

Clerk

ORDINANCE NO. 3169 -C.S.

AN ORDINANCE AMENDING SECTION 3-2.808 OF ARTICLE 8 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED.

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.808 of Article 8 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

3-2.808. USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED.

It shall be unlawful for any person upon roller skates or riding on or by means of a skateboard, coaster or similar device to go upon any roadway in the City or in any City-owned parking lot or City-owned parking structure or in the City of Modesto Transportation Center or in the City of Modesto Amtrak Station or upon the sidewalk in any business district as defined by Section 235 of the Vehicle Code of the State of California or any property of the Modesto City School District, Sylvan Unified School District or Empire Union School District. Provided, however, the Council may, by resolution, grant approval for the use of roadways, City-owned parking lots, City-owned parking structures, and sidewalks for organized skating events of community-wide interest and importance, and that the Operations and Maintenance Director, or such persons as may be designated by the Director, may grant approval for use of City park parking lots for organized skating events of community-wide interest and importance. In granting such approval, the Council and the Director or the Director's designee may impose such conditions, restrictions and requirements as they deem necessary or desirable in order to protect the public interest and promote the general welfare.

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 15th day of February, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

MICHAEL D. MILICH, City Attorney

By Phaedra A. Norton
PHAEDRA A. NORTON, Deputy City Attorney

Ord. No. 3169-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 March, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 6, 2000

ORDINANCE NO. 3170 -C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.301, 10-2.302, 10-2.409, 10-2.508, 10-2.606, 10-2.609, 10-2.1009, 10-2.1309, 10-2.2002, 10-2.2005, 10-2.2306, 10-2.2315, and 10-2.2603 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE AND ADDING SECTIONS 10-2.2334, RELATING TO ZONING.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.301, 10-2.302, 10-2.409, 10-2.508, 10-2.606, 10-2.609, 10-2.1009, 10-2.1309, 10-2.2002, 10-2.2005, 10-2.2306, 10-2.2315, and 10-2.2603, of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

10-2.301. NAMES OF ZONES.

In order to classify, regulate, restrict and segregate the uses of land and buildings, to regulate and restrict the height and bulk of buildings, and to regulate the area of yards and other open spaces about buildings, and to regulate the density of housing, the following zones are created:

Low Density Residential	R-1
Medium Density Residential	R-2
Medium-High Density Residential	R-3
Professional Office	P-O
Neighborhood Commercial	C-1
General Commercial	C-2
Highway Commercial	C-3
Commercial-Industrial	C-M
Light Industrial	M-1
Heavy Industrial	M-2
Business Park	B-P
Planned Development	P-D
Airport	A-P
Specific Plan-Holding	SP-H
Specific Plan-Overlay	SP-O

10-2.302. RESTRICTIVENESS.

- (a) The order of restrictiveness for zones, from most to least restrictive is: R-1, R-2, R-3, P-O, C-1, C-2, C-3, C-M, B-P, M-1, M-2.
- (b) The restrictiveness of uses in a P-D Zone shall be based on that zone which most closely resembles those uses permitted in the P-D Zone.

10-2.409. HEIGHT.

- (a) No structure shall exceed two (2) stories or thirty (30) feet whichever is the lesser height, and no wall or fence shall exceed eight (8) feet except when permitted by a conditional use permit.
- (b) Any second-story portion of any dwelling or accessory building, including additions or alterations to the exterior portions of an existing dwelling or accessory building, shall be subject to plot plan approval by the Director or designee in accordance with Article 27, except as hereinafter specifically excepted. In conducting the plan review, the Director shall consider:
 - (1) The relationship of second-story windows, doors, exterior stairways, exterior balconies, sundecks, etc. with the privacy of the neighbors.
 - (2) The relationship of building mass with the neighbors' views and use and enjoyment of their yards.
 - (3) The relationship of building mass with the neighbors' accessories such as solar collectors and satellite antennas.
- (c) A second-story development is not subject to second-story plan review if at least one (1) of the following two (2) conditions is met:
 - (1) A building permit is issued on the subject lot within ten (10) years of the recordation of the final subdivision map creating the subject lot, and providing that each adjacent residential lot meets at least one (1) of the following criteria:
 - (a) The adjacent residential lot was created by a final subdivision map recorded within the past ten (10) years.

- (b) The adjacent residential lot is greater than one (1) acre in size and contains no dwelling units within forty (40) feet of any lot line abutting the subject lot.
- (2) All second-story portions of any dwelling unit on the subject lot meet the following setback provisions in relation to any adjacent residential lot:
 - (a) Twelve (12) feet where no glazing other than fixed, translucent type is proposed.
 - (b) Forty (40) feet where any clear glazing or decks/balconies are proposed. This forty-foot setback shall be measured from the outside edge of the deck or balcony to the respective property line.
- (3) The term "adjacent residential lot" as used in this subsection (c) means each lot zoned or used residentially, even if separated by an alley, that abuts the side or rear lot line of the subject lot, including those which touch only at a corner.

10-2.508. HEIGHT.

- (a) No structure shall exceed two (2) stories or thirty (30) feet whichever is the lesser height, and no wall or fence shall exceed eight (8) feet except when permitted by a conditional use permit.
- (b) Any second-story portion of any dwelling or accessory building, including additions or alterations to the exterior portions of an existing dwelling or accessory building, shall be subject to plot plan approval by the Director or designee in accordance with Article 27, except as hereinafter specifically excepted. In conducting the plan review, the Director shall consider:
 - (1) The relationship of second-story windows, doors, exterior stairways, exterior balconies, sun decks, etc., with the privacy of the neighbors.
 - (2) The relationship of building mass with the neighbors' views and use and enjoyment of their yards.
 - (3) The relationship of building mass with the neighbors' accessories such as solar collectors and satellite antennas.

- (c) A second-story development is not subject to second-story plan review if at least one (1) of the following two (2) conditions is met:
- (1) The building permit is issued on the subject lot within ten (10) years of the recordation of the final subdivision map creating the subject lot, and providing that each adjacent residential lot meets at least one of the following criteria:
 - (a) The adjacent residential lot was created by a final subdivision map recorded within the past ten (10) years.
 - (b) The adjacent residential lot is greater than one (1) acre in size and contains no dwelling units within forty (40) feet of any lot line abutting the subject lot.
 - (2) All second-story portions of any dwelling unit on the subject lot meet the following setback provisions in relation to any adjacent residential lot:
 - (a) Twelve (12) feet where no glazing other than fixed, translucent type is proposed.
 - (b) Forty (40) feet where any clear glazing or decks/balconies are proposed. This forty-foot setback shall be measured from the outside edge of the deck or balcony to the respective property line.
 - (3) The term "adjacent residential lot" as used in this subsection (c) means each lot zoned or used residentially, even if separated by an alley, that abuts the side or rear lot line of the subject lot, including those which touch only at a corner.

10-2.606. HEIGHT.

- (a) No structure shall exceed two (2) stories or thirty (30) feet whichever is the lesser height, and no wall or fence shall exceed eight (8) feet except when permitted by a conditional use permit.
- (b) On property containing four (4) units or less, any second-story portion of any dwelling or accessory building, including additions or alterations to the exterior portions of an existing dwelling or accessory building, shall be subject to plot plan approval by the Director or designee in

accordance with Article 27, except as hereinafter specifically excepted. In conducting the plan review, the Director shall consider:

- (1) The relationship of second-story windows, doors, exterior stairways, exterior balconies, sundecks, etc. with the privacy of the neighbors.
 - (2) The relationship of building mass with the neighbors' views and use and enjoyment of their yards.
 - (3) The relationship of building mass with the neighbors' accessories such as solar collectors and satellite antennas.
- (c) A second-story development is not subject to second-story plan review if at least one (1) of the following two (2) conditions is met:
- (1) The building permit is issued on the subject lot within ten (10) years of the recordation of the final subdivision map creating the subject lot, and providing that each adjacent residential lot meets at least one (1) of the following criteria:
 - (a) The adjacent residential lot was created by a final subdivision map recorded within the past ten (10) years.
 - (b) The adjacent residential lot is greater than one (1) acre in size and contains no dwelling units within forty (40) feet of any lot line abutting the subject lot.
 - (2) All second-story portions of any dwelling unit on the subject lot meet the following setback provisions in relation to any adjacent residential lot:
 - (a) Twelve (12) feet where no glazing other than fixed, translucent type is proposed.
 - (b) Forty (40) feet where any clear glazing or decks/balconies are proposed. This forty-foot setback shall be measured from the outside edge of the deck or balcony to the respective property line.
 - (3) The term "adjacent residential lot" as used in this subsection (c) means each lot zoned or used residentially, even if separated by

an alley, that abuts the side or rear lot line of the subject lot, including those which touch only at a corner.

10-2.1009. OUTDOOR DISPLAY, SALES AND PROMOTIONS.

- (a) **Purpose.** Visual community character is directly influenced by the built-environment and especially the degree of permissiveness of signs, dealt with in the sign regulations, and the degree to which outdoor display, sales, and promotions are permitted. The regulations that follow are based on the premise that the visual clutter of outdoor display, sales, and promotions on an ongoing basis is not the desired visual community character of the City of Modesto. Consequently, outdoor display, sales, and promotions are limited to:
- (1) Products customarily and continually displayed outdoors on a twenty-four-hour basis such as newspaper vending machines, plants and nursery stock, including bag goods and heavy and (rideable) garden equipment, service stations, vending machines, inventories, recycling collection facilities and seasonal products such as fireworks, pumpkins, and Christmas trees.
 - (2) Products and services very selectively added such as outdoor dining areas, food and drink carts for outdoor dining, and certified farmers markets because of our favorable climate and desired ambiance that these facilities provide.
 - (3) Display or sale of goods or services customarily sold indoors a limited number of times per year, as provided by subsection (b) of this section.
 - (4) Periodic outdoor fund-raisers by nonprofit organizations as provided by subsection (d) of this section.
 - (5) Periodic promotions not involving goods or services.
- (b) The display or sale of goods, merchandise or services which are customary indoor uses shall be allowed outdoors, limited to twelve (12) times in number during any calendar year for each business, subject to these conditions:
- (1) All sales shall be conducted by a business located on the property.

- (2) All merchandise or services displayed outdoors shall be of the same types ordinarily sold indoors at the business conducting the sale.
 - (3) Each display or sale shall be limited to a maximum of ten (10) consecutive days. Sales may be run consecutively.
 - (4) No display shall encroach on a public right-of-way.
 - (5) Each display or sale shall be subject to the sign regulations of this chapter.
 - (6) Prior to any display or sale, a permit for such shall be obtained from the Director.
- (c) Outdoor promotions or events are permitted by a licensed business, merchant association, school, charitable or not-for-profit organization. Promotions or events shall not promote or display the goods or services of any business on the premises and shall be subject to all other limitations in the Modesto Municipal Code, including those governing carnivals, circuses, dances and outdoor sound equipment and noise. Examples of such promotions or events are carnivals, circuses, animal rides, car shows, sporting events, and other exhibitions.
- (d) Outdoor fund-raising sales by schools, charitable or not-for-profit organizations are permitted if the sale is carried on wholly by the organization and it will derive, both directly and indirectly, any and all profits to be derived from the sale. Such sales are not permitted solely by reason of sponsorship by a school, charitable or not-for-profit organization. Outdoor fund-raising sales are limited to twelve (12) times per calendar year for a maximum duration of ten (10) days each for each such organization.
- (e) Outdoor display or sale of goods or services by itinerant vendors as defined by the Modesto Municipal Code is prohibited.
- (f) Use of an inflatable device for a promotion or event shall be limited to six (6) times in number, of nine (9) days maximum during any twelve-month period for each business, and to a single inflatable device per promotion or event.
- (g) Outdoor display or sale of any items of personal property on vacant or unimproved land is prohibited. This prohibition shall not apply to sales

of fireworks, Christmas trees, pumpkins, or other seasonal items as permitted under this article.

- (h) It shall be unlawful and punishable as an infraction for any person to display, sell, or promote for sale any item in violation of the provisions of this section.

10-2.1309. OUTDOOR DISPLAY, SALES AND PROMOTIONS.

Outdoor display, sales and promotions are as permitted in the C-3 Zone except that in addition, any indoor sales, displays and promotions are also permitted outdoors provided they are screened so as not to be visible from a street or parking lot. Failure to comply with the provisions of this Section shall be unlawful and punishable as an infraction.

10-2.2002. NUMBER OF REQUIRED SPACES.

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

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

- (4) 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.
 - (5) For developments utilizing private streets or driveways, one (1) recreational vehicle parking space shall be provided for every twenty-five (25) dwelling units. For projects with less than twenty-five (25) dwelling units, no such spaces are required. Recreational vehicle spaces shall at a minimum be ten (10) feet wide and twenty-six (26) feet long.
- (b) Nonresidential Uses.
- (1) Bar: One (1) for each three (3) seats or one (1) for each sixty (60) square feet of drinking area when the number of seats not known or not permanently fixed;
 - (2) Beauty college: Two and one-half (2.5) for each training station;
 - (3) Bingo game: One (1) for each four (4) seats;
 - (4) Boarding and lodging house, club or fraternity with sleeping rooms: One (1) for each two (2) beds;
 - (5) Bowling alley: One (1) for each three hundred (300) square feet;
 - (6) Child day care: One (1) for each five (5) children;
 - (7) Church: One (1) for each four (4) seats in the building with the largest capacity;
 - (8) Dance hall: One (1) for each fifty (50) square feet of floor area used for dancing;
 - (9) Hospital: One and three-quarters (1.75) for each bed;
 - (10) Hotel or motel: One (1) for each guest room. Additional spaces for restaurants, meeting facilities and other related uses shall be provided as required;
 - (11) Library: One (1) for each three hundred (300) square feet;

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

- (25) Wholesale business: One (1) for each three hundred (300) square feet.
- (c) Nonresidential Uses Inside Downtown P-D Zone Area.
- (1) Bar: One (1) for each four (4) seats or one (1) for each sixty (60) square feet of drinking area when the number of seats is not known or not permanently fixed;
 - (2) Beauty college: Two and one-half (2.5) for each training station;
 - (3) Bingo game: One (1) for each four (4) seats;
 - (4) Boarding and lodging house, club or fraternity with sleeping rooms: One (1) for each two (2) beds;
 - (5) Bowling alley: 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 area bounded by Needham Avenue, Downey Avenue, Burney Street, Grand Street, Morton Boulevard, B Street, Tuolumne Boulevard, Freeway 99 and Kansas Avenue.

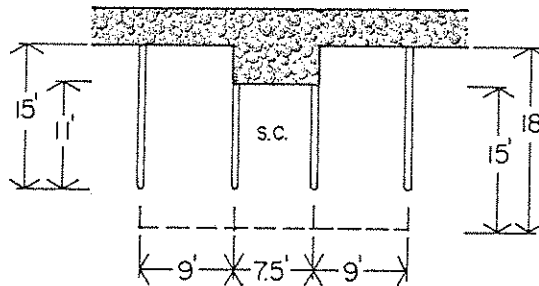
- (e) When the required number of spaces results in a fractional space, it shall be counted as a space if it is one-half (0.5) space or more.
- (f) When a building is removed, any new building on the site shall have spaces provided in accordance with this article.
- (g) Where there are mixed uses, the requirement for spaces shall be the sum of the requirements for each use.
- (h) The Board may approve joint use of spaces subject to the following:
 - (1) A maximum of fifty (50) percent of the requirement for one (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) 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.

10-2.2005. IMPROVEMENT STANDARDS.

The following improvement standards are applicable to all parking areas except temporary downtown parking lots.

- (a) Surface of parking area. Parking areas shall be paved with a minimum of two (2) inches of asphalt concrete surfacing and be graded and designed as to dispose of all surface water in accordance with requirements of the City Engineer.
- (b) Striping of parking area. All parking areas of five (5) or more spaces shall be marked by either striping or buttons to delineate spaces.

The spaces shall be double-striped as shown in the diagram. Painted line width shall be four (4) inches. If buttons are used they shall be three and one-half (3.5) to four (4) inches in diameter, spaced no more than three (3) feet on center. The lines shall be laid parallel to, and one (1) foot within each stall, fifteen (15) feet in length for a full-sized space and eleven (11) feet in length for a small car space, not including the semicircular cap.



- (c) Lighting. All parking areas of five (5) or more spaces shall provide and maintain a minimum of one-third ($\frac{1}{3}$) footcandle illumination per square foot over the entire parking area during the hours of darkness. Wiring for illumination shall be underground unless existing overhead lines can serve the need without any additional overhead lines. Lights provided to illuminate a parking area shall be arranged so as to reflect the light away from any area upon which a dwelling is located.

10-2.2306. TEMPORARY REAL ESTATE OFFICES.

One (1) temporary real estate office may be located in any new subdivision, provided that such office shall be used only for the sale of property located in the subdivision in which such office is located and shall be removed at the end of two (2) years from the date of the recording of the map of the subdivision upon which said office is located, except that where fewer than half of the lots in such subdivision have been sold at the end of such two-year period, a conditional use permit may be granted by the Board of Zoning Adjustment for the extension of the time of establishment and removal of such office. Model Homes may be utilized as temporary real estate offices as above and may also serve adjacent subdivisions by the same developer and marketed under the same name.

10-2.2309. LANDSCAPE PLANS AND MAINTENANCE.

Whenever landscaping or a landscape plan is required by this Code or as a condition of a zone, variance, use permit, plot plan or similar action, landscape and irrigation system design and plan specifications as determined by the Recreation and Neighborhoods Director shall apply. Landscaping and irrigation systems shall be installed and maintained in accordance with the approved plans. Whenever "screen landscaping" is specified in conditions or on approved plans, such landscaping shall be selected to create and maintain a view obscuring "plant mass" at least fifteen (15) feet high within five (5) years.

10-2.2315. PROJECTIONS INTO YARDS.

- (a) Eaves and awnings and other ornamental architectural features may project into a required yard as permitted by the Uniform Building Code.
- (b) Chimneys may project into a required yard a maximum of two (2) feet.
- (c) Ground-mounted air conditioners may encroach into a minimum five (5) foot side yard provided there remains a net two (2) feet clear adjoining passageway and only if there is maintained a clear minimum thirty-two (32) inch wide passageway on the alternate gated side yard.

10-2.2316. WALLS AND FENCES.

Nothing in this Chapter shall limit the location or height of a wall or fence required as a condition of a zone, variance, use permit, plot plan, parcel map, subdivision map or other similar action. Fences and walls permitted in the R-1 Zone shall be permitted in all non-residential zones.

10-2.2603. BURDEN OF PROOF.

The applicant for a zone boundary change shall have the burden of proof of showing that:

- (a) The requested zone change is required by public convenience or necessity;
- (b) The requested change will result in an orderly planned use of land resources;
- (c) The requested zone change is in accordance with the community's objectives as set forth in the General Plan.

SECTION 2. AMENDMENT OF CODE. Section 10-2.2334 is hereby added to Chapter 2 of Title 10 of the Modesto Municipal Code to read as follows:

10-2.2334. GENERAL PROVISIONS.

All uses shall be conducted wholly within a building except such uses as are permitted outdoors as listed in the "Outdoor Display, Sales and Promotion" section of the respective nonresidential zones. A use shall be deemed within a building if, at a minimum, it is under a permanent roof that in nonoperating hours is fully secured on all sides at the wall line of the building from ceiling to floor.

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 15th day of February, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3170-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 March, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 6, 2000

Clerk

ORDINANCE NO. 3171 -C.S.

AN ORDINANCE AMENDING SECTION 4-4.302 OF ARTICLE 3 OF CHAPTER 2 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO GENERAL CONDITIONS OF DESIGN (CUL-DE-SAC OR DEAD-END STREETS).

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

SECTION 1. AMENDMENT OF CODE. Section 4-4.302 of Article 3 of Chapter 4 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

4-4.302. GENERAL CONDITIONS OF DESIGN.

The following general conditions of design shall apply:

- (a) **Streets and Highways.**
 - (1) **Relationship to Existing Streets.** The street system in the proposed subdivision shall relate functionally to the existing streets in the area adjoining the subdivision.
 - (2) **Center Lines.** The center lines of all streets wherever practicable shall be the continuations of the center lines of existing streets, or shall be offset at least one hundred (100) feet.
 - (3) **Intersections.** Each street intersection or interception shall be as near to a right angle as is practicable.
 - (4) **Cul-de-sac or Dead-End Streets.** No cul-de-sac or dead-end streets shall be more than seven hundred fifty (750) feet in length unless emergency access and utility delivery capabilities are acceptable to the Fire Chief and City Engineer, respectively. Where necessary to give access to or permit a satisfactory future subdivision of adjoining land, streets shall extend to the boundary of the property and the resulting dead-end streets may be approved without a turnaround. In all other cases a turnaround having a minimum radius of fifty (50) feet measured to the property line or a comparable area in another form shall be required separated to the depth of one lot from the exterior boundary line or other topographical feature of the subdivision.

- (5) **Curve Radius.** The center line curve radius on all streets and highways shall conform to accepted engineering standards of design and shall be subject to approval of the City Engineer.
- (6) **Intersection Corner Rounding.** At street intersections, the block corners shall be rounded at the property line with a curve having a radius of not less than fifteen (15) feet. A greater curve radius may be required if streets intersect other than at right angles.
- (7) **Street Names.** All names shall be as approved by the Planning Commission. Duplications of existing names will not be allowed unless the streets are obviously in alignment with existing streets and not so far removed as to be confusing.
- (8) **Part-Width Streets.** In case of a part-width street, a minimum of forty (40) feet along and adjacent to a boundary of the subdivision shall be required except in cases in which proper deed or instrument of dedication to the City duly executed by the owner or owners of the adjacent lands is filed with the map of the subdivision, granting sufficient land to make a street of the required full width. Part-width streets shall be permitted only on the periphery of a subdivision and only when the street design approved by the Planning Commission requires the street to be so located that a full dedication would require land not in the subdivider's ownership or control. In no case shall a part-width street be less than forty (40) feet in width, except as provided below. The words "part-width street" shall be lettered on the map following the name of such street.

Exception--A part-width street less than forty (40) feet may be permitted upon recommendation of the Planning Commission and subject to the approval of the City Council, as set forth in Section 1805 of the Streets and Highways Code of the State of California. The recommendation of the Planning Commission and the approval of the City Council shall be based upon the following factors:

- (aa) The extension of the street is along property lines which form a boundary of the subdivision.

- (ab) Adherence to the forty (40) foot part-width standards creates an offset in the center of the street.
- (ac) The public interest in having a street without an offset in the center line thereof outweighs the general public policy, set forth above of having all part-width streets a minimum of forty (40) feet in width.

In all cases in which a part-width street less than forty (40) feet is permitted, on-street parking may be prohibited until such time as a minimum of forty (40) feet of the street is improved.

- (9) **Width of Streets.** Street right-of-way widths shall be not less than those set forth herein. Increased widths may be required when determined necessary by the Planning Commission in the public interest. Approval or determination of street classification shall be made by the Planning Commission.

STREET CLASS	MINIMUM WIDTH
Freeway	As determined by State Highway Commission
Expressway	As determined by precise plan
Major streets	100 feet
Collector streets	60 feet
Collector streets within 250 feet of major street	70 feet
Industrial streets	60 feet
Residential streets	50 feet
Frontage road	As required
Cul-de-sac	50 feet (plus 50-foot radius)

(b) **Alleys.**

- (1) Alleys shall be prohibited in residential subdivision except when approved or required by the Planning Commission for any one of the following reasons:

- (aa) To widen an existing part-width alley which has been dedicated and improved in an adjacent subdivision;
 - (ab) To complete the continuity of existing alleys where the property to be subdivided is located adjacent to existing blocks containing alleys;
 - (ac) The special nature of the design or density of a residential subdivision where dwellings are to be grouped in such a manner as to require access from other than street frontage;
 - (ad) The relationship to existing or proposed adjacent commercial, industrial or high-density residential development, or adjacent railroad, canal rights-of-way or other physical barrier;
 - (ae) The unusual size, shape or topographical character of the property to be subdivided.
- (2) Residential alleys shall be a minimum of twenty (20) feet in width.
 - (3) Alleys shall be provided where needed to serve existing or proposed commercial or industrial areas, and shall have a minimum width of thirty (30) feet, with adequate provision for ingress and egress.
 - (4) Where two (2) alleys intersect, ten (10) foot corner cutoffs measured along the property lines from the point of intersection will be required.
 - (5) Alleys shall be so laid out and aligned as to provide reasonable access for utilities and other services.
- (c) **Blocks.**
- (1) **Acre or Large Lot Subdivisions.** Where a parcel is first subdivided into small farms or acre tracts, the blocks shall be of such size and shape and be so divided as to provide for the opening of major and collector streets and for the ultimate extension and opening of minor streets and alley at such intervals

as will permit a subsequent division of any parcel into lots of normal size.

- (2) **Block Lengths.** Block lengths shall not exceed eleven hundred (1,100) feet. For those blocks of an "el" shape, "tee" shape, or superblock configuration, the width shall not exceed five hundred (500) feet in each of any other direction perpendicular or nearly perpendicular to the length. For the purposes of measurement, the distance between extreme property lines measured generally along rear property lines will be utilized. The above limitations shall not apply to blocks which will abut irrigation canals, railroads, freeways, limited-access expressways, existing subdivisions with a block over eleven hundred (1,100) feet in length, or other existing barriers over eleven hundred (1,100) feet in length.
- (3) **Block Widths.** Blocks shall be of sufficient width to permit the plotting of two (2) tiers of lots except where blocks are adjacent to major streets, freeways or expressways and lots are created with back up to such street and front onto a residential or collector street and access rights to such major street, freeway or expressway are waived by the subdivider. The Planning Commission may grant an exception to these provisions to permit through lots which are to be developed with uses facing both streets when it is determined that such exception is warranted by the circumstances of a particular subdivision and is in compliance with an existing zoning classification.

(d) **Lots.**

- (1) **Side Lines.** The side lines of all lots wherever practicable shall be at right angles to the center line of the street.
- (2) **Division of Lots.** No lot shall be divided by a county, city, school or any other taxing district boundary line.
- (3) **Lot Widths and Depths.** The size and shape of each lot shall be in conformance to the zoning regulations effective in the area of the proposed subdivision.
- (4) **Suitability of Lots.** All lots shall be suitable for the purpose for which they are intended to be sold. No land subject to flooding

or deemed by the Planning Commission to be uninhabitable shall be plotted for residential occupancy.

(e) **Easements.**

- (1) **For Utilities.** The subdivider shall grant easements for public utility use along lot lines where necessary for the extension of any such utility and for the relocation of existing public utility facilities.
- (2) **For Planting.** Where streets are less than sixty (60) feet in width, easements three (3) feet in width for planting and utilities shall be required adjacent to each street right-of-way line.
- (3) **Dedication.** Dedication of easements shall be for the purpose of installing and maintaining utilities, planting strips and for other public purposes as may be ordered or directed by the Council.
- (4) **Protection of Easements.** No person other than a public utility shall erect, construct or place any building or structure except fences or walls on any public utility easement. No person shall permit or allow vines or other climbing plant materials to become attached to public utility poles. It shall be the responsibility of the owner and/or occupant of real property to maintain any public utility easement area thereon in such a manner that its condition will not interfere with the proper operation and maintenance of public utility facilities located thereon. Any public utility using such easement, its representatives, agents or employees, shall have the right to trim or top such trees or shrubs growing within or overhanging the easement as may endanger or interfere with public utility facilities constructed therein and may have free access to said public utility facilities and every part thereof at all times for the purpose of constructing, operating and maintaining said public utility facilities.
- (5) **Design of Easements.** Easements shall be located and designed in subdivisions to provide for reasonable, practical and useful placement, replacement, enlargement, repair and maintenance of utility facilities.

- (f) **Underground Utilities.** All utility distribution facilities and lines, including, but not limited to, gas, water, sewer, electrical

communications, street lighting and cable television shall be installed underground, except that overhead utility lines may be permitted when it is determined by the Planning Commission that such facilities are designed to serve areas larger than that being subdivided and that it is impractical to locate such facilities underground.

When overhead lines are approved by the Planning Commission, they shall extend along alleys, side lot, rear yard or privately owned easements whichever is possible, except where such overhead lines cross streets, or must be located outside of easements for good and sufficient reasons as determined by the Planning Commission.

Overhead service to lots abutting existing overhead lines is permitted where no extension of overhead lines is required.

It shall be the responsibility of the subdivider to insure that utilities are installed in compliance with the requirements of this section. He shall make the necessary arrangements with the utility companies or other agencies for such installation, according to the specifications of the governing agency. For the purpose of this section, appurtenances and associated equipment such as, but not limited to, surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets may be placed aboveground.

- (g) **Subdivisions Along Major Streets.** When a subdivision is developed adjacent to a freeway, expressway or major street as shown on the General Plan, the Planning Commission may require the subdivider to dedicate and improve a frontage road to provide ingress and egress to adjacent lots or to create backup lots which front upon an interior residential street and back up to such freeway, expressway or major street. When backup lots are created, the subdivider shall waive direct access rights from the lots to the freeway, expressway or major street and shall construct a masonry wall, fence or other suitable barrier as required by the Planning Commission between the subdivision and the adjacent freeway, expressway or major street.
- (h) **Watercourses.** The subdivider shall, subject to riparian rights, dedicate a right-of-way for storm drainage purposes conforming substantially with the lines of any natural watercourse or channel, stream or creek that traverses the subdivision, or at the option of the subdivider, provide by dedication further and sufficient easements or construction, or both, to dispose of such surface and storm water.

- (i) **Sewage Disposal.** Provision shall be made for adequate sewerage to be installed in accordance with the provisions of the applicable laws of the City.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 15th day of February, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3171-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 March, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 6, 2000

Clerk
19

ORDINANCE NO. 3172 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1431-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 8-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (SANTA ANITA DEVELOPMENT CORPORATION)." AS AMENDED BY ORDINANCE NOS. 1716-C.S. AND 2099-C.S. (DAYTON HUDSON CORP.)

SECTION 1. AMENDMENT OF ORDINANCE NO. 1431-C.S. Section 2 of Ordinance No. 1431-C.S. as amended by Ordinance Nos. 1716-C.S. and 2099-C.S., is hereby further amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(125) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A community shopping center with those uses permitted in the C-3 Zone.
2. 72 two-story apartment dwelling units with accessory recreation areas and structures and parking.
3. 33 one-story townhouse residential dwelling units with accessory parking."

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of February, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3172-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 March, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 6, 2000

ORDINANCE NO. 3173 -C.S.

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

The 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:

SEC. 8-3.102. CONTRACTING AUTHORITY.

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

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred thousand dollars (\$200,000.00) or less.
- (b) Contracts for public works projects consisting of the improvement, repair, expansion, renovation, or modification of the baseball stadium facilities located at John Thurman Field in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three million dollars (\$3,000,000.00) or less.
- (c) 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.

Any contract for public works projects which may be so approved as set forth in subsections (a), (b) and (c) above of this section and authorized by the City Manager is not subject to the public bidding requirements of article 3 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

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 March, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Mike Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3173-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of March, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Mayor Sabatino
NOES: Councilmembers: Frohman, Smith
ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 13, 2000

Clerk
12

ORDINANCE NO. 3174 - C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1 TO PLANNED DEVELOPMENT ZONE, P-D(541), PROPERTY LOCATED AT 409 EAST COOLIDGE AVENUE. (CANDICE MESERVY)

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

SECTION 1. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(541):

R-1 to P-D(541)

All that certain real property situated in a portion of the northwest quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Parcel B as shown on that Parcel Map, filed in the office of the Recorder of Stanislaus County, California, on August 12, 1977, in Volume 25 of Parcel Maps at Page 77;

Including the northerly 25 feet of Coolidge Avenue, to the centerline of original 40-foot road.

SECTION 2. USES. The following uses shall be permitted in said P-D(541) 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. An existing five-dwelling-unit complex.

2. Off-street parking areas as shown on the P-D plot plan.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 21st day of March, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

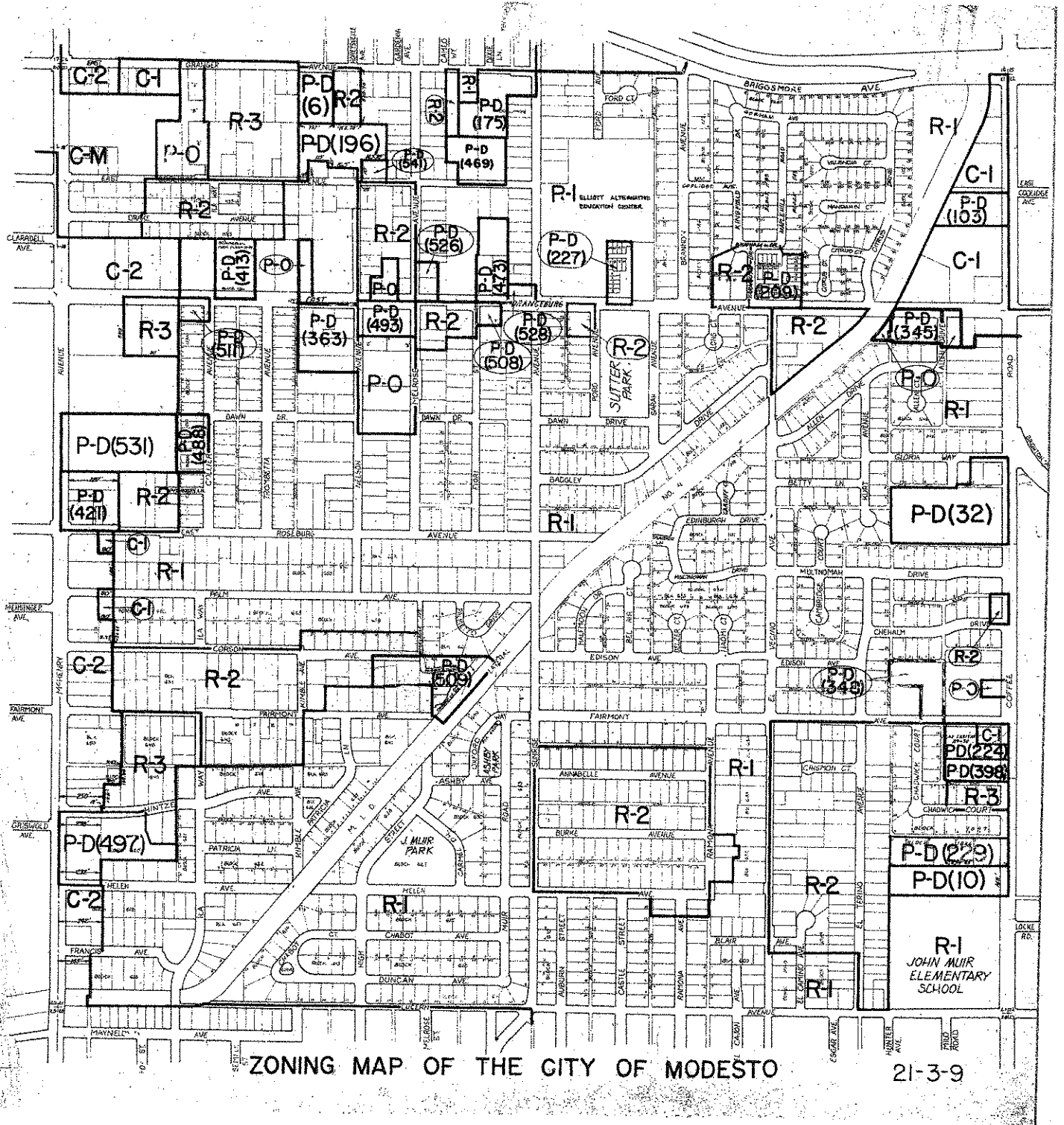
(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *[Signature]*
Community Development Department
Planning Division



ZONING MAP OF THE CITY OF MODESTO

Ord. No. 3174-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of March, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 27, 2000

ORDINANCE NO. 3175-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 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:

SEC. 8-3.102. CONTRACTING AUTHORITY.

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

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred thousand dollars (\$200,000.00) or less.
- (b) Contracts for public works projects consisting of the improvement, repair, expansion, renovation, or modification of the baseball stadium facilities located at John Thurman Field in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three million dollars (\$3,000,000.00) or less.
- (c) 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.

- (d) 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.
- (e) 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.

Any contract for public works projects which may be so approved as set forth in subsections (a), (b), (c), (d) and (e) above of this section and authorized by the City Manager is not subject to the public bidding requirements of article 3 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of March, 2000, by Councilmember Smith, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3175-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of April, 2000, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: May 18, 2000

Check

ORDINANCE NO. 3176 -C.S.

AN ORDINANCE AMENDING ARTICLE 10 OF CHAPTER 1
OF TITLE 4 OF THE MODESTO MUNICIPAL CODE
RELATING TO BINGO GAMES.

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

SECTION 1. AMENDMENT OF CODE. Article 10 of Chapter 1 of Title 4
of the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 10. BINGO GAMES

4-1.1001. PURPOSE AND INTENT.

It is the purpose of this article to authorize the playing of the game of chance commonly known as bingo subject to and pursuant to Penal Code Section 326.5 and this article. The City of Modesto, pursuant to Section 9, Art. IV of the California Constitution and Section 326.5 of the California Penal Code, does hereby authorize and provide for the conduct of bingo games by non-profit organizations for charitable purposes in accordance with the provisions of this article.

The regulatory provisions set forth in this article ensure that bingo games operated within the City of Modesto are subject to reasonable conditions for the protection of the public health, safety and welfare. Bingo operations are an important source of revenue for eligible organizations. These eligible organizations provide a community benefit because receipts from bingo games are required by state law to be used only for charitable purposes. Thus, it is in the best interest of the citizens of Modesto to regulate bingo operations by providing certain standards for the conduct of the games and by providing for licensing and financial accountability procedures set forth in this article.

The Modesto Police Department will conduct a thorough investigation into the background of applicants and their organizations in order to assure the citizens of Modesto that licensure will not provide a means for fraud and deceit and thus safeguard legitimate charitable purposes.

4-1.1002. DEFINITIONS.

- (a) **Bingo.** As used in this article, the term "bingo," means a game of chance in which prizes are awarded on the basis of designated numbers

or symbols on a card that conform to numbers or symbols selected at random. The game of bingo shall include cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. The term bingo does not include the use of electronic bingo aids, that is, the use of any mechanical, electronic, electro mechanical, or computerized aid that is interfaced with or connected to equipment used to conduct a game of bingo in any manner whatsoever.

(b) **Electronic bingo aid.** As used in this article, the term "electronic bingo aid" means any mechanical, electronic, electromechanical or computerized aid (including related hardware and software) that is interfaced with or connected to equipment used to conduct a game of bingo and which allows a player to store, display, and mark a bingo face card five (5) spaces wide by five (5) spaces long, the center space free, and the other spaces containing pre-printed numbers occurring between one (1) and seventy-five (75), inclusive. The electronic bingo aids must be used in conjunction with bingo cards and may be used to assist a bingo player in participating in bingo games if all of the following conditions are complied with:

- (1) The particular type of electronic bingo aid proposed to be used has been demonstrated to, inspected by, and approved by the City's Police Department.
- (2) No more than fifty(50) bingo cards (fifty(50) card faces, each with its random bingo number pattern) shall be programmed into any single electronic bingo aid during any bingo game.
- (3) Only one (1) electronic bingo aids may be used by any bingo player during a bingo game. This is the equivalent of fifty (50) bingo cards.
- (4) The electronic bingo aids shall be distributed for play on a totally random basis. The bingo player is prohibited from selecting the electronic bingo aid. The electronic bingo aid is not to be removed from the premises except for repair. A record will be maintained of all electronic bingo aids removed from the premises, the business entity and site address to which they were taken, and the return date.

- (5) Prior to being given physical possession of the electronic bingo aid, the bingo player must pay for the appropriate number of games to be programmed into the electronic bingo aid and receive a receipt indicating the amount paid and the number of games activated in the electronic bingo aid. In addition, the bingo player must maintain in his/her possession cards or sheets of paper corresponding exactly to the bingo number pattern for each card face entered into the electronic bingo aid. The electronic bingo aid may produce the sheets of paper containing the bingo number pattern for each card ace for the games to be played.
- (6) Electronic bingo aids are permitted as means of assisting the bingo player mark, process by computer or otherwise register, record or process numbers selected at random on any bingo card. They shall not be a complete substitute for bingo cards.
- (7) Electronic bingo aid system must have a dial-up capability so that the Police Department may remotely monitor the operation and the internal accounting systems of the electronic bingo aid at any time.
- (8) To prevent tampering, manufacturers of electronic bingo aids incorporating erasable programmable read only memory modules ("EPROM") and EPROM receptacle or similar logic storage and/or retrieval components must seal these modules and their associated circuitry to secure against unauthorized removal, additions, changes or other alterations.
- (9) Manufacturers of electronic bingo aids must manufacture each electronic bingo aid to insure that it works with an accounting system that records and retains for a period of not less than three (3) years, the serial number of each bingo card sold (it must be clear whether the card sheet is six-on, etc.), the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. This information must be secure and shall not be accessible for alteration. The electronic bingo aid system must be able to verify winning cards and to print them for posting. The electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

- (10) If the Police Department detects or discovers any problem with the electronic bingo aid that affects the integrity of the bingo game, the Police Department may direct the manufacturer, distributor, or conductor to cease the sale, lease, or use of the electronic bingo aid, as applicable, in the City. The Police Department may require the manufacturer to correct the problem or recall the electronic bingo aid immediately upon notification by the Police Department to the manufacturer. If the manufacturer, distributor, or conductor detects or discovers any defect, malfunction, or problem with the electronic bingo aid, the manufacturer, distributor, or conductor, as applicable, shall immediately remove the electronic bingo aid from use or play and immediately notify the Police Department of such action.

Subject to the appeal procedures provided herein, violation of these rules shall result in the loss of the right to use electronic bingo aids or the revocation of the bingo license.

- (c) **Pull tabs.** The game of bingo shall also include cards having numbers or symbols which are concealed and preprinted. These cards are commonly referred to as "pull tabs." The winning preprinted cards or pull tabs shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All such preprinted cards shall bare the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." The preprinted cards shall be sold only during the hours of operation of the licensing organization. It is the responsibility of the game operators to ensure that preprinted cards remain on the premises at all times.

4-1.1003. ARTICLE IS NOT EXCLUSIVE.

This article is not the exclusive regulation of bingo games within the City. It shall supplement and be an addition to other provisions of this Code, other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by the City of Modesto, the State of California or any legal entity or agency having jurisdiction including, but not limited to, the provisions of California Penal Code Section 326.5, as amended, or any successor California code governing bingo. In addition, the Modesto Police Department will issue a bingo handbook to all permittees. This handbook will set forth the administrative regulations governing bingo operations within the City of Modesto.

4-1.1004. LICENSE REQUIRED.

No person, firm, corporation, organization or association shall engage in, carry on, maintain, conduct or cause to be engaged in, carried on, maintained or conducted a bingo game in the City of Modesto without first obtaining a license from the City pursuant to this article and paying the prescribed license fee in the amount of fifty dollars (\$50.00) to the Modesto Police Department.

4-1.1005. ORGANIZATIONS ELIGIBLE FOR LICENSE.

Such licenses may be issued only to non-profit organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701i of the Revenue and Taxation Code and by mobile home park associations and senior citizen organizations-- Organizations exempt because they qualify as a 23701d organization under the California Revenue and Taxation Code are referred to herein as "charitable organizations."

All other exempt organizations, which include, for purposes of this article, mobile home park associations and senior citizen organizations that conduct bingo games for the sole purpose of entertainment and limit bingo prizes to under twenty-five dollars (\$25.00) in cash and kind, are exempt from payment of the prescribed license fee.

4-1.1006. CONTENTS OF THE APPLICATION.

An eligible organization desiring to conduct bingo games in the City of Modesto shall apply to the Administrative Services Division of the Modesto Police Department for a license. The application for a license to conduct bingo games shall be in the form determined by the Police Chief. The Administrative Services Division shall not accept incomplete applications. The application shall include, but not be limited to, the following information:

- (a) A copy of the resolution adopted by the organization authorizing the filing of the application for a bingo license;
- (b) The name of the organization; names, social security number, birth date, driver's license (if current), phone number (business and home), addresses, and signatures of all of the officers of the organization;
- (c) Proposed days and hours of operation of bingo games;

- (d) Copies of certificates or letters evidencing exempt status under the applicable section(s) of the California Revenue and Taxation Code from the Franchise Tax Board, as appropriate;
- (e) Address of the premises where bingo games will be conducted;
- (f) Statement of ownership or a lease agreement relating to the proposed premises where the bingo games will be conducted;
- (g) Purpose(s) for which the premises are used by the organization;
- (h) A signed waiver form authorizing the Modesto Police Department to inspect the financial records required to be maintained by this article and/or any bank accounts containing profits derived from bingo games and the expenditures of said profits;
- (i) Name(s), social security number, birth date, driver's license (if current), phone number (business and home), and addresses of the person(s) responsible for the operation of the bingo games, their capacity within the organization, and their responsibilities with respect to the bingo operation;
- (j) Name(s), social security number, birth date, driver's license (if current), phone number (business and home), and addresses of the person(s) operating or assisting in the operation of the bingo games;
- (k) A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Penal Code Section 326.5 and the provisions of this article, as either may be amended from time to time;
- (l) A financial statement of the organization, signed by a licensed certified public accountant, for the one (1) year period immediately preceding the application;
- (m) If the organization is a mobile home park association or a senior citizen center which does not have a certificate of tax exemption, it shall provide the Administrative Services Division of the Police Department with a copy of its articles of association, bylaws, or other documents setting forth its aims and purposes which is signed by the principal officers or trustees of the association. These organizations shall provide such information and documents as deemed necessary by the Administrative Services Division before any license is issued; and

(n) Such other information as the Police Chief may require.

The license shall be issued for a term of one (1) year from the date of issuance, subject to renewal and payment of applicable annual or other fees.

4-1.1007. DENIAL OF LICENSE AND APPEALS THEREFROM.

The Police Chief or his or her designee, may refuse to issue a bingo license if, after consideration of the application and any other papers, records and investigations, he/she deems relevant, it is determined that the operation of a bingo game would be in violation of the California Penal Code, this article, or any City zoning or building law or regulation.

In addition, the Police Chief has discretion to refuse to issue a bingo license if the applicant has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another and the Police Chief concludes that by reason of the crime or act the applicant may not direct, run, manage or oversee a bingo operation in a law abiding manner or in a manner which does not subject patrons of the bingo operation to risk of harm or criminal, deceitful or otherwise unethical practices.

Upon denial of a license, the appeal procedure provided in this article shall be applicable.

Bingo games within the City of Modesto must be played, at all times, pursuant to the license granted hereunder, the organization so licensed shall maintain an affidavit under penalty of perjury which shall contain the current update of the information originally set forth in the application for the license.

4-1.1008. EXCLUSIVE OPERATION BY MEMBERS OF THE LICENSED ORGANIZATION.

Pursuant to Penal Code Section 326.5(h), the bingo game shall be operated and staffed only by members of the licensee organization. Such members shall not receive a profit, wage or salary from any bingo game. Only the licensed organization shall operate such bingo game or participate in the promotion, advertising, supervision or any other phase of the game. Security personnel who are not members of the licensed organization are authorized pursuant to Penal Code Section 326.5(h).

4-1.1009. ACCESS TO CRIMINAL HISTORY INFORMATION.

The City of Modesto's Police Department shall have the authority to obtain criminal history information for each person operating or assisting in the operation of a bingo game for the purpose of determining those who have been convicted of crimes involving lotteries, gambling, larceny, perjury, bribery, extortion, fraud or similar crimes involving moral turpitude, and to present such information at any bingo license hearing.

4-1.1010. FINANCIAL INTEREST IN LICENSEE ORGANIZATION ONLY.

Pursuant to Penal Code Section 326.5(l)(2), no individual, corporation, partnership or other legal entity except the licensee organization, shall hold a financial interest in the conduct of any bingo game licensed under this article.

4-1.1011. LICENSE IS NOT TRANSFERABLE.

Any license granted under this article shall not be transferable either as to the licensee organization or the location. Any attempt to transfer said license shall render the license invalid. Pursuant to Penal Code Section 326.5(f), a license applicant or an existing licensee organization desiring to expand or change locations shall comply with the City approval process including, but not limited to, the bingo license and/or land use approval.

4-1.1012. BINGO GAMES CONDUCTED ONLY ON LICENSEES PROPERTY.

A license to conduct bingo games shall be issued only for use on property owned or leased by the licensee, or on property loaned to the licensee only if such property is used continuously by such licensee for an office for the performance of the purposes for which it is organized. In the event the described property ceases to be so used for any period of time, the license shall have no further force or effect. Nothing in this article shall be construed to require that the property owned or leased by, or whose use is donated to, the organization be used or leased exclusively by, or donated exclusively to, that organization.

4-1.1013. POSTING OF LICENSE.

An organization granted a permit pursuant to this article shall not conduct or permit to be conducted a bingo game unless said license is posted in a conspicuous place during the conduct of such game. The licensee shall produce

and exhibit the same, when applying for renewal of said license, and whenever requested do to so by any peace officer, code enforcement officer, or officer authorized by the City to issue or inspect the premises.

Every person engaged in the conduct or operation of a bingo game shall wear an identification badge of a type and form required by the Police Chief and issued by the Modesto Police Department.

4-1.1014. REQUIREMENTS AS TO SUPPLIERS AND DISTRIBUTORS.

The licensee organization shall submit to the Modesto Police Department on or before January 15 of each year, a list of the names and addresses of any and all suppliers or distributors of bingo supplies and equipment to the licensee organization during the preceding calendar year.

All suppliers or distributors doing business within the City of Modesto shall provide the information requested by the Police Department. This information shall include, but not be limited to, game descriptions, types of bingo supplies provided, quantities delivered and sales price, and serial numbers, when available.

No supplier shall receive a percentage of profits from the bingo proceeds or any other phase of bingo. No supplier shall absorb the loss derived from the conduct of the bingo. No supplier shall adjust bingo supply prices for a specific licensee organization based on profits, losses, or tax exempt status. No supplier shall dictate or restrict a bingo license organization from choosing a particular vendor for the purchase of bingo supplies.

The licensee organization shall pay in full the invoice amount for bingo supplies not more than five (5) business days after the due date on the invoice. Failure to comply will result in commencement of suspension or revocation proceedings as set forth in this article.

4-1.1015. HOURS OF OPERATION.

No licensee shall conduct bingo games more than six (6) hours out of any one (1) day. No bingo games shall be conducted before 9:00 a.m. or after 12:00 midnight.

4-1.1016. BINGO GAMES OPEN TO PUBLIC.

All bingo games shall be open to the public. All bingo games, equipment, facilities and property shall be open to inspection by members of the Police

Department, Fire Department, Health Department, City of Modesto code enforcement officers, and/or building inspection officers or officials.

4-1.1017. ATTENDANCE LIMITED TO OCCUPANCY CAPACITY.

Notwithstanding that bingo games shall be open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted as determined by the Fire Department and Building Inspection Division of the City in accordance with applicable codes laws and regulations.

4-1.1018. METHOD OF OPERATION.

No bingo game shall be operated in violation of any law or in a manner which shall constitute a public nuisance.

4-1.1019. PARTICIPANTS IN BINGO GAMES.

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted. No licensee shall issue chips or money to a patron on credit or loan (including but not limited to IOU's and checks to be held) or allow any patron to otherwise play on credit. No person shall be allowed to buy more than fifty (50) bingo cards in any one day nor be allowed to play more than fifty (50) bingo cards in any one game. No person who is in a state of intoxication shall be allowed to participate in or to work at any bingo game licensed under this article.

4-1.1020. MAXIMUM AMOUNT OF PRIZE.

The total value of a prize or prizes awarded during the conduct of any bingo game shall not exceed two hundred fifty dollars (\$250.00) in cash or kind, or both, for each separate game which is held. Pull tabs may not be used in conjunction with other bingo games for purposes of exceeding this limit. Each pull tab is, for purposes of this article, a separate bingo game.

4-1.1021. PROFITS AND PROCEEDS TO BE KEPT IN SPECIAL FUND OR ACCOUNT.

- (a) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code of the State of California, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any

other fund or account. Such profits shall be used only for charitable purposes.

(b) With respect to other organizations authorized to conduct bingo games pursuant to this article, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Proceeds are the receipts of bingo games conducted by an organization not within subsection (a). Such proceeds shall be used only for charitable purposes, except as follows:

(1) Such proceeds may be used for prizes.

(2) A portion of such proceeds, not to exceed twenty (20) percent of the proceeds before the deduction for prizes, or two thousand dollars (\$2,000.00) per month, whichever is less, may be used for rental of property, overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.

(3) Such proceeds may be used to pay license fees.

4-1.1022. INSPECTION OF BOOKS, RECORDS OR ACCOUNTS.

The licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision or any other phase of bingo games which are authorized by this article. The City, by and through its authorized officers, shall have the right to examine and audit such records at any reasonable time, and the licensee shall fully cooperate with the City by making such records available. Failure to so cooperate shall be a violation of this article and grounds for revocation of the permit.

4-1.1023. POSTING OF OPERATION RULES.

Each bingo game operation shall post in a conspicuous place, at the entrance of the facility, the rules for operation of its bingo games. The written rules will contain at least the following information:

It is unlawful for a licensee organization to knowingly authorize, permit or do any of the following:

(a) Provide or award total prizes for each separate bingo game which exceeds two hundred fifty dollars (\$250.00) in cash or kind, or both;

Ord. No. 3176-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 June, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino
NOES:	Councilmembers:	Serpa
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 6, 2000

- (b) Limited attendance or participation in such games to members of the licensee's organization or otherwise deny attendance or participation to member of the general public who complies with the rules of the game and conducts himself in an orderly and law abiding manner;
- (c) Participate in a bingo game, if the participant is obviously under the influence of alcohol;
- (d) Participate in bingo games, unless personally present at the location of the games at the time the games are being conducted; and
- (e) Make payouts without a participant evidencing a paid receipt corresponding to the number of games actually being played.

4-1.1024. SOURCE OF PAYOUTS FOR BINGO GAMES AND LIMITATIONS ON GAMES AND FREE PRIZES AND FREE FOOD.

Revenue from bingo operations shall be the sole source of payouts to bingo winners. If an organization has revenue sources separate from bingo revenue, those other revenue sources shall not be commingled into payouts or prizes to participants in the bingo games.

There shall be no free games. There shall be no free door prizes and/or free gifts. Provisions of free drinks such as coffee, tea and hot cocoa is permissible. Carbonated drinks are not included in the free category. Free food for special occasions to all patrons may be permitted up to four (4) times per year. Prior to the event, a written permit for the bingo session(s) must be obtained from the Police Chief, or designee.

4-1.1025. MINORS NOT TO PARTICIPATE.

For the purposes of this article, no person under the age of eighteen (18) years of age shall be allowed to participate or be a worker in any bingo games licensed under this article.

4-1.1026. SERVICE OF ALCOHOLIC BEVERAGES.

No alcoholic beverages shall be served or consumed by bingo workers or bingo participants on the bingo premises during the hours of operation of a bingo game.

4-1.1027. TEMPORARY SUSPENSION OF LICENSE PENDING OPPORTUNITY FOR HEARING.

The Police Chief shall have the authority to temporarily suspend a bingo establishment's license by ordering in writing that the licensee immediately cease and desist any further operations if the Police Chief finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by the exercise of the license and one (1) of the following occurs:

- (a) The licensee is conducting its operation in violation of any of the provisions of this article, California Penal Code Section 326.5, the City of Modesto administrative regulations adopted pursuant to this article, or any other applicable State of California, County of Stanislaus, federal law, or administrative rule or regulation, as they may be amended from time to time; or
- (b) The licensee has not made available upon demand of the Police Chief all records necessary to determine or establish compliance with the provisions of this article, the City of Modesto administrative regulations adopted pursuant to this article, California Penal Code Section 326.5, or any other applicable State of California, County of Stanislaus, federal law, or administrative rule or regulation, as they may be amended from time to time; or
- (c) The licensee has not kept records as required by this article, California Penal Code Section 326.5, the City of Modesto administrative regulations adopted pursuant to this article, or any other applicable State of California, County of Stanislaus, federal law, or administrative rule or regulation, as they may be amended from time to time; or
- (d) Has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Police Chief, this article, or any other applicable State of California, County of Stanislaus, federal law, or administrative rule or regulation, as they may be amended from time to time.

4-1.1028. NOTICE OF TEMPORARY SUSPENSION AND APPEAL.

- (a) The holder of a bingo license shall be given prompt notice of suspension of said license and shall immediately desist from conducting or operating

any bingo games. Service of notice of temporary suspension shall also constitute a notice of proposed revocation of the license. The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of personal service of the notice thereof. The licensee shall be notified that it shall have ten (10) days from the date of such order of temporary suspension to request in writing a hearing before the Police Chief to determine whether its license should be revoked. If the licensee fails to request in writing such hearing before the Police Chief within the period prescribed, the Police Chief shall revoke the license.

- (b) Upon timely request for an appeal by the licensee, the Police Chief shall provide an appeal hearing within fifteen (15) days after receipt of written request from the licensee. Notice of the time and place of such hearing shall be given to the licensee by depositing said notice in the United States mail at least ten (10) days before the hearing to the address in the bingo application.
- (c) If the license is revoked, written notice shall be given to the licensee within twenty-five (25) days of the close of the hearing. Notice of revocation shall be given by United States mail. The licensee will be presumed to have received said notice within five (5) days after mailing.
- (d) Any person who conducts a bingo game after a temporary suspension of its license or after revocation of its license is guilty of a misdemeanor.
- (e) Bingo licensees who have discontinued conducting bingo games and have not followed the administrative regulations set forth in the Modesto Police Department Bingo Handbook, the Modesto Municipal Code Title 4, Chapter 1, shall be denied a subsequent license to conduct bingo games for two (2) years from the last day of bingo game operations.
- (f) Any organization whose license is revoked may not apply for a license to conduct bingo games in the City of Modesto for a period of two (2) years from the date of such revocation. However, if the ground for revocation is cancellation of the exemption granted under the Revenue and Taxation Code, said bingo organization may again apply for a bingo license upon proof of reinstatement of said exemption.

4-1.1029. APPEAL OF DENIAL OF LICENSE OR REVOCATION OF LICENSE.

Any person, firm, corporation, organization or association upon denial of an application for a business license to operate bingo games and any holder of a bingo license whose license is revoked under this article shall have the right, after receiving notice in writing of the denial or revocation, to file a written appeal within twenty (20) calendar days from the service of a notice of denial of license or order of revocation executed by the Police Chief to the City Manager or his or her designee. The provisions for appeals set forth in Title 1, Chapter 4, of the Modesto Municipal Code are inapplicable to this article.

Any written appeal request shall contain the following:

- (a) A brief statement setting forth the interest the appealing party has in the matter to be appealed;
- (b) A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his/her/its contention that the denial of the license or revocation of the license should not be imposed;
- (c) An address which the appellant agrees notice of any additional proceedings or an order after hearing may be received by first class mail;
- (d) As soon as practicable after receiving the written notice of appeal, the City Manager or his or her designee shall schedule a date, time and place for the appeal hearing. A continuance of the hearing may be had upon written request to the City Manager and upon a showing of good cause;
- (e) Written notice of the date, time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the appeal hearing. Notice of hearing shall be sent to the appellant by first class mail at the address provided with the written appeal request. The hearing shall be set for an appeal hearing no sooner than twenty (20) days following a request for a hearing;
- (f) Failure to attend the appeal hearing by the person appealing any notice and/or order of the Police Chief issued under this article shall constitute a waiver of his or her rights to such hearing and adjudication of the notice or order, or any portion of the notice or order; and

- (g) The order of the City Manager or his or her designee shall constitute a final order and judicial review of the order shall be governed by California Code of Civil Procedure Section 1094.6.

4-1.1030. PENAL CODE SECTION 326.5.

All of the provisions of California Penal Code Section 326.5 as it now exists and as amended hereafter are incorporated herein by reference as if set forth in full and shall apply to every bingo game except as to more restrictive provisions which are set forth herein.

4-1.1031. CRIMINAL VIOLATIONS.

Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of this article as an infraction or misdemeanor.

- (a) **Infraction/misdemeanor.** Any person who violates any of the provisions of this article shall be guilty of an infraction and/or misdemeanor. Each and every day, or any part thereof, during which any such violation is committed, continued, or allowed, shall be a separate offense.
- (b) **Prosecution.** Every violation of this article shall be a misdemeanor; provided, however, that where the City Attorney has determined that such action would be in the best interest of justice, the City Attorney may specify in the accusatory pleading or citation, that the violation shall be prosecuted as an infraction.
- (c) **Penalty for infraction.** Each and every violation of this article which is deemed an infraction is punishable by a fine not exceeding two hundred fifty dollars (\$250.00).
- (d) **Penalty for misdemeanor.** Each and every violation of this article which is deemed a misdemeanor is punishable by a penalty of not more than one thousand dollars (\$1,000.00), or by imprisonment in the city or county jail for a period of not exceeding six (6) months, or, by both penalty and imprisonment.

4-1.1032. ADMINISTRATIVE REMEDIES.

Title 1, Chapter 6 of the Modesto Municipal Code establishes the administrative enforcement of remedies for violations of this Code and applicable state codes. The administrative remedies include administrative abatement, summary

abatement, civil penalties, administrative citations, and mediation. The City of Modesto may pursue any of these administrative remedies for violations of this article. Any civil penalties imposed by way of administrative remedies shall be deposited in the general fund of the City of Modesto.

4-1.1033. CONSTITUTIONALITY; SEVERABILITY.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s) or word(s) be declared invalid.

4-1.1034. SAVINGS CLAUSE.

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance, nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance.

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 16th day of May, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Clerk

ORDINANCE NO. 3177-C.S.

AN ORDINANCE ADDING ARTICLE 2 TO CHAPTER 4 OF TITLE 12 OF THE MODESTO MUNICIPAL CODE RELATING TO USE OF PARK AND RECREATION AREAS AND FACILITIES, REPEALING CHAPTER 4 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE AND AMENDING THE TITLE OF TITLE 12 OF THE MODESTO MUNICIPAL CODE TO ELIMINATE REFERENCE TO THE "COMMUNITY SERVICES AND NEIGHBORHOOD CONNECTION DEPARTMENT" AND TO CREATE THE "RECREATION AND NEIGHBORHOODS DEPARTMENT".

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

SECTION 1. AMENDMENT OF CODE. Article 2 is hereby added to

Chapter 4 of Title 12 of the Modesto Municipal Code to read as follows:

ARTICLE 2. USE OF PARK AND RECREATION AREAS AND FACILITIES

12-4.201. DEFINITIONS.

Unless otherwise expressly stated, whenever used in this article, the following words shall be defined as follows:

- (a) "Park" shall mean any areas set aside for recreational uses, areas conserved for their scenic interest, playgrounds, beaches, recreation centers, golf courses, model plane fields, and any other areas owned or operated by the City of Modesto and which are intended for active or passive recreational purposes. The word "park" shall also include any parking lot adjacent to any park, any buildings, equipment, plants or other facilities located in any park and any landscaped public area and/or right-of-way.
- (b) "Director" shall mean the Director of the Recreation and Neighborhoods Department of the City of Modesto and/or his or her designee.
- (c) "City Council" shall mean the legislative body of the City of Modesto.
- (d) "Department" shall mean the Recreation and Neighborhoods Department of the City of Modesto.

- (e) "City" shall mean the City of Modesto.

12-4.202. GENERAL REGULATIONS GOVERNING USE OF PARKS.

- (a) Except as otherwise authorized by law, it shall be unlawful and an infraction for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) To enter or trespass in any area, building or facility which is fenced and locked or enclosed and locked or is posted with a No Trespassing sign.
 - (2) To ride or bring any horse or other similar animal or to propel a vehicle in or upon any area of a park, except those areas specifically provided and designated for such purposes, unless prior written permission is obtained from the Director.
 - (3) To ride a bicycle unless on trails or pathways designated for bicycle use.
 - (4) To drive or operate any motor vehicle in any park in excess of fifteen (15) miles per hour.
 - (5) To park any automobile or other vehicle in any park at any place other than designated parking areas. Places where parking is permitted shall be designated by appropriate signs.
 - (6) To drive or operate any automobile, gasoline-powered go-carts, model airplanes, boats or midget cars in any park except in designated areas or unless prior written permission is obtained from the Director.
 - (7) To clean, wash, polish or make other than emergency repairs upon any automobile, motorcycle or self-driven vehicle in any park.
 - (8) To carry, bring into or ignite, fire or otherwise set off any firearms, air guns, slingshots, firecrackers or fireworks in any park except those fireworks which are part of organized and permitted special events for which prior written permission to use fireworks has been obtained from the Director.

- (9) To make a fire in any park other than in stoves, pits or braziers provided by the City unless prior written permission is obtained from the Director and a permit is obtained from the Air Pollution Control District for burning in open pits.
- (10) To bring into any park any material which will, if spilled or spread, be injurious to the turf or plant growth.
- (11) To cut or remove any wood, turf, rock, tree, flower, shrub, sand or gravel from any park unless prior written permission is obtained from the Director.
- (12) To throw or dispose of in any park any bottles, tin cans, broken glass, paper, clothes, cast iron, rubbish, soil, tree trimmings, garbage, ashes or other debris of any kind except in approved containers provided by the City.
- (13) To remove, damage or destroy any athletic equipment provided by the City, normal wear and tear excepted.
- (14) To move or remove from one (1) location to another any part or parts of field equipment.
- (15) To move or remove from one (1) location to another any equipment used for park maintenance.
- (16) To open or close any valve pertaining to the water mains or sprinkler system or to expose or interfere with any gas pipe, hydrant, stopcock, sewer, catch basin, backflow preventer, or other similar device in any park.
- (17) To cut, break or deface in any way buildings, equipment, grounds or other facilities of any park.
- (18) To wound, kill or catch any bird or other wild animal in any park.
- (19) To indulge in indecent or riotous conduct or language or to otherwise make noises in such a manner as to disturb any picnic, meeting, concert or exhibition in any park.
- (20) To operate a public address system without prior written permission of the Director. This prohibition shall not include

the use of small portable radios used to receive regularly broadcasted programs, as long as such radios are operated at such a volume as not to disturb other persons present in the park.

- (21) To disturb or interfere with any employee of the City of Modesto acting within the scope of his/her employment, or to disturb or interfere with any spectator or participant in any event or activity conducted in any park, or to enter any park for the purpose of committing any such disturbance or interference.
- (22) To camp or lodge in or upon any park unless prior written permission is obtained from the Director.
- (23) To sell refreshments, foodstuffs or novelties in any park or on any street immediately adjacent thereto without the prior written permission of the Director or the City Council.
- (24) To practice, carry on, conduct or solicit for any trade, occupation, business or profession in any park without the prior written permission of the City Council.
- (25) To play or engage in any game or contest in any park except in such places as are specially provided or designated for that purpose.
- (26) To play upon any tennis courts wearing shoes other than those having vulcanized soles and heels, commonly known as tennis shoes.
- (27) To refuse to open any tennis court being used for singles play to doubles play at the end of the set being played when other persons are waiting, unless prior written permission is obtained from the Director.
- (28) To refuse to relinquish any tennis court being used for doubles play at the end of the set being played when other persons are waiting unless prior written permission is obtained from the Director.

- (29) To use any tennis courts for tennis tournaments, team practices or other special events of any kind without the prior written permission of the Director or the City Council.
- (30) To play or engage in the hitting of golf balls in any park, except on driving ranges and golf courses.
- (31) To ride bicycles through any children's playground area.
- (32) To use tobacco products of any kind, including, but not limited to, chewing tobacco, cigars and cigarettes, within fifty (50) feet of children's play areas (playgrounds/tot lots, wading pools, skate parks) installed and/or built for public use by children and/or to discard lighted or unlighted cigars or cigarettes in said areas.
- (33) To wade or swim in any pool in any park except when supervised.
- (34) To use any park facility for which a charge is now or hereafter made without first having paid the fee requested and having received the required permit.
- (35) To enter any park facility for which a charge is made without first paying the full legal charge made for such entrance unless such entrance is by the consent or permission of the person or persons in charge.
- (36) To use any park facility or equipment which has been reserved or which is indicated by an authorized or official sign to have been reserved without first having received the written permission of the Director.
- (37) To remove any authorized or official sign indicating that any park facility or equipment is reserved.
- (38) For any male person to resort to any toilet set apart for women, and for any female person to resort to any toilet set apart for men, provided that this prohibition shall not apply to children accompanied by their father, mother or guardian.
- (39) It shall be unlawful to climb onto any building or structure in a park not designated for such activity.

- (40) To possess any container made of glass in any park or to bring, carry or transport any container made of glass into any park except that the sponsor of an organized event may obtain permission from the Department to possess glass containers.
 - (41) It shall be unlawful for any person without authority to tear down, deface or destroy any sign posted pursuant to the above subsections.
 - (42) It shall be unlawful for any person to consume alcoholic beverages within fifteen (15) feet of an abutting edge of any public parking lot that directly abuts a City park, unless approved in advance in writing by the Director.
- (b) Except as otherwise authorized by law, it shall be unlawful and a misdemeanor for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) No person shall remain in any park between the hours of 10:00 p.m. and 6:00 a.m. of the following day.
 - (2) The prohibitions contained in subsection (b)(1) of this section will not apply to:
 - (i) Special use facilities, as may be posted by the Department extending use hours;
 - (ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the Department or permit therefor, has been issued by the Department;
 - (iii) Any person exiting such park immediately after the conclusion of any activity set forth in subsection (b)(2)(ii) of this section;
 - (iv) Any peace officer or employee of the City while engaged in the performance of his/her duties.

- (c) The City of Modesto hereby designates all of its public parks as drug-free zones pursuant to and within the meaning of Health & Safety Code Section 11380.5.

12-4.203. PARKING FOR DISABLED PERSONS.

- (a) The Engineering and Transportation Director and the Operations and Maintenance Director are hereby authorized to reserve and designate parking for disabled persons and disabled veterans at all parks and recreation facilities owned or operated by the City.
- (b) No persons shall stop, stand or park in any space designated for parking for disabled persons unless their vehicle displays a disabled person's license plate or placard, or a disabled veteran's license plate or placard, as provided by the Vehicle Code of the State of California.

12-4.204. SKATEBOARD FACILITIES OWNED OR OPERATED BY THE CITY.

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

SECTION 2. AMENDMENT OF CODE. The title of Title 12, entitled "Community Services and Neighborhood Connections", of the Modesto Municipal Code is hereby amended to read as follows:

TITLE 12 - RECREATION AND NEIGHBORHOODS

SECTION 3. REPEALS. Chapter 4 of Title 7 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 23rd day of May, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3177-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 June, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Smith, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 6, 2000

Cleish

ORDINANCE NO. 3178 -C.S.

AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(527), AS AN ADDITION TO P-D(527) PROPERTY LOCATED ON THE WEST SIDE OF TULLY ROAD, SOUTH OF WEST UNION AVENUE. (LANCE E. ELLIS)

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

SECTION 1. ZONING CHANGE. Section 7-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium High Density Residential Zone, R-3, to Planned Development Zone, P-D(527), as an addition to P-D(527):

R-3 to P-D(527), as an addition to P-D(527)

All the portion of the southeast quarter of the northeast quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base & Meridian, City of Modesto, Stanislaus County, California. Description as follows:

Parcel D, as shown on the map recorded in Volume 48 of Parcel Maps at Page 95, Stanislaus County Records.

Containing: 2.83 Acres.

Including also, the west half of Tully Road adjoining the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(527) Zone, as an addition to P-D(527), 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. Mini-warehouse storage facility.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of June, 2000, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

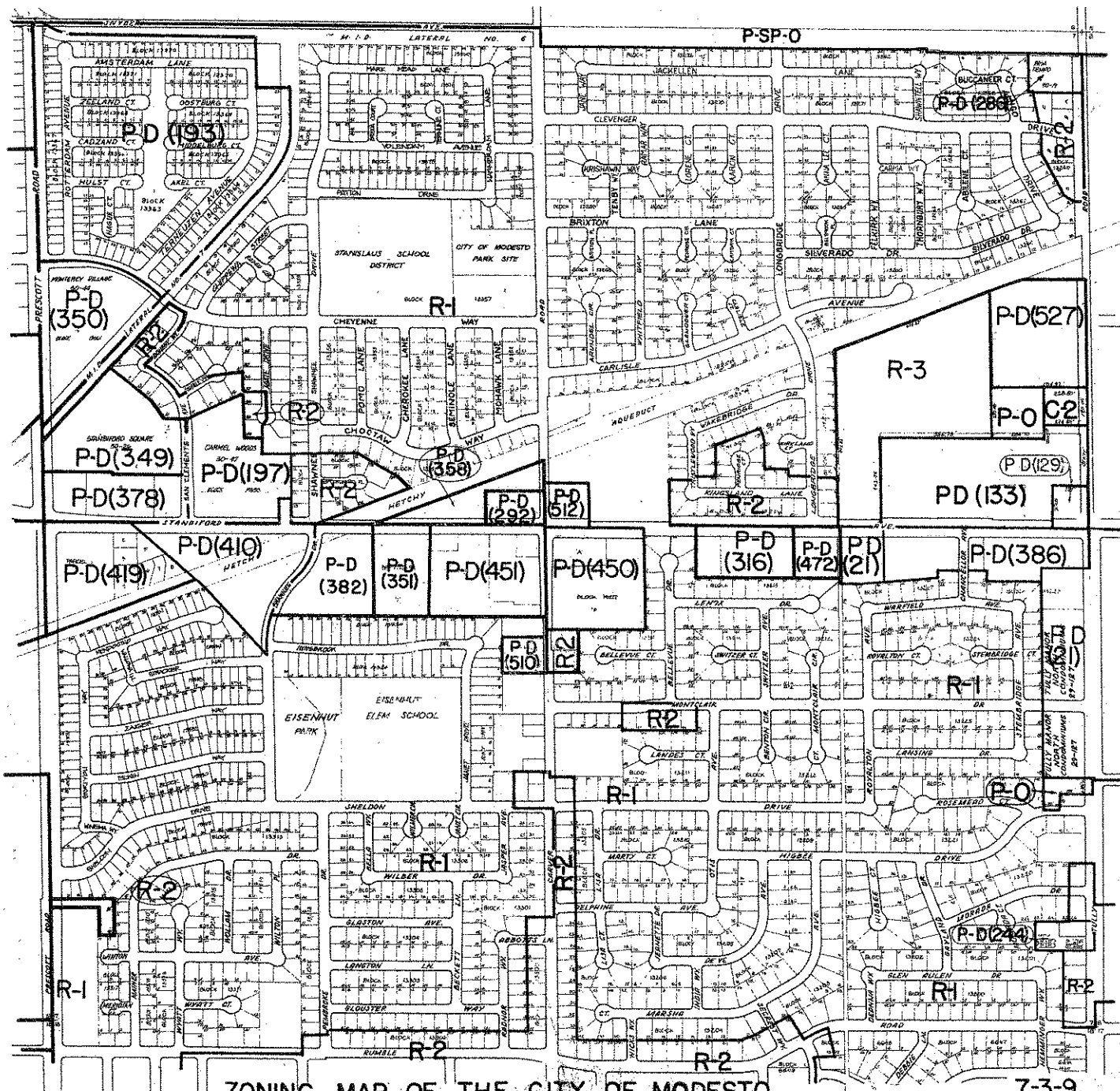
(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By George Over
Community Development Department
Planning Division



ZONING MAP OF THE CITY OF MODESTO

7-3-9

Ord. No. 3178-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20th day of June, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 20, 2000

Corrected 7/3/00

ORDINANCE NO. 3179- C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 2293-C.S. ENTITLED "AN ORDINANCE GRANTING POST-NEWSWEEK CABLE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO" TO CHANGE THE NAME OF POST-NEWSWEEK CABLE, INC. TO CABLE ONE, INC. AND TO EXTEND THE TERM.

WHEREAS, the City Council adopted Ordinance No. 2293-C.S., which became effective on or after December 1, 1984, entitled, "An Ordinance Granting To Capital Cities Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S. was amended by Ordinance No. 2496-C.S. to change the title to read "An Ordinance Granting To Post-Newsweek Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City Of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S., was also amended by Ordinance No. 2620-C.S. to extend the time period that franchise fee payments are due after the end of each quarter, and

WHEREAS, the City Council by Ordinance No. 3162-C.S. previously granted an extension of the term of the current franchise to May 31, 2000, and

WHEREAS, a renewal of the franchise has not yet been negotiated, and

WHEREAS, the term of the current franchise will expire on May 31, 2000, therefore, the Council proposes to extend the franchise for a five month period in order to allow completion of the negotiations, and

WHEREAS, Post-Newsweek Cable, Inc. has changed its corporate name, to Cable One, Inc., and the City of Modesto and Cable One, Inc. desire the City's records to reflect the name change,

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2293-C.S. The title of Ordinance No. 2293-C.S. is hereby amended to read as follows:

AN ORDINANCE GRANTING TO CABLE ONE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO.

SECTION 2. AMENDMENT OF ORDINANCE NO. 2293-C.S. Section 1 of Ordinance No. 2293-C.S. is hereby amended to read as follows:

SECTION 1. DEFINITIONS.

Unless it shall be apparent from the context that they have a different meaning, the following words and phrases shall have the following meanings:

- A. "GRANTEE" shall mean Cable One, Inc.
- B. "FRANCHISE DOCUMENTS" shall mean and include all of the following:
 - (1) Article XIV of the Charter of the City of Modesto.

- (2) Charter 4 of Title 11 of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended.
- (3) This ordinance.
- (4) The Acceptance of Franchise form signed by Grantee.

SECTION 3. AMENDMENT OF ORDINANCE NO. 2293-C.S. Section 4 of Ordinance No. 2293-C.S. is hereby amended to read as follows:

SECTION 4. GRANT OF FRANCHISE.

Pursuant to the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, a nonexclusive franchise to construct, operate and maintain a cable communications system within the City of Modesto, for a term of fifteen (15) years commencing on the effective date of this ordinance, is hereby granted to Grantee with all the rights and privileges and subject to each and all of the terms, conditions, and limitations as set forth in the Franchise Documents.

The area included within the nonexclusive franchise granted hereby includes all areas within the city limits of the City of Modesto, and also includes all territory hereafter annexed, except that the City Council reserves the right to exclude such additional territory from the franchise area at the time it is annexed to the City.

The termination date of this franchise is extended from May 31, 2000 to October 31, 2000.

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

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of June, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3179-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20th day of June, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	Conrad
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 20, 2000

ORDINANCE NO. 3179 - C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 2293-C.S. ENTITLED "AN ORDINANCE GRANTING CAPITAL CITIES CABLE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO" TO EXTEND THE TERM.

WHEREAS, the City Council adopted Ordinance No. 2293-C.S., which became effective on or after December 1, 1984, entitled, "An Ordinance Granting To Capital Cities Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S. was amended by Ordinance No. 2496-C.S. to change the title to read "An Ordinance Granting To Post-Newsweek Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City Of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S., was also amended by Ordinance No. 2620-C.S. to extend the time period that franchise fee payments are due after the end of each quarter, and

WHEREAS, the City Council by Ordinance NO. 3162-C.S. previously granted an extension of the term of the current franchise to May 31, 2000, and

WHEREAS, a renewal of the franchise has not yet been negotiated, and

WHEREAS, the term of the current franchise will expire on May 31, 2000, therefore, the Council proposes to extend the franchise for a five month period in order to allow completion of the negotiations,

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2293-C.S. Section 4 of Ordinance No. 2293-C.S. is hereby amended to read as follows:

SECTION 4. GRANT OF FRANCHISE.

Pursuant to the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, a nonexclusive franchise to construct, operate and maintain a cable communications system within the City of Modesto, for a term of fifteen (15) years commencing on the effective date of this ordinance, is hereby granted to Grantee with all the rights and privileges and subject to each and all of the terms, conditions, and limitations as set forth in the Franchise Documents.

The area included within the nonexclusive franchise granted hereby includes all areas within the city limits of the City of Modesto, and also includes all territory hereafter annexed, except that the City Council reserves the right to exclude such additional territory from the franchise area at the time it is annexed to the City.

The termination date of this franchise is extended from May 31, 2000 to October 31, 2000.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of June, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Clock

ORDINANCE NO. 3180 -C.S.

AN ORDINANCE AMENDING SECTION MAP 25-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON.

WHEREAS, a verified application for an amendment to Section 25-3-8 of the Zoning Map was filed by Mahlon Ford, Attorney for the Estate of Edna Ann Helmick on October 26, 1999, to reclassify from Low-Density Residential Zone, R-1, to Highway Commercial Zone, C-3, property located on the west side of Carpenter Road between Woodland and Torrid Avenues, and

WHEREAS, after a public hearing held on May 1, 2000, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2000-34, adopted on May 1, 2000, the Planning Commission recommended to the Council that the application of Mahlon Ford, Attorney for the Estate of Edna Ann Helmick to amend Section 25-3-8 of the Zoning Map to reclassify the hereinafter described property from Low-Density Residential Zone, R-1, 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 June 13, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and

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

1. That the proposed Highway Commercial Zone, (C-3), by reason of its development and compatibility requirements is compatible with existing and potential development.
2. That the proposed Highway Commercial Zone, (C-3), is consistent with the City's General Plan Land Use Diagram with adoption of the Carpenter Road General Plan amendment to Commercial, (C), as proposed by the previous action.

SECTION 2. ZONING CHANGE. Section 25-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Low-Density Residential Zone, R-1, to Highway Commercial Zone, C-3:

R-1 to C-3

All that portion of Blocks 1 and 12 of the subdivision Pleasant Homes, as per map thereof filed in Volume 9 of Maps, at Page 67, Stanislaus County Records, recorded August 17, 1922; and lying within a portion of the northeast quarter of Section 25, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

All of Lots 1 and 4 of said Block 1 as shown on said map of Pleasant Homes, excluding the easterly 167 feet of said Lot 1; and all of Lots 1 and 4 of said Block 12 as shown on said map of Pleasant Homes, excluding the southerly 195 feet of said Lot 4;

Also including the southerly 20 feet of original 40-foot Woodland Avenue all immediately adjacent to the above-described property.

SECTION 3. ZONING MAP. Section 25-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3th day of June, 2000, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3180-C.S.

FINAL ADOPTION CLAUSE

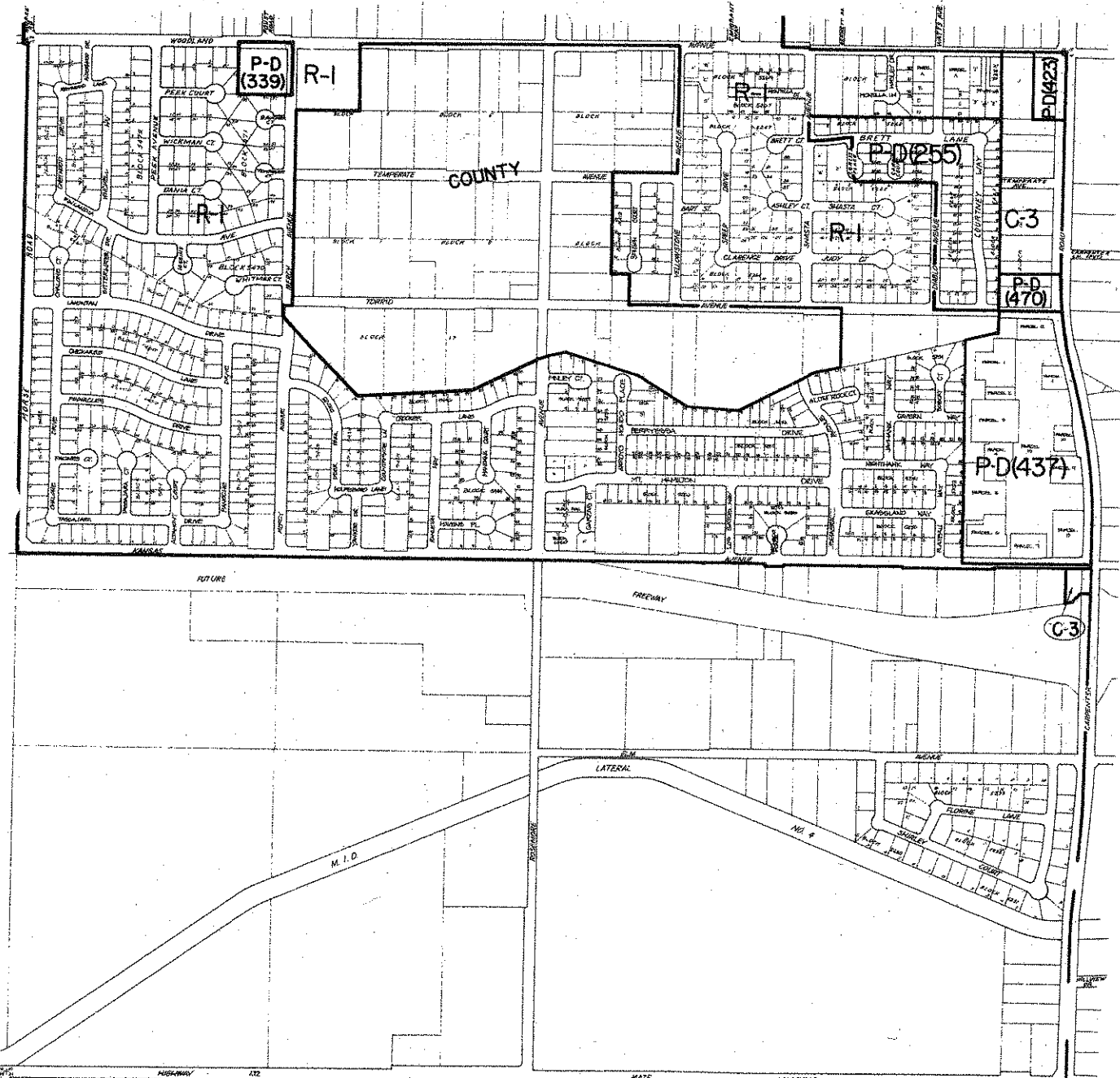
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 18th day of July, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Fisher

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: August 17, 2000



ZONING MAP OF THE CITY OF MODESTO 25-3-8

ORDINANCE NO. 3181-C.S.

AN ORDINANCE ADOPTING THE 2000-2001 OPERATING BUDGET AND FIRST YEAR OF THE FISCAL YEAR 2000-2001 THROUGH 2009-2010 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO FOR THE FISCAL YEAR ENDING JUNE 30, 2001, AND PROVIDING FOR CERTAIN TRANSFERS OF FUNDS.

WHEREAS, pursuant to the Charter of the City of Modesto, a proposed Operating Budget and Capital Improvement Program (CIP) for the 2000-2001 fiscal year has been submitted to the City Council by the City Manager, and the City Council has made such revisions as it has deemed advisable, and

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

WHEREAS, prior to any discussion of the budget and prior to the final adoption, the City Clerk 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 Budget have been and are available for inspection by the public at the office of the City Clerk,

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

SECTION 1. ADOPTION OF BUDGET. That the "City of Modesto Proposed Annual Budget 2000-2001", presented by the City Manager to the City Council at its meeting held on June 20, 2000, and as thereafter amended by the City Council, a copy of

which Budget, as amended, is on file in the office of the City Clerk, is hereby adopted, as the Budget for the City of Modesto for the fiscal year ending June 30, 2001, and the several amounts stated therein as proposed expenditures.

SECTION 2. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 2001, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the Budget for the fiscal year 2000-2001, adopted hereby.

SECTION 3. CAPITAL PROJECTS. That Capital Projects carried over from fiscal year 1999-2000 are hereby re-appropriated as a part of the Budget for the fiscal year 2000-2001, adopted hereby.

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

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

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

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

SECTION 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 27th day of June, 2000, by Councilmember Fisher, who moved its adoption and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad, Serpa

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

ORD. NO. 3182-C.S.

WAS NOT ADOPTED

Clerk

ORDINANCE NO. 3182 -C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.01, 2-1.08 AND 2-1.11 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.01, 2-1.08 and 2-1.11 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

2-1.01. REGULAR MEETINGS.

- (a) **Time.** Regular meetings of the City Council shall be held on the first, second, third and fourth Tuesday of each month. The meetings shall commence at the hour of 5:00 p.m. Whenever the day fixed for any regular meeting of the Council falls upon a day designated by the City of Modesto as a holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.
- (b) **Place.** All regular meetings of the Council shall be held in the Council Chambers at 1010 10th Street, Modesto, California. If, due to an emergency it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the Mayor.
- (c) **Public.** All meetings of the Council shall be open to the public; provided, however, the City Council may hold executive sessions as provided by the laws of the State of California.

2-1.08. ORDER OF BUSINESS.

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

- 1. Roll call.
- 2. Pledge of allegiance to the flag.

3. Invocation.
4. Declare conflicts of interest.
5. Consent items.
6. Acknowledgments and presentations.
7. Oral communications.
8. Written communications.
9. Unfinished business.
10. Hearings.
11. New business.
12. Miscellaneous:
 - a. Legislation.
 - b. Appointments.
 - c. Other.
13. Council comments and reports.
14. Matters too late for the agenda.
15. Adjournment.
16. Closed session items.

2-1.11. ADDRESSING THE COUNCIL.

Any person desiring to address the Council at a meeting shall first secure the permission of the Presiding Officer so to do; provided, however, that under the following headings of business, any qualified and interested person shall have the right to address the Council upon obtaining recognition by the Presiding Officer:

- (a) **Written Communications.** Interested persons or their authorized representatives may address the Council by written communications on any matters concerning the City's business, or any matters over which the Council has control. Such written communications shall be delivered to the City Clerk no later than 5:00 p.m. of the Wednesday immediately preceding the regular Council meeting the agenda for which such written communications are intended.
- (b) **Submission of Written Material for Council Consideration.** Written material to be submitted to the City Council regarding any item on the Council agenda, including items for which a public hearing is required, must be submitted to the City Clerk no later than 5:00 p.m. of the Wednesday immediately preceding the regular Council meeting at which such item will be considered. If the material is not received by that time, the City Council may exercise its discretion to either continue the item in order that the written material can be considered at a future meeting or, alternatively, consider the item without reference to the

written material in which case the written material will not be made part of the administrative record.

- (c) **Submission of Council Reports and Comments to the City Clerk.** Councilmembers who desire discussion or action on any matter brought before the Council under the "Council Comments and Reports" portion of the agenda shall notify the City Clerk of any subjects they wish to be listed under the "Council comments and reports" portion of the agenda no later than 5:00 p.m. of the Wednesday immediately preceding the regular Council meeting at which said items are to be discussed so that these matters can be properly noticed on the agenda.
- (d) **Oral Communications.** Interested persons in the audience or their authorized representatives may address the Council orally on any matters concerning the City's business or any matters over which the Council has control under the "oral communications" portion of the regular Council agenda.
- (e) **Procedures for Persons Addressing the Council.** The following procedures shall be applicable to persons addressing the Council whether during the "oral communications" portion of the agenda or at any other time:
 - (1) Persons shall not address the Council on matters over which the Council has no jurisdiction.
 - (2) During public hearings and discussions of other matters where numerous persons wish to address the same or similar point of view, the Mayor may request that one (1) or more spokespersons be selected to speak for all of said persons. The spokesperson(s) may ask for a show of hands to indicate others in the audience who support the point of view of the spokesperson(s).
 - (3) The Mayor may, "by order of the chair," limit the total amount of time that will be allocated for persons who wish to speak at a public hearing or discussion of an issue being considered by the Council. The Mayor may also, "by order of the chair," limit the total amount of time that individual speakers may use while speaking at a public hearing or discussion of an issue being considered by the Council. The amount(s) of time set by the Mayor shall take into account the number of persons who want to speak on the issue, the complexity of the issue, the length of the

Council's agenda, the hour at which the issue is being heard and other relevant considerations.

- (4) Persons addressing the Council during public hearings and discussions of other matters shall be allowed to address the Council only once during the hearing or discussion unless the Mayor allows them to speak more than once; provided, however, that spokespersons shall be allowed to address the Council twice during the hearing or discussion, once to initially address the issue(s) under consideration and a second time to address issues raised by other speakers. When unusual circumstances exist, the Mayor may allow persons to speak additional times during a public hearing or discussions of other matters.
- (5) The Mayor may, "by order of the chair", limit the total amount of time that persons addressing the Council under "written communications" may use while speaking on the issue(s) raised by the written communications.
- (6) Persons addressing the Council under "oral communications" may speak only once and shall speak no longer than a total of three (3) minutes.
- (7) During the discussion of any matter under consideration by the Council, the amount of time spent answering questions asked by members of the Council or when directed by the Mayor to answer questions asked by other persons shall not be counted against such person(s) under the provisions of the above listed procedures.
- (8) The Council may, by four (4) affirmative votes, modify any "order of the chair" made by the Mayor under the provisions of the above-listed procedures.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of July, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Smith

NOES: Councilmembers: Conrad, Serpa, Mayor Sabatino

ABSENT: Councilmembers: None

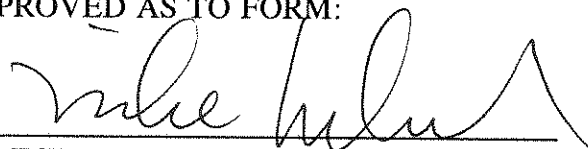
APPROVED: _____
CARMEN SABATINO, Mayor

ATTEST:

By _____
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

ORDINANCE NO. 3183 -C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.01, 2-1.08 AND 2-1.11 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.01, 2-1.08 and 2-1.11 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

2-1.01. REGULAR MEETINGS.

- (a) **Time.** Regular meetings of the City Council shall be held on the first, second, third and fourth Tuesday of each month, except for the month of December when meetings shall be held on the first and second Tuesdays only. The meetings shall commence at the hour of 5:15 p.m. Whenever the day fixed for any regular meeting of the Council falls upon a day designated by the City of Modesto as a holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.
- (b) **Place.** All regular meetings of the Council shall be held in the Council Chambers at 1010 10th Street, Modesto, California. If, due to an emergency it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the Mayor.
- (c) **Public.** All meetings of the Council shall be open to the public; provided, however, the City Council may hold executive sessions as provided by the laws of the State of California.

2-1.08. ORDER OF BUSINESS.

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

- 1. Roll call.
- 2. Pledge of allegiance to the flag.

ORDINANCE NO. 3183 -C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.01, 2-1.08 AND 2-1.11 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.01, 2-1.08 and 2-1.11 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

2-1.01. REGULAR MEETINGS.

- (a) **Time.** Regular meetings of the City Council shall be held on the first, second, third and fourth Tuesday of each month. The meetings shall commence at the hour of 5:15 p.m. Whenever the day fixed for any regular meeting of the Council falls upon a day designated by the City of Modesto as a holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.
- (b) **Place.** All regular meetings of the Council shall be held in the Council Chambers at 1010 10th Street, Modesto, California. If, due to an emergency it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the Mayor.
- (c) **Public.** All meetings of the Council shall be open to the public; provided, however, the City Council may hold executive sessions as provided by the laws of the State of California.

2-1.08. ORDER OF BUSINESS.

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

- 1. Roll call.
- 2. Pledge of allegiance to the flag.

3. Invocation.
4. Declare conflicts of interest.
5. Consent items.
6. Acknowledgments and presentations.
7. Oral communications.
8. Written communications.
9. Unfinished business.
10. Hearings.
11. New business.
12. Miscellaneous:
 - a. Legislation.
 - b. Appointments.
 - c. Other.
13. Council comments and reports.
14. Matters too late for the agenda.
15. Adjournment.
16. Closed session items.

2-1.11. ADDRESSING THE COUNCIL.

Any person desiring to address the Council at a meeting shall first secure the permission of the Presiding Officer so to do; provided, however, that under the following headings of business, any qualified and interested person shall have the right to address the Council upon obtaining recognition by the Presiding Officer:

- (a) **Written Communications.** Interested persons or their authorized representatives may address the Council by written communications on any matters concerning the City's business, or any matters over which the Council has control. Such written communications shall be delivered to the City Clerk no later than 5:00 p.m. of the Wednesday immediately preceding the regular Council meeting the agenda for which such written communications are intended.
- (b) **Submission of Written Material for Council Consideration.** Written material to be submitted to the City Council regarding any item on the Council agenda, including items for which a public hearing is required, must be submitted to the City Clerk no later than 5:00 p.m. of the Wednesday immediately preceding the regular Council meeting at which such item will be considered. If the material is not received by that time, the City Council may exercise its discretion to either continue the item in order that the written material can be considered at a future meeting or, alternatively, consider the item without reference to the

written material in which case the written material will not be made part of the administrative record.

- (c) **Submission of Council Reports and Comments to the City Clerk.** Councilmembers who desire discussion or action on any matter brought before the Council under the "Council Comments and Reports" portion of the agenda shall notify the City Clerk of any subjects they wish to be listed under the "Council comments and reports" portion of the agenda no later than 5:00 p.m. of the Wednesday immediately preceding the regular Council meeting at which said items are to be discussed so that these matters can be properly noticed on the agenda.
- (d) **Oral Communications.** Interested persons in the audience or their authorized representatives may address the Council orally on any matters concerning the City's business or any matters over which the Council has control under the "oral communications" portion of the regular Council agenda.
- (e) **Procedures for Persons Addressing the Council.** The following procedures shall be applicable to persons addressing the Council whether during the "oral communications" portion of the agenda or at any other time:
 - (1) Persons shall not address the Council on matters over which the Council has no jurisdiction.
 - (2) During public hearings and discussions of other matters where numerous persons wish to address the same or similar point of view, the Mayor may request that one (1) or more spokespersons be selected to speak for all of said persons. The spokesperson(s) may ask for a show of hands to indicate others in the audience who support the point of view of the spokesperson(s).
 - (3) The Mayor may, "by order of the chair," limit the total amount of time that will be allocated for persons who wish to speak at a public hearing or discussion of an issue being considered by the Council. The Mayor may also, "by order of the chair," limit the total amount of time that individual speakers may use while speaking at a public hearing or discussion of an issue being considered by the Council. The amount(s) of time set by the Mayor shall take into account the number of persons who want to speak on the issue, the complexity of the issue, the length of the

Council's agenda, the hour at which the issue is being heard and other relevant considerations.

- (4) Persons addressing the Council during public hearings and discussions of other matters shall be allowed to address the Council only once during the hearing or discussion unless the Mayor allows them to speak more than once; provided, however, that spokespersons shall be allowed to address the Council twice during the hearing or discussion, once to initially address the issue(s) under consideration and a second time to address issues raised by other speakers. When unusual circumstances exist, the Mayor may allow persons to speak additional times during a public hearing or discussions of other matters.
- (5) The Mayor may, "by order of the chair", limit the total amount of time that persons addressing the Council under "written communications" may use while speaking on the issue(s) raised by the written communications.
- (6) Persons addressing the Council under "oral communications" may speak only once and shall speak no longer than a total of three (3) minutes.
- (7) During the discussion of any matter under consideration by the Council, the amount of time spent answering questions asked by members of the Council or when directed by the Mayor to answer questions asked by other persons shall not be counted against such person(s) under the provisions of the above listed procedures.
- (8) The Council may, by four (4) affirmative votes, modify any "order of the chair" made by the Mayor under the provisions of the above-listed procedures.

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 18th day of July, 2000, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3183-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 day of July, 2000, Councilmember Frohman, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith,
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: August 24, 2000

ORDINANCE NO. 3184 -C.S.

AN ORDINANCE AMENDING SECTION 2-1.18 OF
CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL
CODE RELATING TO CITY COUNCIL STANDING
COMMITTEES.

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

SECTION 1. AMENDMENT OF CODE. Section 2-1.18 of Chapter 1 of Title
2 of the Modesto Municipal Code is hereby amended to read as follows:

2-1.18. STANDING COMMITTEES.

The standing committees of the Council shall be a Community Development and Housing Committee, an Economic Development, Community and Intergovernmental Relations Committee; a Financial Policy Committee; a Human Services Committee; a Public Safety Committee; a Transportation Policy Committee; a Utility Services and Franchises Committee; and an Audit Committee, each of which committees shall consist of three (3) members of the Council appointed by the Mayor. The responsibilities of the Audit Committee shall be established by resolution of the City Council.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of July, 2000, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3184-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 day of July, 2000, Councilmember Frohman, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: August 24, 2000

Clark

ORDINANCE NO. 3185 -C.S.

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

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

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

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of September, 2000, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

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

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective August 1, 1946, and witnessed July 27, 1946, and as amended effective December 1, 1950, July 1, 1956, July 1, 1959, November 1, 1959, January 1, 1960, October 1, 1962, January 1, 1969, May 1, 1973, May 1, 1974, June 24, 1975, March 28, 1978, July 4, 1978, November 1, 1980, October 20, 1981, June 29, 1982, October 15, 1985, June 24, 1986, April 14, 1987, November 22, 1991 and July 25, 1997 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective July 25, 1997, and hereby replaced by the following paragraphs numbered 1 through 13 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after August 1, 1946 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **POLICE COURT EMPLOYEES; AND**
 - b. **ALL HOURLY RATED OR HOURLY BASIS EMPLOYEES HIRED ON AND AFTER OCTOBER 1, 1962.**
5. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
6. The percentage of final compensation to be provided for local miscellaneous members for each year of credited prior and current service shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to June 30, 1978, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).

7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
8. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21222.1 (Special 5% Increase-1970). Legislation repealed said Section effective January 1, 1980.
 - b. Section 21222.2 (Special 5% Increase-1971). Legislation repealed said Section effective January 1, 1980.
 - c. Section 21319 (Special 15% Increase for Local Miscellaneous Members Who Retired or Died Prior to July 1, 1971).
 - d. Section 21571 (Basic Level of 1959 Survivor Benefits) for local safety members only.
 - e. Section 21572 (Increased Level of 1959 Survivor Benefits) for local miscellaneous members only.
 - f. Section 20042 (One-Year Final Compensation).
 - g. Section 21427 (Improved Nonindustrial Disability Allowance) for local miscellaneous members only.
 - h. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members and those local miscellaneous members entering membership on or prior to October 20, 1981.
 - i. Section 21325 (Special 3% to 15% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1974).
 - j. Section 20475 (Different Level of Benefits Provided for New Employees). Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) are not applicable to local miscellaneous members entering membership after October 20, 1981.

- k. Section 21322 (Special 4% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1981).
 - l. Section 21317 (Special 15% Increase for Certain Local Safety Members Who Retired for Service Retirement).
 - m. Section 21024 (Military Service Credit as Public Service), Statutes of 1976.
9. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on March 28, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
10. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
11. Public Agency shall also contribute to said Retirement System as follows:
- a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
12. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

13. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATORS
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MODESTO

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

BY _____
PRESIDING OFFICER

Witness Date

Attest _____

Clerk

Ord. No. 3185-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of September, 2000, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: October 26, 2000

Clup 5

ORDINANCE NO. 3186-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1840-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 30-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (ERROL VRH)" AS PREVIOUSLY AMENDED BY ORDINANCE NOS. 2250-C.S. AND 3043-C.S., (LEGENDS CAFÉ LLC, ART MITCHELL).

WHEREAS, the Modesto City Council, by Ordinance No. 1840-C.S., which was introduced on June 12, 1979, finally adopted on June 19, 1979, and which became effective on July 19, 1979, granted P-D(225) to allow a retail furniture store and warehouse, property located on the northeast corner of Carpenter Road and Elm Avenue, and

WHEREAS, City Council Resolution No. 79-588, approved the development plan and schedule for P-D(225), and also contained the conditions of approval for the development of said uses on the P-D(225) property, and

WHEREAS, on March 19, 1984, by Resolution No. 84-55, the Planning Commission recommended an amendment to P-D(225) to allow a retail-wholesale building supply business and C-2 zone uses, except for ambulance service and alcoholic beverage sales, as sought by Gary Bedrosian, and

WHEREAS, the Modesto City Council, by Ordinance No. 2250-C.S., which was introduced on April 3, 1984, finally adopted on April 10, 1984, and which became effective on May 10, 1984, amended P-D(225) to allow all C-2 Zone uses along with establishing a wholesale-retail business in an existing 52,500 square foot building, property located at the northeast corner of Carpenter Road and Elm Avenue, and

WHEREAS, City Council Resolution No. 84-173 adopted by the City Council on April 3, 1984, granted the amendment to P-D(225) as sought by Mr. Bedrosian, and

WHEREAS, Planning Commission Resolution No. 84-82 adopted April 20, 1984, granted a revised development plan for an outdoor storage enclosure serving the P.V. Farm and General Merchandise store and expanding the off-street parking area subject to business hours of 7:00 a.m. to 10:00 p.m. seven days a week, and

WHEREAS, on April 21, 1997, by Resolution 97-32, the Planning Commission further recommended an amendment to P-D(225) to allow serving of alcoholic beverages (beer and wine) and for extended hours in conjunction with a new restaurant, and

WHEREAS, the Modesto City Council, by Ordinance No. 3043-C.S., which was introduced on May 27, 1997, finally adopted on June 10, 1997, and which became effective on July 10, 1997, amended P-D(225) to allow the serving of alcoholic beverages (beer and wine) and for extended hours in conjunction with a new restaurant, and

WHEREAS, City Council Resolution No. 97-282 adopted by the Council on May 27, 1997, granted the amendment to P-D(225) as sought by Mr. Mitchell, and

WHEREAS, a verified application for an amendment to Planned Development Zone, P-D(225), was filed by Legends Café LLC, Art Mitchell on May 18, 2000, to include on-sale liquor in addition to beer and wine in conjunction with meals at the Legends Café, and

WHEREAS, after a public hearing held on August 7, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission, by its Resolution No. 2000-39, that amendment of Planned

Development Zone, P-D(225), as proposed, is required by public necessity, convenience and general welfare for the following reasons:

1. That the general commercial uses allowed within this Planned Development Zone include a restaurant which is normally allowed the serving of alcoholic beverages.
2. That this commercial use is in conformance with the General Plan and well insulated from the adjoining residential neighborhood via existing generous setbacks of commercial buildings, a solid masonry wall, and screen landscaping.
3. That the existing limitation of hours for activity in the loading dock and outdoor storage areas of the retail businesses within the planned development zone will continue to provide a degree of compatibility with adjacent uses.

WHEREAS, by Resolution No. 2000-39 the Planning Commission recommended to the Council that Planned Development Zone, P-D(225), be amended to include on-sale liquor in addition to beer and wine in conjunction with meals at the Legends Café, and

WHEREAS, said matter was set for a public hearing before the City Council at its regular meeting place located in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at 5:15 p.m. on September 12, 2000,

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

SECTION 1. COUNCIL FINDINGS. After hearing evidence, both oral and documentary, the Council finds and determines that the requested amendment to P-D(225) to include on-sale liquor in addition to beer and wine in conjunction with meals at the Legends

Café, should be granted as consonant with public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 2000-39 and quoted above.

SECTION 2. AMENDMENT OF ORDINANCE NO. 1840-C.S. Section 2 of Ordinance No. 1840-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(225) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A retail furniture store and warehouse and related parking.
2. A retail/wholesale building supply business.
3. All C-2 Zone uses for which a sufficient number of off-street parking spaces are provided on the property, except that ambulance service is not allowed.
4. Serving of alcoholic beverages (on-sale general liquor license) in conjunction with a restaurant.

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 September, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3186-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 19th day of September, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: October 19, 2000

Clark

ORDINANCE NO. 3187 -C.S.

AN ORDINANCE AMENDING SECTIONS 3-1.125, 3-1.138 AND 3-1.141 OF ARTICLE 1 CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO THE FIRE CODE.

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

SECTION 1. AMENDMENT OF CODE. Sections 3-1.125, 3-1.138 and 3-1.141 of Article 1 of Chapter 1 of Title 3 of the Modesto Municipal Code are hereby amended to read as follows:

3-1.125. SALES OF FIREWORKS.

Subsection 3 is added to Section 7801.3 of the Uniform Fire Code:

- 3. 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) The total number of sales permits issued in any given year shall be limited to one (1) sales permit for each two thousand five hundred (2,500) population or portion thereof; provided however, any organization applying for a sales permit who had such permit in 1999 and also in each subsequent year shall be issued a permit if otherwise qualified. Sales permits shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein, notwithstanding the fact that such issuance may increase the number of permits to more than that allowed herein.
 - (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, or affiliated with a public school located within the city limits of Modesto. Except for organizations affiliated with a public school, each organization shall provide the City with a tax exempt certificate issued pursuant to the Revenue and Taxation Code of the State of California or written verification that they are an integral part of a recognized national organization having such a tax exempt status.

- (B) A "local nonprofit organization" must have its principal and permanent meeting place in the City of Modesto and must 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, and must have a bona fide membership of at least ten (10) members who reside in the City of Modesto. In addition, organizations affiliated with a public school shall provide written verification of existence, acceptable to the Fire Chief, such as, but not limited to a current bank statement.
 - (C) 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, and have remained under the same management and/or ownership continuously since 1999.
- (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 it is issued.
 - (4) All applications for sales permits shall be in writing to the Fire Chief 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.

- (A) In the year 2000 each organization may file an application for one (1) sales permit from April 1st of that year up to and including April 15th and may file an application for one (1) additional sales permit from April 16th up to and including April 30th of the same year, at which time the filing period for that year will close.
 - (B) In the year 2001, and in each subsequent year, each organization may file an application for one (1) sales permit.
- (5) Applications shall set forth the proposed location of the fireworks stand including the seven (7) digit parcel number (APN) of the Stanislaus County Assessor and other information as may be required by the Fire Chief. Written permission from the property owner, or his/her designee, to sell fireworks at that location shall accompany the permit application.
 - (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Chief of approval or disapproval of such application. All approved applications shall be picked up from the Fire Chief by 4:00 p.m. on June 20th of that year. Sales permits will be issued on the day the applicant begins selling, and after inspection of the stand reveals compliance with all conditions of this ordinance.
 - (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.128.
 - (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 this 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 after the last day of the filing period specified in paragraph 5 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period.
 - (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.
- (10) A nonprofit organization may apply for a sales permit with regard to a booth 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;
 - (1) The applicant has received a valid City of Modesto business license; and
 - (2) The organization must either
 - a) Meet the criteria of set forth in Section 3-1.125(2)(A) or
 - b) 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.

- (B) 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 in addition to those issued on the basis of population 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 one sales permit for each two thousand five hundred (2,500) population or portion thereof.

3-1.138. OUTSIDE STORAGE AND USE OF LIQUIFIED PETROLEUM GASES.

Section 8201 of the Uniform Fire Code is amended to 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.

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 Commercial-Light Industrial (C-M), 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 Chief, 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 Chief.
5. For use as an alternative fuel supply for an emergency standby generator, when authorized by the Chief.
6. For use with certain mobile vending and certain commercial barbecue equipment and other specific uses when authorized by the Chief.
7. For use by Artisans in pursuit of their trade, when authorized by the Chief.
8. Storage of portable containers awaiting exchange may be permitted in commercially zoned areas of the City, including those zoned Neighborhood Commercial (C-1), when approved by the Chief and stored in accordance with Section 8212. Such storage shall be located a minimum of twenty (20) feet from any fuel dispenser.

3-1.141. MAXIMUM CAPACITY OF LPG CONTAINERS.

Section 8204.2 of the Uniform Fire Code is amended as follows:

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 Chief, 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.

EXCEPTION:

1. Storage of LP-gas in accordance with Sections 8201.3, 8201.4 and 8201.5 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 Sections 8201.6 and 8201.7 shall not exceed fifteen (15) gallons. Individual containers shall not exceed five

(5) gallons water capacity, unless authorized by the Chief, and shall not be manifolded.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2000, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Serpa, Smith

NOES: Councilmembers: Conrad, Frohman, Mayor Sabatino

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3187-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Friedman, Fisher, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	Conrad, Frohman, Mayor Sabatino
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: November 2, 2000

Clerk

ORDINANCE NO. 3188-C.S.

AN ORDINANCE AMENDING SECTION 8-4-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1 TO PLANNED DEVELOPMENT ZONE, P-D(542), PROPERTY LOCATED ON THE SOUTHEAST AND SOUTHWEST CORNERS OF HATCH ROAD AND DALLAS STREET. (DONALD L. SANDERS)

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

SECTION 1. ZONING CHANGE. Section 8-4-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(542):

R-1 to P-D(542)

All that certain real property situate in the County of Stanislaus, State of California, described as follows:

Description No. 1:

Lot 3 of the Rio Grande Colony, according to the map thereof, filed in the office of the County Recorder of Stanislaus County, California, on July 5, 1912, in volume 6 at Maps, at Page 47.

Excepting therefrom all that portion lying North of the Southerly line of Hatch Road and West of the Easterly line of Dallas Street as conveyed to City Of Modesto by deed dated February 2, 1968, and recorded March 14, 1968, as instrument No. 8053.

Together with all that portion of abandoned road described as follows:

All that real property in the State of California, County of Stanislaus, City of Modesto, Section 8, Township 4 South, Range 9 East, Mount Diablo Base and Meridian, described as Follows:

Commencing at the North quarter corner of said Section 8; thence along the North line of Section 8, South 88° 53' 00" East, 115.42 feet, to the iron pipe marking the intersection of the former center line of 40.00 foot Hatch Road and said Section Line; thence along said centerline, South 46° 46' 52" West, 79.93

feet, to a point on the Southern line of the new Hatch Road right of way, said point being on a non-tangent curve from which a radial line bears South 04° 57' 15" East; thence Westerly along said Southern line on a curve concave to the South, having a radius of 955.00 feet, a central angle of 01° 58' 53" and an arc length of 33.03 feet, to its intersection with the former Northwestern line of said Hatch Road, said point being on a non-tangent curve from which a radial line bears South 06° 56' 08" East; thence along said Northwestern line, South 46° 46' 52" West, 95.72 feet, to a point on the existing City Limits as established by the Modesto Industrial Park Addition, and the true POINT OF BEGINNING of this description; thence continuing along said Northwestern line, South 46° 46' 52" West, 166.12 feet, to a point on the Eastern line of 80.00 foot Dallas Street, said point being on a non-tangent curve from which a radial line bears South 80° 56' 25" West; thence Southerly along said Eastern line on a curve concave to the West, having a radius of 540.00 feet, a central angle of 5° 18' 11" and an arc length of 49.98 feet to a point on the former Southeastern line of Hatch Road, said line also being the Northwestern line of the Turlock Irrigation District Lateral Number 1, and said point being on a non-tangent curve from which a radial line bears South 86° 14' 36" West; thence along said Southeastern line and Lateral Number 1, North 46° 46' 52" East, 196.05 feet, to a point on the existing City Limits; thence along said existing City Limits, North 43° 13' 08" West, 40.00 feet to the POINT OF BEGINNING.

Description No. 2:

Lots 4 and 5 and the East 0.057 chains of Lot 8 of Rio Grande Colony, as per map filed July 5, 1912, in Volume 6 of Maps, at Page 47, Stanislaus County records.

Excepting therefrom all the portion of said Lots 4 and 5 lying North of the Southerly line of Hatch Road and East of the Westerly line of Dallas as conveyed to the City of Modesto by deed dated February 2, 1968, and recorded March 14, 1968, as per instrument No. 8052.

Also excepting from said East 0.057 chains of said Lot 8 all that portion thereof lying North of the Southwest extension of the Southerly line of Hatch Road as said road was conveyed to the City of Modesto by deed March 14, 1968 in Volume 2211 of official records, at Page 227, as instrument No. 8053.

Also: all of Dallas Street, the Southeasterly half of Hatch Road, and the Northwesterly half of T. I. D. Lateral No. 1, all being immediately adjacent to the above described properties.

SECTION 2. USES. The following uses shall be permitted in said P-D(542) 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:

Commercial uses as allowed in the Neighborhood Commercial C-1 Zone.

SECTION 3. ZONING MAP. Section Map 8-4-9 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 B. e.*, 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 September, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *[Signature]*
Community Development Department
Planning Division

Ord. No. 3188-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2000, Councilmember Conrad, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: November 2, 2000

clerk
27

ORDINANCE NO. 3189-C.S.

AN ORDINANCE AMENDING SECTION 14-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1 TO PLANNED DEVELOPMENT ZONE, P-D(543), PROPERTY LOCATED ON THE SOUTH SIDE OF FLOYD AVENUE EAST OF OAKDALE ROAD AT 2254 FLOYD AVENUE. (ROSS BRILES)

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

SECTION 1. ZONING CHANGE. Section 14-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(543):

R-1 to P-D(543)

All that certain real property situate in the Northwest Quarter of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California as follows:

Parcel 2 as shown on map, filed for record in Book 8 of parcel Maps at Page 36, Stanislaus County Records;

Including also that portion of Floyd Avenue South of the centerline of original 40-foot Floyd Avenue, all being adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(543) 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:

Health club facility.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2000, by Councilmember Smith, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3189-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2000, Councilmember Conrad, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Fisher

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: November 2, 2000

ORDINANCE NO. 3190-C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 10 OF THE VILLAGE ONE SPECIFIC PLAN TO ALLOW A GATED SUBDIVISION WITH A PRIVATE LAKE, ON PROPERTY LOCATED ON THE EAST SIDE OF FINE AVENUE NORTH OF KODIAK DRIVE. (MARCHBROOK BUILDING COMPANY)

WHEREAS, pursuant to California Government Code Section 65450, et seq., the City Council, in October, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Specific Plan designated 35 Precise Plan Areas in Village One, and a Precise Plan is required to be approved by Ordinance adopted by the City Council prior to development in each of the areas, and

WHEREAS, the City Council, on May 4, 1999, approved a Precise Plan for Area No. 10, which was to allow a 179-lot single-family subdivision utilizing public streets, however, the subdivision has not been developed, and

WHEREAS, an application has been filed by Marchbrook Building Company for an amendment to Precise Plan Area No. 10 to develop the area with a 123-lot gated subdivision arranged around a private lake utilizing private streets, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on October 16, 2000, in the Chambers located at Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after considering said matter and public comments, the Planning Commission, by Resolution No. 2000-51 recommended to the City Council approval of an amendment to Precise Plan No. 10 of the Village One Specific Plan to allow the gated subdivision with private streets, on property located on the east side of Fine Avenue north of Kodiak Drive, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on Tuesday, October 24, 2000, at 5:15 p.m., in the Chambers located at Tenth Street Place, 1010 Tenth Street, Modesto, California, and

WHEREAS, the Council declares that the recommended amendment for Precise Plan for Area No. 10 of the Village One Specific Plan, to develop the area with a 123-lot gated subdivision arranged around a private lake utilizing private streets, is required by public necessity, convenience, and general welfare and should be approved,

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on October 24, 2000, this Council finds and determines that the requested amendment is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan, and is consistent with the Guiding Principles and Comprehensive Policies of the Village One Specific Plan.

SECTION 2. APPROVAL OF PRECISE PLAN AMENDMENT. The City Council has reviewed and considered the Precise Plan Amendment for Area No. 10 of the Village One Specific Plan, and the Council does hereby approve said Precise Plan Amendment

for Area No., as set forth on the documents attached hereto entitled "Village One Precise Plan Area No. 10 Amendment".

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of October, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *jean zahr*
JEAN ZAHR, City Clerk
(SEAL)

APPROVED AS TO FORM:

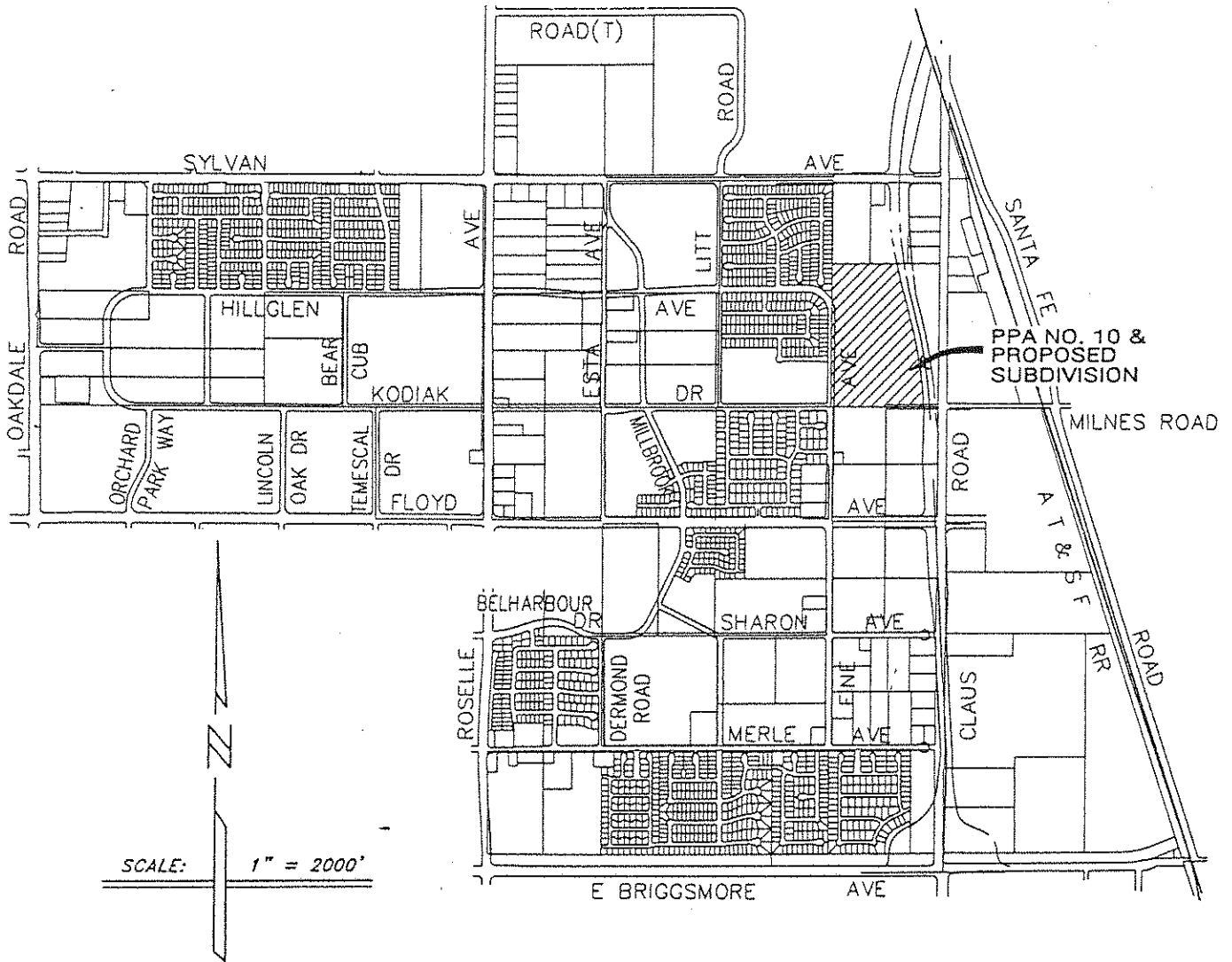
By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

ATTACHMENTS

VILLAGE ONE
PRECISE PLAN AREA NO. 10 AMENDMENT

VILLAGE ONE

AMENDMENT TO PRECISE PLAN AREA NO. 10



PREPARED BY:

DELAMARE - FULTZ
 ENGINEERING AND SURVEYING
 3421 TULLY ROAD, SUITE J, MODESTO, CA 95350
 TELEPHONE (209) 529-7450

JULY 31, 2000



**PRECISE PLAN AREA NO. 10
"SUNDANCE LAKE"**

DEVELOPMENT PLAN

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FIGURES

FIGURE

FIGURE #

Street Sections

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I. Introduction

Project Description

The proposed project entails a request for approval and adoption of a development plan for Precise Plan Area No. 10, as well as the approval of a 123 lot Vesting Tentative Subdivision Map "Sundance Lake", surrounding a centrally located private lake. The project encompasses all of Precise Plan Area No. 10.

Project Applicant

Marchbrook Building Company
3255 W. March Lane
Stockton, CA 95219
Tel. (209) 473-6112

Project Planners, Engineers, and Surveyors

DeLaMare-Fultz Engineering
3421 Tully Road, Suite J
Modesto, CA 95350
Tel. (209) 529-7450
FAX (209) 529-0457

Planning Area

Precise Plan Area No. 10 is bordered by P.P.A. No. 23 to the south, proposed Claus Road Expressway to the east, proposed P.P.A. No. 9 to the north and Fine Avenue to the west.

Special Considerations

"Sundance Lake" is to be developed as a gated community with private streets with single family residences surrounding a private lake, at a density consistent with the Village Residential Standard. The lake will be owned by the Homeowners' Association, and maintained by the Homeowners' Association.

The lots along Fine Avenue will be back up lots, or corner lots with sides adjacent to street frontage. Lots will front on the internal subdivision streets.

The subdivision will include a main entrance from Fine Avenue with expanded landscaping and a median. At the south end of the project, there will be an open-ended cul-de-sac to provide a secondary emergency access to the subdivision.

Access for pedestrians and bicyclists will be permitted through the subdivision by means of a gate at Edgeview Court and along Sundance Lake Drive and out Lauding Way.

Property Owner List

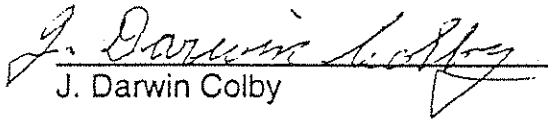
Property owners within Precise Plan Area No. 10 (one only).

APN 85-01-05
J. Darwin Colby
6606 Quannah Way
Orangevale, CA 95662
Tel. (916) 989-0634

Property Owner Written Consent Form for the Submittal of the Vesting Tentative Subdivision Map, "Sundance Lake".

I, as property owner of the site of the proposed Vesting Tentative Subdivision Map, "Sundance Lake", do hereby consent to allow the filing with the City of Modesto any maps, plans, applications, or other documents necessary for the approval of Vesting Tentative Subdivision Map for the property listed below:

APN 85-01-05

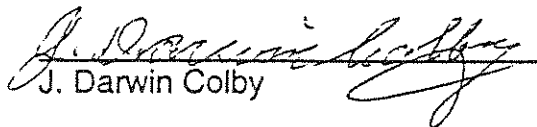

J. Darwin Colby

Aug 2, 2011
Date

Property Owner Written Consent Form for the Submittal of the Village One Precise Plan, Area No. 10.

I, as property owner of the site of the proposed Village One Precise Plan, Area No. 10, do hereby consent to allow the filing with the City of Modesto the Precise Plan Document for the property listed below:

APN 85-01-05


J. Darwin Colby

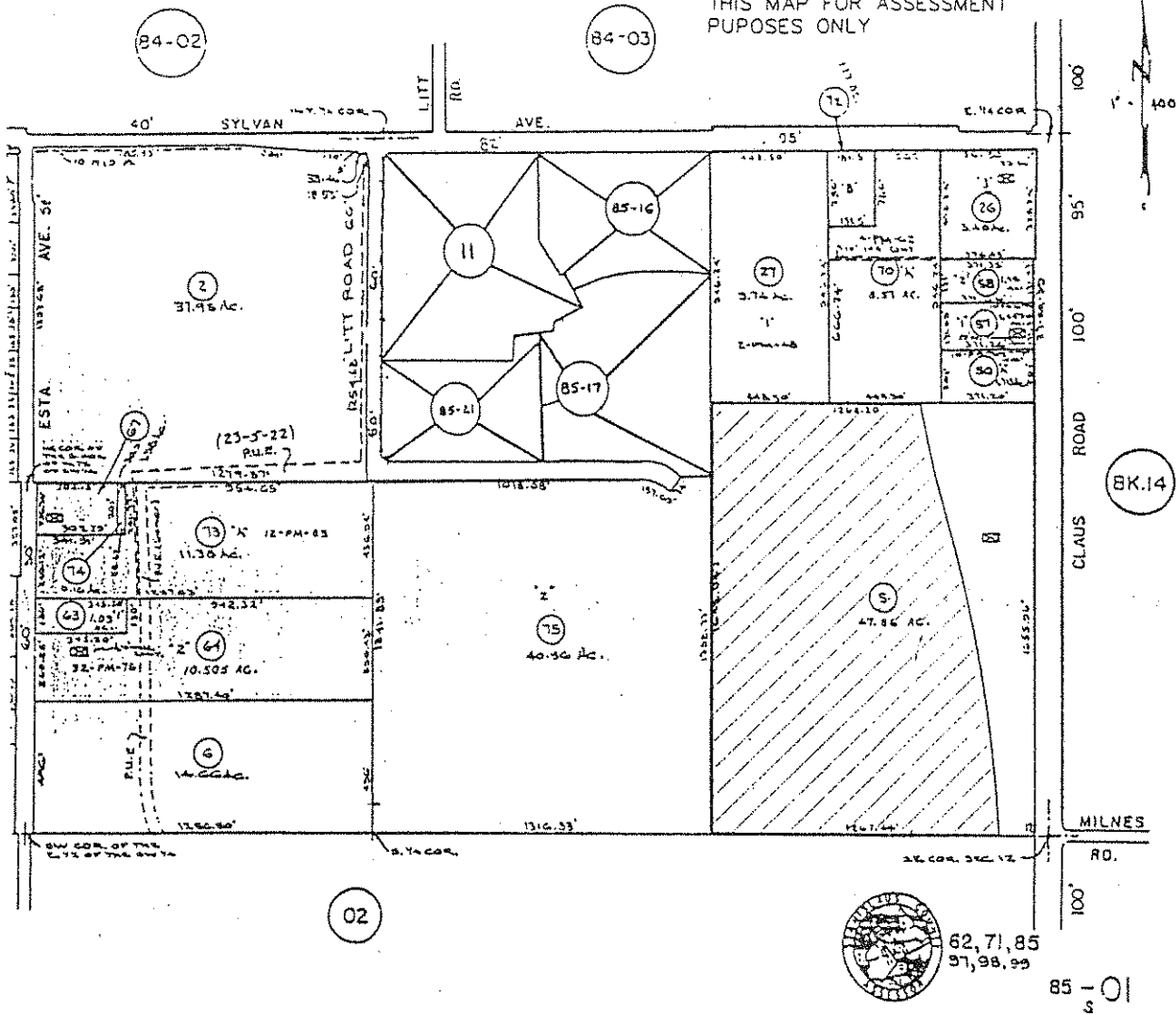
Aug 2, 2011
Date

ASSESSORS MAP

S 1/2 SECTION 12 T. 3 S. R. 9 E. M.D.B. & M.

85 - 01

THIS MAP FOR ASSESSMENT
PUPOSES ONLY



II. Applications/Approvals

Application Fees

Vesting Tentative Subdivision Map	\$ 730
Environmental Questionnaire	535
Precise Plan, including Rezone (SPH to SPO)	<u>1,590</u>
Total	\$2,855

Vesting Tentative Subdivision Map

Submittal will include a Vesting Tentative Subdivision Map, "Sundance Lake", lying in all of PPA No. 10. The subdivision will encompass a portion of APN 85-01-05 and consist of 123 lots on approximately 35.7 acres (gross).

Environmental Review

Applicant will pay fees, and City of Modesto staff will complete the Environmental Questionnaire and compile mitigation measures consistent with the original Village One Environmental Document.

Precise Plan

The City of Modesto will approve and adopt the Precise Plan Development Standards and Regulations for use in governing the development of this project within the geographic sub region. Any revisions within Precise Plan Area No. 10 that are not consistent with the Development Standards and Regulations proposed will require an amendment to the Precise Plan Area No. 10 document accordingly.

Zone Change

The zoning for the project site is SPO (Specific Plan Overlay). As such, no additional zone change is required as part of the Precise Plan Amendment.

III. Land Use

Acreage

Precise Plan Area No. 10 encompasses approximately 35.7 acres, all of which is zoned for Village Residential Use.

Existing Use

The project site is currently being utilized as follows:

APN 85-01-05 The site is currently covered with rice stubble.

Land Use Intensity

The precise plan area can accommodate an average of 179 dwelling units based on the above acreage and density factor of 5.0 units per acre. The proposed project proposes 123 dwelling units on 35.7 acres (gross) with a density of approximately 3.4 units per gross acre.

Principal Underlying Zone

R-1 Single Family Residential

IV. Street Design

Street Sections

The precise plan will be developed in accordance with the street sections shown on Figure 1, which were developed for use specifically in Village One. These proposed streets are consistent with the street sections developed with Implementation Plan No. 2 of the Village One Feasibility Study which are incorporated into Specific Plan Amendment No. 8.

Claus Road Expressway

To be developed with a 135' wide right-of-way and a 65' wide noise buffer consisting of a 20-foot rear yard setback and a 45-foot linear trail. Claus Road is a Class B Expressway that includes 6 travel lanes, one 10' wide bike lane, a divider, and landscaping. Construction will be by the City of Modesto with Capital Facilities Fees. The 7' masonry wall and 20' on-site setback will be installed with the "Sundance Lake" improvements.

Fine Avenue

To be developed as a 56' wide Village One connector street with two 11' travel lanes, two 5' wide bike lanes and an 8' wide parkway on each side of the road between the curb and a 4' sidewalk. On-street parking will not be allowed. In addition to the 8' wide parkway, there will be 8' to 10' of landscaping behind the sidewalk maintained by the CFD.

Interior Streets

The interior streets will be private and developed as a 48' wide Village One minor residential street that includes two travel lanes. On-street parking will be allowed on both sides of the street.

Landscaping Areas

The landscaping areas shown on Figure 2 indicate the specific areas within the project that will be dedicated to and maintained by the Community Facilities District (CFD). The applicants will work with staff to create landscaping areas that reflect the Village Concept through the use of a combination of street trees, shrubs, and bushes. Funding for maintenance of these specified areas will be obtained by the Annexation to the CFD. These areas include the landscaped areas behind the sidewalk on Fine Avenue.

Walls and Fencing

Development along the proposed Claus Road realignment frontage of PPA No. 10 will be required to install a 7' high decorative access control wall as shown on Figure 3. Development of other Precise Plan Areas along Claus Road will need to emulate the decorative access control wall and landscaping that is being proposed for PPA No. 10.

Cul-de-Sac End Detail

An opening will be developed at the cul-de-sac end at Fine Avenue as shown on Figure 4. This detail will occur in one location along Fine Avenue.

Circulation

Circulation through PPA No. 10 will be through a series of 48' wide minor residential streets that are connected to Hillglen Drive and Fine Avenue at one central access location as shown on Figure 5. These roads will link the residents of PPA No. 10 with the rest of Village One.

PPA No. 10 was designed to give pedestrian access to Fine Avenue via entry roadways. Once on Fine Avenue, pedestrians will be able to take advantage of the landscaped walking areas to access the rest of Village One. In addition, the proposed bike lanes will also enhance non-vehicular transportation in this area of the village project.

V. Village One Specific Plan

Specific Plan Conformance

Land Use/Community Design

The plan meets the residential densities outlined for the subject portion of Village One. The PPA No. 10 design will be consistent with the Village One Community Design Policies.

Circulation

The plan provides for efficient interior circulation within the precise plan area.

Public Facilities

The plan will allow the development of public facilities to serve new growth within the precise plan area.

Schools

Development within PPA No. 10 will pay a school fee on a per house basis. Any tentative subdivision or parcel map within Precise Plan Area No. 10 shall be required to annex to a schools Mello-Roos District prior to the recordation of the final map.

Parks

Development with PPA No. 10 will pay the applicable park fees.

Specific Plan Exceptions

The project will be designed and improved to the Village One Specific Plan and or the City of Modesto R-1 Zoning Ordinance except the house setbacks for corner lot side yard on side streets shall be a minimum of 12.00'.

VI. Infrastructure Plan

Pipelines shown are based upon preliminary Vesting Tentative Subdivision Map design. Pipeline sizes for construction will be finalized when the improvement plans are completed.

Sanitary Sewer

The City will provide sewer service for the subdivision. The proposed sewer lines in the subdivision will be per the City Standards and will connect to the proposed 15" sewer main in Kodiak Drive and the existing 10" sewer on Hillglen Drive as shown on Figure 6.

Water

The City will provide domestic water for the subdivision. The proposed water lines in the subdivision will be per the City Standards and will connect to an existing 12-inch water main at Hillglen Drive and Litt Road as shown on Figure 7.

Water source for the lake will be subdivision storm water runoff, Modesto Irrigation District irrigation water and/or an on-site agriculture well.

Storm Drainage

The storm drain system for the subdivision was planned to tie into a City master-planned basin via the proposed 42-inch pipelines in the Hillglen Avenue and Floyd Avenue right-of-ways. In the Village One Public Facilities Master Plan, the northern half of Precise Plan Area No. 10 was to drain to the storm drain basin proposed in Precise Plan Area 14 while the southern half was to drain to the existing storm drain basin in Precise Plan Area 31. The storm drain basin in Precise Plan Area 14 has yet to be constructed, while the storm drain basin in Precise Plan Area 31 is in place but underutilized. As such, it is proposed that the 6.3-acre lake in the subdivision will act as a detention basin and the storm drain basin in Precise Plan Area 31 will be utilized for all drainage from Precise Plan No. 10. Storm drainage facilities are shown on Figure 8.

Phasing

Development of the project is proposed in two phases as shown on Figure 9. The developer reserves the right to develop the project in additional, smaller units in the future, if so desired.

VII. Miscellaneous

Legal Description

The attached legal description and accompanying sketch detail the boundary area of the proposed "Sundance Lake" Subdivision. The subdivision encompasses all of PPA No. 10.

All that certain real property situate in a portion of the southeast quarter of Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

COMMENCING at the southeast corner of said Section 12; thence South $89^{\circ}47'40''$ West along the south line of said Section 12 a distance of 155.63 feet to the centerline of future Claus Road Expressway and the TRUE POINT OF BEGINNING of this description; thence northerly along said centerline of future Claus Road Expressway the following three courses: (1) North $3^{\circ}25'50''$ West 19.21 feet, (2) Northerly 1107.76 feet along a tangent curve, concave to the west, having a radius of 4989.02 feet and a central angle of $12^{\circ}43'19''$ to a point of reverse curve and (3) Northerly 561.53 feet along said reverse curve, concave to the east, having a radius of 4998.02 feet and a central angle of $6^{\circ}26'14''$ to a point on a non-tangent line, being the north line of the south half of the south half of the Northeast Quarter of the Southeast Quarter of said Section 12; thence South $89^{\circ}56'18''$ West along said north line of the south half of the south half of the Northeast Quarter of the Southeast Quarter of Section 12 a distance of 850.04 feet to the Northwest corner of said south half of the south half of the Northeast Quarter of the Southeast Quarter of Section 12; thence South $0^{\circ}05'13''$ East along the West line of the east half of the Southeast Quarter of said Section 12 a distance of 1655.43 feet to the Southwest corner of said Southeast Quarter of the Southeast Quarter of Section 12; thence North $89^{\circ}57'40''$ East along said South line of Section 12 a distance of 1162.30 feet to the point of beginning.

Containing: 39.13 Acres

- ① N. $3^{\circ}25'50''$ W. 19.21'
- ② R = 4989.02', $\Delta = 12^{\circ}43'10''$,
L = 1107.76'
- ③ R = 4998.02', $\Delta = 6^{\circ}26'14''$,
L = 561.53' -
- ④ S. $89^{\circ}56'18''$ W. 850.04'
- ⑤ S. $0^{\circ}05'13''$ E. 1655.43'
- ⑥ N. $89^{\circ}57'40''$ E. 1162.30'

See Figure 10 for the Plat Map of Assessor's Parcel Number 85-01-05.

LEGAL DESCRIPTION

**PRECISE PLAN STATEMENTS, AS REQUIRED
BY THE "VILLAGE ONE SPECIFIC PLAN"**

1. Prior to the Final Inspection, Building Inspection Division shall verify that all fireplaces and wood stoves in residential units are equipped to meet the performance and emissions standards set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1988.
2. Construction noise is regulated by the City's Noise Ordinance, Section 4.9-103. Construction noise is generally permitted during the hours of 7:00 a.m. to 9:00 p.m. To avoid complaints from nearby residents, and possible citations, the full text of the ordinance should be reviewed by builders prior to construction. City construction projects will be monitored by Construction Inspection Division for conformance with the City's Noise Ordinance.
3. During construction activities, Building Inspection Division shall verify that contractors observe the requirements of City of Modesto Standard Specification 1.8, Dust Control, and when necessary, Regulation VIII of the San Joaquin Valley Unified Air Pollution Control District to control the generation of PM 10 from construction related dust and emissions.
4. Any tentative subdivision or Parcel Map within Precise Plan Area No. 10 shall be required to annex to the schools Mello-Roos District prior to the recordation of the final map.

See Figure 11 for the Vesting Tentative Subdivision Map for "Sundance Lake".

**POLICY DIRECTIONS AND RESPONSES APPLYING
TO ALL PRECISE PLAN AREAS
(AS SUMMARIZED FROM SECTION III D OF THE VILLAGE ONE
SPECIFIC PLAN, DATED FEBRUARY 1998)**

All Precise Plans prepared within the Village One Specific Plan Area shall incorporate the following policies into their designs, where appropriate:

1. Land Use Compatibility between Precise Plan Areas may be provided in many ways such as the design, orientation, size of lots, arrangement of specific land uses, or the limitation or provision of pedestrian access. Precise Plans shall incorporate appropriate policies for effective transition between Precise Plans.

The precise plan area is bordered on the east and west by existing or proposed roadways. Precise Plan No. 23 to the south has access available from both Fine Avenue and Floyd Avenue, and does not need access through Precise Plan Area No. 10. Precise Plan Area No. 9 to the north will take its access from Sylvan Avenue to the north, and existing residential development to the west.

2. Right of way acquisition for connector street linkages shall provide for the relocation and or acquisition of structures that are located within the road alignments. If there is an existing dwelling or structure that is located in those alignments, it should be relocated or acquired.

There are no structures located within any of the planned rights-of-way.

3. Precise Plan Areas may be combined to create larger increments for submittal of plans. When one property encompasses several Precise Plan Areas, the property owner may submit individual Precise Plan applications, or one combined Precise Plan application covering all relevant Precise Plan Areas.

This precise plan submittal covers one precise plan only, in its entirety.

4. Remainder parcels within a Precise Plan Area, such as a small triangular properties, shall be assembled and/or reconfigured before approval of a Precise Plan. When applicable, a Precise Plan shall provide for the incorporation of the remainder parcels from the adjacent Areas.

There will be no remainder parcels as this precise plan covers the precise plan area in its entirety.

5. All road alignments for connector streets shall be consistent with the Facilities Master Plan.

The connector roads proposed are consistent with the Facilities Master Plan.

6. The Land Use and Community Design Policies presented in Chapter II (Section II-G) shall be incorporated, where relevant, into each Precise Plan. The Development Review process to implement these policies may specify that, for existing and proposed lots greater than 5,000 square feet in size, performance standards may be utilized, in lieu of architectural and plot plan submittals, to demonstrate conformance with the Land Use and Community Design Policies.

The project will comply with the policies presented in Chapter II.

7. All Precise Plans which propose residential development shall include the following requirement for residential subdivisions notifying future home buyers in the project area of potential land use impacts although it may not fully mitigate the impact:

"All deeds for lots sold in this subdivision shall contain the following statement:

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

The statement will be included as required.

8. All Precise Plans, which propose residential development, shall include the following requirement:

The Developer shall provide Pedestrian linkage to school facilities serving the particular residential Precise Plan Area. Linkage may consist of any surface and route agreed to by the City Transportation Division and School District Facilities Planners to provide safe and continuous linkage from the residential areas to the school facility.

-or-

As an alternative to construction of pedestrian linkage, reimburse the school district for busing arrangement until such time as necessary pedestrian linkage is in place.

This policy does not intend for developers to construct walkways to schools that don't exist.

Acceptable surface routes will be available.

9. Precise Plans in the project area shall contribute to the financing and implementation of the required improvements to provide capacity for projected traffic at the Oakdale and Briggsmore intersection. This shall include the following intersection improvements:

Widen the eastbound and westbound approaches to add a separate right-turn lane on each approach, converting the existing right-turn lane to a through and restriping the departures to receive three through lanes. Restripe the northbound and southbound approaches and widen the departures to convert the existing separate right-turn lanes to through +right-turn lanes.

Department of Public Works and Transportation staff shall determine the design and phasing of these roadway improvements based on the Facilities Master Plan. Completion of final inspection by Construction Inspection Division shall constitute compliance with this measure.

Payment of CFD and/or CFF fees will provide the required funding.

10. The following statement shall be placed in all Precise Plans for Residential Development:

Prior to the Final Inspection, Building Inspection Division shall verify that all fireplaces and wood stoves in residential units are equipped to meet the performance and emissions standards set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1988.

The statement is included.

11. Noise Mitigation for Residential Precise Plan Areas

Noise measures might include, but are not necessarily limited to, setbacks, barriers, site design, or acoustical building treatment. Precise Plans shall determine from this list which measures are most relevant. This requirement shall apply to dwellings located within the identified 65 dBA exterior noise level contours. Verification of noise treatment to reduce interior noise levels to 45 dBA, prior to final inspection by Building Inspection Division shall constitute compliance with this measure.

Noise mitigation for residential dwellings is required along the following streets up to the indicated distance:

Without acoustical treatment, noise levels inside proposed residential housing along the following project area major streets would exceed 45 dBA, the City's General Plan standard. The street segments and distances in feet from centerline these impacts would occur are:

.....

Claus

-	Sylvan to Floyd	132.5 ft.
-	Floyd to Briggsmore	137.5 ft.

Source: Brown-Buntin Associates Noise Study, April 1993 as amended May 25, 2000.

The appropriate setback has been included in the precise plan and tentative maps.

12. All Precise Plans shall contain the following statement:

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

The statement is included.

13. Swainson's Hawk Survey Requirement .

Does not apply.

14. Precise Plans for development within the project area shall contain the following statement:

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

The statement is included.

15. Applies only to Public Facilities Projects.

Does not apply.

**SPECIAL CONSIDERATIONS APPLYING
TO PRECISE PLAN AREA NO. 10**

3(a). Within the Precise Plan Area, only single-family residential uses shall be allowed.

1. The average number of dwelling units is 179.

"Sundance Lake" is to be developed with single family residences surrounding a private lake, at a density consistent with the Village Residential Standard. The proposed project has 123 dwelling units on 35.7 acres (gross) with a density of approximately 3.4 units per gross acre.

3(b). The southern boundary of Precise Plan Area #10 shall be the south property line of Assessor's Parcel Number 85-01-05.

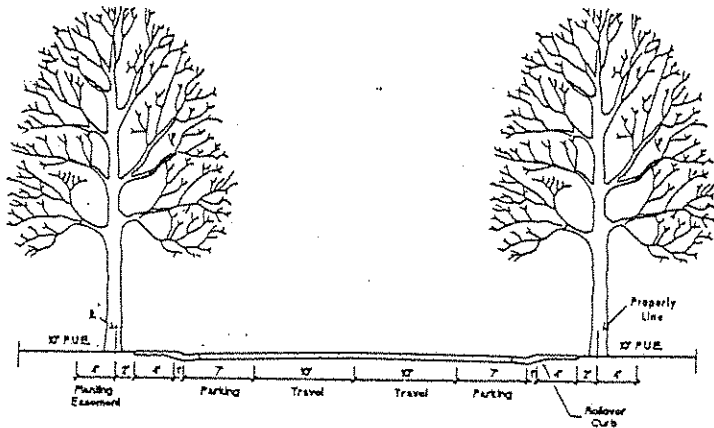
The southern boundary of the precise plan as proposed is the south line of Assessor's Parcel Number 85-01-05.

3(c). Parcels fronting on Claus Expressway shall provide a 65-foot-wide traffic noise mitigation setback, where no habitable dwellings shall be placed, (from the edge of public right of way) for all residential units as well as a seven-foot high soundwall. Setback areas for landscaping and trails shall also be provided in accordance with the standards in Chapter II.

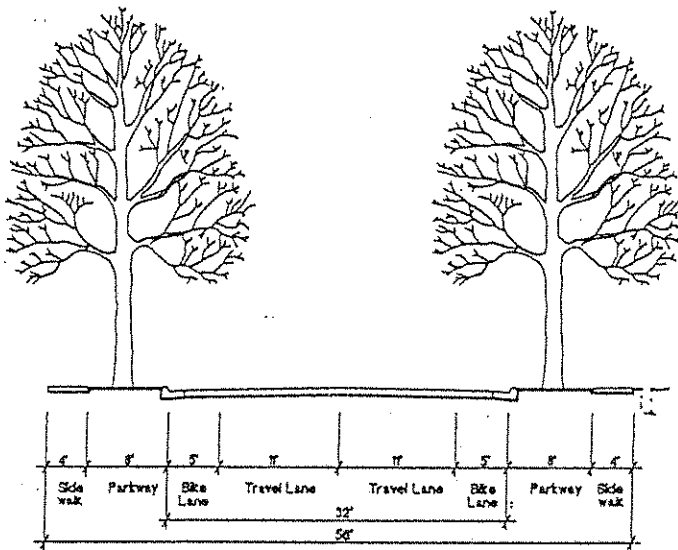
Back up lots are proposed along Claus Road. The required separation is included in the Precise Plan and the Tentative Map.

FIGURE 1

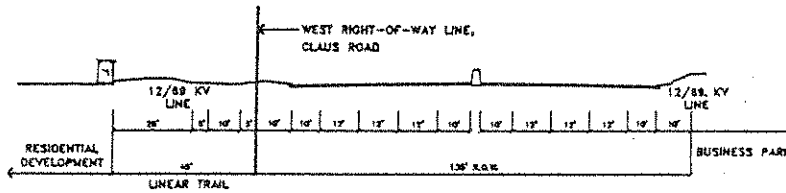
STREET SECTIONS



Minor Residential Street: 48' right-of-way, 2 Lanes



56' Connector Street



Claus Road (Looking North) : 135' Right-of-way, 6 Lanes

FIGURE 2

LANDSCAPING AREAS

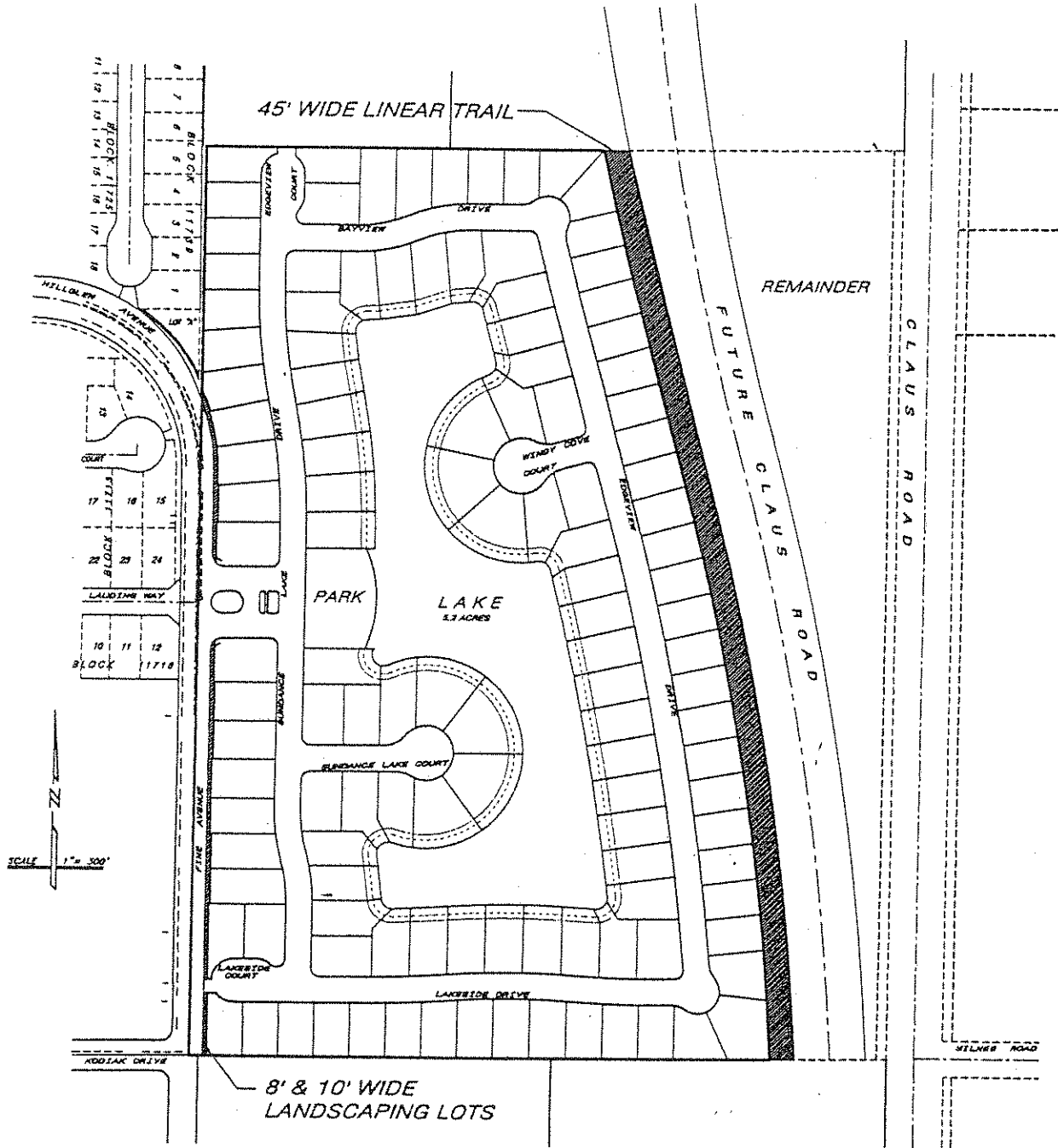


FIGURE 3
WALLS AND FENCING

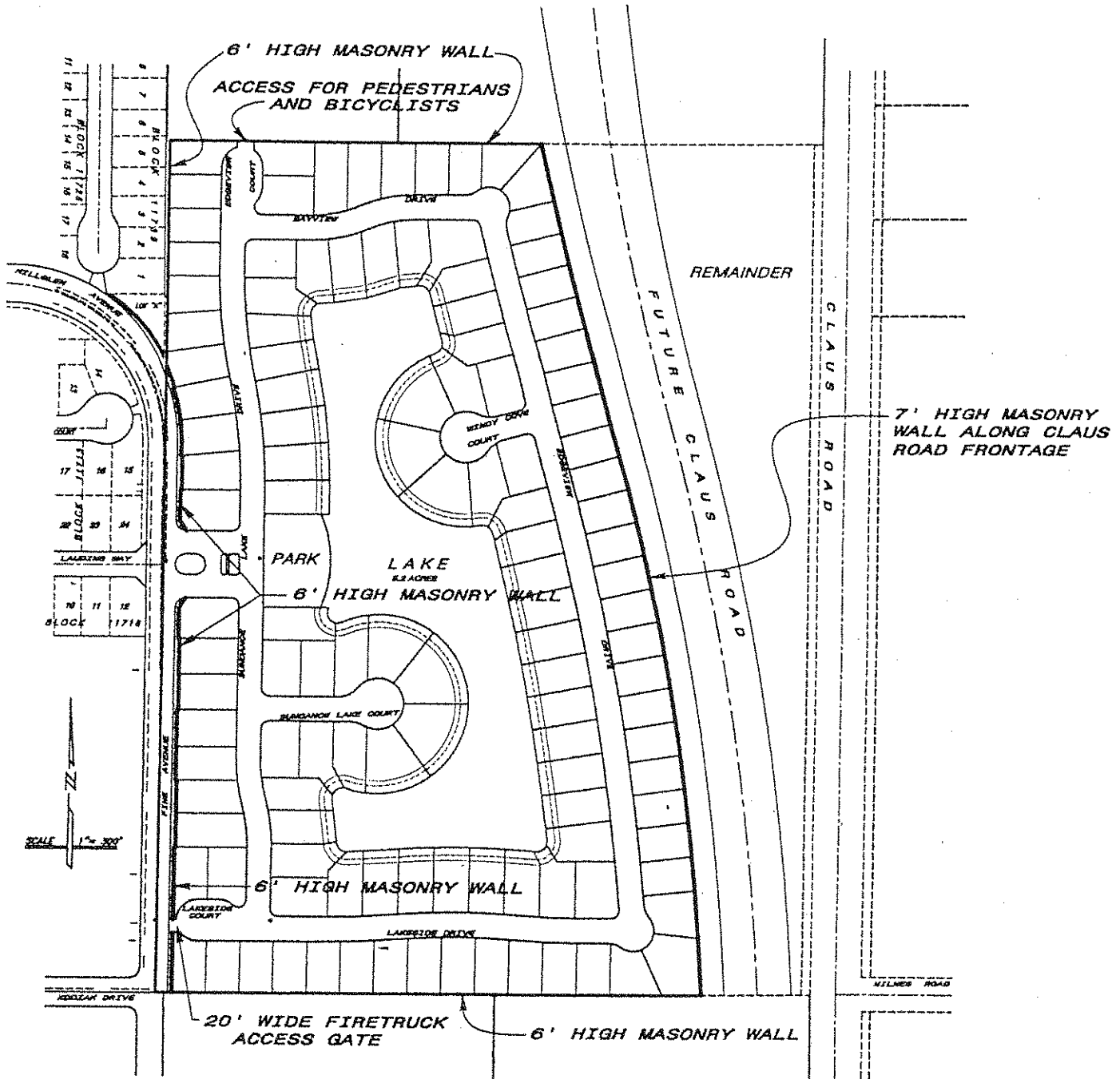


FIGURE 4

Cul-de-Sac End Detail

An opening will be developed at the cul-de-sac ends at Fine Avenue shown below. This detail will occur in one location along Fine Avenue.

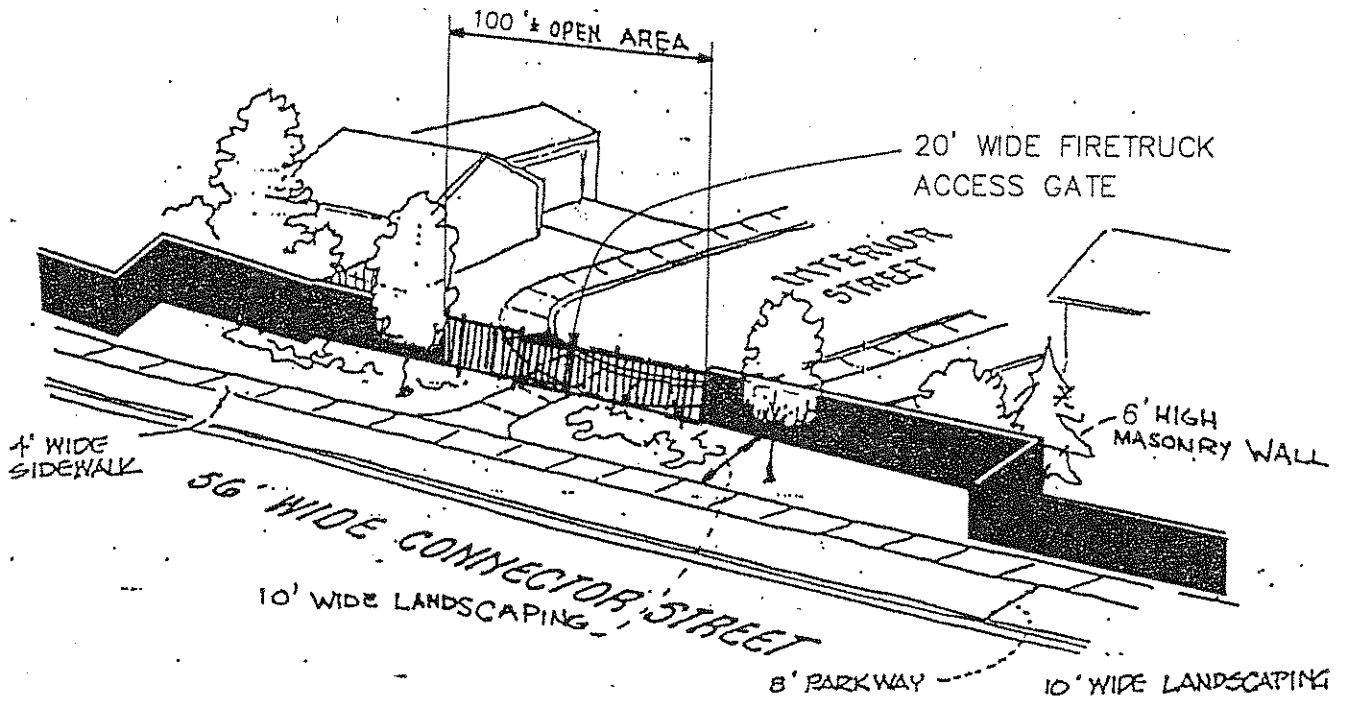


FIGURE 6

SANITARY SEWER PLAN

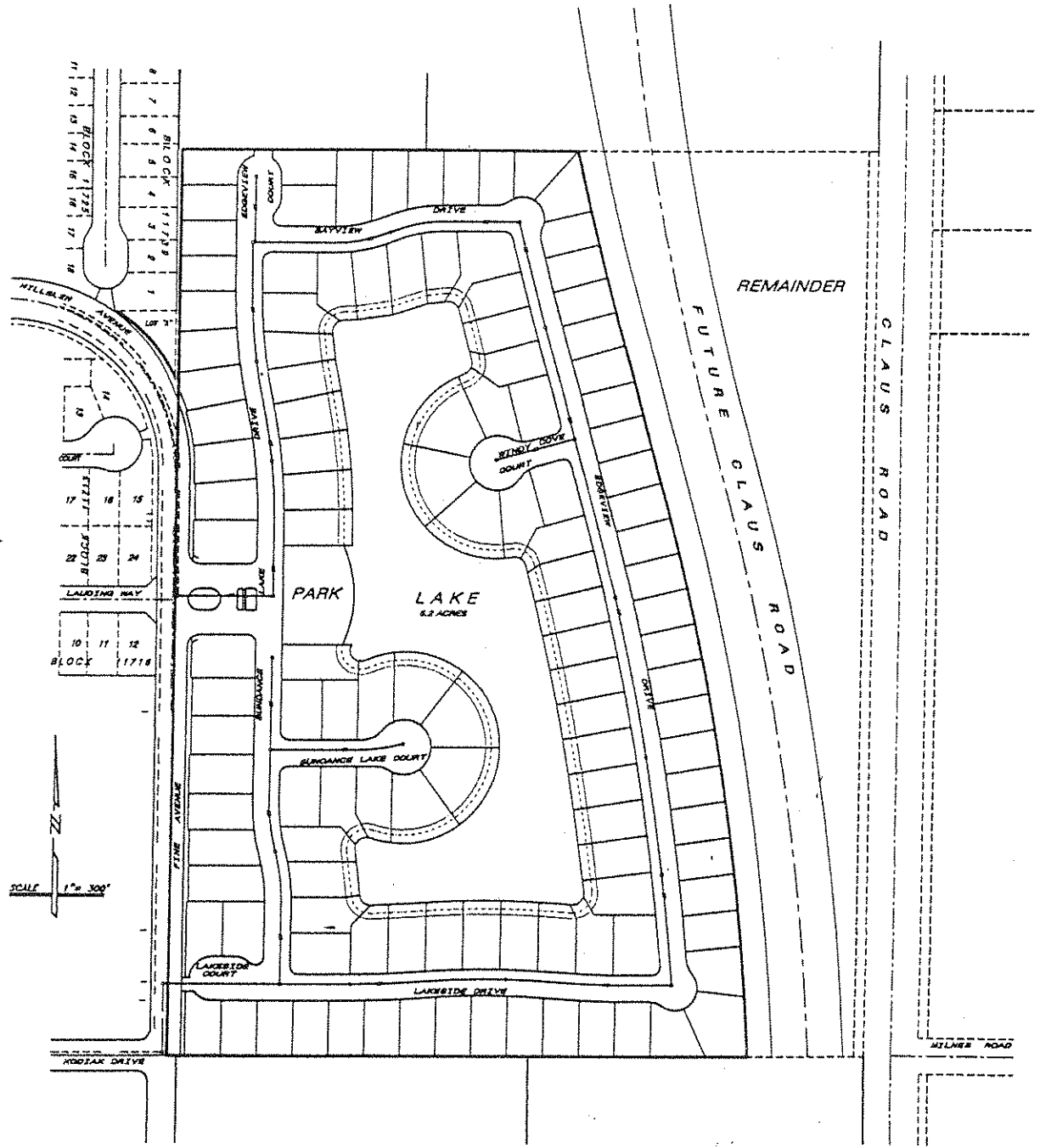


FIGURE 7

WATER PLAN

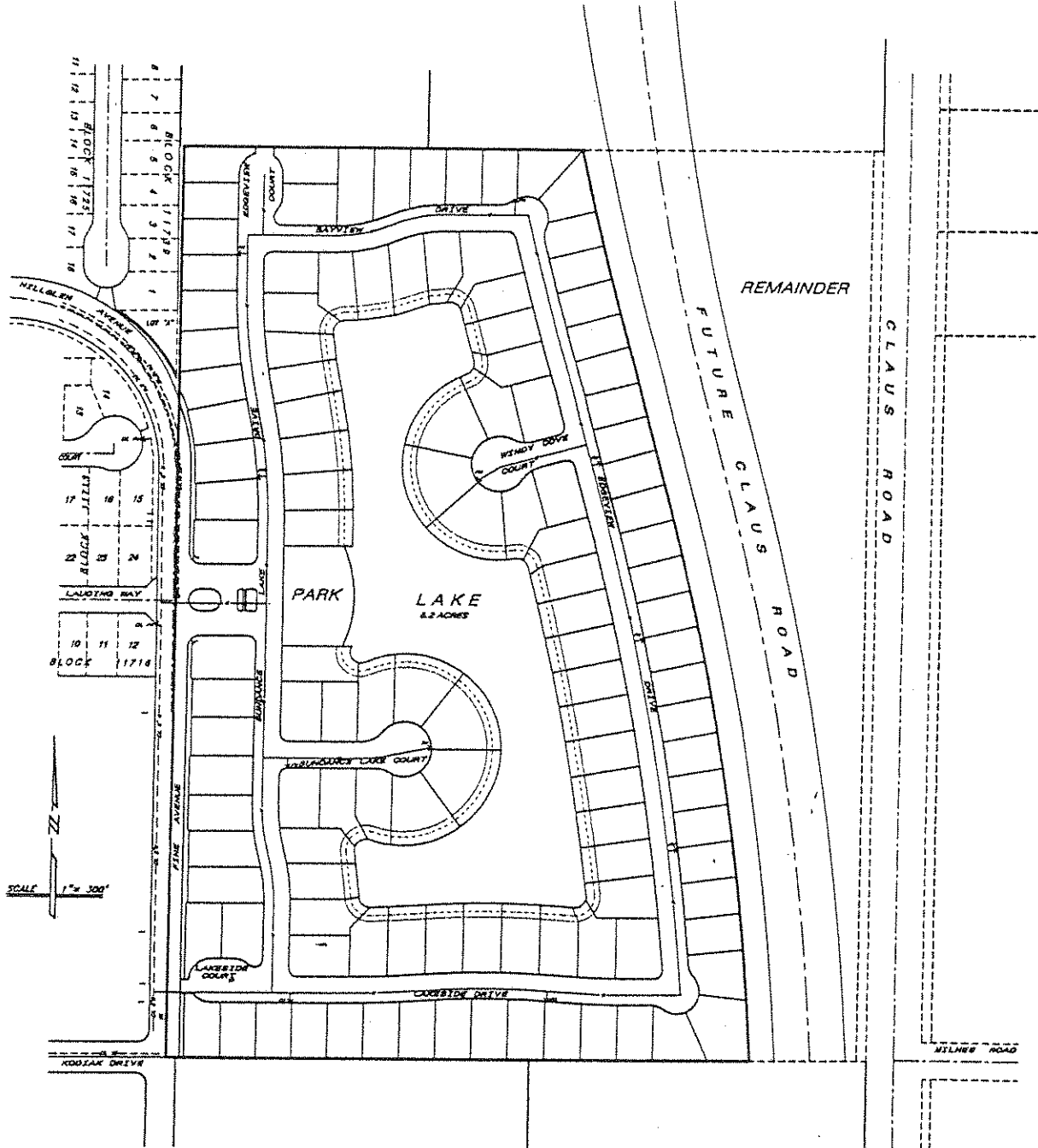


FIGURE 8

STORM DRAINAGE PLAN



FIGURE 9 PHASING

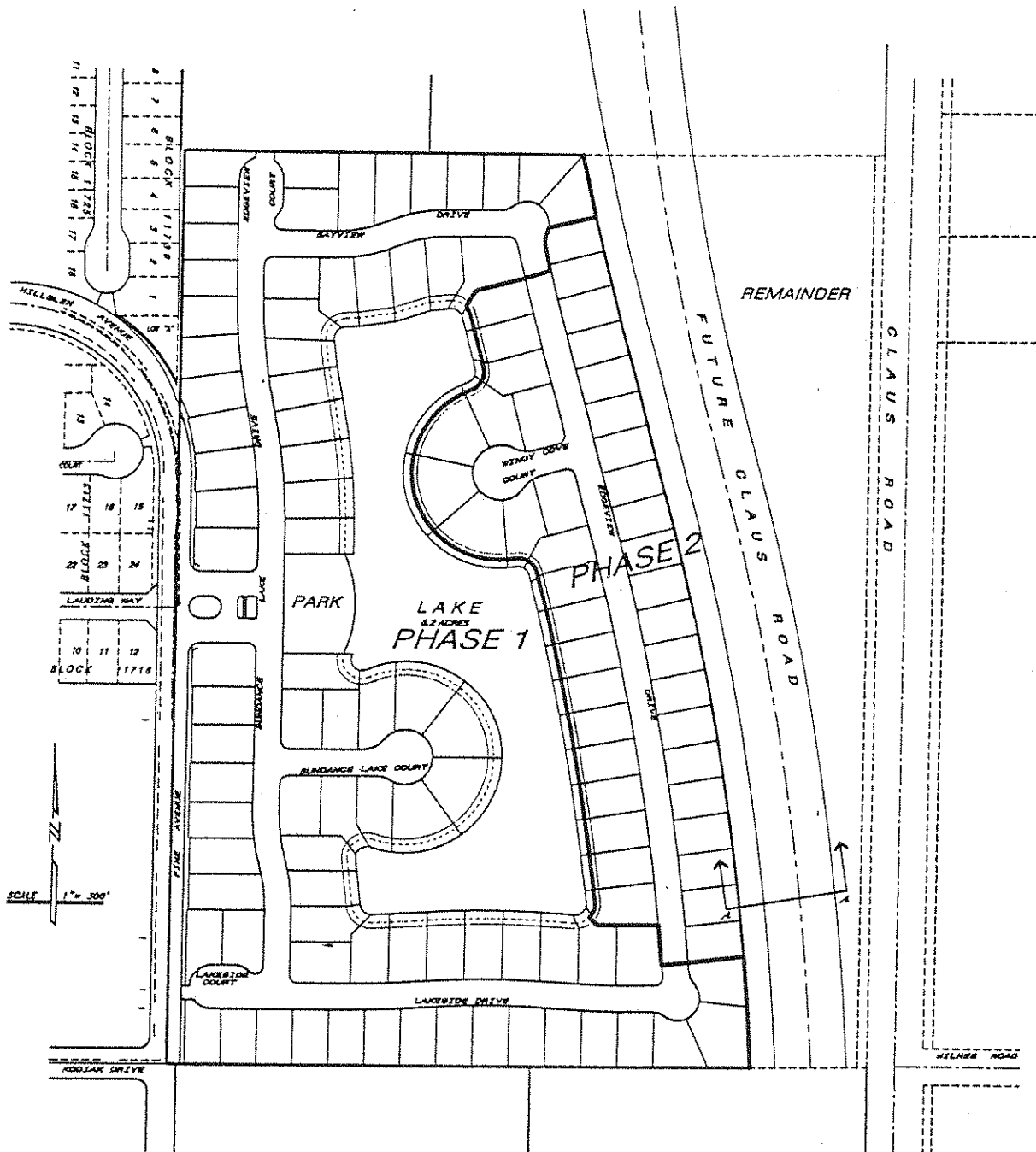
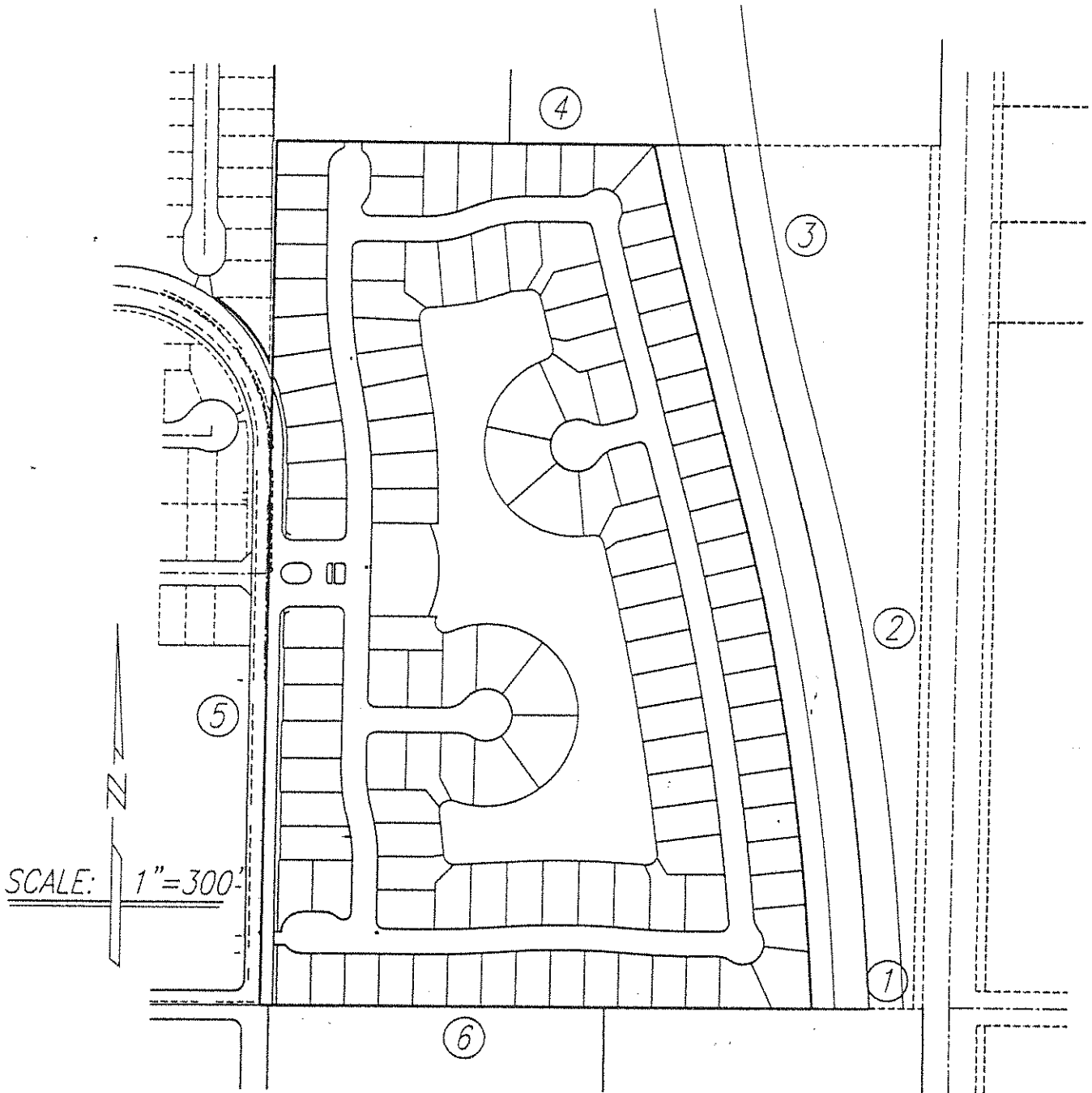


FIGURE 10
PLAT MAP



Ord. No. 3190-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 November, 2000, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: December 5, 2000

ORDINANCE NO. 3191 -C.S.

AN ORDINANCE ADDING SECTION 5-6.309 TO ARTICLE 3 OF CHAPTER 6 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO SEWERAGE CONSTRUCTION AND SEWER USE RULES AND REGULATIONS.

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

SECTION 1. AMENDMENT OF CODE. Section 5-6.309 is hereby added to Article 3 of Chapter 6 of Title 5 of the Modesto Municipal Code to read as follows:

5-6.309. RULES AND REGULATIONS.

- (a) No person shall connect property outside the Sewer District to the sewage system without first obtaining the consent of the City Manager and the Engineering and Transportation Director, and paying the fees and charges imposed by the City. In considering applications for furnishing sewer service to property located outside the Sewer District, the City Manager may impose such reasonable conditions to the granting of such privilege as the City Manager deems to be in the best interest of the City. Any agreements for the provision of such sewer service shall be approved as to form by the City Attorney.
- (b) Each user shall be responsible for the construction, maintenance and repair of his or her house sewer line. Each user shall be liable for damages which may result to the sewage system from his or her failure to keep his or her house sewer line in good order. A City inspector shall be admitted at all reasonable hours to all parts of any premises ~~connected with the sewage system for purposes of checking the house sewer line and all fixtures and facilities~~ connected thereto.
- (c) When a sewer connection fee is paid for a particular parcel, it shall be credited to subsequent owners of that parcel. Refunds shall be made for duplicate payments. Additional fees will be required where there are zoning, use density changes that will increase the fees.

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 November, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3191-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of November, 2000, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: December 14, 2000

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1	Attorney
1	Attorney - Shanna Willis
1	Robert Howard - O&M
5	Posting
1	Code Service
<u>1</u>	For any other interested departments
10	

ORDINANCE NO. 3192-C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 2293-C.S. ENTITLED " AN ORDINANCE GRANTING TO CABLE ONE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO." TO EXTEND THE TERM TO PERMIT RESOLUTION OF BREACH AND COMPLIANCE ISSUES.

WHEREAS, the City Council adopted Ordinance No. 2293-C.S., which became effective on or after December 1, 1984, entitled, "An Ordinance Granting To Capital Cities Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S. was amended by Ordinance No. 2496-C.S. to change the title to read "An Ordinance Granting To Post-Newsweek Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City Of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S., was also amended by Ordinance No. 2620-C.S. to extend the time period that franchise fee payments are due after the end of each quarter, and

WHEREAS, the City Council by Ordinance No. 3162-C.S. previously granted an extension of the term of the current franchise to May 31, 2000, and

WHEREAS, Cable One, Inc., is the current holder of the cable franchise referenced herein, and

WHEREAS, the City Council by Ordinance No. 3179-C.S. granted a further extension of the term of the current franchise to October 31, 2000, and

WHEREAS, on October 4, 2000, the City Manager gave Cable One notice of Breach of the Cable Franchise and set a public hearing on the breach for November 7, 2000, and

WHEREAS, on November 7, 2000, the City Council determined that Cable One was in breach of its franchise obligations and referred the matter back to City staff for further discussions with Cable One to ascertain whether Cable One is willing to cure and the manner of cure; and the City Council set a further public hearing on the franchise for the City Council meeting on December 12, 2000, and

WHEREAS, the City Council desires to assure that Cable One remains bound to the terms of the franchise during this period while the City determines whether Cable One has cured or is willing to cure and the manner of such cure is acceptable to the City, and

WHEREAS, Cable One also has a pending application to transfer ownership of the cable system and franchise to AT&T;

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2293-C.S. Section 4 of Ordinance No. 2293-C.S. is hereby amended to read as follows:

SECTION 4. GRANT OF FRANCHISE.

Pursuant to the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, a nonexclusive franchise to construct, operate and maintain a cable communications system within the City of Modesto, for a term of fifteen (15) years commencing on the effective date of this ordinance, is hereby granted to Grantee with all the rights and privileges and subject to each and all of the

terms, conditions, and limitations as set forth in the Franchise Documents.

The area included within the nonexclusive franchise granted hereby includes all areas within the City limits of the City of Modesto, and also includes all territory hereafter annexed, except that the City Council reserves the right to exclude such additional territory from the franchise area at the time it is annexed to the City.

The termination date of this franchise is extended from October 31, 2000 to December 20, 2000.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of Nov., 2000, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3192-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of November, 2000, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: December 14, 2000

DISTRIBUTION LIST
FOR
CABLE ORDINANCE

- 2 - Clerk
- 1 - Attorney
- 1 Finance
- 2 - City Manager's Office -
Donna Hansen
Cable Company
- 5 Post
- 1 Code Ser.

ACCEPTANCE OF FRANCHISE

Cable One, Inc. does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3192-C.S., introduced by the Council of the City of Modesto on November 7, 2000, extending the term of the franchise.

Dated: _____ CABLE ONE, INC.

By: _____

Title: _____

By: _____

Title _____

(SEAL)

APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of ____ o'clock p.m. on the ____ day of _____, 200__.

JEAN ZAHR, City Clerk

Clerk

ORDINANCE NO. 3193 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 14 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE WEST SIDE OF ROSELLE AVENUE SOUTH OF HILLGLEN DRIVE. (OMEGA VENTURES)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Omega Ventures for a Precise Plan for Area No. 14, property located on the west side of Roselle Avenue south of Hillglen Drive, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on November 6, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, at the public hearing concerns were raised by nearby residents about the proposal to continue McReynolds Avenue into the subdivision, rather than teeing McReynolds Avenue at Hillglen Avenue, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2000-54, recommended to the City Council approval of a Precise Plan for Area No. 14 of the Village One Specific Plan with a redesign to tee McReynolds Avenue at Hillglen Avenue, and

WHEREAS, Omega Ventures subsequently redesigned the Precise Plan to address the Planning Commission's concerns, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on December 5, 2000, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby makes the following findings:

1. The proposed Precise Plan is consistent with the Village One Specific Plan and Modesto Urban Area General Plan.

BE IT FURTHER RESOLVED that the Council of the City of Modesto hereby finds and determines as follows:

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 14 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of December, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Serpa, Smith

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3193-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 January, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 1, 2001

ORDINANCE PRECISE PLAN

1 Attorney - Rosemarie
1 Attorney - Shanna Willis
1 Initiating Department
5 Posting
1 Applicant (if there is one)
1 Code Service
10

ORDINANCE NO. 3194 -C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE WEST SIDE OF ROSELLE AVENUE SOUTH OF HILLGLEN DRIVE. (PRECISE PLAN FOR AREA NO. 14- OMEGA VENTURES)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Omega Ventures for a Precise Plan for Area No. 14, property located on the west side of Roselle Avenue south of Hillglen Drive, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on November 6, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on November 6, 2000, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2000-54, adopted November 6, 2000, the Planning Commission recommended that the application of Omega Ventures to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the west side of Roselle Avenue south of Hillglen Drive be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on December 5, 2000, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on December 5, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The rezoning is a necessary prerequisite to the orderly development of Village One.
2. The accompanying Precise Plan will ensure that development of the area will be compatible with existing and planned uses in the area.

SECTION 2. ZONING CHANGE. Section 11-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from a Specific Plan-Holding Zone, SP-H, to a Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 14

ALL that certain real property situate in the City of Modesto, County of Stanislaus, State of California and lying within a portion of the Southeast Quarter of Section 11, Township 3 South, Range 9 East, Mount Diablo Meridian, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 11, said corner being marked with a 2" iron pipe; thence North 88° 53' West along the South line said Section 11, a distance of 50.00 feet to a point on the present West right-of-way line of Roselle Avenue and the TRUE POINT OF BEGINNING of this description; thence continuing North 88° 53' West along last said line, a distance of 1651.99 feet to the Southeast corner of Parcel 2 as shown on that map filed for record in the Office of the Recorder of Stanislaus County on May 10, 1983 in Book 34 of Parcel Maps at Page 04; thence leaving last said line and proceeding North 00° 18'20" East along the East line of Parcel 2 and Parcel 1 of last said map, a distance of 1323.25 feet to the Northeast corner of said Parcel 1; thence leaving last said line and proceeding South 88° 53' East, a distance of 1654.97 feet to a point on the above-referenced West right-of-way line of Roselle Avenue; thence South 00° 26' 05" West along last said right-of-way line, a distance of 1323.21 feet to the POINT OF BEGINNING of this description;

Including also the Westerly 50 feet of 95-foot Roselle Avenue, all being adjacent to the above-described property.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of Decmeber, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Serpa, Smith

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3194-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 January, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 1, 2001

ORDINANCE PRECISE PLAN

1	Attorney - Rosemarie
1	Attorney - Shanna Willis
1	Initiating Department
5	Posting
1	Applicant (if there is one)
<u>1</u>	Code Service
10	

ORDINANCE NO. 3195-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MODESTO AUTHORIZING THE LEVY OF A SPECIAL TAX
WITHIN COMMUNITY FACILITIES DISTRICT NO. 2000-2
(COFFEE-CLARATINA)

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

WHEREAS, on October 17, 2000, the City Council of the City of Modesto ("City"), State of California (the "Council"), adopted its Resolution No. 2000-537 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 2000-2 of the City of Modesto (the "District") for the purpose of financing the costs of certain services (the "Services") specified in the Resolution of Intention to Establish the District pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"), and

WHEREAS, a notice was published as required by law relative to the intention of this Council to form the proposed District and to establish an appropriations limit for the District in the amount of \$1,000,000.00 per fiscal year in connection with the proposed Services, and

WHEREAS, this Council held the noticed public hearing as required by law to determine whether it should proceed with the formation of the District and authorize the rate, method of apportionment, and manner of collection of a special tax to be levied within the District sufficient to pay all costs necessary to finance the proposed Services, and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the formation of the District, the levy of the special tax, and all other matters set forth in the Resolution of Intention to Establish the District, were heard and considered and full and fair hearings were held thereon, and

WHEREAS, this Council, upon the conclusion of the hearing, did, on December 5, 2000, adopt its Resolution No. 2000-616 (the "Resolution of Formation") which established the District, determined the validity of prior proceedings relative to the formation of the District, authorized the levy of a special tax within the District, and called an election for December 12, 2000, on the proposition of levying a special tax and establishing an appropriations limit within the District, and

WHEREAS, on December 12, 2000, or sooner in accordance with law, and in accordance with the Resolution of Formation a consolidated election was held within the District in which the qualified voters approved by more than a two-thirds vote the proposition to levy the special tax and establish an appropriations limit within the District,

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

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

SECTION 2. By the passage of this Ordinance, a special tax is hereby levied by this Council at the rate, manner and method of apportionment set forth in Exhibit "A" attached hereto and incorporated by reference herein, being the rate, manner and method of apportionment

specified in the Resolution of Formation. The special taxes are hereby levied commencing in fiscal year 2001-2002 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Annual Special Tax rate described in Exhibit "A" hereto.

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

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

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

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of December, 2000, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa, Smith

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By: Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

EXHIBIT A

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

CITY OF MODESTO
COFFEE-CLARATINA
COMMUNITY FACILITIES DISTRICT No. 2000-2

CFD REPORT

November 13, 2000

Prepared For:

CITY OF MODESTO

Prepared By:

DAVID TAUSSIG & ASSOCIATES, INC.
425 University Avenue, Suite 110
Sacramento, California 95825
(916) 920-1109

Exhibit "A"

Table of Contents

<u>Section</u>	<u>Page</u>
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A. Introduction	1
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III. Description of Services and Expenses to be Funded by CFD No. 2000-2	2

APPENDICES:

Appendix A: CFD Boundary Map

Appendix B: Calculation of Maximum Special Tax

Appendix C: Rate and Method of Apportionment of Special Tax

Appendix D: Services to be Funded by CFD 2000-2

I. INTRODUCTION

The Coffee-Claratina site is located within a "Comprehensive Planning District (CPD)", which, pursuant to the City of Modesto General Plan, necessitates adoption of a specific plan prior to development within the area. The Coffee-Claratina Specific Plan was adopted by the Modesto City Council setting forth a plan for development which includes 130 acres designated for a maximum of 1,000 residential dwelling units, 40 acres designated "Regional Commercial", and 15 acres of "Mixed Community Commercial" development. The Coffee-Claratina CPD is located on the south side of Claratina Avenue, bound by Coffee Road on the east, McHenry Avenue on the west, and the Modesto City limits to the south.

Tentative maps approved for development within the Specific Plan area require, as a condition of development, that the property be included within a Mello-Roos Community Facilities District (CFD) to fund maintenance of median, bikeway, round-about and miscellaneous planting areas. In addition, the CFD will generate funding for maintenance and repair of a storm drain basin and dual-use flood control/recreation facility.

II. STRUCTURE OF COMMUNITY FACILITIES DISTRICT NO. 2000-2

A. Introduction

A Mello-Roos CFD may provide for the purchase, construction, expansion or rehabilitation of any real or tangible property, including public facilities and infrastructure improvements, with an estimated useful life of five (5) years or longer, which is necessary to meet increased demands placed upon local agencies as a result of development or rehabilitation occurring within the CFD. In addition, a CFD may pay for various public services and maintenance of public improvements, including parkways and open space.

The Resolution of Intention to Establish CFD No. 2000-2 was adopted by the City Council on October 17, 2000. After a public hearing and a successful election by the landowners within the CFD, the CFD will be formed and the levy of a special tax will be authorized.

B. Boundaries of Coffee-Claratina CFD

The initial boundaries of the CFD include six assessor's parcels and a total of 78.10 gross acres. Nine additional assessor's parcels are anticipated to annex into CFD No. 2000-2 when development is triggered on the parcels; ultimately, the CFD will include approximately 131 gross acres and an estimated 78 net developable acres. A copy of the boundary map for CFD No. 2000-2 is included as Appendix A of this CFD Report. Appendix B identifies the assessor's parcels that are ultimately expected to be included with the boundaries of CFD No. 2000-2 and the maximum special tax that can be collected within the CFD based on the estimated net developable acreage of these parcels.

C. CFD Special Tax Structure

Each year a special tax will be levied and collected from parcels within the CFD to pay costs associated with the maintenance and repair of a storm drain basin and a dual-use flood control/recreation facility, and the ongoing maintenance of median, bikeway, round-about and miscellaneous planting areas within the Specific Plan. The Rate and Method of Apportionment of Special Tax ("RMA"), which describes in detail how the tax will be allocated among properties in the CFD, is included as Appendix C of this report.

As explained in the RMA, an "Annual Special Tax" will be levied to pay for authorized maintenance expenses, in an amount not to exceed \$2,468 per acre in fiscal year 2001-02 dollars. This maximum tax will escalate each year by applying the greater of (i) the percentage increase, if any, in the Engineering News Record construction cost index for the San Francisco region for the prior twelve month period, or (ii) four percent. The Annual Special Tax will first be levied on "Developed Property", which is defined, for a particular fiscal year, as any parcel for which a final building permit inspection was conducted or certificate of occupancy issued by June 1 of the preceding fiscal year. After the maximum Annual Special Tax has been collected from Developed Property, the remaining amount needed for authorized expenses in the fiscal year will be collected from "Undeveloped Property", which includes all parcels that have not had a final building permit inspection conducted or certificate of occupancy issued.

In addition to the Annual Special Tax, an "Annexation One-Time Special Tax" will be collected from all parcels that annex into CFD No. 2000-2 in future fiscal years. The Annexation One-Time Special Tax will be calculated pursuant to the formula set forth in Section E of the RMA and will be collected to reimburse the landowner who made the initial deposit to the City to pay the costs of forming CFD No. 2000-2. The Annexation One-Time Special Tax must be paid prior to approval by the City Council of the resolution approving the annexation.

III. DESCRIPTION OF SERVICES AND EXPENSES TO BE FUNDED BY CFD No. 2000-2

The individual line-item service costs to be funded by CFD No. 2000-2 are identified in Appendix D of this report.

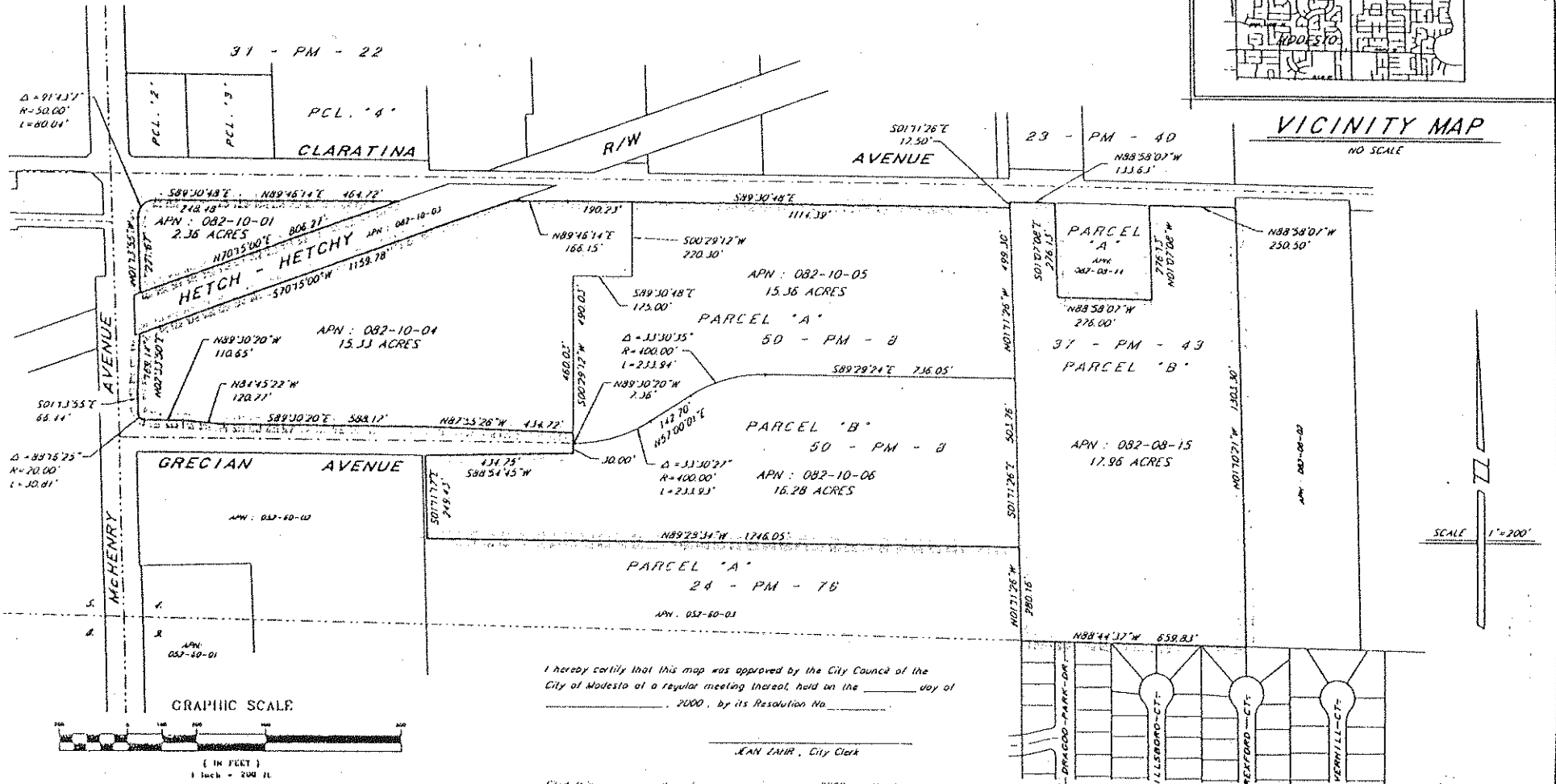
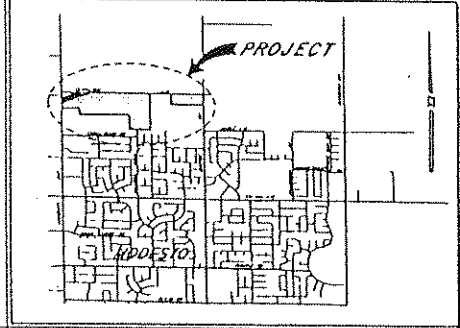
APPENDIX A

COFFEE-CLARATINA COMMUNITY FACILITIES DISTRICT NO. 2000-2
OF THE CITY OF MODESTO

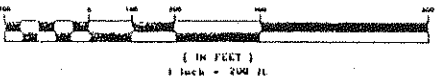
CFD BOUNDARY MAP

COFFEE-CLARATINA CFD NO. 2000-2

**PROPOSED BOUNDARIES OF CFD DISTRICT NO. 2000-2
CITY OF MODESTO, COUNTY OF STANISLAUS
STATE OF CALIFORNIA**



GRAPHIC SCALE



I hereby certify that this map was approved by the City Council of the City of Modesto at a regular meeting thereof, held on the _____ day of _____, 2000, by its Resolution No. _____.

JAN LAINR, City Clerk

Filed this _____ day of _____, 2000, at the hour of _____ o'clock _____ m. in Volume _____ of Maps of Assessment and Community Facilities Districts of page(s) _____ in the Office of the County Recorder of the County of Stanislaus, State of California.

ARJUN MADHENS, County Recorder of the County of Stanislaus, State of California

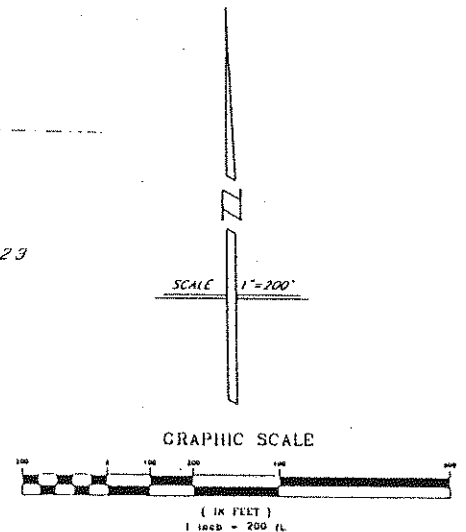
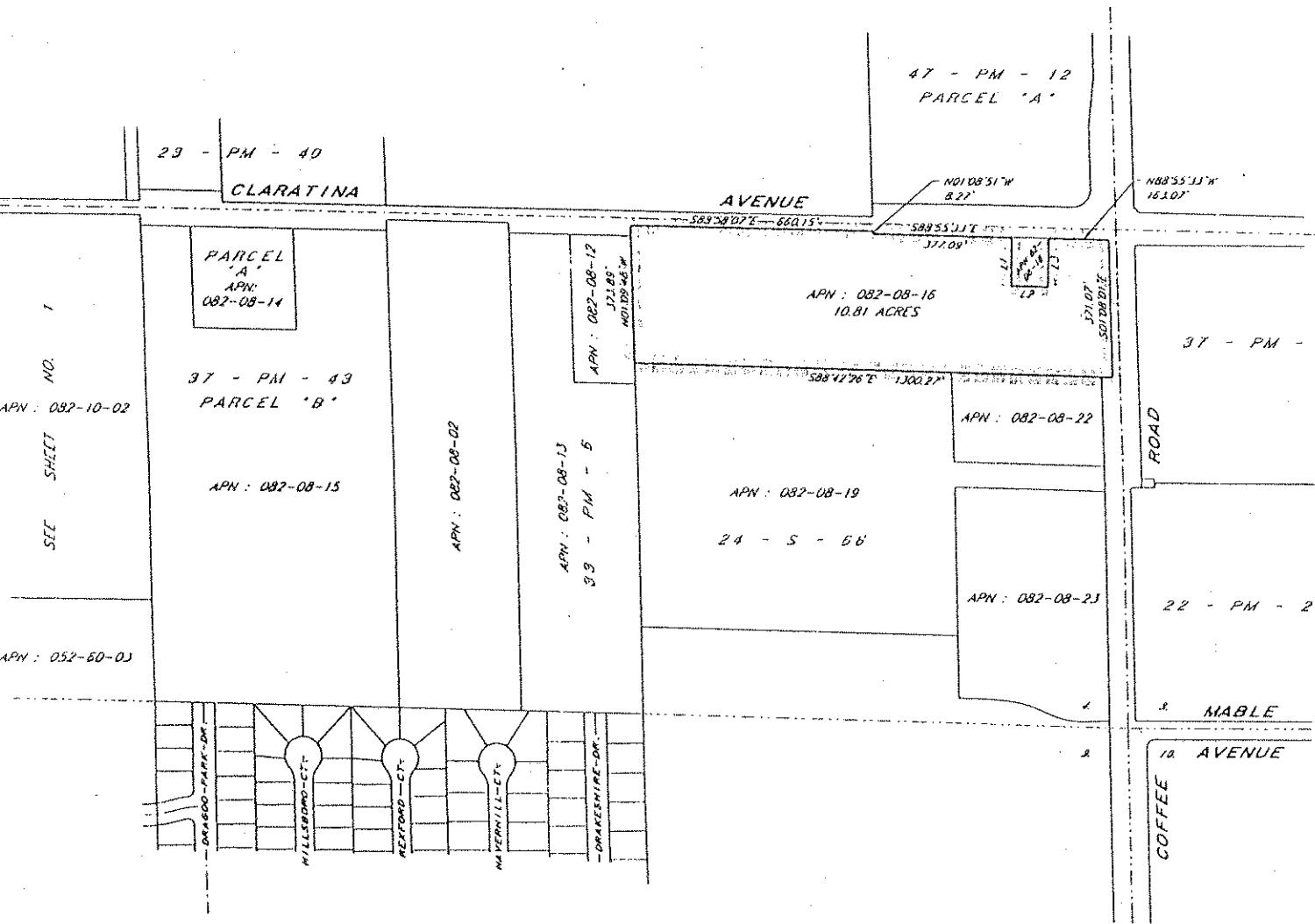
BASIS OF BEARINGS:
The bearing of North 86°41'37" East between GPS Monument 2724 and 2725 was shown on the "Assessment City of Modesto Record of Survey" recorded March 30, 1993 in Book 37 of Surveys of Page 31, Stanislaus County Records, was used as the basis for all bearings shown herein.

Filed in the Office of the City Clerk of the City of Modesto in recordable form this _____ day of _____, 2000.

JAN LAINR, City Clerk

COFFEE-CLARATINA CFD NO. 2000-2

PROPOSED BOUNDARIES OF CFD DISTRICT NO. 2000-2
CITY OF MODESTO, COUNTY OF STANISLAUS
STATE OF CALIFORNIA



LINE TABLE		
LINE	LENGTH	BEARING
L1	133.45	N01D1'S1'E
L2	99.94	S82°38'02"E
L3	133.38	S01D1'S1"W

NO. 1
SEE SHEET
APN: 082-10-02
APN: 052-60-03

APPENDIX B

COFFEE-CLARATINA COMMUNITY FACILITIES DISTRICT NO. 2000-2
OF THE CITY OF MODESTO

CALCULATION OF MAXIMUM SPECIAL TAX

CITY OF MODESTO
COFFEE-CLARATINA COMMUNITY FACILITIES DISTRICT NO. 2000-2

CALCULATION OF MAXIMUM ANNUAL SPECIAL TAX

<i>Cost Estimates</i>	<i>Acreage Within CFD</i>
<p>Annual Maintenance Costs (2000 \$) (including 10% administration) \$182,462</p>	<p style="text-align: right;">Net Developable Acreage/2</p> <p style="text-align: center;">APN</p> <p>082-10-01 2.37</p> <p>082-10-03 0.00</p> <p>082-10-04 14.36</p> <p>082-10-05 10.01</p> <p>082-10-06 12.32</p> <p>082-08-02 1.98</p> <p>082-08-12 1.20</p> <p>082-08-13 3.34</p> <p>082-08-14 1.35</p> <p>082-08-15 4.08</p> <p>082-08-16 7.55</p> <p>082-08-18 0.00</p> <p>082-08-19 11.65</p> <p>082-08-22 2.14</p> <p>082-08-23 5.50</p>
<i>Maximum Tax Calculation</i>	
<p>Maximum Annual Special Tax (FY 2001-02) /1 \$2,467.12 per acre</p>	
	<p>Net Developable CFD Acreage 77.85</p> <p>Buffer for Maximum Tax Calculation 5.00%</p> <p>Estimated Net Taxable Acreage in CFD 73.96</p>

1. The maximum Annual Special Tax will escalate each year at the greater of (i) the percentage increase in the ENR Index for the San Francisco region, or (ii) four percent.

2. Source: Benchmark Engineering, Inc.

APPENDIX C

COFFEE-CLARATINA COMMUNITY FACILITIES DISTRICT NO. 2000-2
OF THE CITY OF MODESTO

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

CITY OF MODESTO
COFFEE-CLARATINA COMMUNITY FACILITIES DISTRICT NO. 2000-2

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A special tax applicable to each Assessor's Parcel in Coffee-Claratina Community Facilities District No. 2000-2 (herein "CFD No. 2000-2") shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2000-2, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2000-2 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

"Annual Special Tax" means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Stanislaus designating parcels by Assessor's Parcel Number.

"City" means the City of Modesto.

"City Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2000-2.

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

"District Administrator" means the individual(s) designated by the City Council to administer the CFD in accordance with the authority and powers granted by the City Council to said individual(s).

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

"Maintenance Special Tax Requirement" means the amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 2000-2, (iii) cure any delinquencies in the payment of Annual Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (iv) maintain a reasonable reserve, as determined by the District Administrator, for unforeseen expenses, cost overruns, etc.

"Maximum Annual Special Tax" means the maximum Annual Special Tax determined in accordance with Section C below, that can be levied on Taxable Property in any Fiscal Year.

"Proportionately" means, for Developed Property, that the ratio of the actual Annual Special Tax levied in any Fiscal Year to the Maximum Annual Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor's Parcels of Developed Property. For Undeveloped Property, "Proportionately" means that the ratio of the actual Annual Special Tax to the Maximum Annual Special Tax is equal for all Assessor's Parcels of Undeveloped Property.

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

"Taxable Property" means all of the Assessor's Parcels within the boundaries of CFD No. 2000-2 which are not exempt from the Annual Special Tax pursuant to law or Section E below.

"Undeveloped Property" means, in any Fiscal Year, all Taxable Property that is not Developed Property.

B. CATEGORIZATION OF PARCELS

Each Fiscal Year, the District Administrator shall identify the current Assessor's Parcel number for each Assessor's Parcel within the CFD, and shall categorize each Parcel of Taxable Property as Developed Property or Undeveloped Property. The District Administrator shall also identify the current Acreage of each Parcel by reference to the Stanislaus County Assessor's Parcel Maps.

C. MAXIMUM ANNUAL SPECIAL TAX

The Maximum Annual Special Tax for all Parcels of Taxable Property within CFD No. 2000-2 for Fiscal Year 2001-02 is \$2,468 per Acre. Beginning in January 2002, the Maximum Annual Special

Tax shall be adjusted annually by applying 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 Special Tax shall become effective on the subsequent July 1.

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

Each Fiscal Year, the District Administrator shall determine the Maintenance Special Tax Requirement for that Fiscal Year. The Annual Special Tax shall then be levied on all Parcels of Taxable Property as follows:

- Step 1:* The Annual Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Annual Special Tax for Taxable Property for such Fiscal Year determined pursuant to Section C;
- Step 2:* If additional revenues are needed to meet the Maintenance Special Tax Requirement after Step 1, the Annual Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Special Tax for Taxable Property for such Fiscal Year determined pursuant to Section C.

The Annual Special Tax for CFD No. 2000-2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes provided, however, that CFD No. 2000-2 may (under the authority of Government Code Section 53340) in any particular case bill the taxes directly to the property owner, off the County tax roll, and the Annual Special Tax will be equally subject to foreclosure if delinquent.

E. ANNEXATION ONE-TIME SPECIAL TAX

A one-time Special Tax shall be levied on property that annexes into CFD No. 2000-2 after the CFD is formed. This "Annexation One-time Special Tax" shall be used to reimburse the landowner who made the initial deposit to the City to cover the costs of forming the CFD. The Annexation One-time Special Tax shall be calculated for each annexing property as follows:

- Step 1.* Add the estimated net developable acres for the annexing property to the estimated net developable acreage for property already within the CFD at the time of annexation;
- Step 2.* Divide the net developable acres within the annexation area by the sum determined in Step 1 to determine the annexing property's share of the total net developable acreage within the CFD;

Step 3.

Multiply the quotient determined in Step 2 by either (i) \$64,500 in 2000 dollars, which shall increase on January 1, 2001 and on each January 1 thereafter by applying 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) such lower number as shall be determined by the City as the amount that was actually expended to cover the costs of formation of CFD No. 2000-2.

The Annexation One-time Special Tax must be paid prior to approval by the City Council of the resolution approving the annexation. If for any reason the Annexation One-time Special Tax has not been paid for property that has been annexed into the CFD, the Annexation One-time Special Tax shall be subject to an immediate 10% penalty plus interest charges of 1 1/2% as of the first day of the month after the City Council adopted the resolution approving the annexation 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 along with the Annual Special Tax levied pursuant to Section D above. The amount placed on the roll shall include the 10% penalty and interest charges through the following December 1.

F. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Annual Special Tax shall be levied on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982.

G. ENFORCEMENT

If any delinquent Annual Special Taxes are billed off the County tax roll, such Annual Special Taxes shall be subject to an immediate 10% penalty plus interest charges of 1 1/2% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent special taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following December 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract or guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

CAFILES\WPWIN\MODESTO\COFFEE\RMA1.100

APPENDIX D

COFFEE-CLARATINA COMMUNITY FACILITIES DISTRICT NO. 2000-2
OF THE CITY OF MODESTO

DETAIL OF EXPENSES TO BE FUNDED BY CFD

Coffee-Claratina CFD No. 2000-2

Overview - Storm Drain Basin Expenses

Description	Annual Expense
Specific Plan Area	
Median Plantings (25,396 s.f. @ \$.61 + 20% contingency)	\$ 18,589.87
Bikeway Plantings (36,167 s.f. @ \$.61 + 20% contingency)	\$ 26,474.24
Round About Plantings (1,591 s.f. @ \$.61 + 20% contingency)	\$ 1,164.61
Back Up Lot Plantings (2,849 s.f. @ \$.61 + 20% contingency)	\$ 2,085.47
MID power costs (\$20/mo. per location * 6 locations * 12 mos.)	\$ 1,440.00
West Basin	
Crew Leader (12 one-hour visits @ \$20.73/hr + 32% benefits)	\$ 328.36
Supervisor (4 one-hour visits @ \$26.02/hr + 32% benefits)	\$ 137.39
Superintendent (2 one-hour visits @ \$33.23/hr + 32% benefits)	\$ 87.73
Equipment	
1/2 Ton Full Size Pick-Up - Crew Leader (12 hrs x \$2.37)	\$ 28.44
1/2 Ton 4/4 Full Size Pick-up - Supervisor (4 hrs x \$2.50)	\$ 10.00
1/2 Ton Full Size Pick-Up - Superintendent (2 hrs hrs x \$2.37)	\$ 4.74
Fence Repair	\$ 1,000.00
Maintenance - interior of basin	\$ 1,500.00
Annual lab tests	\$ 1,200.00
Silt excavation, erosion repair for annual improvement maintenance to basin	\$ 9,000.00
Maintenance of landscaping (at build-out) <i>(includes monthly water charges)</i>	\$ 11,807.51
East Basin	
Crew Leader (12 one-hour visits @ \$20.73/hr + 32% benefits)	\$ 328.36
Supervisor (4 one-hour visits @ \$26.02/hr + 32% benefits)	\$ 137.39
Superintendent (2 one-hour visits @ \$33.23/hr + 32% benefits)	\$ 87.73
Equipment	
1/2 Ton Full Size Pick-Up - Crew Leader (12 hrs x \$2.37)	\$ 28.44
1/2 Ton 4/4 Full Size Pick-up - Supervisor (4 hrs x \$2.50)	\$ 10.00
1/2 Ton Full Size Pick-Up - Superintendent (2 hrs hrs x \$2.37)	\$ 4.74
Fence Repair	\$ 1,000.00
Maintenance - interior of basin	\$ 1,500.00
Annual lab tests	\$ 1,200.00
Silt excavation, erosion repair for annual improvement maintenance to basin	\$ 9,000.00
Maintenance of landscaping (9.5 acres @ \$8,181/acre) <i>(includes monthly water charges)</i>	\$ 77,719.50
Administration (10% of total cost)	\$ 16,587.45

TOTAL \$ 182,461.97

Ord. No. 3195-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 January, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa, Smith

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: February 1, 2001

ORDINANCE NO. 3196 -C.S.

AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO STREET CUTS.

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

SECTION 1. FINDINGS. The Council finds that:

A. Studies undertaken for the cities of Austin, Kansas City, Burlington, Cincinnati, Phoenix, San Francisco, Sacramento, Modesto, and Los Angeles have concluded that excavations in paved streets degrade and shorten the life of the surface of the streets, and this degradation increases the frequency and cost to the public of necessary resurfacing, maintenance and repair. The studies performed in the cities of Los Angeles and San Francisco have concluded that pavement degradation occurs no matter how well the excavation is restored. Local conditions in the City of Modesto, including soil, climate, and local construction costs, are sufficiently similar to the conditions existing in the cities subject to the above-referenced studies to permit the City to rely on such studies.

B. The cutting of the pavement and trenching in the streets, if not properly restored, can permit water seepage into the street as well as weakening pavement support around the patch, thereby allowing deterioration at an accelerated rate.

C. Even if pavement restoration in the trench itself is structurally adequate, excavation in some cases damages the strength and life of the pavement located adjacent to the trench where the excavation occurs. The potential for damage to the pavement is magnified when a street is subject to multiple excavations after the street is surfaced or resurfaced and before the next scheduled resurfacing.

D. Millions of dollars in public funds have been invested to build, maintain, and repair the streets within the City's geographical boundaries, and the City holds these streets as an asset for its citizens. It is desirable to adopt regulations that will help protect the structural integrity of City streets and thereby safeguard the value of the public investments in City streets for the benefit of City residents, by assuring that excavations are properly restored. In addition excavators shall be required to pay a fee to help offset the shortened life of the streets that their excavations cause.

E. Because excavations result in the greatest long term impact to newly surfaced streets, and to provide an incentive to avoid excavations in newly surfaced streets wherever feasible, the fee should be highest for excavations in newly surfaced streets, and should decrease as the condition of the street surface being excavated decreases.

F. Based on the Modesto Trench Cut Evaluation Study, performed in March 1999, the cost to mitigate the damage and degradation that street excavations cause to the pavement located within the trench influence area is between \$0 and \$2.50 per square foot of trench influence area, depending upon the condition of the pavement at the time of the trenching.

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

CHAPTER 2 - STREET CUTS

7-2.01. PURPOSE.

The control of excavation within the public right-of-way is essential to protect the public health, safety and welfare in its use of the public right-of-way. In so

doing, it is necessary to establish minimum requirements controlling such items as safety, workmanship and insurance responsibilities.

7-2.02. DEFINITIONS.

For the purposes of this chapter, the following definitions apply:

- (a) "**Applicant**" shall mean any owner, or contractor, who has submitted an application for a permit to excavate.
- (b) "**Chapter**" shall mean this Chapter 2 of Title 7 of the Modesto Municipal Code.
- (c) "**City**" shall mean the City of Modesto.
- (d) "**City street**" shall mean any public highway, road, street, avenue, alley, lane, drive, way, place, court or trail, which has been accepted, or is hereafter accepted, by the City Council into the City road system pursuant to Section 941 of the California Streets and Highways Code.
- (e) "**Crack**" shall include any crack with a measurable opening in the pavement of one-fourth (1/4) of an inch or more.
- (f) "**Department**" shall mean the Engineering and Transportation Department.
- (g) "**Director**" shall mean the Engineering and Transportation Director or his or her designee.
- (h) "**Excavation**" shall mean any opening in the paved surface or subsurface of the public right-of-way in excess of four (4) square feet or four (4) feet long, whichever is smaller.
- (i) "**Facility**" or "**facilities**" shall mean any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, wells, and other appurtenances or tangible things that are located or are proposed to be located in the public right-of-way.
- (j) "**Major project**" shall mean the installation or replacement of any underground facility other than a service.

- (k) "**Owner**" shall mean any person, including any agency, department, or subdivision of the City, who owns, or maintains, any facility or facilities that are, or are proposed, to be installed or maintained in the public right-of-way.
- (l) "**Permit**" or "**permit to excavate**" shall mean a permit to perform an excavation as it has been approved or may be amended or renewed by the Department.
- (m) "**Person**" shall mean one or more natural persons, any corporation, partnership, or other business or enterprise, or any governmental agency, department, or subdivision of the City, of the State of California, or United States of America.
- (n) "**Pothole**" shall mean any excavation less than four (4) square feet of any depth necessary to locate a subsurface utility, facility or structure. The structure of a pothole shall be such that the vertical alignment of the sides of the excavation shall not exceed that of the surface cut.
- (o) "**Public right-of-way**" shall mean the area across, along, beneath, in, on, over, under, upon, and within the City streets, as they now exist or hereafter will exist, including any associated public utility easements, and which are under the permitting jurisdiction of the Engineering and Transportation Department.
- (p) "**Street cut**" shall mean the action of or the result of opening, tearing up, excavating, repairing, installing, adding to, removing or otherwise altering any portion of any public roadway, street, alley or thoroughfare for any purpose whatsoever.
- (q) "**Structural overlay**" shall mean any repaving, overlay, seal or reconstruction which constructs a new pavement surface of greater than one (1) inch thickness over the entire width of the street, excluding crack seals, and not including micropaving, Class 1 to 3 slurry seals, cape seals, and chip seals.
- (r) "**Surface irregularity**" shall mean any hump or settlement such that the surface shall have no irregularity greater than three-eighths (3/8) of an inch in ten (10) feet in any direction.
- (s) "**Trench failure**" shall mean any condition that causes surface irregularities, cracking, severe spalling or raveling of the patch area,

surface buckling, upheaval, frac-outs and other failures resulting from trenchless excavation methods.

- (t) **"Trench influence area"** shall mean an area four (4) feet adjacent to the trench where the excavation is greater than four (4) feet in depth, or an area two (2) feet adjacent to the trench where the excavation is four (4) feet or less in depth.

7-2.03. PERMIT.

It shall be unlawful for any person, other than the officers, agents, contractors or employees of the City, to make or cause to be made any street cut in the City without first having obtained a permit therefor as herein provided. Any permit issued hereunder shall not be assignable to any other person.

7-2.04. APPLICATION FOR PERMIT.

Every application for a permit shall be made in writing upon forms furnished by the Director, and applications shall furnish thereon such information as is required by the Director.

On major projects, if requested to do so by the Director, applicants shall furnish plans and profiles, in duplicate, showing the work to be done, location, limits of work, location of pavements and replacement types, together with such further information as the Director may require.

If the street cut is to be made in a State Highway, applicant shall comply with all lawful regulations of the Department of Transportation, State of California (Caltrans), and procure from such department all necessary permits required therefor by the State of California.

At the time of application the applicant shall either (1) provide the City with the utility cut location in a Computer Aided Drawing (CAD) file format (dxf or dwg) in California State Plane, Zone III coordinates, North American Datum 1983 (NAD83), or (2) pay an additional fee for City staff to enter this information into the City GIS system. This fee will be set from time to time by resolution of the City Council.

If the size and/or location of the utility cut is altered from the application information the applicant will provide within five (5) working days accurate "As Built" information to update the original. In all cases where trenchless excavation methods are utilized the applicant will provide a borepath plan prior

to work and an "As Built" borepath with the invert information upon project completion.

7-2.05. TIME OF ISSUANCE OF PERMIT.

Permits required by this chapter shall be secured at least two (2) working days prior to the time the work under such permit is proposed; except, however, where an emergency street cut is to be performed, applicant shall immediately give prior notice thereof to the Police and the Fire Departments of the City; shall secure or make a reasonable effort to secure the consent to such work from the Director as soon as reasonably practicable; and shall make application for a permit for such work on the next working day following.

7-2.06. CONDITIONS OF PERMIT.

The validity of any permit issued shall be subject to permittee's compliance with all general provisions hereof, as well as any special provisions specified therein. All permits issued hereunder shall require that all underground facilities shall be of the quality and installed in a manner which may be prescribed or required by law. The issuance of a permit does not guarantee to permittee the exclusive use of any surface area occupied by permittee.

7-2.07. PERMIT: EXTENSION OF COMPLETION DATE.

Every permit issued pursuant to this chapter shall specify a completion date for the work. The Director may, for good cause, grant a written extension of time to permittee, which grant shall extend the validity of said permit to said extended time.

7-2.08. DENIAL OF PERMIT.

The Director shall have the right to refuse a permit to any person who is in violation of, or who has failed to comply with the provisions of this chapter in connection with the permit being applied for, or any permit previously issued except as provided otherwise by this chapter.

7-2.09. REVOCATION OF PERMIT.

The Director may, for noncompliance with any of the provisions of this chapter, revoke any permit granted hereby.

7-2.10. PERMIT VIOLATIONS.

No person who has violated any provision of this chapter shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on such person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the Director. The foregoing requirement shall not apply when the violation is being appealed pursuant to Title 1, Chapter 4 of this Code. The foregoing requirement is in addition to any penalty, as defined in Title 1, Chapter 2, of this Code, or remedy for violation that may be imposed or sought by the City at law or equity.

7-2.11. NOTICE OF COMMENCEMENT OF WORK.

Permittee shall give notice to the Director of the actual time of commencement of any work at least twenty-four (24) hours in advance. Similar notice shall be given to the Police Department and Fire Department if required on the permit. If the permittee is a utility company, the form and frequency of notifications on work to be performed shall be as agreed upon in writing by the Director and the utility company. When work on any project ceases for any reason for a period of twenty-four (24) hours or more, permittee shall notify the Director and the Police Department and Fire Department, when required, at least twenty-four (24) hours prior to recommencing said work. Work being performed on weekends and holidays, that requires inspection, shall be by special arrangement.

7-2.12. GENERAL REQUIREMENTS IN PERFORMANCE OF WORK.

All work shall be performed in a neat and workmanlike manner and so programmed as to cause a minimum of interference with traffic and inconvenience to the public. Said work shall be coordinated whenever possible with other projects in the area to the end that the public convenience is least impaired to the satisfaction of the Director.

(Amended by Ord. 782-C.S., and Ord. 3130-C.S., §2, effective 5-27-99)

7-2.13. PUBLIC ACCESS.

Permittee shall provide free and unobstructed access to all mailboxes, fire hydrants, water gates, valves, manholes, drainage structures and other public service structures and property that may be required for emergency use. Permittee shall not remove such public service facilities and property or relocate same without proper coordination with the authorities charged with control and maintenance of same.

7-2.14. TEMPORARY ACCESS IN RIGHTS-OF-WAY.

Temporary roadways, driveways, walks and rights-of-way for vehicles and pedestrians shall be constructed where required.

Temporary walkways shall be not less than four (4) feet in width and shall be designed for uniform live load of one hundred fifty (150) pounds per square foot. Suitable ramps or stairs shall be provided with a handrail not less than three (3) feet high along each side, or with a railing on one side and a fence on the other, as the case may require. Said walkway around said street cut shall be located as close to the area formerly used for pedestrian travel as possible. The permittee shall construct and maintain in good condition such detours, detour bridges and temporary crossings for public use as are deemed necessary for the proper execution of the work, and shall comply with the provisions and intent of the American Disabilities Act or when same are ordered by the Director.

7-2.15. TEMPORARY CLOSING OF PUBLIC WAYS.

The Director may grant written permission to close or cause to be closed for limited periods City streets, or other areas not under control of the State of California, Department of Transportation if, in the opinion of the Director, the public interest can best be served thereby.

Permittee shall reimburse to City the cost for inspection in accordance with a Schedule of Fees approved by the Council from time to time by resolutions and on file in the offices of the City Clerk and Director.

7-2.16. PUBLIC SAFETY BARRICADES AND WARNINGS.

Permittee shall provide and maintain, during the performance of the work to ensure public safety, such fences, barricades, warning and directional signals, flares, lights, watchmen and flagmen as are or may be required by law or regulation or as may be deemed necessary by the Director.

7-2.17. PROVISION FOR PUBLIC SAFETY BARRICADES AND WARNINGS BY CITY: A LIABILITY FOR COSTS.

In the event permittee fails to provide for the safety of the public in a manner specified in Section 7-2.16, the Director may provide whatever facilities are necessary and charge permittee a fee for the work involved. The fee shall be in accordance with a schedule of fees approved by the City Council from time to time by resolution and on file in the offices of the City Clerk and the Director.

7-2.18. STATE SAFETY ORDERS AND APPLICABLE LAWS.

Permittee shall obey and enforce all safety orders, rules and regulations of the Division of Industrial Safety of the State of California applicable to the work; and permittee shall comply with all applicable State and local laws, ordinances, codes and regulations.

7-2.19. EMERGENCY INFORMATION.

On the major number of barricades at any single project, there shall be clearly labeled, in letters not less than two (2) inches high, the name of the permittee or his agent.

7-2.20. COMPLETION OF WORK BY CITY: LIABILITY FOR COSTS.

If the work is unduly delayed by the permittee and if the public interests reasonably so demand, the Director shall have the authority, upon written notice to the permittee, to complete the work or any portion thereof or to cause said work to be completed. The actual cost of such work by the City or its contractors, plus an overhead charge as determined by the Finance Director, shall be charged to and paid for by the permittee.

7-2.21. BACKFILL.

Backfill for both trench and pothole shall meet the requirements of the Modesto Standard Specifications.

7-2.22. NOTICE OF COMPLETION OF BACKFILL.

Except in the case of a major project, upon completion of the backfill, permittee shall notify the Director of such completion. Utility companies which are authorized by the Director to do their own paving are not required to give such notice.

The Director, upon receipt of such notice and upon inspection and approval of work, shall cause street cuts, not in the category of major projects, to be paved.

7-2.23. STREET PAVING FEES.

On all projects other than major projects, street paving shall be performed by City and shall be paid for by permittee except that the Director may authorize both qualified licensed contractors, public utilities and private utilities to do their own street paving.

Said paving fees shall be in accordance with a schedule of fees approved by the Council from time to time by resolution and on file in the offices of the City Clerk and the Director.

Street paving fees shall be paid at the time the permit is issued.

7-2.24. STREET REPAVING: MAJOR PROJECTS.

When major projects are involved, repaving of street cuts shall be done by the permittee in accordance with the Standard Specifications of the City of Modesto and in accordance with the terms indicated by the Director on the permit for such work.

7-2.25. RESTORATION OF IMPROVEMENTS

Curbs, gutters, sidewalks, sewers, drains, structures, conduits, cables and all other improvements damaged, disturbed, or removed during the progress of the work shall be restored or replaced to as good or better condition than existed prior to work performed by permittee in accordance with Standard Specifications of the City of Modesto and to the satisfaction of the Director.

7-2.26. PRESERVATION OF MONUMENTS

Any monument of concrete, iron, or other lasting material set for the purpose of locating or preserving the lines and/or elevation of any public street or right of way, property, subdivision, or a precise survey point or reference point shall not be removed or disturbed without first obtaining permission from the Director to do so. Replacement of removed or disturbed monumentation will be at the expense of the permittee.

7-2.27. ALTERNATIVE METHODS AND MATERIALS.

The Director shall determine all questions concerning which alternative methods and materials may be used by permittee, and the decision of the Director concerning the same shall be final.

7-2.28. INSPECTION AND INSPECTION FEES.

All work done by the permittee shall be inspected by the City and the permittee shall pay the City for such inspection. Said inspection fees shall be in accordance with a schedule of fees approved by the Council from time to time by resolution and on file in the offices of the City Clerk and the Director.

Inspection fees shall be paid at the time the permit is issued, except that utility companies may pay on a periodic basis as approved by the Finance Director.

7-2.29. TRENCH RESTORATION FEE.

At the time any permit is issued, improvement plan approved, or work performed that causes an excavation of a paved City street, the applicant shall pay a trench restoration fee, in addition to the fee required by the encroachment permit or other administrative fees. The fee shall be in the amount set by resolution of the Council. A trench restoration fee shall not be required for the following excavations:

- (a) In a City street that the City has scheduled for resurfacing either during the fiscal year (July 1- June 30) when the excavation permit is issued or during the immediately following fiscal year;
- (b) In a City street where the pavement condition index (PCI), as defined by the City's Pavement Management System, is less than twenty-five (25) on the date the excavation permit is issued;
- (c) In a City street where the Pavement Condition Index (PCI) has not been updated within the previous three (3) years;
- (d) For potholing, where required by USA, or City of Modesto and/or Caltrans Horizontal Directional Drilling Specification, to verify utility depth or location;
- (e) Where work will include resurfacing of all or a significant portion of the City street where the excavation is made provided that the Director approves the resurfacing;
- (f) Made for a utility relocation required by the City to accommodate a proper governmental use of a City street;
- (g) For owners possessing a valid pavement life performance warranty agreement with the City as set forth in Section 7-2.33;
- (h) Horizontal Directional Drilling (HDD) excavations greater than eighteen (18) inches in depth of cover over the utility facility not requiring a significant surface incision greater than four (4) square feet and at a depth not greater than six (6) inches below the asphalt.

- (i) With the approval of the Director, and where it would minimize neighborhood disruption, and where savings in street resurfacing costs through avoidance of future excavation are anticipated to exceed amounts that would otherwise be due from the Street Restoration Fee, some portion or all of the otherwise applicable fee may be waived for an excavation in which the applicant installs:
 - (1) Conduit for City use or control or;
 - (2) Conduit made available via approval and coordination with the City such that future excavation is permanently avoided. The City shall make any available space in such conduit available to subsequent applicants to avoid future excavations in the street. The City shall adopt orders or regulations prescribing circumstances under which in-kind payment of all or some portion of the fee shall be permitted, prescribing specifications for the conduit to be installed, and prescribing terms under which the conduit shall be made available to interested parties on a competitively neutral and non-discriminatory basis.

7-2.30. ESTABLISHMENT OF FUND.

All monies paid to the City pursuant to Section 7-2.29 shall be deposited in a special fund or funds and shall be expended only for the resurfacing, maintenance, administration, and protection of City streets where excavation has occurred after the effective date of adoption of this Ordinance.

7-2.31. RELOCATION OF UTILITIES REQUIRED BY CITY.

No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any City street to relocate the facilities at no cost to the City, in the event that relocation is required by the City to accommodate a proper governmental use of the City street.

7-2.32. PAVEMENT CONDITION INDEX RATINGS.

The City shall perform periodic pavement condition surveys of all City streets and determine the pavement condition index (PCI) rating for each street. A PCI rating shall be assigned to discrete blocks of a street and the fees calculated for each block. The PCI report shall be published on an annual basis and made available for public review at the permit counter.

7-2.33. PAVEMENT LIFE PERFORMANCE WARRANTY.

In lieu of paying a trench restoration fee pursuant to Section 7-2.29, an owner who has a valid franchise agreement with the City or is statutorily exempt from franchise requirements, including Modesto Irrigation District, and Turlock Irrigation District, may provide a written pavement life performance warranty in a form acceptable to City. The warranty shall provide that in the event that subsurface material or pavement over or within the trench influence area becomes depressed, broken, or otherwise fails, as a result of the owners excavation, at any time during the useful life of the street, the owner who performed the trench cut shall repair or restore such condition pursuant to the procedure set forth in Section 7-2.34. In the event that an owner who has a valid franchise agreement with the City or is statutorily exempt from franchise requirement fails or refuses to provide a written pavement life performance warranty such owner shall pay the trench restoration fee set forth in Section 7-2.29.

7-2.34. REPAIR OF TRENCH FAILURE.

After completion of the work, the permittee shall exercise reasonable care in inspecting for and immediately repairing and making good any injury or damage to the street resulting from defective work done under the permit. If the subsurface material or pavement becomes depressed or fails at any time (1) within one (1) year after the excavation has been completed and accepted and before resurfacing of the City street, where the owner has paid a trench restoration fee pursuant to Section 7-2.29, or (2) at any time during the useful life of the street where the owner has provided a pavement life performance warranty pursuant to Section 7-2.33, the City shall inspect the depressed or broken area to ascertain the cause of the failure. If, after inspection by the city, it is determined that the failure is due to the owners excavation, the owner shall make repairs to the installation or backfill and have the pavement restored in the manner and within the time period specified by the Director. Additional inspection permit fees may be imposed as appropriate. A trench restoration fee shall not be charged for work performed under this Section. If the pavement is not restored as specified by the Director, unless delayed by conditions beyond the owner's control, the Director may cause the work to be done after giving the owner forty-eight (48) hours final notice. The cost thereof, including any inspection costs and administrative overhead incurred by the City, shall be assessed against the owner. The owner shall remain responsible for any future repairs of that portion of pavement over the excavation that was repaired by the City for a period of one (1) year, where the owner has paid a trench restoration fee pursuant to Section 7-2.29, or in accordance with the pavement life performance warranty pursuant to Section 7-2.33.

7-2.35. PUBLICLY BID CITY PLANS, AND FIELD CHANGES.

Publicly bid City plans, and field changes that alter the square footage of the trench surface area issued by the Director to any owner to make excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes shall be subject to all fees and requirements of this chapter. The owner shall report the amount of excavation to the permit counter and pay the required fees. Utilities providing lifetime warranties as specified in Section 7-2.33 are exempt from these fees. Failure to report the excavation and pay the required fees shall be considered a permit violation pursuant to Section 7-2.10.

7-2.36. COORDINATION OF EXCAVATIONS.

Any owner installing facilities providing water, sewer, stormwater drainage, gas, electric, communication, video or other utility services in City streets shall participate in City of Modesto Utility Coordination Committee and prepare a utility master plan, in a format specified by the Utility Coordination Committee, that shows all of the owner's planned major utility work in City streets for the coming year. Prior to applying for an excavation permit, any owner planning to excavate in City streets shall coordinate, to the extent practicable, with other owners to minimize damage to, and avoid undue disruption and interference with, the public use of City streets. The City shall provide the utilities with its street reconstruction and repaving schedule so that the utilities can coordinate their work with the City's schedule.

7-2.37. MORATORIUM.

Excavation in newly renovated City streets is prohibited for three (3) years after filing of a notice of completion or acceptance of a new street or structural overlay of an entire street except as follows:

- (a) Emergency which endangers life or property.
- (b) Repair or modification to prevent denial or interruption of utility service.
- (c) Relocation work that is mandated by City, State or Federal legislation.
- (d) Service for buildings where no other reasonable means of providing service exists, as determined by the Director.
- (e) In a City street that the City has scheduled for resurfacing either during the fiscal year (July 1- June 30) when the excavation permit is issued or

during the immediately following fiscal year and the work takes place prior to the resurfacing.

- (f) For potholing to verify utility depth or location.
- (g) Horizontal Directional Drilling (HDD) excavations greater than eighteen (18) inches in depth of cover over the utility facility not requiring a significant surface incision greater than four (4) square feet and at a depth not greater than six inches (6") below the asphalt may be allowed at the discretion of the Director.
- (h) Other situations deemed by the Director to be in the best interest of the general public.

7-2.38. JOINT EXCAVATION.

Whenever applicants propose major work in the same block, the Department shall condition permits for such work in a manner that maximizes coordination and minimizes the total period of construction. Such work may be conditioned to require the applicants to participate in a single excavation and pay their pro rata share of the trench restoration fees. In lieu of this requirement, a single utility, who qualifies for a pavement life performance warranty, may provide such warranty. Applicants may seek a waiver of the joint excavation requirements with respect to a particular excavation. Within thirty (30) calendar days of receipt of a written request for a waiver, the Director shall render a decision upon such a request, taking into account the impact of the proposed excavation on the neighborhood, the applicant's need to provide services to a property or area, facilitating the deployment of new technology as directed pursuant to official City policy, and the public health, safety, welfare, and convenience.

7-2.39. NON-TRANSFERABILITY OF PAVEMENT LIFE WARRANTY.

Pavement life warranty agreements are not transferable or assignable.

7-2.40. SEVERABILITY.

Should any part of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain in full force and effect.

7-2.41. RESPONSIBILITY FOR ACCIDENTS: INSURANCE.

Permittee shall be responsible for any and all claims and liabilities for damages caused by any of the work herein permitted or caused by permittee's failure to perform his obligations under the permit. In the event any such claim or liability for damages is made against or imposed upon the City or any department, officer, or employee thereof, permittee shall and by acceptance of the permit agrees to defend, indemnify, and hold each of them harmless from such claim or liability. Each permittee shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager. Such amounts shall be set forth from time to time by resolution of the City Council.

7-2.42. POSTING OF BOND.

If it has been finally determined that the permittee has failed to comply with the provisions hereof or the conditions of any permit, the Director may refuse to grant and may withhold issuance of any subsequent permits to permittee until the latter has paid all costs due City for prior permits and has posted with the City a cash bond in the sum of five thousand dollars (\$5,000.00), which bond or any part thereof shall be used as follows:

- (a) To pay the actual cost of work completed by the Director in connection with any permit issued, including overhead costs.
- (b) To pay the actual cost of work done by the Director to repair or restore any public improvements damaged or destroyed by permittee during the course of any operations performed under any permit, including overhead costs.
- (c) To pay the actual cost of all lighted barricades placed on or about the permittee's work, including overhead costs, and the costs of the furnishing by City of any other safety barricades or warnings in connection with any permit issued.

7-2.43. REFUND OF CASH BOND.

Permittee shall be entitled to refund in whole or in part, as the case may be, of any cash bond posted with the City pursuant hereto when all work to be done by permittee under a permit issued prior or subsequent to posting of said bond has been completed by permittee and has been approved or completed by City, from which bond shall be first deducted all amounts due City under the terms of said

bond and all amounts which may otherwise be due City pursuant to the provisions of this chapter.

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 12th day of December, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Mayor Sabatino

NOES: Councilmembers: Frohman, Serpa

ABSENT: Councilmembers: Smith

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3196-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 January, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: Smith

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: February 1, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney
1 Attorney - Shanna Willis
1 Engineering & Transportation
5 Posting
1 Code Service
1 For any other interested departments
10

Clerk

ORDINANCE NO. 3197 - C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 2293-C.S. ENTITLED " AN ORDINANCE GRANTING TO CABLE ONE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO." TO EXTEND THE TERM TO PERMIT RESOLUTION OF BREACH AND COMPLIANCE ISSUES.

WHEREAS, the City Council adopted Ordinance No. 2293-C.S., which became effective on or after December 1, 1984, entitled, "An Ordinance Granting To Capital Cities Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S. was amended by Ordinance No. 2496-C.S. to change the title to read "An Ordinance Granting To Post-Newsweek Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City Of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S., was also amended by Ordinance No. 2620-C.S. to extend the time period that franchise fee payments are due after the end of each quarter, and

WHEREAS, the City Council by Ordinance No. 3162-C.S. previously granted an extension of the term of the current franchise to May 31, 2000, and

WHEREAS, Cable One, Inc., is the current holder of the cable franchise referenced herein, and

WHEREAS, the City Council by Ordinance No. 3179-C.S. granted a further extension of the term of the current franchise to October 31, 2000, and

WHEREAS, on October 4, 2000, the City Manager gave Cable One notice of Breach of the Cable Franchise and set a public hearing on the breach for November 7, 2000, and

WHEREAS, on November 7, 2000, the City Council determined that Cable One was in breach of its franchise obligations and referred the matter back to City staff for further discussions with Cable One to ascertain whether Cable One is willing to cure and the manner of cure; and the City Council set a further public hearing on the franchise for the City Council meeting on December 12, 2000, and

WHEREAS, on November 7, 2000, the City Council adopted Ordinance No. 3192 extending the term of the franchise to December 20, 2000 to permit time to resolve compliance issues and to assure that Cable One remains bound to the terms of the franchise; and

WHEREAS, on December 12, 2000, the City Council determined that Cable One remains in material breach of the terms of the franchise; and

WHEREAS, the City Council desires to assure that Cable One remains bound to the terms of the franchise during this period while the City determines whether Cable One cured is willing to complete a cure and the manner of such cure, and

WHEREAS, Cable One also has a pending application to transfer ownership of the cable system and franchise to AT&T and desires the franchise to stay in place so that the franchise can be transferred if compliance is achieved;

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2293-C.S. Section 4 of

Ordinance No. 2293-C.S. is hereby amended to read as follows:

SECTION 4. GRANT OF FRANCHISE.

Pursuant to the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, a nonexclusive franchise to construct, operate and maintain a cable communications system within the City of Modesto, for a term of fifteen (15) years commencing on the effective date of this ordinance, is hereby granted to Grantee with all the rights and privileges and subject to each and all of the terms, conditions, and limitations as set forth in the Franchise Documents.

The area included within the nonexclusive franchise granted hereby includes all areas within the city limits of the City of Modesto, and also includes all territory hereafter annexed, except that the City Council reserves the right to exclude such additional territory from the franchise area at the time it is annexed to the City.

The termination date of this franchise is extended from December 20, 2000 to February 28, 2001.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of December, 2000, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Smith

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3197-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 January, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Smith

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 1, 2001

ACCEPTANCE OF FRANCHISE

Cable One, Inc. does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. _____-C.S., introduced by the Council of the City of Modesto on _____, 2000, extending the term of the franchise.

Dated: _____.

CABLE ONE, INC.

By: _____

Title: _____

By: _____

Title _____

(SEAL)

APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of _____ o'clock p.m. on the _____ day of _____, 200__.

JEAN ZAHR, City Clerk

ACCEPTANCE OF FRANCHISE

Cable One, Inc. does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. _____-C.S., introduced by the Council of the City of Modesto on _____, 2000, extending the term of the franchise.

Dated: _____.

CABLE ONE, INC.

By: _____

Title: _____

By: _____

Title _____

(SEAL)

APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of _____ o'clock p.m. on the _____ day of _____, 200__.

JEAN ZAHR, City Clerk

CABLE ORDINANCE

- 2 - Clerk
- 1 - Attorney
- 1 - Finance
- 2 - City Manager's Office -
 Donna Hansen
 Cable Company
- 5 - Post
- 1 - *Code Section*

Cleek

ORDINANCE NO. 3198-C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1 TO PLANNED DEVELOPMENT ZONE, P-D(544), PROPERTY LOCATED ON THE EAST SIDE OF COFFEE ROAD SOUTH OF EAST ORANGEBURG AVENUE AT 1332 COFFEE ROAD. (DON AND ANNETTE BAKER)

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

SECTION 1. ZONING CHANGE. Section 22-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(544):

R-1 to P-D(544)

All that portion of Lot 12, as shown on that certain map filed in the office of the Recorder of Stanislaus County, State of California, on March 17, 1904 in Volume 1 Page 78 of Maps, lying within a portion of Section 22, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Beginning at the Northwestern corner of said Lot 12; thence along the Northern line of said Lot 42, North 89° 54' East, 436.0 feet; thence South 0° 27' East, 30.0 feet, to a point on the Southerly line of East Orangeburg Avenue, also being the Northwesterly corner of Parcel B as shown on that map filed in the office of the Recorder of Stanislaus County, State of California, on January 21, 1974, in Book 18 of Parcel Maps at Page 49; thence continuing along the Northwesterly line of said Parcel B, South 0° 27' East, 229.2 feet; thence leaving said parcel line, South 89° 54' West, 80 feet to a point being the TRUE POINT of BEGINNING; thence continuing South 89° 54' West, 311 feet, to a point on the west line of 90 foot Coffee Road; thence North 0° 27' West, 79.2 feet, along said Coffee Road; thence leaving said Coffee Road, North 89° 54' East, 311 feet; thence South 0° 27' East, 79.2 feet, to the True Point of Beginning;

Including also the Easterly half of 90 foot Coffee Road, all being immediately adjacent to the above-described properties.

SECTION 2. USES. The following uses shall be permitted in said P-D(544) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Professional office building.
2. Off-street parking areas.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of December, 2000, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Smith

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3198-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 January, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 1, 2001

P-D ORDINANCE

1 Applicant
1 CDD - Becky Jenkins
1 Attorney
1 Attorney - Shanna Willis
1 E&T - Engineering Services
5 Posting ✓
1 E&T - Traffic
1 Code Service ✓
1 County Assessor
1 E&T - Construction Administration
1 CDD - Building Inspection
1 Recreation & Neighborhoods - NPU - Virginia M.
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