

ORDINANCE NO. 3641-C.S.

AN ORDINANCE AMENDING SECTION 10-2.152, "MARIJUANA DISPENSARIES," SECTION 10-3.101, "LAND USE TABLE," AND SECTION 10-3.210 "MEDICAL MARIJUANA USES" OF THE MODESTO MUNICIPAL CODE PROHIBITING COMMERCIAL MARIJUANA (CANNABIS) ACTIVITIES AND THE CULTIVATION OF MEDICAL MARIJUANA

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or the "MMP"), to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary care givers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP

expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana...". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015 the State of California enacted Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and State-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing of medical marijuana; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA states that "[i]f a city, county or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivations of marijuana, either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county." (AB 243, Health & Safety Code § 11362.777(B)(c)(4).) If said regulations or ordinances are not enacted by March 1, 2016, the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, the City desires by the adoption language of this Ordinance, to retain the authority to regulate or prohibit cultivation and delivery of marijuana, and not to cede that authority solely to the State; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 21, 2015, at which time it considered all evidence presented, both written and oral, and at the end of the hearing voted to adopt a resolution recommending that the City Council not adopt this Ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on this Ordinance on January 12, 2016, at which time it considered all evidence presented, both written and oral; and

WHEREAS, improper medical marijuana cultivation poses an environmental health risk to the public and may create a public nuisance, including without limitation, offensive and irritating odor, degradation of air quality, excessive noise, risk of criminal activity, improper and/or dangerous electrical alterations, and impairment of the general quality of life of property owners and occupants adjoining medical marijuana cultivation sites; and

WHEREAS, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the California Court of Appeal decision in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the California Supreme Court decision of *Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, and the City of Modesto's Municipal Code, the City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of its residents and community. Additionally, pursuant to Government Code section 38771, the City has the power, through its City Council to declare actions and activities that constitute a public nuisance; and

WHEREAS, the justifications for regulating or banning of medical marijuana cultivation pursuant to the City's police power include, but is not limited to: a) the increased risk to public safety, based on the value of visible marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; b) the strong fumes that are emitted from marijuana plants which can interfere with the use and enjoyment of neighboring properties by their occupants; c) the potential for theft and use by school age children where marijuana is cultivated in a visible location; and d) the cultivation of medical marijuana can also result in various code violations and impairments of the general quality of life for property owners and occupants near or adjacent to medical marijuana cultivation sites. These secondary effects pose serious safety risks, and require the commitment of scarce police and public resources; and

NOW, THEREFORE, the City Council of the City of Modesto does ordain the following:

SECTION 1. Purpose and Authority.

The City Council hereby incorporates by reference the above Recitals and additionally finds and declares the following:

- (a) The purpose of this Ordinance is to expand and clarify the prohibition of all cultivation of marijuana and medical marijuana (cannabis), commercial marijuana activity, dispensaries and commercial deliveries of medical marijuana (cannabis) in all zones of the City.
- (b) The City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of the public health, safety and welfare of its residents and community. This Ordinance is also consistent with the General Plan of the City which promotes safe neighborhoods and communities.
- (c) This Ordinance is intended to acknowledge that the cultivation and use of marijuana is illegal under federal law and to implement state law.
- (d) This Ordinance is adopted consistent with the City's police power provided by Article XI, section 7 of the California Constitution. The purpose of this Ordinance is to comply with the requirements of the MMRSA set forth in Chapter 3.5 of the Business and Professions Code while preserving the continuing authority of the City to regulate or ban marijuana cultivation and delivery in the future. The City, by enacting this Ordinance, is seeking to maintain local control by prohibiting cultivation and deliveries of marijuana. This prohibition will also promote the health, safety, and welfare of the public, avoid

nuisance odor created by marijuana plants from impacting adjacent properties, and assists in efforts to prevent crimes associated with marijuana.

SECTION 2. Amendment to Section 10-2.152.

Title 10, Chapter 2 “Definitions,” Section 10-2.152, “Medical Marijuana Dispensaries,” of the Modesto Municipal Code is hereby amended to modify the definition of “Medical Marijuana Dispensaries” to read as follows:

10-2.152 Medical Marijuana Dispensaries.

“Dispensaries” shall mean any facility, building, structure, delivery service, vehicle or location whether fixed or mobile, where medical marijuana (cannabis), medical marijuana (cannabis) products, or devices for the use of medical marijuana (cannabis) or medical marijuana (cannabis) products are offered, either individually or in any combination, for retail sale, transmittal, or otherwise provided to any of the following: a primary caregiver, a qualified patient, or a person with an identification card, in accordance with Health & Safety Code Section 11362.5, et seq. “Dispensary” shall also include a cooperative/collective. The terms "primary caregiver" and "qualified patient" shall be as defined in Health & Safety Code Section 11362.7.

A “dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5, et seq.

SECTION 3. Amendment to Section 10-3.101.

Title 10, Chapter 3 “Land Use Regulations,” Section 10-3.101, “Land Use Table, Table 3.1-1” of the Modesto Municipal Code is hereby amended to be read as follows:

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)											
Land Use	Zoning Districts										
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2	Notes
AGRICULTURAL											
Community Gardens	P	P	P	P	P	P	P	P	P	P	See Section 10-2.114
Fruit and nut trees, vines, row crops, horticulture stock	P	P	P	P	P	P	P	P	P	P	

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)

Land Use	Zoning Districts										
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2	Notes
RESIDENTIAL											
Accessory Uses											
Animals and Fowl	P	P	P	-	-	-	-	-	-	-	See Section 10-3.202
Garage Sales	P	P	P	-	-	-	-	-	-	-	See Section 10-3.206
Home Business	P	P	P	-	-	-	-	-	-	-	See Section 10-3.207
Marijuana Cultivation	-	-	-	-	-	-	-	-	-	-	See Section 10-3.210 Prohibited in all zones.
Dwellings											
Single Family Dwelling	P	P	P	-	-	-	-	-	-	-	In R-1, 1 unit per lot
Second Dwelling in the R-1 Zone	P	-	-	-	-	-	-	-	-	-	See Section 10-3.217
Manufactured Homes	P	P	P	-	-	-	-	-	-	-	See Section 10-3.209
Multiple Family	-	P	P	C	C	C	C	-	-	-	See Sections 10-9.1002 b 3 & 10-9.1002 b 5
Mobile Home Parks	-	-	-	-	-	-	-	-	-	-	See Section 10-7.103 b 2
Other Residential Uses within Dwellings											
Lodging and Boarding (3 or fewer persons, 1 dwelling)	P	P	P	-	-	-	-	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 1 dwelling)	C	C	P	-	-	-	-	-	-	-	See Section 10-3.208
Lodging and Boarding (3 or fewer persons, 2 dwellings on a lot)	-	P	P	C	C	C	C	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 2 dwellings on a lot)	-	C	P	C	C	C	C	-	-	-	See Section 10-3.208
CIVIC / INSTITUTIONAL											
Educational Facilities											
School - Private (including charter schools)	C	C	C	C	P	P	P	C	C	C	
School - Public (including charter schools)	C	C	C	C	P	P	P	C	C	C	
School - Vocational	-	-	-	C	P	P	P	P	P	P	
Healthcare Facilities											
Hospital	-	-	-	-	-	P	P	P	P	P	
Medical Marijuana Dispensary	-	-	-	-	-	-	-	-	-	-	See Section 10-3.210
Substance Abuse Clinic/Facility	-	-	-	P	P	P	P	P	P	P	
Veterinary Hospital (large animals)	-	-	-	-	-	-	-	P	P	P	See Section 10-2.1100
Veterinary Hospital (small animals)	-	-	-	P	P	P	P	P	P	P	See Section 10-2.1101
Non-Profit Organization											
No Retail (office, classroom, meeting hall)	C	C	C	C	P	P	P	P	P	P	
Retail	-	-	-	-	P	P	P	P	P	P	

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)

Land Use	Zoning Districts										
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2	Notes
Public Facilities											
Library	-	-	-	-	P	P	P	P	P	P	
Museum	-	-	-	-	P	P	P	P	P	P	
Public Buildings and Grounds (ie corporation yard)	C	C	C	C	C	C	C	P	P	P	
Public Facilities, Minor (wells, pumps)	P	P	P	P	P	P	P	P	P	P	
Public Parks	P	P	P	P	P	P	P	P	P	P	
Storm Drainage Facilities	P	P	P	P	P	P	P	P	P	P	
Quasi-Public Facilities											
Cemetery	-	-	-	-	-	-	-	-	-	-	See Section 10-7.103 b 3
Church (place of worship)	C	C	C	C	P	P	P	P	P	P	
Utilities											
Solar Energy Systems (accessory use)	P	P	P	P	P	P	P	P	P	P	See Section 10-2.187
Solar Energy Farm	-	-	-	-	-	-	-	-	P	P	See Section 10-2.186
Utility Company Buildings, Facilities, and Grounds	C	C	C	C	C	C	C	P	P	P	
Utilities and Railroads											See Section 10-3.221
COMMERCIAL											
Communication											
Broadcasting Studio (radio or television)	-	-	-	-	-	P	P	P	P	P	
Radio or Television Transmitter	-	-	-	-	C	C	C	P	P	P	
Wireless Telecommunication Facilities											See Chapter 3, Article 4
Entertainment											
Adult Entertainment Business	-	-	-	-	-	-	-	-	P	P	See Chapter 3, Article 3
Carnival (entertainment permit required)	-	-	-	-	-	P	P	P	P	P	See Title 4, Chapter 1, Article 4
Circus (entertainment permit required)	-	-	-	-	-	P	P	P	P	P	See Title 4, Chapter 1, Article 4
Entertainment Establishment (entertainment permit required)	-	-	-	-	-	P	P	P	P	P	See Title 4, Chapter 1, Article 4
Theater, Motion Picture (indoor)	-	-	-	-	-	P	P	P	P	P	
Commercial Marijuana Activity	-	-		-	-	-	-	-	-	-	See Section 10-3.210
Lodging											
Motel, Hotel	-	-	-	-	P	P	P	P	P	P	
Bed and Breakfast (2 rooms for lodging, owner resides on site)	P	P	P	-	-	-	-	-	-	-	
Office											

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Land Use	Zoning Districts											Notes
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2		
General	-	-	-	P	P	P	P	P	P	P	P	See Section 10-2.159
Medical	-	-	-	P	P	P	P	P	P	P	P	See Section 10-2.160
Outdoor Sales and Activities												
Auction Yard	-	-	-	-	-	-	-	-	-	P	P	
Commercial												
Certified Farmers' Market	-	-	-	-	P	P	P	P	P	P	P	See Section 10-3.212 a
Food and Drink Stands	-	-	-	-	P	P	P	P	P	P	P	See Section 10-3.212 b
Fund Raisers (nonprofit organizations)	P	P	P	P	P	P	P	P	P	P	P	See Section 10-3.212 c
Outdoor Dining Areas	-	-	-	-	P	P	P	P	P	P	P	See Section 10-3.212 d
Outdoor Display, major	-	-	-	-	-	P	P	P	P	P	P	See Section 10-3.212 e (2)
Outdoor Display, minor	-	-	-	-	P	P	P	P	P	P	P	See Section 10-3.212 e (1)
Outdoor Sales (products customarily sold indoor)	-	-	-	-	P	P	P	P	P	P	P	See Section 10-3.212 f
Promotions	P	P	P	P	P	P	P	P	P	P	P	See Section 10-3.212 g
Seasonal Sales (fire works, pumpkins, Christmas trees)	P	P	P	P	P	P	P	P	P	P	P	See Section 10-3.212 h
Vehicle Food Vendors	-	-	-	-	-	-	-	-	-	P	P	See Section 10-3.212 i
Flea Market - Indoor	-	-	-	-	-	P	P	P	P	P	P	
Flea Market - Outdoor	-	-	-	-	-	-	-	-	-	P	P	
Industrial	-	-	-	-	-	-	-	-	P	P	P	See Section 10-3.213
Recreational												
Campground, Recreation Vehicle Overnight Park	-	-	-	-	-	-	C	P	P	P	P	
Health Club	-	-	-	-	P	P	P	P	P	P	P	
Private Club, Lodge, Social Club, Cultural Center	-	-	-	-	P	P	P	P	P	P	P	
Recreation Facility - Indoor	-	-	-	-	C	P	P	P	P	P	P	See Section 10-2.165
Recreation Facility - Outdoor	-	-	-	-	-	C	C	P	P	P	P	See Section 10-2.166
Recycling (Collection)												
Recycling Facility, Large (more than 500 SF area)	-	-	-	-	-	C	C	P	P	P	P	
Recycling Facility, Small (500 SF max area)	-	-	-	-	P	P	P	P	P	P	P	See Section 10-3.215 b
Unattended Containers no more than 50 SF area (in residential zones w/ school, church, or government use)	P	P	P	-	-	-	-	-	-	-	-	See Section 10-3.215 a
Unattended Containers/ Reverse Vending Machine no more than 50 SF area (w/ permitted or conditional use)	-	-	-	P	P	P	P	P	P	P	P	
Restaurants												
Banquet Hall	-	-	-	-	-	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.203
Bar, Cocktail Lounge, Tavern	-	-	-	-	-	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.203
Restaurants (w/ alcohol)	-	-	-	-	C/P	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.203

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)

Land Use	Zoning Districts											Notes
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2		
Restaurants (w/o alcohol)	-	-	-	-	P	P	P	P	P	P		
Retail												
General Retail	-	-	-	-	-	P	P	P	P	P		See Section 10-2.174
Neighborhood Retail	-	-	-	-	P	P	P	P	P	P		See Section 10-2.175
Services												
General Services												
Ambulance Service	-	-	-	-	-	P	P	P	P	P		
Armored Car Service	-	-	-	-	-	P	P	P	P	P		
Business Services	-	-	-	-	P	P	P	P	P	P		See Section 10-2.178
Car Wash	-	-	-	-	-	C/P	C/P	C/P	C/P	C/P		See Section 10-3.222
Equipment Rental (indoors)	-	-	-	-	-	P	P	P	P	P		
Exterminating Service	-	-	-	-	-	P	P	P	P	P		
Fortune Telling	-	-	-	-	-	P	P	P	P	P		
Funeral Home (includes cremation)	-	-	-	-	-	C	C	P	P	P		
Janitor Service	-	-	-	-	-	P	P	P	P	P		
Kennel	-	-	-	-	-	C	C	P	P	P		
Laboratory (research and testing)	-	-	-	-	-	P	P	P	P	P		
Package Delivery Service	-	-	-	-	-	-	C	P	P	P		
Personal Services	-	-	-	-	P	P	P	P	P	P		See Section 10-2.179
Security Company	-	-	-	-	-	P	P	P	P	P		
Self Storage	-	-	-	-	-	-	C	P	P	P		
Sign Painting Shop	-	-	-	-	-	P	P	P	P	P		
Stone Monument	-	-	-	-	C	C	C	P	P	P		
Taxicab Service	-	-	-	-	-	P	P	P	P	P		
Taxidermist Shop	-	-	-	-	-	P	P	P	P	P		
Towing Services (no impound yard)	-	-	-	-	-	P	P	P	P	P		
Trade Services	-	-	-	-	-	P	P	P	P	P		See Section 10-2.182
Repair Services												
Major Repair	-	-	-	-	-	P	P	P	P	P		See Section 10-2.180
Minor Repair	-	-	-	-	P	P	P	P	P	P		See Section 10-2.181
Social Assistance Services												
Assisted Living Facility	C	C	P	P	P	P	P	-	-	-		
Adult Day Care (3 or fewer clients, 1 unit per lot)	P	P	P	-	-	-	-	-	-	-		Residential dwelling. Clients plus family members
Adult Day Care (4 or more clients, 1 unit per lot)	C	C	C	-	-	-	-	-	-	-		
Adult Day Care (3 or fewer clients, 2 units per lot)	C	C	C	-	-	-	-	-	-	-		
Adult Day Care	C	C	C	C	P	P	P	P	P	P		Commercial facility
Day Care Home - Small Family (6 or fewer children)	P	P	P	-	-	-	-	-	-	-		See Section 10-3.204 a 1
Day Care Home - Large Family (7-14 children)	P	P	P	-	-	-	-	-	-	-		See Section 10-3.204 a 2
Child Day Care Home (15 or more children)	C	C	C	-	-	-	-	-	-	-		See Section 10-3.204 a 3

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)

Land Use	Zoning Districts											Notes
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2		
Child Day Care Center	C	C	C	C	P	P	P	P	P	P	P	See Section 10-3.204 b
Convalescent and Other Care Facility	C	C	C	C	P	P	P	P	P	P	P	Commercial facility
Emergency Shelter	-	-	-	-	C	C	C	C	C	C	C	See Section 10-3.205
Homeless Shelter	-	-	-	-	C	C	C	C	C	C	C	
Residential Care Facility (6 or fewer persons)	P	P	P	-	-	-	-	-	-	-	-	
Residential Care Facility (7 or more persons)	C	C	C	-	-	-	-	-	-	-	-	
Residential Care Facility (2 or more care facilities)	C	C	C	-	-	-	-	-	-	-	-	See Section 10-3.216
Residential Service Facility (not State licensed)	C	C	C	-	-	-	-	-	-	-	-	
Supportive Housing	P	P	P	-	-	-	-	-	-	-	-	See Section 10-2.192
Supportive Housing (7 or more persons if it operates as residential care facility or residential service facility)	C	C	C	-	-	-	-	-	-	-	-	See Section 10-2.192
Transitional Housing	P	P	P	-	-	-	-	-	-	-	-	See Section 10-2.194
Vehicle Related												
Heavy Vehicles												See Section 10-2.198
Farm Equipment Sales, Rental, Repair, & Service	-	-	-	-	-	-	C	P	P	P	P	
Truck & Trailer Sales, Rental, Repair, & Service	-	-	-	-	-	-	C	P	P	P	P	
Light Vehicles												See Section 10-2.199
Minor Maintenance (minor tune up, smog check)	-	-	-	-	C/P	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.222
Parts Store	-	-	-	-	P	P	P	P	P	P	P	
Rental and Sales	-	-	-	-	-	P	P	P	P	P	P	
Repair and Service, Major	-	-	-	-	-	-	-	C/P	C/P	C/P	C/P	See Sections 10-2.199 a and 10-3.222
Repair and Service, Minor	-	-	-	-	-	C/P	C/P	C/P	C/P	C/P	C/P	See Sections 10-2.199 b and 10-3.222
Service Station	-	-	-	-	P	P	P	P	P	P	P	
Stereo Installation	-	-	-	-	-	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.222
INDUSTRIAL												
Manufacturing												
Heavy	-	-	-	-	-	-	-	-	-	-	P	See Section 10-2.150
Light	-	-	-	-	-	-	-	-	-	P	P	See Section 10-2.151
Other Manufacturing Involving:												
Chemical Products (Hazardous)	-	-	-	-	-	-	-	-	-	-	C	
Explosives	-	-	-	-	-	-	-	-	-	-	C	
Natural Gas and Gas Products	-	-	-	-	-	-	-	-	-	-	C	

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)

Land Use	Zoning Districts											Notes
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2		
Paper, Pulp, and Wood (no burning operation).	-	-	-	-	-	-	-	-	-	-	C	
Other Industrial												
Animal Slaughter Facility	-	-	-	-	-	-	-	-	-	-	C	
Brewery	-	-	-	-	-	-	-	-	-	P	P	
Microbrewery	-	-	-	-	-	C/P	C/P	C/P	C/P	C	C	See Section 10-3.203
Bulk Fuel Storage (Class II flammable liquids for the power needs of food processing plants)	-	-	-	-	-	-	-	-	-	P	P	
Cabinet Shop	-	-	-	-	-	-	-	P	P	P		
Contracting Business (with equipment and materials yard)	-	-	-	-	-	-	-	P	P	P		
Distributing, Freighting or Trucking Yard	-	-	-	-	-	-	-	-	P	P		
Equipment Rental Yard	-	-	-	-	-	-	-	P	P	P		
Laundry and Dry Cleaning Plant	-	-	-	-	-	-	-	P	P	P		
Machine Shop	-	-	-	-	-	-	-	P	P	P		
Power Plant	-	-	-	-	-	-	-	-	C	P		
Rock Crushing	-	-	-	-	-	-	-	-	-	C		
Sand, Gravel, Brick, and Building Block Yard (no concrete mixing, manufacture or rock crushing)	-	-	-	-	-	-	-	-	P	P		
Sheet Metal Shop	-	-	-	-	-	-	-	P	P	P		
Tire Rebuilding, Recapping, Retreading	-	-	-	-	-	-	-	P	P	P		
Transit and Transportation Equipment Storage Yard	-	-	-	-	-	-	-	-	P	P		
Vehicle Impound Yard	-	-	-	-	-	-	-	P	P	P		
Warehousing	-	-	-	-	-	-	-	P	P	P		
Waste Disposal or Transfer Station	-	-	-	-	-	-	-	-	-	C		
Welding Shop	-	-	-	-	-	-	-	P	P	P		
Wholesale Business	-	-	-	-	-	-	-	P	P	P		
Winery	-	-	-	-	-	-	-	-	-	P		
Recycling Facilities												
Recycling, Junk Handling, Processing and Storage, Heavy	-	-	-	-	-	-	-	-	-	C		
Recycling Processing Facility, Light	-	-	-	-	-	-	-	-	P	P		
Vehicle Salvage, Wrecking	-	-	-	-	-	-	-	-	-	C		
Miscellaneous												
Accessory Uses and												

Table 3.1-1 Permitted and Conditional Land Uses (updated 02-28-14)											
Land Use	Zoning Districts										
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2	Notes
Buildings											
Customarily incidental to permitted & conditional uses	P	P	P	P	P	P	P	P	P	P	See Section 10-3.201 a
Incidental Manufacturing, Processing, Packaging, Storage, or Wholesale Sales	-	-	-	-	P	P	P				See Section 10-3.201 b
Parking											
Parking Area in residential zone for adjacent nonresidential use in nonresidential zone	C	C	C	-	-	-	-	-	-	-	
Parking Area in P-O zone for adjacent commercial use in commercial zone	-	-	-	P	-	-	-	-	-	-	
Parking Lot or Garage	-	-	-	-	P	P	P	P	P	P	
Recreational Vehicles	P	P	P	P	P	P	P	P	P	P	See Section 10-3.214
Trucks and Truck Trailers in residential zones	-	-	-								See Section 10-3.220
Temporary Buildings											
Construction Buildings	P	P	P	P	P	P	P	P	P	P	See Section 10-3.218
Mobile Living Quarters	P	P	P	-	-	-	-	-	-	-	See Section 10-3.211
Sales Offices and Model Homes	P	P	P	P	P	P	P	P	P	P	See Section 10-3.219
Legend											
P Permitted Use - Not Permitted C Conditional Use											

SECTION 4. Amendment to Section 10-3.210.

Title 10, Chapter 3 “Land Use Regulations,” Section 10-3.210, “Medical Marijuana Uses,” of the Modesto Municipal Code is hereby amended to be read as follows:

10-3.210- Medical Marijuana Uses.

(a) The following marijuana and medical marijuana uses are prohibited in all zones:

- (1) Medical marijuana dispensary.
- (2) All cultivation of marijuana or medical marijuana within the City is prohibited. It shall be unlawful for any person owning, leasing, occupying, or having charge or possession of any premises within any zoning district of the City to cause or allow such premises to be used for the cultivation of marijuana, regardless of whether the cultivation is for the medicinal use by a qualified patient or primary caregiver.

- (3) All commercial marijuana or commercial medical marijuana cultivation and any other commercial marijuana activity, including delivery, within the City is prohibited. It shall be unlawful for any person owning, leasing, occupying, or having charge or possession of any premises within any zoning district of the City to cause or allow such premises to be used for the purposes of commercial marijuana activity.
- (4) Any use which is prohibited by State and Federal law.

(b) Definitions.

For the purposes of this Title, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Cannabis” shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time. For purposes of this Title, cannabis and marijuana shall have the same meaning.

“Commercial marijuana activity” or “commercial” shall have the same meaning as set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.

“Cooperative/Collective” shall mean two (2) or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana (cannabis), with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.

“Dispensary” shall mean any facility, building, structure, vehicle or location whether fixed or mobile, where medical marijuana (cannabis), medical marijuana (cannabis) products, or devices for the use of medical marijuana (cannabis) or medical marijuana (cannabis) or any other marijuana products are offered, either individually or in any combination, for retail sale, transmittal, or otherwise provided to any of the following: a primary caregiver, a qualified patient, or a person with an identification card, in accordance with Health & Safety Code Section 11362.5, et seq. For purposes of this Title, “Dispensary” shall also include a cooperative/collective.

“Marijuana” shall have the same meaning as cannabis as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time. For purposes of this Title, cannabis and marijuana shall have the same meaning.

“Medical marijuana,” or “medical marijuana product,” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

(c) Enforcement.

- (1) It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana. Such violations may be abated in accordance with the procedures and remedies in Title 1, Chapter 6 of this code, including the appeal procedure contained therein.
- (2) Any person who violates a provision of this Chapter is subject to administrative penalties (pursuant to Title 1, Chapter 6 of this Code), and any available civil remedies.
- (3) Any person who violates a provision of this Chapter is liable for civil penalties of not less than Two Hundred-Fifty Dollars (\$250.00) or more than One Thousand Dollars (\$1,000.00) for each day the violation continues.

SECTION 5. California Environmental Quality Act (“CEQA”).

This proposed Ordinance is exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also prohibit cultivation so there will be little to no potential for significant water impacts and pesticide application impacts.

SECTION 6. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or

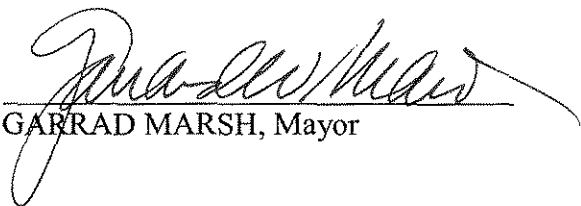
applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 7. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

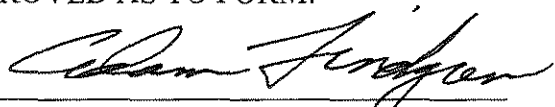
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of January, 2016, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

AYES:	Councilmembers:	Ah You, Grewal, Madrigal, Ridenour, Zoslocki, Mayor Marsh
NOES:	Councilmembers:	Kenoyer
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

APPROVED: 
GARRAD MARSH, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of January, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

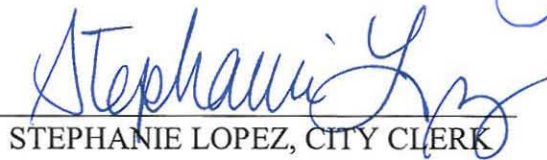
ABSENT: Councilmembers: None

APPROVED:



GARRAD MARSH, MAYOR

ATTEST:



STEPHANIE LOPEZ, CITY CLERK

Effective Date: February 26, 2016

ORDINANCE NO. 3642-C.S.

AN ORDINANCE REPEALING AND REPLACING CHAPTER 2 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE TO ESTABLISH NEW REGULATIONS REGARDING MASSAGE AND MASSAGE ESTABLISHMENTS AND REPEALING ORDINANCE NO. 3629-C.S., ENDING THE MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF MASSAGE ESTABLISHMENTS

WHEREAS, the City of Modesto has an interest in the safe operation and licensing of businesses in the City; and

WHEREAS, the City seeks to maintain the quality of life and character in the City's neighborhoods throughout the City by preventing activities that are a threat to the health, safety, and welfare of the community; and

WHEREAS, without regulation of specified businesses, portions of the City can be affected, with negative consequences to social, environmental, and economic values; and

WHEREAS, on September 27, 2008, the Governor approved Senate Bill 731, which sanctioned Business and Professions Code sections 4600 et seq., known as the Massage Therapy Act; and

WHEREAS, pursuant to Senate Bill 731, the California Massage Therapy Council ("CAMTC") was formed and subsequent legislation prohibited cities from requiring licenses or permits of holders of CAMTC certificates and preempted most regulations pertaining to the operation of massage establishments; and

WHEREAS, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB1147"), the Massage Therapy Act, effective January 1, 2015, which substantially changed Business and Professions Code sections 460, 4600-4621, and Government Code section 51034, by significantly revising existing laws regulating certified massage professionals and gave cities

some regulatory authority over massage establishments, including return of land use authority over massage establishments to cities; and

WHEREAS, a revision to the City of Modesto Municipal Code pertaining to massage businesses will streamline licensing procedures while promoting those businesses providing a legitimate and important health and therapeutic services to the community; and

WHEREAS, a revision of the City of Modesto Municipal Code will also bring the City's local ordinance into compliance with uniform statewide regulations enacted by Assembly Bill 1147; and

WHEREAS, with this revision of the Modesto Municipal Code, Ordinance No. 3629-C.S. relating to the moratorium on the establishment and expansion of massage businesses is no longer necessary and the moratorium can now be repealed; and

WHEREAS, the accompanying Staff Report shall serve as the report provided for by Government Code section 65858(d), describing the measures taken to alleviate the condition leading the City to enact the moratorium ordinance.

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

SECTION 1. Ordinance 3629-C.S. is hereby repealed in its entirety and Chapter 2 of Title 5 of the Modesto Municipal Code is also hereby repealed in its entirety and replaced with the following:

CHAPTER 2- MASSAGE/MASSAGE ESTABLISHMENTS

ARTICLE 1. GENERAL PROVISIONS.

5-2.101. PURPOSE AND INTENT.

It is the purpose and intent of this Chapter to provide for the orderly regulation of massage businesses and to comply with state regulations as it relates to massage services. The City Council recognizes massage is a viable professional field offering the public valuable health and therapeutic services. While there are significant health benefits that can result from massage, there are also significant risks of injury by persons improperly trained and/or educated in providing massage services. There are also opportunities for illegal acts of prostitution, lewdness and human trafficking that can occur in massage establishments.

This Chapter establishes minimum standards for massage businesses and massage therapists so as to protect and safeguard the public health, safety and welfare and to enhance the reputation of the profession and integrity of the services provided. The establishment of reasonable standards for the issuance of business licenses and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

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

5-2.102. DEFINITIONS.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

A. “California Massage Therapy Council” or “CAMTC” shall mean the non-profit organization created to regulate the massage industry set forth Chapter 10.5 of Division 2 of the Business and Professions Code of the State of California (commencing with Section 4600).

B. “CAMTC Certificate” shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner pursuant to Business and Professions Code section 4601(b) or (c) or any later enacted amendment.

C. “Certified Massage Therapist” or “massage therapist” shall mean any individual, certified by the CAMTC and possessing a valid CAMTC Certificate and is licensed to practice or administer massage, in exchange for any form of compensation within the City of Modesto. All persons certified by CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification, and the provisions of this Chapter stated herein.

D. “City” shall mean the City of Modesto.

E. “Client” shall mean the customer or patron who pays for or receives massage services.

F. “Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

G. "Employee" shall mean any person employed by a massage business who may render any service to the business and who receives any form of compensation from the business. For the purposes of this Chapter, the term "Employee" shall include independent contractors, agents and volunteers.

H. "Licensee" shall mean any person who receives from the City of Modesto a Business License pursuant to Municipal Code Section 6-1.103.

I. "Manager" means a person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the conduct of the activities within a massage business. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner.

J. "Massage" or "Massage Therapy" shall mean any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating, of the external parts of the body with hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.

K. "Massage business" means any business that offers massage in exchange for compensation, whether at a fixed place of business or at a location designated by the

customer or client through outcall or on-site massage services. The term “massage business” includes a Certified Massage Therapist who is the sole owner, operator and employee of a massage business operating as a sole proprietorship. For the purposes of this Chapter, the term “massage business” shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber’s, cosmetologist’s, and esthetician’s state license.

L. “Massage establishment” shall mean a fixed location where massage for compensation is regularly conducted. For the purposes of this Chapter, the term “massage establishment” shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber’s, cosmetologist’s, and esthetician’s state license.

M. “On-site massage” shall mean a massage given to an individual who remains fully clothed during the massage and at a location other than a massage business, and is limited to massages that take place at malls, business offices, sports complexes, convention centers and public events.

N. “Operator” or “massage business operator” shall mean any and all owners of a massage business.

O. “Out-call massage” shall mean the engaging in or carrying on of massage for compensation in a location other than a duly licensed massage establishment.

P. “Owner” shall mean any of the following:

1. The sole proprietor of a massage business or establishment; or
2. Any person who is a general partner of a general or limited partnership that owns a massage business; or
3. Any person who has a five percent (5%) or greater ownership interest in a corporation that owns a massage business; or
4. Any person who is a member of a limited liability company that owns a massage business; or
5. Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.

Q. "Person" shall mean any individual.

R. "Reception area" shall mean the area immediately inside the front door of the massage establishment, dedicated to the reception and waiting of clients and visitors of the massage establishment, which is not a massage room or otherwise used for the provision of massage services.

S. "Sole-Proprietorship" shall mean a massage business where the owner owns one-hundred percent (100%) of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active CAMTC certificate, and has no other employees or independent contractors that perform massage for the business.

T. "Spa" or "Day Spa" shall mean a business that offers a variety of services intended to meet personal needs of individuals such as skin treatment, manicures and pedicures and massage.

5-2.103.

EXEMPTIONS

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

A. Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, podiatrists, physical therapists, who are duly licensed to practice their respective professions, in the State of California under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code.

B. Persons operating or employed at hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State of California.

C. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' practice of massage is limited to such athletes and athletic teams.

D. Persons operating or employed at athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education, and where massage services are provided to members of such facilities.

E. Barbers, cosmetologists, or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's, and esthetician's state license.

F. Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training wherein the student receives school credit, operated by the school, without receiving any form of compensation, including tips, on the premises of a massage establishment duly authorized to operate in the City.

G. Persons performing a therapeutic modality for which the state does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology, Rolfing or the Bowen Technique.

5-2.104. OUT-CALL MASSAGE AND ON-SITE MASSAGE RESTRICTIONS

A. No person or massage business shall perform either on-site massage or out-call massage for compensation without possessing a CAMTC certificate in conjunction with a valid City Business License.

B. Out-call massage shall not be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California.

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

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

1. A hotel/motel room or any other similar location used primarily for transitory habitation purposes.

2. The residence of the out-call or on-site massage therapist.

5-2.105. HEALTH AND SAFETY REQUIREMENTS FOR ALL MASSAGES.

All massage establishment owners, operators, employees, sole proprietors, independent contractors and any person performing massage within the City shall comply with all of the following health and safety requirements.

A. Massage establishments and massage therapists shall at all times have an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels, nondisposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate receptacles.

B. In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, showers and bathrooms, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a hospital-grade disinfectant. Bath tubs shall be thoroughly cleaned with a hospital-grade disinfectant after each use. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.

C. All equipment used in the massage establishment shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.

D. No massage establishment shall have any alcohol for consumption or illegal controlled substance on the premises at any time except for those massage establishments who obtain authorization from the Chief of Police and any licenses from the State of California Department of Alcohol Beverage Control that may be necessary to provide alcohol to a client as a part of the establishment's services.

E. No massage shall be given by any massage therapist who is consuming, or under the influence of, any alcoholic beverage or illegal controlled substance.

F. No massage shall be given unless the client's genitalia and female breasts are, at all times, fully covered. Genitalia shall include the genitals, anus, and perineum of any person. No massage shall be provided to a client for sexual gratification by intentional contact, or occasional and repetitive contact with the client's genitalia or female breasts either covered or uncovered.

G. No massage therapist or massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising material that depicts any portion of the human body that would reasonably suggest to prospective customers that services prohibited by this Chapter are available nor shall any massage therapist or massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.

H. A massage therapist shall not violate the provisions of Sections 647(a) (soliciting to engage in lewd or dissolute conduct in a public place) and 647 (b) (soliciting to engage in or engaging in any act of prostitution) of the California Penal Code, or any other state

law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage business.

5-2.106. OPERATING REQUIREMENTS FOR MASSAGE.

All massage establishment owners, operators, employees, sole proprietors, independent contractors and any person performing massage within the City shall comply with all of the following operating requirements.

A. CAMTC certification shall be worn by and on the massage therapist's person during working hours and at all times when the massage therapist is inside a massage establishment or providing outcall massage. No owner, operator or manager of a massage establishment shall allow or permit a person to administer massage for such establishment unless the practitioner possesses and wears a valid CAMTC certificate.

B. Massage shall only be performed between the hours of 6:00 a.m. and 10:00 p.m. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 6:00 a.m. A massage commenced prior to 10:00 p.m. shall terminate prior to 10:00 pm. and all clients shall exit the massage establishment prior to 10:00 pm.

C. A list of services available and the cost of each service shall be posted in the reception area within the massage establishment, and shall be described in English if another language is also used to list the available services. Outcall service providers shall provide such a list to clients in advance of performing any service. No owner, manager, or operator shall permit, and no massage therapist shall offer to perform any service other than those posted or listed, as required herein, nor shall an owner, manager, or operator nor a massage therapist

request or charge a fee for any service other than those on the list of available services posted in the reception area or provided to the client in advance of any outcall services.

D. The massage establishment premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the City, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

E. Clients of the massage establishment shall be furnished with a private dressing room. Dressing rooms need not be separate from the room in which the massage is being performed.

F. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

G. A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Soap and sanitary towels shall also be provided at each basin.

H. The CAMTC certificate of each and every massage therapist performing massage shall be displayed in the reception area or in the area where massage is to be performed. CAMTC certificates of former employees, independent contractors, volunteers shall be removed as soon as those massage therapists are no longer performing massage at the location. All

records of employees, independent contractors, volunteers who have performed massage for a massage business shall be retained for a period of two (2) years.

I. Massage therapists shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and said garments shall not expose their genitals, pubic areas, buttocks, or breasts.

J. Every massage business shall keep a written or electronic record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist administering treatment, and the type of treatment administered. Such written or electronic record shall be available for inspection by officials charged with the enforcement of this Chapter. Such records shall be kept on the premises of a massage establishment for a period of two (2) years and shall be open to inspection by the City.

K. Where the massage establishment has staff available to ensure security, the entry to the reception area of the massage business shall remain unlocked during business hours when the establishment is open for business or when clients are present.

L. No massage establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage.

M. Minimum lighting consisting of at least one (1) artificial light of not less than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients and in all areas where clients are present.

N. No massage establishment shall allow any person to reside within the massage establishment or in any attached structures owned, leased or controlled by the massage establishment owners.

O. All massage establishments must comply with all state and federal laws and regulations pertaining to disabled clients.

P. All massage establishments must comply with the City's sign ordinance pursuant to Title 10, Chapter 6 of the Modesto Municipal Code.

ARTICLE 2. LICENSING AND STATE CERTIFICATION.

5-2.201. CAMTC CERTIFICATION REQUIRED.

A. It shall be unlawful for any person to perform or engage in the practice of massage for compensation within the City unless that person possesses a current, valid, unsuspended and unrevoked CAMTC certificate.

B. It shall be unlawful for any massage business or massage establishment to provide massage for compensation within the City unless all persons employed by the massage business or massage establishment to perform massage; whether as an employee, independent contractor, volunteer, or sole proprietorship, possesses a current, valid, unsuspended and unrevoked CAMTC certificate.

5-2.202. TIME FOR COMPLIANCE WITH CAMTC CERTIFICATION.

A. Any individual holding a valid Business License issued by the City to perform or engage in massage for compensation within the City prior to the effective date of this Chapter, may continue to provide such massage services under that license until that license expires, but shall otherwise comply with the requirements of this Chapter. Upon expiration of said license issued by the City, any person who desires to continue to provide massage for compensation within the City shall first obtain a current, valid, unsuspended and unrevoked CAMTC certificate.

B. Any massage business holding a valid Business License issued by the City to provide massage for compensation within the City may continue to operate as a massage business until the license expires provided that all of the massage business' employees providing massage services possess a CAMTC certificate or the equivalent state certificate for massage. Upon expiration of the massage business' City Business License, any massage business that desires to continue to provide massage for compensation within the City shall first ensure that all of the massage business' employees providing massage possess a current, valid, unsuspended and unrevoked CAMTC certificate.

C. All persons, massage businesses or establishments, including its owners, operators, managers, and employees engaged in the practice of massage for compensation within the City shall comply with all health and safety and operating requirements, set forth in this Chapter 5-2.105 and 5-2.106, upon its effective date.

5-2.203. CITY BUSINESS LICENSE.

It shall be unlawful for any person or massage business to conduct massage for compensation within the City without first obtaining a valid City Business License pursuant to Modesto Municipal Code 6-1.103.

A. Application for License

1. An applicant wishing to obtain a Business License from the City shall complete a Business License Application form completely and accurately and shall provide a copy of a current and valid CAMTC certificate possessed by every person who will be performing or engaging in the practice of massage for the massage business.

2. Every massage business owner[s] or manager[s] who does not qualify as a massage therapist and is not CAMTC certified must obtain a Massage Business Permit and be subject to a background check and fingerprinting pursuant to section 5-2.205 prior to the issuance of a City Business License. If any massage business owner[s] or manager[s] are denied a Massage Business Permit then a City Business License cannot be issued to the massage business until such time as the denied business owner[s] or manager[s] is removed from the Application for the City Business License.

3. Prior to the issuance of a City Business License, the City shall make a reasonable investigation into the information provided in the application to confirm the facts stated therein.

B. Issuance of License

All Business Licenses shall be issued in accordance with the Modesto Municipal Code.

C. Renewal of License

A City Business License shall be valid for one (1) year from the renewal date, which is determined at the time the initial application is received and the Business License is issued. The City Business License must be renewed within thirty (30) days after the expiration of said City Business License. If an application for renewal of a City Business License and all required information is not timely received and the license expires, no right or privilege to provide massage shall exist.

D. Fees

The fee for a City Business License shall be assessed pursuant to Modesto Municipal Code 6-1.201-6-1.207, as amended by Council from time to time.

5.2-204. EXCHANGE OF INFORMATION

The City may, from time to time, request information from CAMTC pertaining to any person who possesses a CAMTC certificate and who is engaging in the practice of massage in the City. The requested information may include, but need not be limited to, the current status of a person's CAMTC certificate, any history of disciplinary action(s) taken against the person, the home and work addresses of the CAMTC certificate holder, and any other information that may be necessary to verify fact relevant to administering the provisions of this Chapter.

5.2-205. MESSAGE BUSINESS PERMIT FOR OWNERS AND MANAGERS WHO DO NOT QUALIFY AS MASSAGE THERAPISTS AND WHO ARE NOT CAMTC CERTIFIED.

Every massage business owner[s] and manager[s] who do not possess a current and valid CAMTC certificate, must obtain a Massage Business Permit from the Chief of Police, or his designee, prior to obtaining a Business License, according to the following procedures:

A. The massage business owner[s] and manager[s] shall complete an application that requests information regarding topics including, but not limited to, the applicant's current business name and location, occupation, employment history for the five years preceding the date of the application, and the name and address of any massage business or like establishment previously owned or managed by the applicant.

B. All massage business owner[s] and manager[s] subject to this section shall personally appear at the City Police Department to be fingerprinted. The Chief of Police, or his designee, shall conduct or cause to be conducted on its behalf a background investigation of the applicant.

C. At the time of the fingerprinting, the applicant shall pay the Police Department a fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time.

D. The Chief of Police, or his designee, shall determine, based on the background investigation and the information submitted with the application, whether a Massage Business Permit shall be issued. If the Chief of Police, or his designee, determines that the applicant is not qualified, the Chief of Police, or his designee, shall inform the applicant in writing and specify the reasons for the denial. The City may deny a Massage Business Permit for the following reasons:

- i. The applicant has provided materially false information in applying for a Massage Business Permit.
- ii. Within five years immediately preceding the date of the filing of the application the applicant has been convicted of, or pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b, 647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety

Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement, or moral turpitude;

- iii. Within five years immediately preceding the date of the filing of the application the applicant has had a massage license suspended or revoked; unless the applicant can show mitigating circumstances exist since the revocation or suspension.

E. Any person aggrieved by the decision of the Chief of Police, or his designee, may appeal that decision to the City Manager, or his designee, by filing a notice of appeal within ten days of being notified of the decision.

F. An appeal must be in writing, shall explain the reason(s) for the appeal and mailed to the City Manager's Office, or his designee, with a filing fee of two-hundred-fifty (\$250) dollars within five (5) days of the date of the written notice. The City Manager, or his designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant.

G. The hearing shall be conducted pursuant to Modesto Municipal Code 1-6.505. The City Manager, or his designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise. The City Manager, or his designee, shall notify the appellant in writing of the decision. The decision of the City Manager, or his designee, may be appealed pursuant to Modesto Municipal Code 1-6.507.

H. If a Massage Business Permit is granted by the Chief of Police, or his designee, it shall be valid until such time as the Permittee terminates the Permit or the Permit is suspended or revoked pursuant to Modesto Municipal Code Section 5-2.206. The Permit shall be non-transferrable and cannot be sold.

I. A Massage Business Permittee shall notify the Chief of Police, or his designee, in writing at least thirty (30) days after the sale of the massage business or establishment for which he/she obtained the Massage Business Permit is completed.

J. A Massage Business Permit shall be non-transferable and every new owner of a massage business or establishment who does not qualify as a massage therapist and is not CAMTC Certified must obtain a Massage Business Permit before operating a massage business or establishment.

5-2.206. MASSAGE BUSINESS PERMIT –GROUNDS FOR SUSPENSION AND REVOCATION

The Chief of Police, or his designee, may suspend and/or revoke a Massage Business Permit issued under this Chapter for one or more of the following reasons:

A. A Massage Business Permit was obtained with fraudulent or deceitful information.

B. A Massage Business Permittee violated a provision or provisions of this Chapter or the Massage Therapy Act or some other state or federal law. Including a violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b, 647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement, or moral turpitude;

C. The massage establishment is not being maintained in compliance with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Modesto Municipal Code or any other local, state or federal law and the Massage Business Permittee has failed to promptly remedy any deficiency for which they have received notice.

D. The massage business has knowingly employed, allowed, or permitted a person who was not certified by CAMTC to perform massage services at the massage establishment.

5-2.207. MESSAGE BUSINESS PERMIT -PROCESS FOR SUSPENSION AND REVOCATION

A. The Chief of Police, or his designee, shall send written notice of the suspension or revocation shall be served on the business owner[s] or manager[s] by certified

mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal.

B. Suspension or revocation issued pursuant to subsection (A) shall be effective five (5) days from the date appearing on the notice, unless a timely appeal is filed in accordance with subsection (C)

C. The decision of the Chief of Police, or his designee, may be appealed to the City Manager's Office, or his designee. An appeal must be in writing, shall explain the reason(s) for the appeal and mailed to the City Manager's Office, or his designee, with a filing fee of two-hundred-fifty (\$250) dollars within five (5) days of the date of the written notice. The City Manager, or his designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant.

D. The hearing shall be conducted pursuant to Modesto Municipal Code 1-6.505 and 1-6.506. The City Manager, or his designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise. The City Manager, or his designee, shall notify the appellant in writing of the decision. The decision of the City Manager, or his designee, may be appealed pursuant to Modesto Municipal Code 1-6.507.

5-2.208. INSPECTION OF MASSAGE ESTABLISHMENT BY OFFICIALS.

The investigating and enforcing officials of the City, including but not limited to the Chief of Police, or his designees, Chief Building Official or his designees, the Chief of the Fire Department or his designee, shall have the right to enter the massage establishment premises, from time to time, during regular business hours, for the purpose of making reasonable inspections to observe and enforce compliance with applicable laws, statutes and

regulations, and with the provisions of this Chapter. The Chief Building Official and/or the Chief of the Fire Department may charge a fee for any safety inspections, which shall be established by Council.

5-2.209. APPLICABILITY OF OTHER ORDINANCES.

Nothing contained in this Chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or massage therapist from the provisions of any zoning, licensing or other building ordinance, rule or regulation.

5-2.210. NOTIFICATIONS.

A. Any person or massage Business Licensee shall notify the City Finance Department of any amendments or changes necessary to the information provided to the City pursuant to Section 5-2.203.

B. Any person or massage Business Licensee who holds a City Business License pursuant to Section 5-2.203 shall inform the City Finance Department within five (5) days if any of following events occur:

- i. Arrest of any employee, owner, manager, operator of the massage establishment.
- ii. Any event involving an employee, owner, manager, operator or independent contractor, volunteer that may constitute a violation of this Chapter or any state or federal law.

C. This provision shall be complied with even if the licensee believes that the City has or will receive the information from another source.

5-2.211. NUISANCE.

Any massage business or establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by law, and shall take such other steps and shall apply to such court(s) as may have jurisdiction to grant such relief as will abate or remove such businesses and restrain and enjoin any person from operating, conducting, or maintaining a massage establishment or business contrary to the provisions of this Chapter. All remedies provided for in this Chapter are cumulative.

5-2.212. UNLAWFUL BUSINESS PRACTICES MAY BE ENJOINED.

Any massage establishment or business operated, conducted, or maintained contrary to the provisions of this Chapter shall constitute an unlawful business practice pursuant to Business & Professions Code section 17200 et seq., and the City Attorney and/or District Attorney may, in the exercise of its discretion, in addition to or in lieu of taking any other action permitted by this Chapter, commence an action or actions, proceeding or proceedings in an appropriate court of jurisdiction, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorney's fees and costs.

5-2.213. CRIMINAL PROSECUTION.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor and at the discretion of the City Attorney, a violation of any provision of this Chapter may be prosecuted in a criminal court. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), per violation or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. All remedies provided for in this Chapter are cumulative.

5-2.214. ADMINISTRATIVE FINES.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter, may result in the issuance of an administrative citation and the City may, at its discretion, seek an administrative fine of up to one thousand dollars (\$1,000.00).

A. Each violation of any provision of this Chapter shall constitute a separate and distinct violation for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person.

B. Notice of the assessed fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to file an appeal and the process for contesting the imposition of the fine with the City. The appeal process and timeline shall follow those procedures and timelines set forth in Modesto Municipal Code Section 1-6.502 through 1-6.508.

C. If an appeal is not filed and the fine is not paid within thirty (30) days from either the date of the notice of fine or a notice of determination from the Hearing Officer, the fine may be referred to a collection agency within or external of the City.

D. Any outstanding amounts owed to the City may be recovered through a lien against any real property owned by the offending party or a personal obligation lien against the offending party.

5-2.215. PROSECUTORIAL DISCRETION.

Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil, and/or administrative violations utilizing administrative remedies. All remedies provided for in this Chapter are cumulative.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a "project" under the California Environmental Quality Act (CEQA) pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State of California CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 3. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

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

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

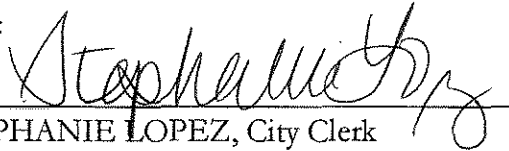
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of February, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Marsh


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23rd day of February, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: March 24, 2016

ORDINANCE NO. 3643-C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MODESTO AUTHORIZING THE LEVY OF SPECIAL TAXES
WITHIN THE CITY OF MODESTO COMMUNITY FACILITIES
DISTRICT NO. 2016-1 (KIERNAN BUSINESS PARK EAST #2)**

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

WHEREAS, on January 26, 2016, this City Council, by Resolution No. 2016-20, adopted a resolution entitled “A Resolution Declaring the City Council’s Intention to Establish City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2) and to Authorize the Levy of a Special Tax Within Said Community Facilities District” stating its intention to form City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain services and facilities and incidental expenses to be incurred in connection with financing the foregoing, and

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

WHEREAS, subsequent to said hearing, the City Council adopted resolutions entitled “A Resolution Declaring Formation of City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2), Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit” (the “Resolution of Formation”), and “A Resolution Calling a Special Election for the City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2),” which resolutions established the Community Facilities District, authorized the levy of special taxes therein and called an election within

the Community Facilities District on the propositions of levying special taxes and establishing an appropriations limit, and

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

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2), DOES ORDAIN as follows:

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

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

SECTION 3. The City's Community Development Manager shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor's parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the City's Community Development Manager is authorized to determine the specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method. In connection with the foregoing, the Administrator of the Infrastructure Financing Program of the City shall take any and all steps

necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Maintenance Special Tax and/or the Annual Facilities Special Tax (each as defined in the Rate and Method) levies, including the amount of each such tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special taxes may be levied at lower rates.

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

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

SECTION 6. The One-Time Special Facilities Tax (as defined in the Rate and Method) shall be collected prior to the issuance of a building permit for new construction of any structure on Taxable Property within the Community Facilities District. The Annual Maintenance Special Tax and the Annual Facilities Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time.

Notwithstanding the foregoing, the City's Community Development Manager may collect, or cause to be collected, one or more installments of such special taxes by means of direct billing of the property owners within the Community Facilities District if, in the judgment of the City's Community Development Manager, such means of collection will reduce the burden of administering the Community Facilities District or is otherwise appropriate in the circumstances. In such event, such special taxes shall become delinquent if not paid when due as set forth in any such respective billing to the property owners.

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

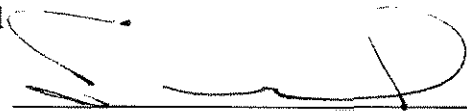
SECTION 8. At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of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

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Modesto, California, held on the 8th of March, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki

NOES: None

ABSENT: Grewal, Mayor Brandvold



TED BRANDVOLD, Mayor

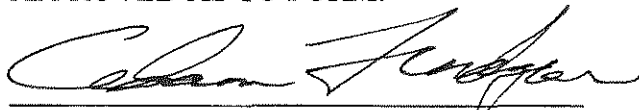
ATTEST:



STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:



ADAM U. LINDGREN, City Attorney

Ordinance 3643-C.S.

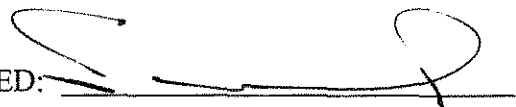
FINAL ADOPTION CLAUSE

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 22nd day of March, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal, Mayor Brandvold

APPROVED: 

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: April 22, 2016

ATTACHMENT A

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2016-1
(KIERNAN BUSINESS PARK EAST)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor's Parcel in the City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2016-1, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD, unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. **DEFINITIONS**

The terms hereinafter set forth have the following meanings:

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

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

"Administrative Expenses" means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2016-1, including, but not limited to, levying and collecting the Special Taxes; the fees and expenses of legal counsel; charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office; costs related to annexing property into the CFD; costs related to property owner inquiries regarding the Special Taxes; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this RMA.

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

"Annual Maintenance Special Tax Requirement" means the amount of revenue needed in any Fiscal Year to pay for: (i) Authorized Services, (ii) establishment of reserves, (iii) Administrative Expenses, and (iv) amounts needed to cure any delinquencies in the payment of Annual Maintenance Special Taxes which have occurred in prior Fiscal Years.

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

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

“Assessor’s Parcel Number” or **“APN”** means a unique number assigned to an Assessor’s Parcel by the County Assessor for purposes of identifying a property.

“Authorized Services” means the public services authorized to be funded by the CFD as set forth in the documents adopted by the City Council when the CFD was formed.

“CFD” or **“CFD No. 2016-1”** means the City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East).

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2016-1 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2016-1.

“County” means the County of Stanislaus.

“Escalation Factor” means, in any Fiscal Year, 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%).

“Final Map” means a final map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410, *et seq.*) that creates individual lots on which a building permit can be issued for construction of residential units without further subdivision of the lots.

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

“Maximum Annual Maintenance Special Tax” means the Maximum Annual Maintenance Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

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

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

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

“Proportionately” means the ratio of the actual Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Taxable Property.

“Public Property” means, in any Fiscal Year: (i) all Parcels within the boundaries of the CFD that are owned by or irrevocably offered for dedication to the federal government, the State of California, the City or any other public agency; provided, however, that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act (as such section may be amended or replaced) shall be taxed and classified in accordance with its use; or (ii) all Parcels within the boundaries of the CFD that are encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

“RMA” means this Rate and Method of Apportionment of Special Tax.

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

“Taxable Property” means all Assessor’s Parcels within the boundaries of the CFD that are not exempt from the Special Taxes pursuant to law or Section F below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within the CFD that, (i) based on a tentative map or other development plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Annual Maintenance Special Taxes were assigned to the Parcels in prior Fiscal Years.

“Tax Zone” means a mutually exclusive geographic area within which the Special Taxes may be levied pursuant to this RMA. *All of the property within CFD No. 2016-1 at the time of CFD Formation is within Tax Zone I.* Additional Tax Zones may be created when property is annexed to the CFD, and separate Maximum Special Taxes shall be identified for property within the new Tax Zone at the time of such annexation. The Assessor’s Parcels included within a new Tax Zone established when such Parcels are annexed to the CFD shall be identified by Assessor’s Parcel Number in the Unanimous Approval Form that is signed by the owner(s) of the Parcels at the time of annexation.

“Unanimous Approval Form” means that form executed by the record owner of fee title to a Parcel or Parcels annexed into the CFD that constitutes the property owner’s approval and unanimous vote in favor of annexing into the CFD and the levy of Special Taxes against his/her Parcel or Parcels pursuant to this RMA.

B. DATA FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor's Parcel Numbers for all Parcels of Taxable Property within the CFD. The Administrator shall also determine: (i) in which Tax Zone each Parcel of Taxable Property is located, (ii) the Acreage for each Parcel of Taxable Property, and (iii) the Annual Maintenance Special Tax Requirement for the then-current Fiscal Year.

In any Fiscal Year, if it is determined that (i) a Final Map or parcel map for a portion of property in the CFD was recorded after the last date upon which the Assessor will incorporate the newly-created Parcels into the then current tax roll, (ii) because of the date the Final Map or parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map or parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Taxable Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Final Map or parcel map by determining the Special Taxes that apply separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the Final Map or parcel map.

C. MAXIMUM SPECIAL TAXES

1. Tax Zone 1

Table 1 below identifies the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax assigned to all Parcels of Taxable Property in Tax Zone 1 at CFD Formation and all Parcels that annex into Tax Zone 1 after CFD Formation.

**TABLE 1
MAXIMUM SPECIAL TAXES FOR TAX ZONE 1
FISCAL YEAR 2015-16**

<i>Fiscal Year 2015-16 Assessor's Parcel Number (s)</i>	<i>Fiscal Year 2015-16 Maximum One-Time Facilities Special Tax*</i>	<i>Fiscal Year 2015-16 Maximum Annual Maintenance Special Tax*</i>
078-015-029 078-015-030	\$0	\$2,872 per Acre

** On January 1, 2016 and each January thereafter, the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax rates shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.*

2. Additional Tax Zones

If property is annexed into the CFD and a separate Tax Zone is established for such property, a Maximum One-Time Facilities Special Tax and a Maximum Annual Maintenance Special Tax will be identified for Taxable Property in the new Tax Zone in the Unanimous Approval Form signed by the annexing property owner.

D. METHOD OF LEVY OF SPECIAL TAXES

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Section C above shall be levied on all Taxable Property in CFD No. 2016-1 and shall be collected as set forth in Section E below.

2. Annual Maintenance Special Tax

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

Step 1: The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Taxable Property that is not Taxable Public Property up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

Step 2: If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year.

E. COLLECTION OF SPECIAL TAXES

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of a structure on a Parcel of Taxable Property within CFD No. 2016-1, and shall be immediately delinquent if not so paid.

The Annual Maintenance Special Tax for CFD No. 2016-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Maintenance Special Taxes through foreclosure or other available methods. The Annual Maintenance Special Tax shall be levied and collected in perpetuity unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay for Authorized Services and Administrative Expenses.

F. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on Parcels of Public Property except Taxable Public Property, as defined herein.

G. INTERPRETATION OF SPECIAL TAX FORMULA

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

H. ENFORCEMENT

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

ORDINANCE NO. 3644-C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MODESTO AUTHORIZING THE LEVY OF SPECIAL TAXES
WITHIN THE CITY OF MODESTO COMMUNITY FACILITIES
DISTRICT NO. 2016-2 (THE VINTAGE)**

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

WHEREAS, on January 26, 2016, this City Council, by Resolution No. 2016-21, adopted a resolution entitled “A Resolution Declaring the City Council’s Intention to Establish City of Modesto Community Facilities District No. 2016-2 (The Vintage) and to Authorize the Levy of a Special Tax Within Said Community Facilities District” stating its intention to form City of Modesto Community Facilities District No. 2016-2 (The Vintage) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain services and incidental expenses to be incurred in connection with financing the foregoing, and

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

WHEREAS, subsequent to said hearing, the City Council adopted resolutions entitled “A Resolution Declaring the Formation of City of Modesto Community Facilities District No. 2016-2 (The Vintage), Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit” (the “Resolution of Formation”), and “A Resolution Calling a Special Election for the City of Modesto Community Facilities District No. 2016-2 (The Vintage),” which resolutions established the Community Facilities District, authorized levy of special taxes therein and called an election within the Community Facilities District on the propositions of levying special taxes and establishing an appropriations limit, and

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

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of City of Modesto Community Facilities District No. 2016-2 (The Vintage), DOES ORDAIN as follows:

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

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

SECTION 3. The City's Community Development Manager shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor's parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the City's Community Development Manager is authorized to determine the specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method. In connection with the foregoing, the Administrator of the Infrastructure Financing Program of the City shall take any and all steps necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Maintenance

Special Tax (as defined in the Rate and Method) levies, including the amount of each such tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special taxes may be levied at lower rates.

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

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

SECTION 6. The Annual Maintenance Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time. Notwithstanding the foregoing, the City's Community Development Manager may collect, or cause to be collected, one or more installments of such special taxes by means of direct billing of the property owners within the Community Facilities District if, in the judgment of the City's Community Development Manager, such means of collection will reduce the burden of administering the Community Facilities District or is otherwise

appropriate in the circumstances. In such event, such special taxes shall become delinquent if not paid when due as set forth in any such respective billing to the property owners.

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


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

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Modesto, California, held on the 8th of March, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

AYES: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: None

ABSENT: Grewal



TED BRANDVOLD, Mayor

ATTEST:



STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:



ADAM U. LINDGREN, City Attorney

Ordinance 3644-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 22nd day of March, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: April 22, 2016

ATTACHMENT A

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2016-2 (VINTAGE MAINTENANCE)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in the City of Modesto Community Facilities District No. 2016-2 (Vintage Maintenance) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2016-2, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD, unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

"Administrative Expenses" means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2016-2, including, but not limited to, levying and collecting the Special Tax; the fees and expenses of legal counsel; charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office; costs related to property owner inquiries regarding the Special Tax; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Tax according to this RMA.

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

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

“Assessor’s Parcel Number” or **“APN”** means a unique number assigned to an Assessor’s Parcel by the County Assessor for purposes of identifying a property.

“Authorized Services” means the public services authorized to be funded by the CFD as set forth in the documents adopted by the City Council when the CFD was formed.

“CFD” or **“CFD No. 2016-2”** means the City of Modesto Community Facilities District No. 2016-2 (Vintage Maintenance).

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2016-2 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2016-2.

“Commercial Property” means all Parcels of Taxable Property for which a building permit has been or may be issued for construction of a commercial building, as determined by the City.

“County” means the County of Stanislaus.

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

- for Single Family Residential Property, all Parcels of Taxable Property for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year;
- for Multi-Family Property, all Parcels of Taxable Property for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year; and
- for Commercial Property, all Parcels of Taxable Property for which a building permit for construction of a commercial structure was issued prior to June 30 of the preceding Fiscal Year.

“Escalation Factor” means, in any Fiscal Year, 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%).

“Final Map” means a final map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410, *et seq.*) that creates individual lots on which a building permit can be issued for construction of residential units without further subdivision of the lots.

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

“Land Use Class” means one of the three mutually-exclusive land use classes identified in Table 1 in Section C below and defined in this Section A.

“Maximum Special Tax” means the maximum special tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

“Multi-Family Property” means all Parcels of Taxable Property for which a building permit has been or may be issued for construction of a residential structure consisting of two or more residential units that share common walls, including but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes, and apartment units.

“Proportionately” means, for Developed Property, that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Taxable Property that is Developed Property. For Undeveloped Property, “Proportionately” means that the ratio of the actual Special Tax to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Property that is Undeveloped Property. For Taxable Public Property, “Proportionately” means that the ratio of the actual Special Tax to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Public Property.

“Public Property” means, in any Fiscal Year: (i) all Parcels within the boundaries of the CFD that are owned by or irrevocably offered for dedication to the federal government, the State of California, the City or any other public agency; provided, however, that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act (as such section may be amended or replaced) shall be taxed and classified in accordance with its use; and (ii) all Parcels within the boundaries of the CFD that are encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“SFR Lot” means an individual numbered lot which is in its final configuration and for which a building permit may be issued for a single family residential unit.

“Single Family Residential Property” means, in any Fiscal Year, all Parcels of Taxable Property for which a building permit has been or may be issued for construction of a residential structure on an SFR Lot.

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

“Special Tax Requirement” means the amount of revenue needed in any Fiscal Year to pay for: (i) Authorized Services, (ii) establishment of reserves, (iii) Administrative Expenses, and (iv) amounts needed to cure any delinquencies in the payment of Special Taxes which have occurred in prior Fiscal Years.

“Taxable Property” means all Assessor’s Parcels within the boundaries of the CFD that are not exempt from the Special Tax pursuant to law or Section F below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within the CFD that, (i) based on a tentative map or other development plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in prior Fiscal Years.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2016-2 that are not Developed Property.

B. DATA FOR SPECIAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel Numbers for all Parcels of Taxable Property within the CFD. The Administrator shall also determine: (i) whether each Parcel of Taxable Property is Developed Property or Undeveloped Property, (ii) which Parcels are Commercial Property, Single Family Residential Property, and Multi-Family Property, (iii) the Acreage of each Parcel of Commercial Property and Multi-Family Property, and (iv) the Special Tax Requirement for the then-current Fiscal Year.

In any Fiscal Year, if it is determined that (i) a Final Map or parcel map for a portion of property in the CFD was recorded after the last date upon which the Assessor will incorporate the newly-created Parcels into the then current tax roll, (ii) because of the date the Final Map or parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map or parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Taxable Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Final Map or parcel map by determining the Special Taxes that apply separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the Final Map or parcel map.

C. MAXIMUM SPECIAL TAXES

Table 1 below identifies the Maximum Special Tax assigned to all Parcels of Taxable Property.

**TABLE 1
MAXIMUM SPECIAL TAXES
FISCAL YEAR 2015-16**

	<i>Land Use Category</i>	<i>Fiscal Year 2015-16 Maximum Special Tax*</i>
Developed Property	Single Family Residential Property	\$326 per SFR Lot
	Multi-Family Property	\$300 per Acre
	Commercial Property	\$300 per Acre
Undeveloped Property	Single Family Residential Property	\$1,950 per Acre
	Multi-Family Property	\$300 per Acre
	Commercial Property	\$300 per Acre

** On January 1, 2016 and each January thereafter, the Maximum Special Tax rates shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1*

D. METHOD OF LEVY OF SPECIAL TAXES

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

- Step 1:** The Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Special Tax for each Parcel of Taxable Property for such Fiscal Year;
- Step 2:** If additional revenue is needed after Step 1, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property that is not Commercial Property within the CFD, up to 100% of the Maximum Special Tax for each Parcel of Taxable Property for such Fiscal Year;
- Step 3:** If additional revenue is needed after applying the first two steps, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Special Tax assigned to each Parcel of Taxable Public Property.

E. COLLECTION OF SPECIAL TAXES

The Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Special Taxes through foreclosure or other available methods. The Special Tax shall be levied and collected in perpetuity unless and

until the City determines that the Special Tax no longer needs to be levied to pay Authorized Services and Administrative Expenses.

F. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on Parcels of Commercial Property that are Undeveloped Property and Parcels of Public Property, except Taxable Public Property, as defined herein.

G. INTERPRETATION OF SPECIAL TAX FORMULA

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

H. ENFORCEMENT

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

ORDINANCE NO. 3645-C.S.

AN ORDINANCE REPEALING ORDINANCE 3222-C.S. AND ADDING CHAPTER 4, "VIDEO SERVICE PROVIDED BY STATE FRANCHISE HOLDERS" OF TITLE 11 OF THE MODESTO MUNICIPAL CODE REGARDING THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006.

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

SECTION 1. Repeal of Ordinance No. 3222-C.S. Ordinance No. 3222-C.S. is hereby repealed in its entirety and replaced with language in Section 2.

SECTION 2. Enacting Ordinance. Title 11, Chapter 4 shall read as follows:

"Chapter 4 – VIDEO SERVICE PROVIDED BY STATE FRANCHISE HOLDERS"

11-4.01 – Purpose and Applicability.

The purpose of this chapter is to establish regulations for the provision of video service by state franchise holders, pursuant to the Digital Infrastructure and Video Competition Act, California Public Utilities Code sections 5800-5970 (the "DIVCA"), as may be amended from time to time. This chapter is applicable to all video service providers who are eligible for, and have been awarded, a state video franchise under the DIVCA to provide cable or video services in any portion of the City. The fees and regulations set forth herein do not apply to any local cable franchise agreement between the City of Modesto and cable television provider in effect at the time of adoption of this ordinance.

11-4.02 – Definitions.

For purposes of this chapter, the words set out in this section shall have the following meanings:

- (a) "City" means the City of Modesto.
- (b) "City Manager" means the City Manager of the City of Modesto, or his or her designee.
- (c) "Franchise fee" shall have the meaning given that term by subdivision (g) of Public Utilities Code section 5830 or its successor.
- (d) "Holder" shall have the meaning given that term by subdivision (j) of Public Utilities Code section 5830 or its successor.
- (e) "Material breach" shall have the meaning given that term by subdivision (j) of Public Utilities Code section 5900 or its successor.
- (f) "Network" shall have the meaning given that term by subdivision (l) of Public Utilities Code section 5830 or its successor.

- (g) "PEG channels" means "public, educational, and governmental access channels" as that term is defined in Public Utilities Code section 5870 or its successor section.
- (h) "State franchise" shall have the meaning given that term by subdivision (p) of Public Utilities Code section 5830.

11-4.03 – Franchise Fee for State Franchise Holders.

Each State franchise Holder shall remit to the City a franchise fee in the amount of five percent (5%) of the gross revenues of the State franchise Holder in compliance with California Public Utilities Code sections 5840(q), 5860(a) and (d). If the Holder does not pay the Franchise fee when due, it shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

11-4.04- PEG Channels.

- (a) The City's current franchise with Comcast of California XII, Inc., provides for three (3) public, educational and governmental channels for PEG programming. Local franchise Holders and Holders of a state video franchise under the DIVCA shall each provide at least three (3) PEG channels.

11-4.05 – Fee to Support Public, Educational, and Government Channels.

- (a) Each State franchise Holder shall remit to the City a fee to support PEG channel facilities in the amount of one percent (1%) of the gross revenues, as defined in Public Utilities Code section 5860, of the State franchise Holder. The fee shall be remitted on a quarterly basis and within forty-five (45) days of the close of each calendar quarter. Each remittance shall be accompanied by a summary explaining the basis for the calculation of the fee.
- (b) Each State franchise Holder shall furnish, on an annual basis, a statement within ninety (90) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by an officer of the State franchise Holder, reflecting the total amount of gross revenues, as defined in Public Utilities Code section 5860, for the preceding calendar year, and all payments, deductions and computations used to determine the amount of the remittances required by subsection (a) of this section during the preceding calendar year. The City Manager may establish, and from time to time revise, such additional reporting requirements as are necessary to ensure that the basis for the calculation of the amount of remittances are adequately explained and documented, and each State franchise Holder shall comply with such additional reporting requirements provided that each State franchise Holder shall have first been provided written notice of such requirements at least fifteen (15) days prior to the beginning of the calendar year.
- (c) Notwithstanding subdivision (n) of Public Utilities Code section 5870, upon the expiration of any State franchise, without any action of the City Council, this section shall be deemed to have been automatically reauthorized, unless the State

franchise Holder has given the City Manager and the City Council written notice sixty (60) days prior to the expiration of its State franchise that the section will expire pursuant to the terms of subdivision (n) of Public Utilities Code section 5870.

11-4.06 - Penalties for Material Breach by State Franchise Holders.

- (a) Any State franchise Holder shall comply with the customer service provisions set forth in Public Utilities Code section 5900. The City shall enforce all customer service and protection standards contained in Section 5900 of the Act, including, without limitation, those standards set forth in Section 5900(c).
- (b) The City shall impose the following penalties against a State franchise Holder for any material breach of the customer service provisions set forth in subsection (a) of this section:
 - (1) For the first occurrence of a material breach, a penalty of Five Hundred Dollars (\$500.00) shall be imposed for each day of each material breach, not to exceed One Thousand Five Hundred Dollars (\$1,500.00) for each occurrence of the material breach.
 - (2) For a second occurrence of a material breach of the same nature as the first material breach that occurs within twelve (12) months, a penalty of One Thousand Dollars (\$1,000.00) shall be imposed for each day of each material breach, not to exceed Three Thousand Dollars (\$3,000.00) for each occurrence of the material breach.
 - (3) For a third or further occurrence of a material breach of the same nature as the previous material breaches that occurred within the preceding twelve (12) months, a penalty of Two Thousand Five Hundred Dollars (\$2,500.00) shall be imposed for each day of each material breach, not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for each occurrence of the material breach.
- (c) The City Manager shall have the authority to assess penalties for any material breach by a holder of a State franchise. Prior to assessing penalties for a material breach, the City Manager shall first have provided the State franchise holder with written notice of any alleged material breach of the customer service provisions set forth in California Public Utilities Code section 5900 and shall allow the State franchise Holder at least thirty (30) days from receipt of the notice to remedy the specified material breach. If the material breach has not been remedied upon the expiration of this thirty (30)-day period, the City Manager may commence the assessment of penalties. In the event that a specified material breach has not been remedied following the City Manager's assessment of penalties in the maximum amount permitted per occurrence, the City Manager, after providing a subsequent written notice of the alleged material breach, may treat the continuing occurrence as a subsequent material breach. A Holder of a State franchise may appeal the City may treat the continuing occurrence as a subsequent material breach.
- (d) The City shall submit one half (1/2) of any penalty amounts it receives to the Digital Divide Account established by California Public Utilities Code section 280.5.

- (e) No monetary penalties shall be assessed for a material breach if it is out of the reasonable control of the State franchise Holder.
- (f) The penalty amounts established in subsection (b) of this section are based on the maximums allowed under subdivision (d) of California Public Utilities Code section 5900, and the City desires to set the penalty amounts at the highest amount authorized by law. Accordingly, the penalty amounts set out in subsection (b) of this section shall be automatically increased to the maximum penalties under subdivision (d) of California Public Utilities Code section 5900, as section 5900 is amended from time to time.

11-4.07 – Authority to Examine State Franchise Holder’s Business Records.

The City Manager is hereby authorized to examine, or cause to be examined, the business records of the Holder of the State franchise in accordance with subdivision (i) of Public Utilities Code section 5860.

11-4.08 – Public Rights-of-Way

Any State franchise Holder erecting, installing, constructing, repairing, replacing, reconstructing, and retaining in, on, over, under, upon, across and along the public rights-of-way and public cables, conductors, ducts, conduits, vaults, manholes, amplifiers, property and equipment must comply with all applicable city construction codes and regulations and obtain all necessary permits.

11-4.09 – Notices.

Each State franchise holder or applicant for a State franchise shall file with the City a copy of all applications or notices the State franchise holder or applicant is required to provide to the City under the Public Utilities Code. All notices or other documentation that a State franchise Holder is required to provide to the City under this chapter or the Public Utilities Code shall be provided to the City Manager.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 4. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days following 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 22nd day of March, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Grewal, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

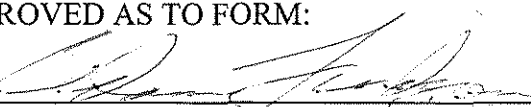
NOES: Councilmembers:

ABSENT: Councilmembers:

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
By 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

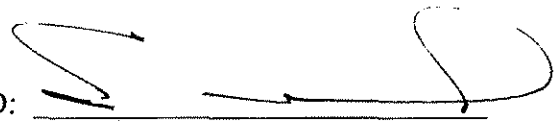
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5th day of April, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: May 5, 2016

ORDINANCE NO. 3646-C.S.

AN ORDINANCE AMENDING SECTION 8-3.102 OF ARTICLE 1 OF CHAPTER 3 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE TO AUTHORIZE THE USE OF DESIGN-BUILD PROCUREMENT FOR THE NORTH VALLEY REGIONAL RECYCLED WATER PROJECT

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

SECTION 1. Amendment to Article 1 of Chapter 3 of Title 8. Section 8-3.102 of the

Modesto Municipal Code is hereby amended to read as follows:

8-3.102 - Contracting Authority.

The City Manager may approve and authorize all contracts and purchase orders involving an expenditure of City funds in the total amount of fifty thousand dollars (\$50,000.00) or less . Except as noted below, no contract involving an expenditure in excess of fifty thousand dollars (\$50,000.00) may be authorized, approved or executed without City Council approval. The fifty thousand dollars (\$50,000.00) limit set forth in the preceding sentences does not apply to the following: Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred fifty thousand dollars (\$250,000.00) or less.

- (b) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation or modification of any facilities funded by a Mello-Roos Community Facilities District and involving an expenditure of District Facility Taxes in the amount of three million dollars (\$3,000,000.00) or less. The District Administrator may approve and authorize all contracts for such projects.
- (c) Contracts for public works projects consisting of the maintenance, repair, replacement, and improvement of existing water lines. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.
- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.

- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than four hundred thousand dollars (\$400,000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
- (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of four million two hundred thousand dollars (\$4,200,000.00) or less.
- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17, 2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million five hundred thousand dollars (\$2,500,000.00) or less.
- (j) Contracts for public works contracts consisting of the purchase, installation and replacement of water meters including an automated water meter reading (AMR) system and infrastructure work in conjunction with the system-wide water metering program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of five million dollars (\$5,000,000.00) or less annually.

- (k) Contracts for paving and landscaping work to be done by City forces at the City's Traffic Operations Facility located at 117 Elm Street in the amount of one hundred thousand dollars (\$100,000.00) or less.
- (l) Contracts for public works projects consisting of the design, purchase and installation of water lines and associated equipment used to blend down contaminants at water well sites in the amount of one million five hundred thousand dollars (\$1,500,000.00) per project.
- (m) Contracts for public works projects consisting of additions and/or expansion of facilities and structures at John Thurman Field not to exceed two million four hundred thousand dollars (\$2,400,000.00) per project.
- (n) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the McHenry Avenue Water System Upgrade Project in the amount of four hundred fifty thousand dollars (\$450,000.00) or less.
- (o) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the 9th Street Water Main Replacement Project in the amount of five hundred eighty-five thousand dollars (\$585,000.00) or less.
- (p) Contracts for Public Works projects consisting of bus stop improvements at various locations on the Modesto Area Express route system. The City Manager may approve all contracts for such projects in the amount of six hundred seventy-five thousand dollars (\$675,000.00) or less annually.
- (q) Contracts for work done by City forces consisting of roadway and intersection improvements on Oakdale Road between Claratina Avenue and Mable Avenue in the amount of one hundred forty thousand dollars (\$140,000.00) or less.
- (r) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the Del Rio Water Main Replacement Project in the amount of three hundred ninety thousand dollars (\$390,000.00) or less.
- (s) Contracts for public works projects consisting of energy efficient improvements to City facilities that are funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Energy Efficiency and Conservation Block Grant (EECBG) Program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of six hundred thousand dollars (\$600,000.00) or less.
- (t) Contracts for public works to purchase and construct a Police Officer Memorial and associated appurtenances at the Modesto Police Headquarters in the amount of one hundred twenty-five thousand dollars (\$125,000.00) or less.
- (u) Contracts for public works projects consisting of the design, purchase and installation of water mains and associated appurtenances used to upgrade the water system in the Airport Neighborhood service area in the amount of one million four hundred five thousand one hundred sixty-six dollars (\$1,405,166.00) or less.

- (v) Contracts for public works projects consisting of the design, purchase and installation of street lights and associated appurtenances used to upgrade the street lighting throughout the City in the amount of four million dollars (\$4,000,000.00) or less.
- (w) Contracts for work done by City forces in the design, purchase and installation of Tenth Street Improvements between I and J Streets consisting of irrigation, storm drain, stamped concrete, street trees, planters, and electrical improvements and associated appurtenances. Improvements shall be consistent in concept with Resolution 2014-172 and the Staff Report presented to the City Council at its regular Council Meeting of June 9, 2015.
- (x) Contracts for work done by City forces, consisting of the design, purchase and installation of flashing beacons and associated appurtenances used to construct flashing beacons throughout the City in the amount of \$770,000 or less.
- (y) Contracts for the construction, improvement, installation, or repair of water facilities associated with the North Valley Regional Recycled Water Program, involving an expenditure of City funds in excess of one million dollars (\$1,000,000). Such projects may be procured under the design-build methodology authorized under Public Contract Code section 22160, et seq., as may be amended from time to time.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), and (y) above of this section and authorized by the City Manager, District Administrator, or other authorized person, is not subject to the public bidding requirements of articles 2 and 4 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(k) 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 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of April, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR TED BRANDVOLD

ATTEST: 
STEPHANIE LOPEZ, City Clerk

SECTION 4. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days following 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 April, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____


TED BRANDVOLD, Mayor

ATTEST: _____


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By _____


ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3647-C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM R-1, LOW-DENSITY RESIDENTIAL ZONE, TO PLANNED DEVELOPMENT ZONE, P-D(600), PROPERTY LOCATED AT 522 E. GRANGER AVENUE (STANCO)

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 R-1, Low-Density Residential Zone, to Planned Development Zone, P-D(600):

R-1 to P-D(600)

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

PARCEL A AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MARCH 2, 1978 IN BOOK 26 OF PARCEL MAPS AT PAGE 89, STANISLAUS COUNTY RECORDS.

CONTAINING 0.41 acres more or less

Also including the southern 30.00 feet of E. Granger Avenue immediately adjacent to the above-described property.

APN: 031-002-046-000

SECTION 2. USES. The following uses shall be permitted in said P-D(600) 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 10-7.108(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 10-7.108(a) or (b) of the Modesto Municipal Code:

1. Four medium-density, one-bedroom residential units.
2. Onsite community resource center and required parking.
3. Residential uses as allowed in the R-2 Zone.

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 26th day of April, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

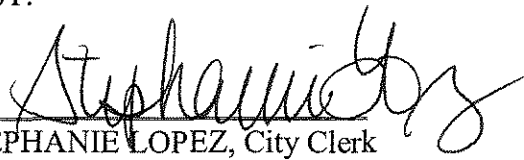
AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour

NOES: Councilmembers: Grewal, Zoslocki, Mayor Brandvold

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

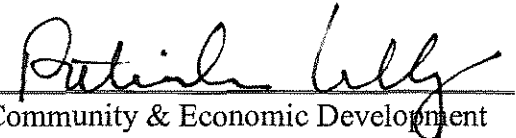
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3647-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2016, Councilmember Zoslocki moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

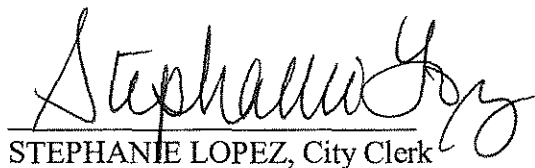
ABSENT: Councilmembers: None

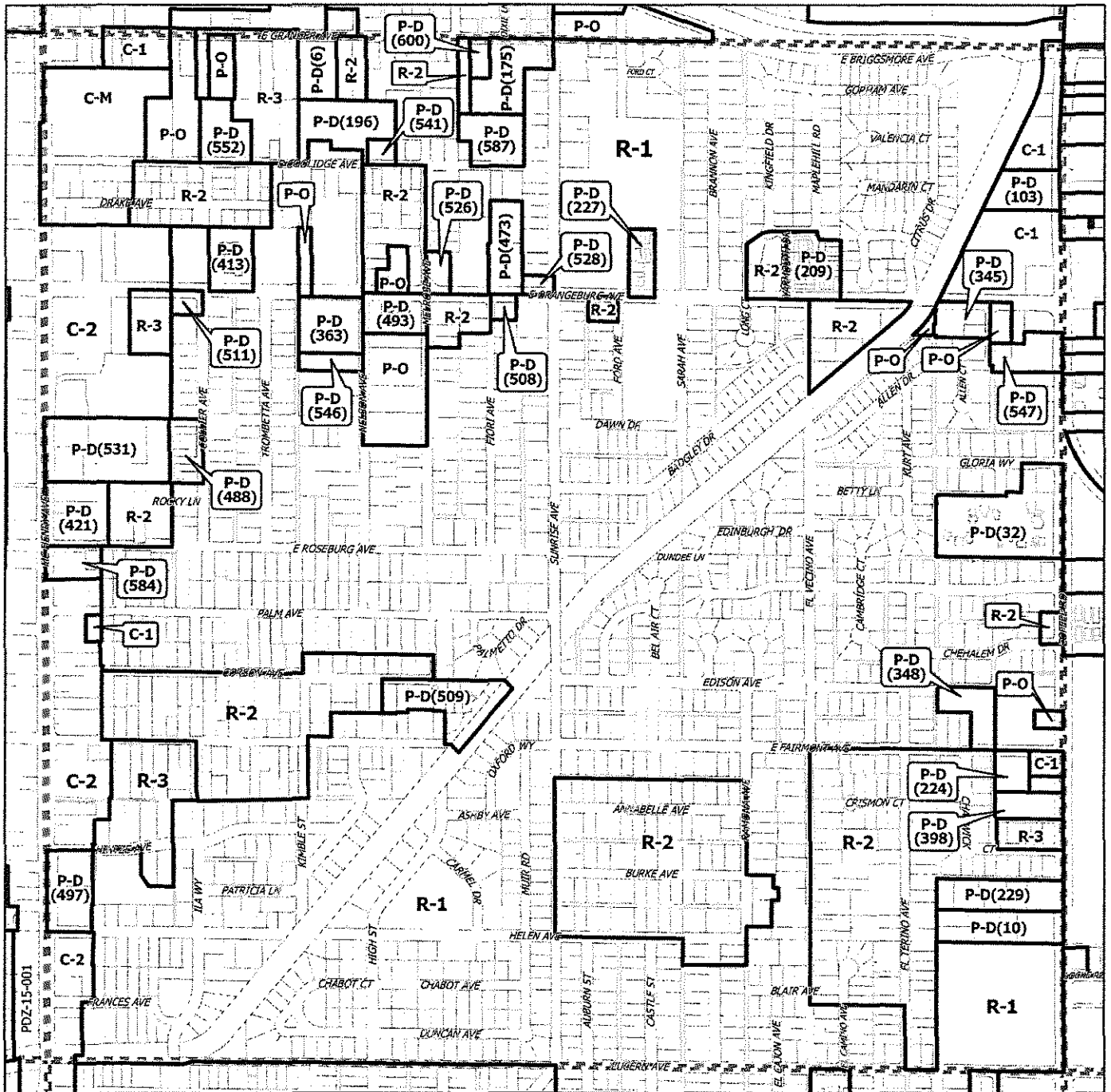
APPROVED: _____



MAYOR TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk



ZONING MAP OF THE CITY OF MODESTO

21-3-9



1 inch = 700 feet

Ord. 3647-C.S.

ORDINANCE NO. 3648-C.S.

ORDINANCE REPEALING ORDINANCE NO. 3524-C.S. DISSOLVING CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2009-1 (KIERNAN BUSINESS PARK EAST) AND ORDERING THE RECORDATION OF AN ADDENDUM TO THE NOTICE OF SPECIAL TAX LIEN THEREON

WHEREAS, on January 26, 2010, the City Council of the City of Modesto took the following actions relating to City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East): adopted Resolution No. 2010-042 establishing City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East), authorizing the levy of special taxes therein, and establishing an annual appropriations limit; adopted Resolution No. 2010-043 calling a special election for the City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East); adopted Resolution No. 2010-044 declaring the results of the January 26, 2010 Special Election and approving certain related actions pertaining to City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East); adopted Resolution No. 2010-045 determining it necessary to incur bonded indebtedness within the City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East); and introduced Ordinance No. 3524-C.S. authorizing the levy of special taxes within City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East), and

WHEREAS, at its meeting held on February 2, 2010, the Council adopted Ordinance No. 3524-C.S. thereby authorizing the levy of a special tax (the "Special Tax") upon certain parcels of land within the City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East), and

WHEREAS, at its meeting held on March 8, 2016, the Council approved the formation of City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2), and

WHEREAS, City of Modesto Community Facilities District No. 2016-1 will ultimately encompass the same parcels that City of Modesto Community Facilities District No. 2009-1 covers, and

WHEREAS, the City has determined that it is appropriate to dissolve City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East), and

WHEREAS, the City has undertaken the necessary process to dissolve Community Facilities District No. 2009-1 (Kiernan Business Park East) in accordance with state law.

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

SECTION 1. Findings. The City Council hereby finds and determines Community Facilities District No. 2009-1 (Kiernan Business Park East):

- a) has not issued any bonds;
- b) has not otherwise incurred any debt or other form of payment obligation;
- c) has no facilities requiring public services;
- d) is not obligated to pay any outstanding debt; and
- e) is therefore not authorized to levy any special tax.

SECTION. 2. Dissolution. The City Council hereby dissolves Community Facilities District No. 2009-1 (Kiernan Business Park East) pursuant to by Section 53338.5 of the California Government Code. The City Council hereby orders the City Clerk to file or cause to be filed the filing of an addendum to the Notice of Special Tax Lien created by Instrument No 2010-0008604-00, recorded on January 29, 2010, in the office of the County Recorder of Stanislaus County dissolving Community Facilities District No. 2009-1 (Kiernan Business Park East) which shall state that CFD 2009-1 and all associated liens have been dissolved.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 4. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days following its final passage and adoption. This Ordinance shall be effective after thirty (30) days from its final passage and adoption. The City Clerk or designee shall record an addendum to the Notice of Special Tax Lien created by Instrument No 2010-0008604-00, recorded on January 29, 2010, in the office of the County Recorder of Stanislaus County dissolving Community Facilities District No. 2009-1 (Kiernan Business Park East) and the levy of special tax pursuant to Section 53338.5 of the California Government Code and Section 3114.5 of the California Streets and Highways Code.

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 June, 2016, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Ridenour, Zoslocki

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal, Madrigal, Mayor Brandvold

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:

By:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

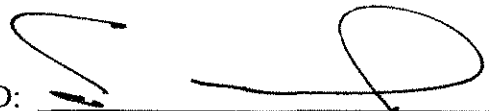
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of June, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Kenoyer, Madrigal, Ridenour, Zoslocki

NOES: Councilmembers: None

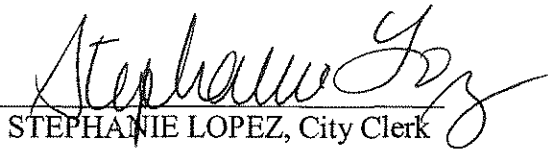
ABSENT: Councilmembers: Ah You, Grewal, Mayor Brandvold

APPROVED:



MAYOR TED BRANDVOLD

ATTEST:



STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3649-C.S.

ORDINANCE AMENDING TITLE 5, SANITATION AND HEALTH, CHAPTER 6, ARTICLES 1, 2, 5, 6, AND 7 OF THE MODESTO MUNICIPAL CODE TO UPDATE DEFINITIONS TO COMPLY WITH THE CODE OF FEDERAL REGULATIONS GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

WHEREAS, the Modesto Municipal Code currently regulates the Wastewater Collection and Disposal in the City, and

WHEREAS, the City wishes to update its regulations on the Collection and Disposal of Wastewater to offer clarity and ensure that the regulations are consistent with federal regulations, and

WHEREAS, the proposed modifications will ensure that the regulations contained in the Municipal Code accurately reflect the current procedures used by the City.

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

SECTION 1. AMENDMENT OF CODE. Section 5-6.103, “Definitions,” of Chapter 6, “Wastewater Collection and Disposal,” Title 5, “Sanitation and Health,” is hereby amended to read as follows:

Article 1. - Title, Purpose, and General Provisions

“5-6.103 - Definitions.

Unless the context specifically indicates otherwise, the following terms and phrases shall be defined herein. Words and phrases used in this chapter and not otherwise defined shall be interpreted, as defined in the Code of Federal Regulation, Standard Methods for the Analysis of Wastewater, or as established by State regulatory agencies.

(a) The following terms shall have these meaning(s) in this chapter:

Act. The Federal Water Pollution Control Act, also known as the Clean Water Act;

Administrative order. An enforcement document which directs industrial users to implement corrective or remedial measures;

Administrator. The person appointed by the Director to manage the affairs of the City of Modesto, POTW Pretreatment Program;

Aliquot. A portion of a sample. Often an equally divided portion of a sample;

Apartment. A building or portion thereof containing three (3) or more dwelling units;

Approval authority. The State of California Water Resources Control Board, except for certain EPA oversight functions;

Authorized representative of industrial user. May be: (1) a principal executive officer of at least the level of vice-president, if the industrial user is a corporation; (2) a general partner or proprietor if the industrial user is a partnership or proprietorship, respectively. A duly authorized representative is responsible for the overall operation of the facilities from which the direct or indirect discharge originates;

Baseline monitoring report (BMR). Baseline monitoring report (BMR) is required report for all industrial users subject to a categorical pretreatment standard. A BMR provides information that documents an industrial user's compliance status with all applicable pretreatment standards. If an industrial user is not in compliance with the BMR, a compliance schedule will be submitted with the BMR describing actions to achieve compliance at least 90 days prior to commencement of discharge. The BMR at a minimum shall contain the following information:

- a) Method of pretreatment to meet discharge and/or new source limit
- b) Identification information name and address of operator and owner
- c) List all Environmental permits held by the facility
- d) Brief description of the nature, average rate of production, SIC of the operation, schematic process diagram showing points to discharge to the City of Modesto
- e) Average and maximum daily flow in gallons per day from each:
- f) Regulated process stream
- g) Other streams as necessary to allow us of the combined wastestream formula
- h) Average and maximum concentration of pollutants from each regulated process based on the results from a one representative sample taken immediately downstream from the pretreatment facility or regulated process if no pretreatment system exists. These results must be submitted to the City and

shall be performed in accordance samples and analysis as prescribed in with 40 CFR part 136

- i) In lieu of actual monitoring data the City allow historical data provided the data is sufficient to determine the required level of pretreatment.
- j) All data shall include a certification statement that the data submitted is representative of normal work cycles and expected pollutants
- k) Certification statement reviewed by the authorized representative that the user are meeting on a consistent basis based pretreatment requirements based on current Best Management Practice or if additional operation and maintenance (O&M) and or pretreatment is required.
- l) If additional pretreatment and/or O&M is required the user shall submit a compliance schedule work plan to achieve compliance.

Batch process. A treatment process in which a tank or vessel is filled with wastewater (or solution), the wastewater (or solution) is treated to meet discharge standards and is then released into the sanitary system. A batch process is intermittent not continuous;

Best available technology (BAT). A level of technology that is based on the very best (state-of-the-art) control and treatment measures that have been developed or are capable of being developed for a particular industrial category;

Best practical technology (BPT). A level of technology represented by the average of the best existing wastewater treatment performance levels within an industrial category;

Biochemical oxygen demand (BOD). A test that measures the organic strength of wastewater. The test represents the quantity of oxygen required by sewage for biochemical oxidation in five (5) days at twenty (20) degrees Celsius in ppm;

Biodegradable. Organic matter that can be broken down by bacteria to more stable forms which will not create a nuisance or give off offensive odors;

Blowdown. The removal of accumulated solids in boilers to prevent plugging of boiler tubes and steam lines. In cooling towers, blowdown is used to reduce the amount of dissolved solids in the recirculated cooling water;

Building sewers. A privately owned pipeline conveying wastewater from the premises of a user to a sewer main;

Bypass. The intentional diversion of wastestreams from any portion of an industrial user's treatment facility;

Categorical industrial user. Are all industrial users subject to National Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N;

Categorical industry. An industry which possesses industrial processes, defined in the Code of Federal Regulations as Categorical Processes;

Categorical limits. Industrial wastewater discharge pollutant effluent limits developed by the EPA that are applied to the effluent from any industry, in any category, anywhere in the United States, that discharge to a publicly owned treatment works (POTW). These are pollutant effluent limits based on the technology available to treat the wastestreams from the processes of the specific industrial category and normally are measured at the point of discharge from the regulated process. The pollutant limits are listed in the Code of Federal Regulations;

Categorical standards. Industrial waste discharge standards developed by EPA that are applied to the effluent from any industry, in any category, anywhere in the United States, that discharges to a POTW. These are standards based on the technology available to treat the wastestreams from the processes of the specific industrial category and normally are measured at the point of discharge from the regulated process. The standards are listed in the Code of Federal Regulations;

Cease and desist order. An order by the Director requiring immediate termination of an activity or situation which threatens to create or does create a significant safety hazard noncompliance with the provisions of this chapter, or noncompliance with State and/or Federal law. The order shall be enforceable in court.

Chemical oxygen demand (COD). A test that measures the inorganic and organic strength of wastewater. The test measures the amount of oxygen consumed from a chemical oxidant, in milligrams per liter (mg/l), under conditions outlined under the latest edition of Standard Methods for the Analysis of Wastewater;

City. The City of Modesto in the State of California;

Collection system. The combined pipes, conduits, manholes, ditches, rockwells, and other structures, usually underground, whose purpose is to convey wastewater or storm water;

Commercial user. Any user whose premises are used to provide a product or service for retail or wholesale. Commercial shall include, but shall not be limited to, the following: motel; hotel; boarding and rooming house; health care facility;

Compatible pollutants. Those pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and ammonia that are normally removed by the existing POTW treatment processes;

Compliance. The act of meeting specified conditions or requirements;

Compliance directive. An enforcement document which directs an industrial user to implement corrective or remedial measures;

Compliance schedule. An enforcement document which directs a user to create or imposes upon a user, a time schedule for meeting any provision of the sewer ordinance;

Consistent removal. The act of removing pollutants from wastewater in a manner which prevents the level of pollutants from exceeding any treatment standard at any time;

Control authority. The division of the City of Modesto, Public Works Department, which administers the POTW Pretreatment Program;

Cooling wastewater. The water discharged from any use to which the only pollutant added is heat or uses such as air conditioning, cooling or refrigeration;

Correction notice. A notice to a user or users orally or in writing, to correct its noncompliance with the sewer ordinance;

Corrosion. The gradual deterioration or destruction of a substance or a material by chemical action. Corrosive materials deteriorate the collection system;

Deleterious. Refers to something that can be or is hurtful, harmful, or injurious to health or the environment;

Direct discharge. The discharge of treated or untreated wastewater directly to the waters of the State of California. Direct discharges are regulated under the NPDES program;

Director. The Public Works Director of the City or such other persons as may be designated by the Public Works Director to perform the services or make the determinations permitted or required in this chapter to be made by the Public Works Director of the City;

Discharge permit. Formal authorization by the Modesto Control Authority, stipulating the conditions under which wastewater effluent may be released into the sewage system;

Discharger. Any person that discharges or causes a direct or indirect discharge to a public sewer;

Dissolved solids. Solids that are completely dissolved in water and are not removable by laboratory filtration;

Domestic wastewater/sanitary sewage. The liquid and solid waterborne wastes derived from the ordinary living processes of humans of such character as to permit satisfactory disposal, without special pretreatment, into the public sewer or into a private wastewater disposal system;

Dry industry. Any user who does not discharge nondomestic wastewater and is a member of a category of users which the Director has determined to have a potential for impact upon the POTW;

Duplex. A building containing two (2) dwelling units;

Dwelling group. Two (2) or more buildings on any one (1) lot, containing three (3) or more dwelling units;

Dwelling unit. A suite of one (1) or more rooms which is occupied by or intended to be occupied by one (1) family;

Enforcement. A series of procedures and/or actions used to ensure compliance with legislation or associated rules, ordinances, or limitations;

Environmental Protection Agency (EPA). The Federal agency charged by law with carrying out and obtaining compliance with the Clean Water Act of 1977 and other Federal environmental laws and promulgating, interpreting and enforcing regulations implementing such statutes;

Flammable liquid. A liquid which by itself, or any component of it present in greater than one (1) percent concentration, has a flashpoint below one hundred (100) degrees Fahrenheit (thirty-eight (38) degrees Centigrade);

Flashpoint. The minimum temperature at which a liquid gives off vapor in sufficient concentration to ignite when exposed to any source of ignition;

Grab sample. A single sample of water collected at a particular time and place which represents the composition of the water only at that time and place;

Grease. Fats, oils, greases, or other ether-soluble matter, which shall include each of the following two (2) types:

- (1) Dispersed grease. Grease which is not floatable, and
- (2) Floatable grease. Grease which floats on the surface of quiescent sewage water or other liquid or which floats upon dilution of the liquid with water;

Hazardous material management plan. A document prepared by an industry which contains copies of material safety data sheets (MSDS) as well as additional information regarding the storage, handling and disposal of all chemicals used on site by the industry;

Hazardous waste. Any waste that is potentially damaging to environmental health and/or the collection system because of toxicity, ignitability, corrosivity, chemical reactivity or other reasons;

Holding tank waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks;

House sewer line. The line connecting a user's property to the sewage system;

Indirect discharge. The discharge or the introduction of nondomestic pollutants from any regulated sources to the POTW, which may include certain holding tank wastes. These discharges are subject to EPA pretreatment regulations;

Industrial user. Any person who discharges or causes a discharge of industrial wastewater directly or indirectly to the City sewage system which requires a permit under the provisions of this chapter. This specifically includes any categorical users connected to the City sewage system whether or not they discharge process wastewater;

Industrial wastewater/industrial waste. All water-carried wastes and wastewater of the community, excluding domestic wastewater, and including all wastewater from any commercial or industrial production, manufacturing, processing, agricultural or other operation. These may also include wastes of human origin similar to domestic wastewater;

Industrial wastewater discharge. Liquid and/or solids contained within a liquid, other than sanitary sewage, and discharged into the sewage system by an industrial user;

Inspector. A person authorized by the Director to inspect any development discharging or anticipating discharge to the wastewater collection system and/or the POTW;

Interceptor. A device or trap to reduce the amount of grease, sand, or oil entering the sewage system;

Interference. A discharge that alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, including either the use or disposal of sludge, and
- (2) Is a cause of a violation of any requirement of the City NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any applicable regulation;

Local limits. Pollutant discharge limits set by the local POTW based on the treatment plant's efficiency in treating specific pollutants;

Lot. A parcel of land consisting of one (1) or more contiguous lots of record in one (1) ownership;

Major industry. Any industrial user whose effluent discharge exceeds four million (4,000,000) gallons per month (MG/mo), or whose biochemical oxygen demand (BOD) is greater than or equal to twenty thousand (20,000) pounds per month, or total suspended solids (TSS) is greater than or equal to ten thousand (10,000) pounds per month;

Mass emission rate. The weight of material discharged to the sewage system during a given time interval. Unless otherwise specified, the mass emission rate shall mean pounds per day of a particular constituent or combination of constituents;

Material safety data sheets (MSDS). A document normally developed by a chemical manufacturer or formulator, which provides pertinent information about a hazardous substance or mixture. The MSDS is required to be available to employees and inspectors when a hazardous substance is used or found in the workplace;

Milestone. A time interval given in a compliance schedule specifying the date which an assigned task is to be completed leading to the completion of the objective(s) in the compliance schedule;

Minor industry. Any industry with an average effluent discharge which exceeds twenty-five thousand (25,000) gallons per day (GPD), or has a reasonable potential, in the opinion of the City, to adversely affect the POTW;

Mobile home park. Any area or tract of land where two (2) or more spaces are rented or leased or held for rent or lease to accommodate mobile homes;

Mobile home space. Each space in a mobile home park designed to be used for parking a mobile home on a temporary, semi-permanent or permanent basis;

Mobile home subdivision. Any area or tract of land improved to subdivision standards with mobile home lots;

National Pollutant Discharge Elimination System permit (NPDES permit). A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342), governing direct discharges to the waters of the State;

National pretreatment standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1347) which applies to a specific category of industrial users. This term includes categorical limits established pursuant to Title 40 CFR Section 403.5, or under the authority of this chapter;

New source. An industrial user must meet the performance standards of a new source for any new building, structure, facility or installation from which there is or

may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

- a) The building, structure, facility or installation is constructed at a site at which no other source is located, or the building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- b) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
 - i. Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation but otherwise alters, replaces, or adds to existing process or production equipment.
 - ii. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - ii.i Begun, or caused to begin as part of a continuous onsite construction program:
 - ii.ii Any placement, assembly, or installation of facilities or equipment
 - ii.iii Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment
 - ii.iv Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Nonbiodegradable. Any substances that cannot readily be broken down by bacteria to simpler forms;

Noncompatible pollutants. Those pollutants that are not removed by the POTW treatment system. These pollutants may be toxic waste and may cause pass through or interference with the treatment system;

Noncontact cooling water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat;

Nonintegrated facility. Industrial wastewater sources at a single facility that generate wastewater from different categorical pretreatment processes, but do not combine the wastestreams prior to pretreatment or discharge to the sanitary sewer;

Nonsignificant industry. An industry that produces and discharges less than twenty-five thousand (25,000) gallons of wastewater per day and is not classified as a significant or categorical industry;

Notice of violation. A notice issued by the Director or Inspector to the industrial user, hand delivered or mailed, informing the industrial user that a violation has occurred;

Nuisance. Anything which is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property or which affects at the same time an entire community or neighborhood or sewer collection system or POTW or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal;

Order to show cause hearing. A meeting with representatives of a user and the Director or his/her designee to discuss reasons for noncompliance and corrective actions. At this time, the user may be issued an administrative order and/or fine(s);

Pass through. A discharge from an industrial source that passes through the POTW to the waters of the State in concentrations which, alone or in conjunction with other discharges, cause an NPDES permit violation;

Permit. The authorization by the City to the POTW facilities to discharge under specified rules and conditions;

Permittee. A person who has received a permit to discharge wastewater pollutants into the City sewage system subject to the requirements and conditions established by the City;

Person. An individual, partnership, copartnership, firm, company, corporation, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context;

pH. Mathematically, pH is the logarithm (base 10) of the reciprocal of the hydrogen ion activity in a substance. The pH range is from zero (0) to fourteen (14) where zero (0) is the most acidic and fourteen (14) the most basic, and seven (7) is neutral;

Pollutant. Any substance which causes an impairment (reduction) of water quality to a degree that may have an adverse effect on any beneficial use of the water.

Pollutants include: any dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into waters and onto the ground, or deposited where subsurface waters may become contaminated by leaching;

Pollution. The man-made or man-induced impairment (reduction) of chemical, physical, biological, and radiological integrity of water;

Pollution prevention permit. The authorization by the control authority to wet industries or dry industries to discharge under specified rules and conditions;

Premises. Any lot, piece or parcel of land, and building or other structure or any part of any building or structure used or useful for human habitation or gathering or carrying on any business, industry or occupation;

Pretreatment or treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutant to a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or process changes by other means except as prohibited by 40 CFR, Section 403.6(d);

Pretreatment facility. Any works or device for treatment, control, or flow limitation of sewage or industrial waste, prior to discharge into a public sewer;

Pretreatment requirements. Requirements for users, established by the City, State, or other regulatory agency for the insurance of compliance to pretreatment standards. Requirements may include, but are not limited to, the installation and maintenance of treatment equipment, metering facilities, and/or monitoring facilities;

Pretreatment standards. The maximum levels of pollutants allowed to be discharged under local, State, or Federal guidelines when implementing the best available technology to treat the process wastewater of the users;

Process wastewater. Any wastewater contaminated by human activities including, but not limited to, that originating from manufacturing, agriculture, processing, rinsing, washing or producing;

Public owned treatment works (POTW). A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to the facility

providing treatment. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewater from persons outside the City, who are, by contract or agreement users of the City treatment plant;

Receiving waters. Waters which are defined under 40 CFR 122 (NPDES System) as "Waters of the United States;"

Residential user. Any user whose premises contain a dwelling unit(s) intended for permanent occupancy. Residential shall include, but shall not be limited to, the following: single-family residential; multi-family residential; condominiums/townhouses; mobile homes; senior residential housing;

Restaurant. A place where food is processed and served to the public;

Sanitary sewer. A pipe or conduit (sewer) intended to carry domestic wastewater from homes, businesses, and industries to the treatment works. Storm water runoff or unpolluted water should be collected and transported in a separate system of pipes or conduits (storm sewer) to natural watercourses;

Sewage. Industrial waste or sanitary sewage, or both;

Sewage system. The facility designated and used for the collection, treatment, and disposal of industrial wastes and sanitary sewage;

Sewer bond redemption charge. A charge established to compensate the City for having provided collection and treatment facilities before being able to collect revenue from the benefited properties;

Sewer District. The Modesto Municipal Sewer District No. 1 established by the City Council by Resolution No. 66-543 effective August 16, 1966, encompassing the City of Modesto and portions of contiguous unincorporated areas, the legal description and boundaries of which have been recorded in the office of the Recorder of the County of Stanislaus, including areas heretofore or hereafter annexed thereto;

Sewer lateral/sewer main. A pipeline which collects sewage from one (1) or more individual users and transports it to subtrunk and trunk sewers;

Sewer main service area. An area that is one hundred sixty (160) acres or less which is served by the extension of sewer mains. The sewer mains are connected to either a subtrunk sewer or a trunk sewer;

Sewer service. The services and facilities for the collection, treatment, and disposal of industrial wastes and sanitary sewage;

Sewer service charge. A charge established to pay the cost of operation, maintenance, and debt service of the sewage system;

Shall is mandatory; may is permissive;

Show cause order. An order for an industrial user to appear before the Director or the Director's designee to explain any noncompliance and why specified enforcement actions should not be taken;

Significant industrial user (SIU) includes:

- (1) All categorical users, and
- (2) Any noncategorical users that:
 - (i) Discharge twenty-five thousand (25,000) gallons or more per day of process wastewater (excluding domestic wastewater),
 - (ii) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic (BOD, SS) capacity of the POTW, or
 - (iii) Has a reasonable potential, in the opinion of the City, to adversely affect the POTW;

Significant noncompliance (SNC) includes: Significant Noncompliance (SNC) includes SIUs that have a reasonable potential, in the opinion of the City, to adversely affect the POTW can be listed as Significant noncompliance (SNC) in addition SIUs can be listed as SNC if any one of the follow condition occurred:

1. Chronic violations where sixty-six (66) percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six (6) month period
2. Violations where thirty-three (33) percent or more of the measurements exceed the same daily maximum limit or the same average limit by more than the technical review criteria (TRC) in a six (6) month period
3. Failure to provide reports for compliance schedules, self-monitoring data, or categorical standards (BMR, ninety (90) day compliance reports, and periodic reports) within forty five (45) days from the due date.
4. Any discharge that has caused imminent endangerment of human health/welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge
5. Any other violation(s) of an effluent limit (average or daily maximum) that the City believes has caused, alone or in combination with other discharges, interference with POTW (e.g. slug loads) or pass through, or endangerment of health of the POTW personnel or the public
6. Violations of compliance schedule milestones, contained in a local control mechanism or enforcement order, for starting construction, completing construction, and attaining final compliance by delay of ninety (90) days or more after any compliance schedule date

7. Any other violations or violations that the Director considers to be significant violation. A violation which remains uncorrected for forty-five (45) days after notification of noncompliance; is part of a pattern of noncompliance over a twelve (12) month period; involves a failure to accurately report noncompliance; or resulted in the POTW exercising its emergency authority under Section 403.8(f)(1)(vi)(B);

Significant violation. A violation which remains uncorrected for forty-five (45) days after notification of noncompliance; is part of a pattern of noncompliance over a twelve (12) month period; involves a failure to accurately report noncompliance; or resulted in the POTW exercising its emergency authority under Section 403.8(f)(1)(vi)(B);

Slug load/slug discharge. Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flow rate during normal operation;

Spill containment. A government agency approved protection system installed by the permittee to prohibit the discharge of noncompatible pollutants to the sewer;

Standard industrial classification. A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987, as amended and supplemented;

Standard methods. Procedures described in the current edition of Standard Methods for the Examination of Water and Wastewater, as published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation;

State. The State of California;

Storm water. Water resulting from any form of natural precipitation;

Subtrunk sewer. A pipeline designed to transport sewage from the subtrunk sewer service area to the trunk sewer;

Subtrunk sewer extension charge. A charge established to equalize the costs of connecting the in-tract facilities and/or oversize facilities of a particular subdivision or trunk sewers so that developments close to the chosen trunk sewer alignments do not receive unfair advantage over those located further away;

Subtrunk sewer service area. An area that is one hundred sixty (160) acres or larger that is not adjacent to a trunk sewer that is served by a subtrunk sewer;

Technical review criteria (TRC). An EPA term that defines the magnitude of a limits violation. The TRC is calculated by multiplying the daily average maximum limit by the applicable TRC value (TRC=1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH.);

Total suspended solids (TSS). Any insoluble material contained as a component of wastewater and capable of separation from the liquid portion of the wastewater by the appropriate filtering procedures and expressed in terms of milligrams per liter;

Total toxic organics (TTO). The sum of the concentrations of the toxic organic compounds, listed in the Code of Federal Regulations, present in the industrial users process wastewater discharge;

Toxic pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the EPA under the provisions of the Act Section 307(a) or other Acts;

Trunk sewer. A pipeline which transports sewage from sewer main service areas and subtrunk sewer service areas to the water quality control plant;

User. Any person responsible for payment of sewer service charges for premises or any person who discharges, causes or allows the discharge of wastewater directly or indirectly to the sewage system. This includes residential, commercial, and industrial users as defined herein. This term specifically includes any categorical users connected to the City sewerage system whether or not they discharge process wastewater;

Waste manifest. The receipt which is retained by the generator of hazardous wastes as required by the State and/or the United States Government pursuant to RCRA, or the California Hazardous Materials Act, or that receipt which is retained by the generator for recyclable wastes or liquid nonhazardous wastes as required by the POTW;

Waste hauler. Any person carrying on or engaging in vehicular transport of wastewater as part of, or incidental to, any business for the purpose of discharging said wastewater into the POTWs system;

Wastewater. The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter the City's facilities;

Wastewater discharge permit. A control mechanism issued to an industrial user, or any person discharging to the sewage system that the Director determines needs a permit, to regulate its discharge of toxic, organic, or hydraulic loading to the wastewater collection, conveyance, and treatment system;

Water quality control plant. The plant owned by the City and designed for the treatment and disposal of sewage, including a remote oxidation ponding site;

Water quality requirements. Requirements for City's treatment plant effluent, or for receiving waters, established by law, or by State or Federal regulatory agencies, for the protection of receiving water quality;

Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof;

Wet industry. Any user which is not a significant industrial user (SIU) and has a nondomestic wastewater discharge.”

SECTION 2. AMENDMENT OF CODE. Section 5-6.201, "Prohibited Discharges," of Chapter 6, "Wastewater Collection and Disposal," Title 5, "Sanitation and Health," is hereby amended to read as follows:

Article 2 - Regulations

"5-6.201 - Prohibited Discharges.

(a) No person shall discharge a quantity or quality of wastewater directly or indirectly to sewer facilities owned by or tributary to the City's sewage system which causes, or is capable of causing, either alone or by interaction with other substances:

- (1) A fire or explosion;
- (2) Obstruction to the flow in the sewage system resulting in interference or damage to the sewerage facilities;
- (3) Danger to life or safety of any person;
- (4) Impairment of the effective maintenance or operation of the sewerage system;
- (5) The release of toxic or malodorous gas-producing substances; including any material identified as hazardous according to 40 CFR Part 261 except as may be specifically authorized by the Director;
- (6) Interference with the wastewater treatment process;
- (7) The City's effluent or any other product of the treatment process, residues, sludges, or scums to be unsuitable for reclamation, reuse, or disposal;
- (8) Discoloration, pass through, or any other condition which affects the quality of the City's treatment works effluent in such a manner that receiving water quality requirements established by regulatory agencies cannot be met;
- (9) Conditions which violate any statute, rule, regulation, or ordinance of any public agency or regulatory agency having jurisdiction over the discharge of wastewater through the sanitary sewage system;
- (10) Contamination of the collection system, soil, or groundwater by osmosis, chemical action, leakage, or any other means of conveyance from the sewage system.

(b) No person shall discharge wastewater or any substance delivered by vehicular transport, rail car, or dedicated pipeline directly or indirectly to the City's sewerage facilities that is defined as a hazardous waste by the control authority.

In the event that user discharges waste to sewer which if otherwise disposed of would be a hazardous waste under 40 CFR part 261 the user at a minimum shall immediately notify the City and California Office of Emergency Services (OES), County Environmental Resources followed with a written report within 5-days. The Report shall include the name of the waste set forth in 40 CFR part 261 along with the EPA hazardous Waste Number, type, and quantity of the discharge.

- (c) No person shall transport waste from one location or facility to another for the purpose of treating or discharging it directly or indirectly to a publicly owned sewer without written permission from the City.
- (d) No user shall increase the contribution of flow, pollutants, or change the nature of pollutants where such contribution or change does not meet applicable standards and requirements or where such contribution or change would cause the City to violate its NPDES permit.”

SECTION 3. AMENDMENT OF CODE. Section 5-6.401, “Permits,” of Chapter 6,

“Wastewater Collection and Disposal,” Title 5, “Sanitation and Health,” is hereby amended to read as follows:

Article 4 – Discharge Permits

“5-6.401 - Permits.

- (a) To provide the maximum public benefit from the use of City facilities, written authorization to use said facilities is required. This written authorization shall be in the form of a discharge permit. All users are required by the Director to obtain a Wastewater Discharge Permit that shall be completed, filed, and approved by City at least ninety (90) days prior to any planned discharge to sewer. No vested right shall be given by issuance of any permit(s) provided for in this chapter.
- (b) The discharge permit is dependent upon the type of discharger, volume, and characteristics of the discharge. The types of discharge permits are:
 - (1) Categorical Permit;
 - (2) Industrial User Permit:
 - (i) Major Industry,
 - (ii) Minor Industry;
 - (3) Pollution Prevention Permit:
 - (i) Wet Industry,
 - (ii) Dry Industry;
 - (4) Groundwater Discharge Permit;
 - (5) Wastehauler Discharge Permit.
- (c) In support of the application, the user shall submit, in units and terms appropriate for evaluation, all information as may be deemed by the Director as necessary to evaluate the Wastewater Discharge Permit Application. This information includes, but is not limited to: identifying information; environmental control permits held; Standard

Industrial Classification codes for industry as a whole or any categorical process; flow rates; wastewater constituents and characteristics; time and duration of discharge; peak discharge amounts; locations of all discharge points; pretreatment facilities; sampling and monitoring equipment and points; description of activities; facilities, and plant processes including raw materials, processes and types of materials which are or could be produced, by type; number of employees and hours of operation; time and duration of discharge; wastewater characteristics; site diagrams; flow schematics; and a statement reviewed by an authorized representative of the user and certified by a qualified professional indicating whether or not the pretreatment standards are being met on a consistent basis, and if not, what additional pretreatment is necessary.

- (d) The permittee must abide by all terms, provisions, rules and regulations contained in the permit and/or this chapter.
- (e) Permit fees and any other associated fees may be collected by the City in an amount adopted from time to time by City Council resolution.”

SECTION 4. AMENDMENT OF CODE. Section 5-6.504, “Monitoring/Metering Facilities,” of Chapter 6, “Wastewater Collection and Disposal,” Title 5, “Sanitation and Health,” is hereby amended to read as follows:

Article 5 – Facilities Requirements

“5-6.504 - Monitoring/Metering Facilities.

- (a) The City may require any user discharging sewage or industrial waste in quantities in excess of twenty-five thousand (25,000) gallons per day or whose flows, in the opinion of the director, may substantially impact the POTW, to construct and maintain in proper operating condition at the user's sole expense, flow monitoring, constituent monitoring and/or sampling facilities of the type the Director deems appropriate for the user's facilities.
- (b) Any sample taken from a sample box or other representative sampling location is considered to be representative of the discharge to the public sewer.
- (c) Monitoring or metering facilities may be required to include a security closure that can be locked with a City provided lock during sampling or upon termination of service.
- (d) Location of the monitoring or metering facilities shall be subject to approval by the City.

- (e) Location of the monitoring or metering facilities shall provide clear and uninterrupted access to the City.
- (f) The Director may utilize metering of the user's water supply instead of or in addition to metering the wastewater discharge.
- (g) Users are required to immediately notify the City within 24 hours of any potential exceedance as indicated by observation or sample results after becoming aware of the exceedance. The User is required immediately resample to confirm a potential exceedance and resubmit the results to the City within 30 days.

SECTION 5. AMENDMENT OF CODE. Section 5-6.605, "Notification of Bypass," of Chapter 6, "Wastewater Collection and Disposal," Title 5, "Sanitation and Health," is hereby amended to read as follows:

"5-6.605 - Notification of Bypass.

- (a) Bypass, including discharge of off specification product, of industrial wastewater to the sewer is prohibited. The City may take enforcement action against the user, unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of treated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (3) The permittee submitted notices as required by this Section 5-6.604.
- (b) If a permittee knows in advance of the need for a bypass, it shall submit prior notice to the City, the permittee, if possible, shall notify the City at least ten (10) days before the date of the bypass.
- (c) The City may approve an anticipated bypass after considering its adverse effects, if the City determines that it will meet the conditions listed in this section.
- (d) A permittee shall submit oral notice of an unanticipated bypass, to the City, immediately after the user has knowledge of the bypass. A written report shall also be provided within five (5) working days of the time the permittee becomes aware of the bypass. The report shall contain a description of the bypass, its cause, the duration of

the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. Failure to submit oral notice or written report may be grounds for permit revocation.

- (e) Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage or loss to the City or any other damage or loss to person or property; nor shall such notification relieve the user of any fees or other liability which may be imposed by this chapter or other applicable law.”

SECTION 6. AMENDMENT OF CODE. Section 5-6.703, “Noncompliance with Permit Conditions and Applicable Fees,” of Chapter 6, “Wastewater Collection and Disposal,” Title 5, “Sanitation and Health,” is hereby amended to read as follows:

Article 7 - Enforcement

“5-6.703 - Noncompliance with Permit Conditions and Applicable Fees.

If the Director or their designee has determined that a violation has occurred of an Industrial User’s Wastewater Discharge Permit or any other violation of this charter by any User, the User may be required to pay fees to the City as specified from time to time by resolution.

- (a)The Environmental Protection Agency (EPA) under 40 CFR 403.8 stipulates that the City shall seek fees for non-compliance with an Industrial User’s Wastewater Discharge Permit or any other section of this chapter by any user as outlined in the City’s current Enforcement Response Plan. In addition, the City may seek cost recovery to compensate the City for additional costs of sampling, monitoring, laboratory analysis, treatment, disposal, and administrative processing incurred as a result of the noncompliance, and shall be in addition to and not in lieu of any penalties as may be assessed pursuant to this chapter.
- (b)The noncompliance fees specified shall commence on the date the sampling establishes noncompliance, and shall continue to accumulate for each day continuing noncompliance is verified by sampling.”

SECTION 7. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect

other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 8. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 9. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

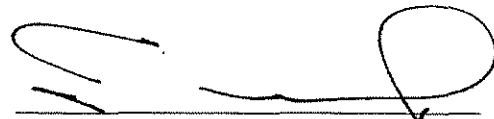
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of June, 2016, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of June, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You

APPROVED: 
MAYOR TED BRANDVOLD

ATTEST: 
STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3650-C.S.

**AN ORDINANCE AMENDING PROVISIONS OF TITLE 4,
CHAPTER 2, "MISDEMEANORS" OF THE MODESTO
MUNICIPAL CODE REGARDING PENALTIES FOR
DANGEROUS FIREWORKS**

WHEREAS, the City of Modesto's Fire Code, found in Section 3-1.101 et seq. of the Modesto Municipal Code, prohibits the possession, sale, use and discharge of dangerous or illegal fireworks; and

WHEREAS, the City's Fire Code authorizes the City to pursue administrative and criminal penalties for violations, including misdemeanor charges; and

WHEREAS, Section 4-2.07 of Modesto Municipal Code provides that the possession, fire, discharge or set off of dangerous fireworks is punishable as an infraction; and

WHEREAS, the City Council intends to amend Section 4-2.07 to clarify that violations relating to dangerous fireworks may be charged as either a misdemeanor or infraction and establish that the City's Fire Code is the primary law regulating.

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

SECTION 1. Amendment to Section 4-2.07. Title 4, Chapter 2, Section 4-2.07, "Fireworks" of the Modesto Municipal Code is hereby retitled and amended to read as follows:

"4-2.07 - Reserved."

SECTION 2. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this

Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 3. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days following 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 7th day of June, 2016, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

Ord. No. 3650-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 June, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

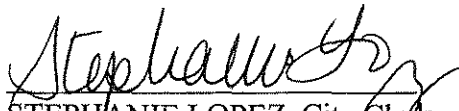
NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You

APPROVED: 

MAYOR TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3651-C.S.

AN ORDINANCE AMENDING PROVISIONS OF TITLE 3, CHAPTER 1, "ADOPTION OF THE CALIFORNIA, FIRE CODE, 2013 EDITION" OF THE MODESTO MUNICIPAL CODE TO PROHIBIT THE MANUFACTURE OF DANGEROUS FIREWORKS AND IMPOSING ADMINISTRATIVE PENALTIES AND REMEDIES AGAINST ANY RESPONSIBLE PARTY

WHEREAS, the City of Modesto currently prohibits the possession, sale, use and discharge of dangerous fireworks, specified as such by the State Fire Marshal and by the State Fireworks Law (Section 12505 of the California Health and Safety Code), which are commonly referred to as illegal fireworks, within City boundaries; and

WHEREAS, illegal fireworks pose a serious risk to the public's safety, given the potential for personal bodily injury and property damage and loss, and the unknown material composition of these fireworks and lack of safeguards; and

WHEREAS, despite the prohibition against illegal fireworks, City fire and law enforcement officials continue to respond to calls for service and issue citations for the use of illegal fireworks during certain holidays such as the Fourth of July and New Year's Eve; and

WHEREAS, the City has experienced a 35% increase in overall fire activity since 2010, and in particular, an increase of 41% in reported fires between July 2, 2014 and July 5, 2014, and

WHEREAS, the City recognizes the need to adopt further restrictions and increase penalties to hold property owners responsible for the possession, manufacture, sale, use or discharge of illegal fireworks on their properties; and

WHEREAS, it is the intent of the City Council to reasonably regulate the possession, manufacture, sale, use or discharge of dangerous fireworks within the City to protect the public

health, safety, and general welfare of its residents.

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

SECTION 1. Amendment to Section 3-1.224. Title 3, Chapter 1, Article 2,

Section 3-1.224, "Possession, Sale, Use or Discharge of Dangerous Fireworks" of the Modesto Municipal Code is hereby retitled and amended to read as follows:

"3-1.224. POSSESSION, MANUFACTURE, SALE, USE OR DISCHARGE OF DANGEROUS FIREWORKS.

Section 5605 of the 2013 California Fire Code is hereby amended by adding the following:

5605.8 Dangerous Fireworks

(a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.

(b) It shall be unlawful for any person to possess, manufacture, sell, use or discharge dangerous fireworks, or a dangerous firework kit, unless a permit authorizing such possession, sale, use or discharge has been issued by the Fire Code Official to the person or responsible party, as is defined in Section 1-6.207 of the Modesto Municipal Code; using, selling, discharging or found in possession of said fireworks or kits, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal. The Fire Code Official may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.

(c) The Fire Code Official, or designee, shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of dangerous fireworks offered or exposed for sale, stored, or held in violation of this chapter."

SECTION 2. Amendment to Section 3-1.304. Title 3, Chapter 1, Article 3, Section 3-

1.304, "Administrative Remedies" of the Modesto Municipal Code is hereby retitled and amended to read as follows:

"3-1.304. ADMINISTRATIVE PENALTIES AND REMEDIES.

In addition to any other remedies set forth in this chapter, administrative penalties may be imposed against any person, as defined in Section 1-6.207 of the Modesto Municipal Code, or any responsible party as defined herein, for violating any of the requirements set forth in this chapter. Any administrative penalties assessed shall be as follows:

(a) For violations of Section 3-1.224, possession, manufacture, sale, use or discharge of dangerous fireworks, the administrative penalty shall be one thousand dollars (\$1,000.00) for each specific act found to be in violation of that section.

(b) For all violations of this chapter, other than Section 3-1.224, possession, manufacture, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.

(c) For purposes of this chapter, the term “responsible party” means any person or person with the right of possession of the residence or other private property at which dangerous fireworks are possessed, manufactured, sold, used or discharged, including but not limited to:

(1) Any owner of the residence or other private property, meaning the record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;

(2) Any occupant, lessor, lessee, manager, licensee, or other person having control over a property, structure or parcel of land at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;

(3) Any person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering where dangerous fireworks are possessed, manufactured, sold, used or discharged;

(d) Responsibility for Proper Property Management. Every owner, occupant, lessee, tenant, or holder of any possessory interest of a residence or other private property within the City is required to maintain, manage and supervise property and all persons thereon in a manner so as not to violate the provisions of this chapter. The owner of the property may remain liable for such violations regardless of any contract or agreement with any third party regarding the property. A responsible party need not be present at the time dangerous fireworks are possessed, manufactured, sold, used or discharged in order for the City to issue an administrative citation under this section.

(e) Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code.”

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance

of the Ordinance be enforced.

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 June, 2016, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

Ord. No. 3651-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 June, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold


NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You

APPROVED: 

MAYOR TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3652-C.S.

AN ORDINANCE ADOPTING THE 2016-2017 ANNUAL AND MULTI-YEAR OPERATING BUDGETS AND THE 2016-2017 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO AND THE RELATED INTER-FUND TRANSFERS

WHEREAS, pursuant to the Charter of the City of Modesto, the Mayor presented the Proposed Operating Budget and Capital Improvement Program for the 2016-2017 Fiscal Year to the Effective Government Committee at workshops held on May 6, May 7, and May 18, 2016, and

WHEREAS, the Effective Government Committee reviewed the Proposed Annual and Multi-year Operating Budgets and the Capital Improvement Program in a series of televised public workshops on May 16, May 17, and May 18, 2016 and

WHEREAS, the Effective Government Committee is recommending the Proposed Operating and Multi-Year budgets to the full City Council, and

WHEREAS, the Effective Government Committee is recommending the proposed Capital Improvement Program budget to the full City Council, and

WHEREAS, the City Council considered the recommendations of the Effective Government Committee, and

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was scheduled on June 21, 2016 during which the City Council considered the recommendations of the Effective Government Committee relating to the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

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

WHEREAS, copies of the Proposed Operating and Multi-year budgets and the Capital

Improvement Program have been and are available for inspection by the public at the office of the City Clerk,

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

SECTION 1. ADOPTION OF BUDGET. That the Proposed Operating and Multi-year Budgets, a copy of which is on file in the City Clerk's Office and as shown in Exhibit 2, 4, 5, 7, 8, and 9 (Exhibit 2-FY 2016-2017 Mayor's Approved and Not Approved Enhancement Lists, Exhibit 4-FY 2016-2017 Proposed Position Allocation Addendum, Exhibit 5-FY 2016-2017 Proposed Operating and Multi-Year Budget Addendum, Exhibit 7-Fund Summary, Exhibit 8-Transfer In/Out List, Exhibit 9-Multi-Year Operating Budget List) are hereby adopted as the Fiscal Year 2016-2017 Operating and Multi-year Budgets for the City of Modesto.

SECTION 2. ADOPTION OF BUDGET CONTROLS/FINANCIAL POLICIES. That the Financial Policies for budgetary control and authority as shown in Exhibit 6 and incorporated herein by reference are hereby adopted for the Fiscal Year 2016-2017.

SECTION 3. ADOPTION OF CAPITAL IMPROVEMENT PROGRAM. That the Capital Improvement Program, a copy of which is on file in the City Clerk's office and shown in the proposed CIP budget document and in Exhibit 1 (Exhibit 1-CIP Addendum List) and other amounts previously approved for spending on Capital Improvement Projects are hereby adopted as the 2016-2017 Capital Improvement Program for the City of Modesto.

SECTION 4. MULTI-YEAR OPERATING PROGRAMS. That unexpended funds previously approved and appropriated in Multi-Year Programs are hereby re-appropriated for the programs for which they were originally authorized (Exhibit 9-Multi-Year Operating Budget List).

SECTION 5. COUNCIL POLICIES. That the Policy Issues outlined in the 2016-2017 Proposed Operating and Multi-Year Budgets have been reviewed and are adopted hereby (Exhibit 3-FY 2016-2017 Proposed Policies).

SECTION 6. 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 7. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a special meeting of the Council of the City of Modesto held on the 21st day of June, 2016, by Councilmember Grewal, who moved its adoption, and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour,
Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of June, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Grewal, Kenoyer, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You, Madrigal

APPROVED: 

MAYOR TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3653-C.S.

ORDINANCE AMENDING CHAPTER 1, "BUILDING CODE" OF TITLE 9, "BUILDING REGULATIONS," OF THE MODESTO MUNICIPAL CODE TO ADD ARTICLE 19, "EXPEDITED ELECTRIC VEHICLE CHARGING STATION PERMITTING"

WHEREAS, the State of California and the City of Modesto have consistently promoted and encouraged the use of fuel-efficient electric vehicles; and

WHEREAS, the State of California recently adopted Assembly Bill 1236, which requires local agencies to adopt an ordinance that creates an expedited and streamlined permitting process for electric vehicle charging stations; and

WHEREAS, the creation of an expedited, streamlined permitting process for electric vehicle charging stations would facilitate convenient charging of electric vehicles and help reduce the City's reliance on environmentally damaging fossil fuels.

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

Section 1. Amendment of Code. Chapter 1, "Building Code" of Title 9, "Building Regulations," of the Modesto Municipal Code, is hereby amended to include Article 19, "Expedited Electric Vehicle Charging Station Permitting" as follows:

Chapter 1 – BUILDING CODE*

Article 19. – Electric Vehicle Charging Stations

- 9-1.1901 - Purpose.
- 9-1.1902 - Definitions.
- 9-1.1903 - Expedited Permitting Process.
- 9-1.1904 - Permit Application Processing.
- 9-1.1905 - Technical Review.
- 9-1.1906 - Electric Vehicle Charging Station Installation Requirements.
- 9-1.1907 - Appendices.
- 9-1.1908 - Partial Invalidity.
- 9-1.1909 - Right of Appeal.

9-1.1901 - Purpose.

The purpose of this Chapter is to promote and encourage the use of electric vehicles by creating an expedited, streamlined permitting process for electric vehicle charging stations while promoting public health and safety and preventing specific adverse impacts in the installation and use of such charging stations. This Chapter is also purposed to comply with California Government Code Section 65850.7, as may be amended from time to time.

9-1.1902 - Definitions.

- (a) “Electric vehicle charging station” or “charging station” means any level of electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electrical Code, as it reads on the effective date of this Chapter, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.
- (b) “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- (c) “Electronic submittal” means the utilization of one or more of the following:
 - (1) Electronic mail or email.
 - (2) The internet.
 - (3) Facsimile.

9-1.1903– Expedited Permitting Process.

Consistent with Government Code Section 65850.7, as may be amended from time to time, the Building Official shall implement an expedited, streamlined permitting process for electric vehicle charging stations, and adopt a checklist of all requirements with which electric vehicle charging stations shall comply with in order to be eligible for expedited review. The expedited, streamlined permitting process and checklist may refer to the recommendations contained in the most current version of the “Plug-In Electric Vehicle Infrastructure Permitting Checklist” of the “Zero-Emission Vehicles in California: Community Readiness Guidebook” as published by the Governor’s Office of Planning and Research. The City’s adopted checklist shall be published on the City’s website.

9-1.1904 – Permit Application Processing.

- (a) Prior to submitting an application for processing, the applicant shall verify that the installation of an electric vehicle charging station will not have specific, adverse impact to public health and safety and building occupants. Verification by the applicant includes but is not limited to: electrical system capacity and loads; electrical system wiring, bonding and overcurrent protection; building infrastructure affected by charging station equipment and associated conduits; areas of charging station equipment and vehicle parking.
- (b) A permit application that satisfies the information requirements in the City’s adopted checklist shall be deemed complete and be promptly processed. Upon confirmation by the Building Official that the permit application and supporting documents meets the

requirements of the City adopted checklist, and is consistent with all applicable laws and health and safety standards, the Building Official shall, consistent with Government Code Section 65850.7, approve the application and issue all necessary permits. Such approval does not authorize an applicant to energize or utilize the electric vehicle charging station until approval is granted by the County. If the Building Official determines that the permit application is incomplete, he or she shall issue a written correction notice to the applicant, detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

- (c) Consistent with Government Code Section 65850.7, the Building Official shall allow for electronic submittal of permit applications covered by this Ordinance and associated supporting documentations. In accepting such permit applications, the Building Official shall also accept electronic signatures on all forms, applications, and other documentation in lieu of a wet signature by any applicant.

9-1.1905 – Technical Review.

- (a) It is the intent of this Ordinance to encourage the installation of electric vehicle charging stations by removing obstacles to permitting for charging stations so long as the action does not supersede the Building Official’s authority to address higher priority life-safety situations. If the Building Official makes a finding based on substantial evidence that the electric vehicle charging station could have a specific adverse impact upon the public health or safety, as defined in this Chapter, the City may require the applicant to apply for a use permit.
- (b) In the technical review of a charging station, consistent with Government Code Section 65850.7, the Building Official shall not condition the approval for any electric vehicle charging station permit on the approval of such a system by an association, as that term is defined by Civil Code Section 4080.

9-1.1906 – Electric Vehicle Charging Station Installation Requirements.

- (a) Electric vehicle charging station equipment shall meet the requirements of the California Electrical Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and accredited testing laboratories such as Underwriters Laboratories, and rules of the Public Utilities Commission or a Municipal Electric Utility Company regarding safety and reliability.
- (b) Installation of electric vehicle charging stations and associated wiring, bonding, disconnecting means and overcurrent protective devices shall meet the requirements of Article 625 and all applicable provisions of the California Electrical Code.
- (c) Installation of electric vehicle charging stations shall be incorporated into the load calculations of all new or existing electrical services and shall meet the requirements of the California Electrical Code. Electric vehicle charging equipment shall be considered a continuous load.
- (d) Anchorage of either floor-mounted or wall-mounted electric vehicle charging stations shall meet the requirements of the California Building or Residential Code as applicable per occupancy, and the provisions of the manufacturer’s installation instructions. Mounting of charging stations shall not adversely affect building elements.

9-1.1907 – Appendices.

Any provision of the City of Modesto Municipal Code or appendices thereto, inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

9-1.1908 – Partial Invalidity.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every Section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

9-1.1909 – Right of Appeal.

Any person having any record title or legal interest in the building may appeal from any action or decision of the Building Official under this title by filing at the office of the Building Official within thirty (30) calendar days from the date of that action or decision of the Building Official, a written appeal. Said appeal shall be in accordance with Sections 9-1.1307 -9-1.1311 of this Code.

Section 2. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

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. CEQA

The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a “project” under the California Environmental Quality Act (CEQA) pursuant to

section 15060(c)(2) and (3) and 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or foreseeable indirect physical change in the environment as it does not authorize the construction of any new structures or other physical changes to the environment.

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 27th day of September, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

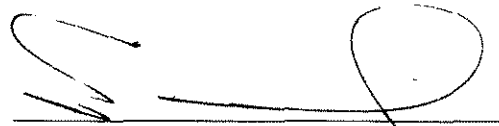
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of October, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: November 4, 2016

ORDINANCE NO. 3654-C.S.

ORDINANCE AMENDING THE TIVOLI SPECIFIC PLAN AMENDMENT NO. 1 FOR PROPERTY LOCATED NORTH OF SYLVAN AVENUE, SOUTH OF FUTURE CLARATINA AVENUE, EAST OF OAKDALE ROAD, WEST OF ROSELLE AVENUE

WHEREAS, Government Code Section 65450 et. seq. permits cities and counties to adopt Specific Plans for the systematic implementation of the General Plan and to provide for greater level of detail in planning sites or areas of special interest or value, and

WHEREAS, on February 26, 2008, the City Council by Ordinance No. 3479-C.S. approved the Tivoli Specific Plan to allow the development of approximately 454 acres, and

WHEREAS, Government Code Section 65453 permits the amendment of specific plans as often as deemed necessary by the legislative body, and

WHEREAS, the applicant has filed an application to amend the Tivoli Specific Plan to include minor land use adjustments regarding the relocation of the school site with the overall density and intensity remaining essentially the same, minor internal street alignment adjustments, removal of four roundabouts, and various clean-up and technical changes, and

WHEREAS, a public hearing was held by the Planning Commission on August 15, 2016, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WEHERAS, after considering public comments, the Planning Commission, by Resolution No. 2016-13, recommended to the City Council approval of the proposed Tivoli Specific Plan Amendment No. 1 to include minor land use adjustments regarding the relocation of the school site with the overall density and intensity remaining essentially the same, minor

internal street alignment adjustments, removal of four roundabouts, and various clean-up and technical changes, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on September 27, 2016 at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, and

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

WHEREAS, the City Council has considered the addendum to the Tivoli Specific Plan Amendment EIR documented with Environmental Assessment No. EA/C&ED 2015-18, which concludes that no major revisions to the previously-certified Tivoli Specific Plan EIR (SCH No. 2005072125) are needed as a result of the project, and that, pursuant to Section 15162 and 15164 of the CEQA Guidelines, no new environmental review is required.

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on September 27, 2016, this Council finds and determines:

1. The proposed amendment to the Tivoli Specific Plan is consistent with the General Plan, because the proposed project does not include any change to the General Plan land use designations. The Planning Commission determined on January 26, 2009, that the proposed relocation of the school site was in conformance with the General Plan. Both the existing and proposed school sites are designated Village Residential on the General Plan map. The Village Residential designation allows residential uses combined with public uses such as parks and schools. The school relocation is consistent with the Village Residential designation. The other changes to the Specific Plan regarding the internal street realignment, removal of some roundabouts, and some clean-up and technical changes are minor in nature that are not subject to a General Plan Amendment.
2. There are no substantial changes proposed in the project which result in new significant environmental effects or a substantial increase in the severity of

previously identified significant effects and, therefore, no major revisions to the Tivoli Specific EIR are required.

3. No substantial changes have occurred with respect to the circumstances under which the proposed project are undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Tivoli Specific Plan EIR are required.
4. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Tivoli Specific Plan EIR was adopted which shows any of the following:
 - a. One or more significant effects which are not discussed in the Tivoli Specific Plan EIR, or
 - b. Significant effects which were previously examined will be substantially more severe than previously shown, or
 - c. Previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or
 - d. Mitigation measures or alternatives which are considerably different from those analyzed in the Tivoli Specific Plan EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
5. The Initial Study, Environmental Assessment No. EA/C&ED 2016-18, provides the substantial evidence to support findings 2-4, noted above.

SECTION 2. COUNCIL ACTION. The Council of the City of Modesto hereby approves Tivoli Specific Plan Amendment No. 1 to include minor land use adjustments regarding the relocation of the school site with the overall density and intensity remaining essentially the same, minor internal street alignment adjustments, removal of four roundabouts, and various clean-up and technical changes, which is on file in the office of the Community and Economic Development Department and incorporated herein by reference.

SECTION 3. INDEMNIFICATION. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers,

directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding.

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.

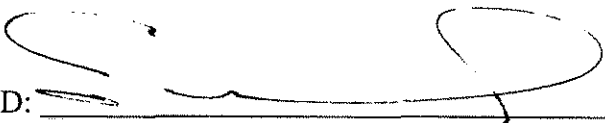
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth 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 27th day of September, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Madrigal, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

Ord. No. 3654-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of October, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3655-C.S.

**ORDINANCE AMENDING PROVISIONS OF TITLE 5,
CHAPTER 6, ARTICLE 9, "WASTEWATER COLLECTION AND
DISPOSAL," OF THE MODESTO MUNICIPAL CODE
REGARDING TRANSFER OF WASTEWATER DISCHARGE
CAPACITY**

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

SECTION 1. Amendments to Article 9 of Chapter 6 of Title 5. Article 9,

"Wastewater Permitted Capacity Banking and Transfer" of Chapter 6 of Title 5 of the Modesto Municipal Code is hereby amended to read as follows:

Article 9. - Wastewater Treatment Capacity Allocations, Permitting, and Transferability
5-6.901 - Definitions.

For the purposes of this Article 9 of Chapter 6 of Title 5 of the Modesto Municipal Code, the following terms shall have the following meanings:

- (a) Allocated Capacity.
- (1) For Major Industry Users, Allocated Capacity means the "allocation level" as determined under City Council Resolution No. 2007-422 for the flows and substances listed in such resolution and any other constituents or substances for which the City imposes a limit in a User's wastewater discharge permit (including without limitation constituents referred to in Modesto Municipal Code Section 5-6.210 entitled Specific Pollutant Limitations (Local Limits)) (collectively, "substances").
 - (2) For Minor Industry Users, Allocated Capacity means the "allocation level" as determined under City Council Resolution No. 2007-422 for the flows and substances listed in such resolution and any other constituents or substances for which the City imposes a limit in a User's wastewater discharge permit (including without limitation constituents referred to in Modesto Municipal Code Section 5-6.210 entitled Specific Pollutant Limitations (Local Limits)) (collectively, "substances"), except that for Minor Industry Users, the years 2003-2013 will be used to determine the allocation level.

(b) Equivalent Dwelling Unit or EDU means a single-family equivalent dwelling unit based upon standardized estimated wastewater discharge characteristics of a typical single-family dwelling of two hundred ninety (290) gallons per day (gpd), two hundred (200) milligrams per liter (mg/L) of strength Five Day Biochemical Oxygen Demand (BOD), and two hundred (200) mg/L of Total Suspended Solids content (TSS) as set forth in City Council Resolution 2007-287.

(c) Industrial User has the same meaning as in Modesto Municipal Code Section 5-6.103.

(d) Major Industry has the same meaning as in Modesto Municipal Code Section 5-6.103.

(e) Minor Industry has the same meaning as in Modesto Municipal Code Section 5-6.103.

(f) Permitted Capacity means the amount of wastewater flows and substances that a User is entitled to discharge into the City's wastewater collection and treatment system under a valid wastewater discharge permit.

(g) Transfer, Transfer of Allocated Capacity, and Transfer Allocated Capacity mean the sale, loan, lease, or gift of Allocated Capacity to another User, another property owned by the same Industrial User or an affiliate of the same Industrial User that operates under a separate wastewater discharge permit, or the City.

(h) User has the same meaning as in Modesto Municipal Code Section 5-6.103 and includes Industrial User, as defined in this Article.

(i) Wastewater Treatment Capacity means the entire ability of the City to legally process and discharge wastewater in accordance with the laws and regulations of the State of California. This ability is under the exclusive dominion, ownership, and control of the City and its Sewer District No. 1 as licensed providers of wastewater services to the public.

5-6.902 - Purpose and Findings.

The City Council of the City of Modesto finds that some Industrial Users have in the past as set forth in Modesto City Council Resolution 2007-422 been entitled through their respective wastewater discharge permits to amounts of Allocated Capacity that they regularly or for irregular but sustained periods do not use. The purpose of this Article is to facilitate and to provide the conditions and procedures under which an Industrial User may keep and Transfer Allocated Capacity to other Users or from an Industrial User's own property to another property within the City's wastewater collection system for use by the same Industrial User or an entity affiliated with the same Industrial User.

5-6.903 - Nature, Use, and Transfer of Allocated Capacity.

(a) (1) As of January 1, 2017, a User's Permitted Capacity will be at least as much as a User's Allocated Capacity. Upon issuance to an Industrial User of a wastewater discharge permit in which Permitted Capacity is at least as much as that Industrial User's Allocated Capacity, the Industrial User shall have a right to discharge wastewater to the City's wastewater collection and treatment system up to the Industrial User's Allocated Capacity, subject to the terms of the wastewater discharge permit and applicable law.

(2) An Industrial User's right under its wastewater discharge permit and applicable law to discharge wastewater up to its Allocated Capacity shall not be limited to a particular part of the City's wastewater treatment system (i.e. primary, secondary, or tertiary treatment, or land application). If an Industrial User's wastewater discharge permit limits its discharge of wastewater to specified times of the year, Allocated Capacity permanently Transferred by the Industrial User shall not be similarly limited, unless the User receiving the Transferred Allocated Capacity is also operating under an existing discharge permit that limits the times when it may discharge wastewater. If an Industrial User's wastewater discharge permit limits its discharge of wastewater to a particular part of the wastewater system or to particular times of the year, and the Industrial User changes its use of the property such that, as reasonably determined by the City, the limitations are no longer necessary, the Industrial User shall retain its Allocated Capacity without such limitations. Nothing in the immediately preceding sentence shall relieve an Industrial User changing the use of its property from obtaining approval of a new or amended wastewater discharge permit and any other approvals required from the City or other regulatory authorities, as may be necessary.

(b) (1) An Industrial User may Transfer Allocated Capacity, subject to the requirements of this Article.

(2) Subject to the limitations in this Article, an Industrial User may permanently Transfer Allocated Capacity, and if approved, the wastewater discharge permits for the properties involved in the Transfer shall reflect the change in permitted amounts of discharge for each property.

(3) The additional wastewater allowed to be discharged by the recipient of a Transfer of Allocated Capacity shall not be restricted to a particular part of the City's wastewater treatment system (i.e. primary, secondary, or tertiary treatment or land application).

- (c) (1) Upon the issuance to an Industrial User of a wastewater discharge permit in which Permitted Capacity is at least as much as that Industrial User's Allocated Capacity, the City may thereafter decrease the amount of that Industrial User's Permitted Capacity to less than the Industrial User's Allocated Capacity only for the following reasons:
- (A) To meet the City's Federal or State regulatory requirements;
 - (B) To ensure that the wastewater collection and treatment system will operate safely and legally; or
 - (C) Because an Industrial User has permanently Transferred a portion of its Allocated Capacity.

(2) In the event that the City reduces an Industrial User's Permitted Capacity for reason (A) or (B) in subparagraph (c)(1) above, it shall make reasonable efforts to address the regulatory or system issues that necessitated the reduction in a prompt manner and shall provide written notice to the Industrial User of the reasons for the reduction.

(3) In the event that an Industrial User Transfers a portion of its Allocated Capacity to another property owned or used by the same Industrial User or an affiliate of the same Industrial User, the City may reduce the Industrial User's Permitted Capacity in the wastewater discharge permit for each property, as long as the total Permitted Capacity for each property is no less than the Industrial User's total Allocated Capacity. Notwithstanding the foregoing, in the situation described in the immediately preceding sentence, the City may reduce the Industrial User's Permitted Capacity in all of its or its affiliates' wastewater discharge permits to less than its total Allocated Capacity for reasons (A) and (B) in subparagraph (c)(1) above.

(4) In the event that an Industrial User permanently Transfers a portion of its Allocated Capacity to another User or to the City, the City may reduce the Industrial User's Permitted Capacity to reflect its remaining Allocated Capacity.

5-6.904 - General Conditions for Transfers of Allocated Capacity.

(a) A Transfer of Allocated Capacity is limited to the area served by the City's wastewater collection and treatment system ("City's Authorized Sewer Service Area").

(b) An Industrial User seeking to Transfer Allocated Capacity shall submit an application on a form to be developed and provided by the City.

(c) No approved Transfer of Allocated Capacity may result in a property being entitled to discharge less than one thousand (1,000) gallons per day per acre into the City's wastewater system under the approved wastewater discharge permit for that property.

(d) Transfers of Allocated Capacity from one property to another property owned or used by the same Industrial User, or from an Industrial User to another User, or from an Industrial User to the City, may proceed subject to City approval of the Transfer.

(e) The City may deny a proposed Transfer if it determines that the Transfer would result in any of the following:

- (1) Either the applicant or recipient User has a substantial and current wastewater discharge permit violation that is not cured within a reasonable period of time after notice of violation from the City; or
- (2) A Transfer of Allocated Capacity would cause an overload and/or surcharge of the City's wastewater collection and treatment system; or
- (3) A Transfer of Allocated Capacity would be detrimental to the public safety, health, or environment.

(f) The City shall not unreasonably delay, deny, or condition an application for a Transfer of Allocated Capacity.

5-6.905 - Conditions for Transfers Other Than to City.

A Transfer of Allocated Capacity is subject to the following additional process and conditions:

(a) At least 30 days prior to a proposed Transfer, an Industrial User shall provide the City with notice of its intent to do so by submitting an application for the proposed Transfer.

(b) The City will review the notice and application to determine if the conditions for the Transfer are met within 30 days.

(c) If the City denies a Transfer of Allocated Capacity subject to this section because the then-existing wastewater infrastructure located on the property receiving the additional Allocated Capacity is not sufficient for the resulting wastewater discharge, the Transfer will be allowed if the proposed transferor or transferee makes provisions to correct any infrastructure deficiencies with improvements or operational modifications as may be needed to accommodate the additional wastewater proposed to be discharged from the property.

(d) The City may initiate a Transfer subject to this section by written request, avoiding (a) and (b) above.

(e) The City shall charge a legally compliant application review and processing fee in an amount to be set by the City to recover associated costs.

5-6.906 - No Reservation Charges.

Notwithstanding any other provision of this Code, Industrial Users shall not be charged a “reservation,” standby, or similar charge for unused Allocated Capacity.

5-6.907 - No Capacity Charge for Transferred Allocated Capacity.

The recipient of an approved Transfer of Allocated Capacity shall not be required to pay City capacity charges that might otherwise apply to increasing the amount of discharge from the property to which the Allocated Capacity will be Transferred.

5-6.908 - Unused Allocated Capacity by Industrial Users Ceasing Entire Operations.

In the event that an Industrial User ceases operations at its business site or address and does not relocate those operations to another site or address within the City’s Authorized Sewer Service Area or Transfer all or a portion of its Allocated Capacity, upon the Industrial User not renewing its wastewater discharge permit, the City may loan that portion of the Industrial User’s Allocated Capacity that has not been Transferred. If the Industrial User later desires to Transfer its Allocated Capacity, including to a new User at the same business site or address, the Industrial User shall provide the City with one year’s written notice of its intent to Transfer its Allocated Capacity before the Transfer will become effective.

5-6.909 - Valuation of Allocated Capacity at Transfer.

Valuation of Allocated Capacity for the purposes of Transfer shall be determined by the parties to the Transfer but may be based on EDU, as defined in this Article. As part of a Transfer of Allocated Capacity application, at the request of the applicant, the City may calculate the number of EDU’s proposed to be transferred.

5-6.910 - Relationship to Other Parts of the Municipal Code.

The provisions of this Article regarding the Transfer of Allocated Capacity shall control over any conflicting provisions contained in this Code.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a “project” under the California Environmental Quality Act (CEQA) pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical

change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 3. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of October, 2016, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

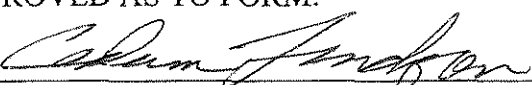
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of October, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour,
Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: November 11, 2016

ORDINANCE NO. 3656-C.S.

AN ORDINANCE ADDING CHAPTER 10, "CITIZENS' TRANSPORTATION SALES TAX COMMISSION" TO TITLE 8 OF THE MODESTO MUNICIPAL CODE TO ESTABLISH A CITIZENS' TRANSPORTATION SALES TAX COMMISSION

WHEREAS, Section 1100 of Article XI of the Modesto City Charter grants the Council the authority to create by ordinance "such boards or commissions, as in its judgment are required and may grant them such powers and duties as are consistent" with the Charter; and

WHEREAS, Council desires to form a Citizens' Transportation Sales Tax Commission to provide oversight and advisory input and to make recommendations to the full City Council on City budget each year in regards to funds generated by a local transportation sales tax.

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

SECTION 1. Enacting Ordinance. Chapter 10 of 8 shall read as follows:

"8-10.101 - Citizen's Transportation Sales Tax Commission; Duties.

(a) A Citizen's Transportation Sales Tax Commission, hereinafter "Commission," is hereby established for the purpose of providing oversight of the collection and spending of tax revenue from any local transportation sales tax. . For purposes of this chapter, a "local transportation sales tax" is defined as a sales tax imposed on City residents for purposes of generating funds to specifically fund the City's transportation plan; any local tax used to fund general services in the City is not a "local transportation sales tax." The first such Commission shall be appointed by the Council no later than ninety (90) days from the effective date of the passage of any local dedicated tax imposed for transportation purposes. The Commission shall regularly meet and make recommendations to the Council to provide oversight of any transportation tax then in effect.

(b) The duties of the Commission shall include, but not be limited to, the following:

(i) reviewing the annual work plan and priorities for revenue derived from any transportation sales tax then in effect;

(ii) analyzing and commenting on any proposed items in the City budget that would lessen the City's its commitment to road and street funding from sources of revenue other than any transportation sales tax then in effect;

(iii) reviewing any policies, standards or similar measures that the City uses to set priorities for where revenues from any transportation sales tax then in effect are to be spent;

(iv) reviewing any proposals for the City to use bond or similar financing secured by revenues from any transportation sales tax then in effect;

(v) reviewing any policies, standards or similar measures that the City uses to determine whether work funded by the tax shall be done "in-house" or through outside contracts; and,

(vi) reviewing any other matter the Council deems appropriate related to any local transportation sales tax. The Council shall appropriate adequate funds for the work of the Commission.

8-10.102 – Membership of Commission.

The Commission shall consist of eleven (11) qualified electors residing within the City and shall be appointed by the City Council by resolution pursuant to the provisions below:

(a) Strong consideration shall be given to composing the Commission of:

(i) two (2) members from any bona fide local taxpayer's association with tax-exempt status under the relevant provisions of the Internal Revenue Code;

(ii) one (1) member from any bona fide local nonpartisan political organization, with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, dedicated to encouraging informed and active participation in government;

(iii) two (2) members from bona fide Modesto Neighborhood Associations or organizations with similar purposes with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code;

(iv) one (1) member from any bona fide association representing business such as a chamber of commerce

(v) one (1) member from a large business located in the City;

(vi) one (1) member from a small business located in the City;

(vii) two (2) members from a bona fide labor union with members residing in the City; and,

(viii) one (1) member from a former Stanislaus County Civil Grand Jury who has served in that role within the previous five (5) years of his or her appointment.

(b) No member of the Commission shall be a relative by blood or marriage within the second degree of the Mayor, a member of the Council, any Charter officer, or any department head or deputy department head.

(c) No member of the Commission shall be an employee of the City nor any bargaining unit for employees of the City, nor be a person who receives

compensation from the City or from bargaining units of the City in any manner, including retirement benefits.

(d) No member of the Commission shall be a lobbyist or other person with business before the City that represents an economic interest in excess of the limit for material financial effect as established by state law.

(E) Members of the Commission shall serve without compensation.

(F) One-half of the Commissioners for the Commission in 2017 shall be appointed to two year terms and one-half shall be appointed to four year terms. Thereafter, each Commissioner shall be appointed to a four year term unless the appointment is to fill a vacancy.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

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 4th day of October, 2016, by Councilmember Grewal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:




TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of October, 2016, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: November 11, 2016

ORDINANCE NO. 3657-C.S.

AN ORDINANCE AMENDING SECTION 8-3-9 OF THE CITY OF MODESTO ZONING MAP TO REZONE PROPERTY LOCATED AT 332 AND 336 STANDIFORD AVENUE FROM LOW DENSITY RESIDENTIAL ZONE, (R-1), TO PROFESSIONAL OFFICE ZONE, (P-O)

WHEREAS, a verified application for an amendment to Section 8-3-9 of the Zoning Map was filed by L Street Architects on August 23, 2016, to rezone from Low Density Residential Zone, R-1, to Professional Office Zone, P-O, property located at 332 and 336 Standiford Avenue, and

WHEREAS, after a public hearing held on October 3, 2016 the Planning Commission determined and made the following findings: 1) that the requested zone change will not be detrimental to the public health, safety or welfare because it will provide for new professional office uses that are compatible with nearby office uses and adjacent residential uses; 2) the requested zone change will result in an orderly planned use of land because the project will provide for new development along a segment of Standiford Avenue that is transitioning from single-family residential uses to professional office and commercial uses; and 3) the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan and any applicable specific plans(s) because the allowable uses in the Professional Office (P-O) Zone are consistent with the site's General Plan Land Use Designation of Mixed Use (MU), which allows for office uses, and

WHEREAS, by Resolution No. 2016-16, adopted on October 3, 2016, the Planning Commission recommended to the Council that the application of L Street Architects to

amend Section 8-3-9 of the Zoning Map to rezone the hereinafter described property from Low Density Residential Zone, R-1, to Professional Office Zone, P-O, be approved,

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

SECTION 1. After a public hearing held on November 22, 2016, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because it will provide for new professional office uses that is compatible with nearby office uses and adjacent residential uses;
2. The requested change will result in an orderly planned use of land because the project will provide for new development along a segment of Standiford Avenue that is transitioning from single-family residential uses to professional office and commercial uses;
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the allowable uses in the Professional Office (P-O) Zone are consistent with the site's General Plan Land Use Designation of Mixed Use (MU), which allows for office uses.

SECTION 2. ZONING CHANGE. Section 8-3-9 of the Zoning Map is hereby amended to rezone the following described property from Low Density Residential Zone, R-1, to Professional Office Zone, P-O:

R-1 to P-O

Lots 4 and 5 as shown on that certain map entitled "Carpenter Manor", filed in the Office of the County Recorder of Stanislaus County on June 21, 1977 in Volume 26 of Maps, Page 86.

Including also all of the south one-half of Standiford Avenue immediately adjacent to the above described Lots 4 and 5

APN: 055-029-027 (Lot 4) and APN: 055-029-028 (Lot 5)

SECTION 3. AMENDMENT OF ZONING MAP. Section 8-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: _____

TED BRANDVOLD, Mayor

ATTEST:

By: _____

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____

ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: _____

Community & Economic Development
Department, Planning Division

Ord. No. 3657-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

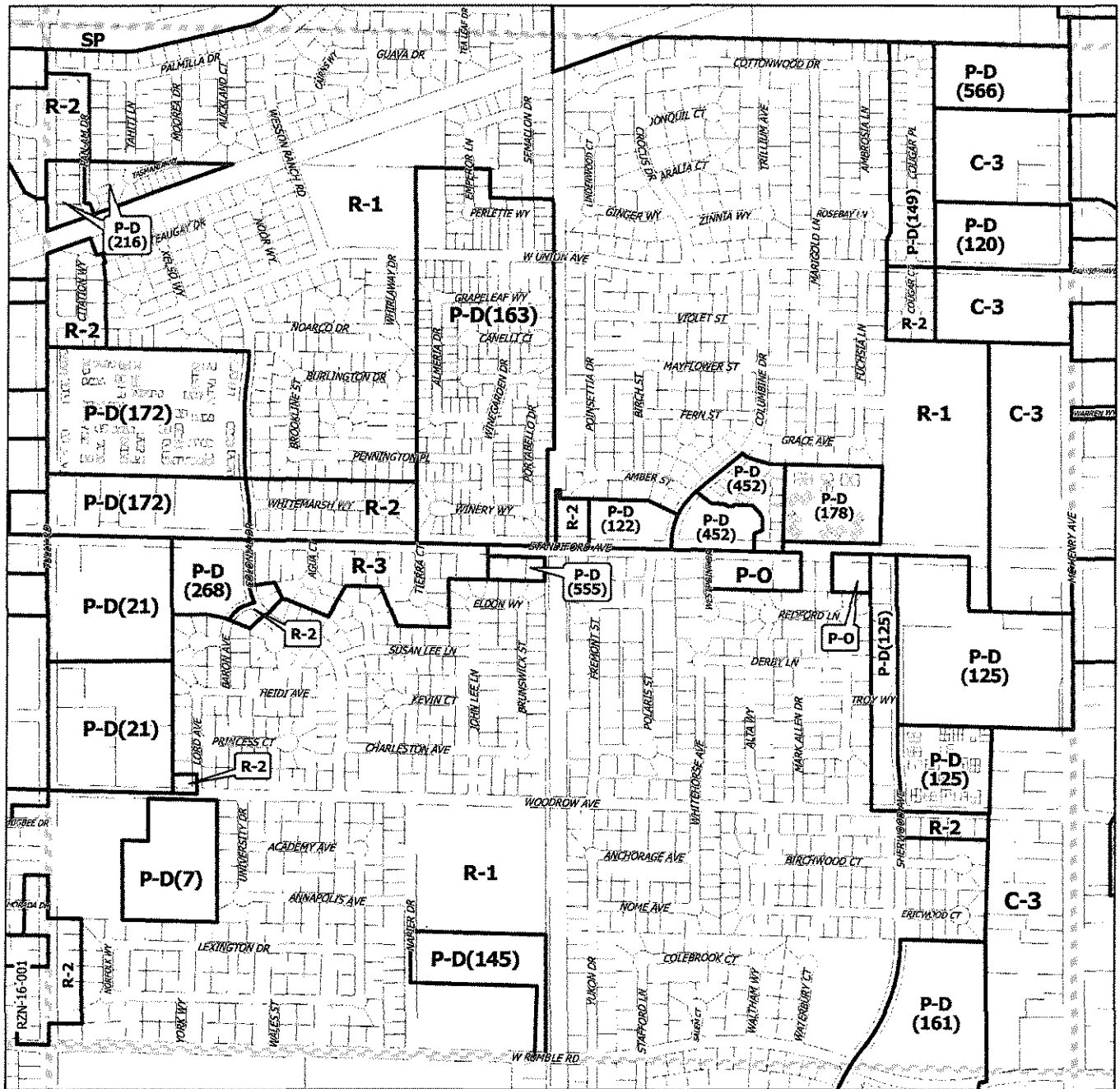
APPROVED: _____


TED BRANDVOLD, Mayor

ATTEST: _____


STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017



ZONING MAP OF THE CITY OF MODESTO

8-3-9



1 inch = 700 feet
Ord. 3657-C.S.

ORDINANCE NO. 3658-C.S.

AN ORDINANCE AMENDING ARTICLES 1, 2, 8, AND 16 OF CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE TO ADOPT BY REFERENCE CALIFORNIA CODE OF REGULATIONS, TITLE 24 PART 2, VOLUMES 1 & 2 AND ADDING CHAPTER 12, "POST DISASTER ASSESSMENT," TO TITLE 9 RELATING TO BUILDING REGULATIONS

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof; and

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

SECTION 1. Articles 1, 2, 8, and 16 of Chapter 1 “Building Code,” of Title 9 “Building Regulations” of the Modesto Municipal Code is hereby amended to read as follows:

Article 1. - Adoption by Reference of the 2016 California Building Code

9-1.101 - Adoption by Reference of the 2016 California Building Code.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2016 California Building Code, California Code of Regulations, Title 24, Part 2, Volumes 1 and 2, as published by the International Code Council, as now existing, or hereafter amended, regulating and governing the conditions of all properties, buildings, and structures; by providing the standards for facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupancy and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2016 California Building Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Building Code of the City of Modesto.

9-1.101.2 - Adoption by Reference of the 2016 California Residential Code.

That certain document, one (1) copy of which is on file in the office of the City Clerk at the City of Modesto, being marked and designated as the California Residential Code, 2016 edition, California Code of Regulations Title 24, Part 2.5 as published by the International Code Council, regulating and governing the conditions of residential detached one- and two-family dwellings by providing the standards for facilities and other physical things and conditions essential to ensure that these structures are safe, sanitary and fit for occupation and use; and the demolition of such structures as herein

Ordinance No. 3658-C.S.
Effective: January 6, 2017

provided, providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof, and each and all of the regulations; provisions, penalties, conditions and terms of said building code on file in the office of the City Clerk of the City of Modesto are hereby referred to, adopted and made part hereof, as if fully set out in this ordinance with the additions, deletions and changes, if any prescribed in this chapter, be and hereby are adopted by reference as the Building Code of the City of Modesto.

Article 2. - General Code Provisions

9-1.201 - Title.

These regulations shall be known as the "Building Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to herein as the "Building Code," the "2016 California Building and 2016 California Residential Code," the "California Building and Residential Code," or "this Code."

9-1.202 - Purpose.

The purpose of this Code is to establish the minimum requirements to safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, access for persons with disabilities, sanitation, adequate light and ventilation, and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to firefighters and emergency responders during emergency operations.

9-1.203 - Scope.

The provisions of this Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures throughout the City of Modesto.

9-1.204 - Appendices.

Provisions contained in the appendices of the 2016 California Building Code and the 2016 California Residential Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

9-1.205 - Most Restrictive—Specific Requirement.

Where, in any specific case, different sections of this Code specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

9-1.206 - Other Laws.

The provisions of this Code shall not be deemed to nullify any provision(s) of local, state, or federal law.

9-1.207 - Application of References.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this Code.

9-1.208 - Referenced Codes and Standards.

The codes and standards referenced in this Code shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and referenced codes and standards, the provisions of this Code shall apply, unless stated otherwise.

9-1.209 - Partial Invalidity.

In the event that any part or provision of this Code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions of this Code.

9-1.210 - Maintenance.

All plumbing, mechanical, electrical system, materials, and appurtenances, both existing and new, and all parts thereof, shall be maintained in proper operating condition. All devices or safeguards required by this Code shall be maintained in conformance with the code edition under which installed.

9-1.211 - Existing Structures.

The legal occupancy of any structure existing on the date of adoption of this Code shall be permitted to continue without change, except as is specifically covered in this Code, the California Mechanical Code, or the California Fire Code, or as is deemed necessary by the Building Official for the general safety and welfare of the occupants and the public.

9-1.212 - Existing Installations.

Plumbing, mechanical, and electrical systems or equipment lawfully in existence at the time of the adoption of this Code may have their use, maintenance, or repair continued if the use, maintenance, or repair is in accordance with the original design and location and no hazard to life, health, or property has been created by such system or equipment.

Article 8. –Inspections

9-1.801 - General.

Construction or work for which a permit is required shall be subject to inspection by the Building Official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this Code or of any local, state, or federal law. Inspections presuming to give authority to violate or cancel the provisions of this Code or of other local, state, or federal law shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the Building Official nor the City of Modesto shall be liable

for expense entailed in the removal or replacement of any material required to allow inspection.

9-1.802 - Preliminary Inspection.

Before issuing a permit, the Building Official is authorized to examine or cause to be examined buildings, structures, and sites for which an application has been filed.

9-1.803 - Required Inspections.

The Building Official, upon notification, shall make the inspections set forth in Sections 9-1.804 through 9-1.813.

9-1.804 - Types of Inspections.

For onsite construction, from time to time the Building Official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this Code. The Building Safety Division, upon notification of the permit holder or their agent, shall within a reasonable time make the inspections set forth in Sections 9-1.805 through 9-1.813.

Note: Reinforced steel or structural framework: of any part of any building or structure shall not be covered or concealed without first obtaining the approval of the Building Official.

9-1.805 - Footing and Foundation Inspection.

Inspection of the foundation and footings shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation or footing inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations. Materials for the foundation shall be on the job site except where concrete is ready-mixed in accordance with ASTM C94. Under this circumstance concrete is not required to be at the job site.

9-1.805.1 - Concrete Slab and Underfloor Inspection.

Concrete slab and underfloor inspections shall be made after in-slab or underfloor reinforcing steel and building service equipment, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

9-1.806 - Flood Plain Inspections/Lowest Floor Elevation.

For construction in areas prone to flooding as established by Table R301.2(1) of the California Residential Code upon placement of the lowest floor, including basement, and prior to further vertical construction, the Building Official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, required in Section R322. In flood hazard areas,

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Effective: January 6, 2017

upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Chapter 16 of the California Building Code shall be submitted to the Building Official.

9-1.807 - Frame and Masonry Inspection.

Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after chimneys and vents to be concealed are completed and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

9-1.807.1 - Moisture Content Verification.

Moisture content of framing members shall be verified in accordance with the California Green Building Standards Code (CALGreen).

9-1.808 - Lath and Gypsum Board Inspection.

Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception. Gypsum board that is not part of a fire-resistance-rated assembly or a shear assembly.

9-1.809 - Fire-Resistant Penetrations.

Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

9-1.810 - Energy Efficiency Inspections.

Inspections shall be made to determine compliance with the California Energy Code and shall include, but not be limited to, inspections for: envelope insulation R and U values, fenestration U value, duct system R value, and HVAC and water-heating equipment efficiency.

9-1.811 - Other Inspections.

In addition to the inspections specified above, the Building Official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this Code and other laws that are enforced by the Building Safety Division.

9-1.811.1 - Fire-Resistance-Rated Construction Inspection.

Where fire-resistance-rated construction is required between dwelling units or due to location on property, the Building Official shall require an inspection of such construction after all lathing and/or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished. Protection of joints and penetrations in fire resistance rated assemblies shall not be concealed from view until inspected and approved.

9-1.812 - Special Inspections

For special inspections, see the California Building Code.

9-1.813 - Final Inspection.

The final inspection shall be made after all work required by the building permit is completed.

9-1.814 - Reinspections.

A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when required corrections have not been made.

This provision is not to be interpreted as requiring reinspection fees the first time an inspection is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspection before the project is ready for inspection or reinspection. Reinspection fees may be assessed:

- (a) When the approved plans are not readily available to the inspector.
- (b) For failure to provide access on the date for which the inspection is requested.
- (c) For any deviation from plans requiring the approval of the Building Official.

To obtain reinspection, the applicant shall file an application therefor in writing upon a form for that purpose and pay the reinspection fee as adopted from time to time by resolution of the City Council of the City of Modesto.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

9-1.815 - Inspection Agencies.

The Building Official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

9-1.816- Inspection Request.

It shall be the duty of the holder of the building permit or their duly authorized agent to notify the Building Official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this Code.

9-1.817 - Approval Required.

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Building Official. The Building Official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this Code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the Building Official.

Article 16. - Technical Amendments to the 2013 California Building Code

9-1.1601 - Deleted Sections.

9-1.1602 - Amended Sections.

9-1.1602.1 - Definitions.

Section 202 of the 2013 California Building Code is hereby amended to read as follows:

BUILDING OFFICIAL. The officer or other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.

9-1.1602.2 - Structural Design.

Section 1612.3 of the 2013 California Building Code is hereby amended to read as follows:

1612.3. ESTABLISHMENT OF FLOOD HAZARD AREAS.

To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for the City of Modesto", dated September 26, 2008, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

9-1.1602.3 – Structural Tests and Special Inspections

Section 1704.2 of The 2016 California Building Code Is Hereby Amended to Read As Follows:

1704.2. Special inspections and Tests.

Where application is made to the building official for the construction as specified in *Title 9 Chapter 1 Article 5 Permits* or 1.8.4, applicable, the owner or the owner's agent, other than the contractor, shall employ one or more approved agencies to provide special inspections and tests during construction on the types of work specified in Section 1705 and identify the approved agencies to the building official. These special inspections and tests are in addition to the inspection by the building official that are identified in *Title 9 Chapter 1 Article 8*

Chapter 12 "Post Disaster Assessment" of Title 9 "Building Regulations" of the Modesto Municipal Code is hereby added to read as follows:

Ordinance No. 3658-C.S.
Effective: January 6, 2017

12-1.101- Intent.

This chapter establishes standard placards to be used to indicate the condition of a building and/or structure for continued occupancy. This chapter further authorizes the Building Official and his or her authorized representatives to post the appropriate placard at each entry point to a building and/or structure upon completion of a safety assessment.

12-1.102 - Application of Provisions.

The provisions of this chapter are applicable to all buildings of all occupancies regulated by the City.

12-1.103 - Safety Assessment Defined.

“Safety assessment” means a visual, nondestructive examination of a building and/or structure for the purpose of determining the condition for continued occupancy.

12-1.104 - Placards.

Official jurisdiction placards use three (3) categories to designate the condition for continued occupancy of buildings and/or structures as follows:

- (a) Inspected – Lawful Occupancy Permitted. This category description is to be posted on any building and/or structure wherein no apparent structural hazard has been found. This placard is not intended to mean that there is no damage to the building and/or structure.
- (b) Restricted Use. This category description is to be posted on each building and/or structure that has been damaged wherein the damage has resulted in some form of restriction to the continued occupancy. The individual who posts this placard shall note the type of damage encountered and shall note the restrictions on continued occupancy.
- (c) Unsafe – Do Not Enter or Occupy. This category description is to be posted on each building and/or structure that has been damaged such that continued occupancy poses a threat to life safety. Buildings and/or structures posted with this placard shall not be entered under any circumstance except as authorized in writing by the Building Official, or his or her authorized representative. Safety assessment teams shall be authorized to enter these buildings and/or structures at any time. This placard is not to be used or considered as a demolition order. The individual who posts this placard shall note the type of damage encountered.

12-1.105 - Placard Contents.

Placards referenced in this chapter should include all of the following information:

- (a) Name of the jurisdiction.
- (b) Address and phone number of jurisdiction.
- (c) The category designated in MMC Section 9-1.1504 that the building’s and/or structure’s condition conforms to. This designation should be in bold face type.
- (d) For “inspected” placards the language “Lawful Occupancy Permitted.”

- (e) For “restricted use” placards the language “Caution: This building and/or structure has been inspected and found to be damaged as described:” and “Entry, occupancy and lawful use are restricted as indicated.”
- (f) For “unsafe” placards the language “Do not enter or occupy (This placard is not a demolition order). This building and/or structure has been inspected, found to be seriously damaged and is unsafe to occupy, as described:” and “Do not enter, except as specifically authorized in writing by jurisdiction. Entry may result in injury or death.”
- (g) The address of the building and/or structure inspected.
- (h) The advisement “Caution: Aftershocks since inspection may increase damage and risk.”
- (i) The date and time of inspection.
- (j) The name, employing agency and, if applicable, the identification number of the inspector.
- (k) The advisement “Do not remove, alter or cover this placard until authorized by the Building Official (MMC 9-1.1506).”

12-1.106 - Removal Prohibited.

Once a placard has been attached to a building and/or structure, a placard is not to be removed, altered or covered until done so by an authorized representative of the Building Official. It shall be a misdemeanor enforced pursuant to Modesto Municipal Code Title 1 Chapter 6 Administrative Remedies for any person or entity to alter, remove, cover or deface a placard unless authorized pursuant to 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.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA

applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 6. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 

TED BRANDVOLD, Mayor

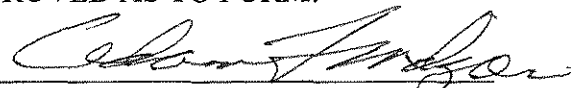
ATTEST:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

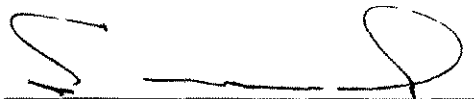
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017

ORDINANCE NO. 3659-C.S.

AN ORDINANCE AMENDING CHAPTER 3, "ELECTRICAL CODE" OF TITLE 9 OF THE MODESTO MUNICIPAL CODE RELATING TO BUILDING REGULATIONS TO ADOPT BY REFERENCE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 3 "ELECTRICAL CODE"

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

Ordinance No. 3659-C.S.
Effective: January 6, 2017

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

SECTION 1. AMENDMENT OF CODE. Chapter 3 entitled "Electrical Code" of

Title 9 "Building Regulations" shall be amended as follows:

9-3.101 - Adoption by Reference of the 2013 California Electrical Code.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2016 California Electrical Code, California Code of Regulations Title 24, Part 3, as published by the Building News, inc. (BNi), as now existing, or hereafter amended, regulating, governing and providing standards for the erection, installation, repair, relocation, replacement, addition to, use, or maintenance of electrical systems and parts thereof for the protection of public health and safety, providing for the issuance of permits and collection of fees, providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2016 California Electrical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes if any, prescribed in this Chapter, be and hereby is adopted as the Electrical Code of the City of Modesto.

Article 2. - General Code Provisions

9-3.201 - Title.

These regulations shall be known as the "Electrical Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to herein as the "Electrical Code," the "2016 California Electrical Code," the "California Electrical Code," or "this Code."

9-3.204 - Appendices.

Provisions contained in the appendices of the 2016 California Building Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

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

Ordinance No. 3659-C.S.
Effective: January 6, 2017

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.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold


NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017

ORDINANCE NO. 3660-C.S.

AN ORDINANCE AMENDING CHAPTER 7, "MECHANICAL CODE" OF TITLE 9 OF THE MODESTO MUNICIPAL CODE RELATING TO BUILDING REGULATIONS TO ADOPT BY REFERENCE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 4 "MECHANICAL CODE"

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

Ordinance No. 3660-C.S.
Effective: January 6, 2017

WHEREAS, notice of the ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

SECTION 1. AMENDMENT OF CODE. Chapter 7 entitled "Mechanical Code" of Title 9 "Building Regulations" shall be amended as follows:

Article 1. - Adoption by Reference of the 2016 California Mechanical Code

9-7.101 - Adoption by Reference of the 2016 California Mechanical Code.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2016 California Mechanical Code, California Code of Regulations, Title 24, Part 4, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, which said Code governs and provides proper regulations of mechanical systems and parts thereof, including, but not limited to, addition to or erection, installation, alteration, repair, relocation, replacement, use, or maintenance of any heating, ventilation, cooling, refrigeration systems or equipment thereof; incinerators or parts or equipment thereof; or other miscellaneous heat producing appliances, parts or equipment thereof; providing for the issuance of permits and collection of fees therefor; providing for the inspection thereof; providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2016 California Mechanical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Mechanical Code of the City of Modesto.

Article 2. - General Code Provisions

9-7.201 - Title.

These regulations shall be known as the "Mechanical Code of the City of Modesto", and may be cited and referred to herein as such or may be cited and referred to herein as the "Mechanical Code", the "2016 California Mechanical Code", the "California Mechanical Code", or "this Code."

9-7.204 - Appendices.

Provisions contained in the appendices of the 2016 California Mechanical Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

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

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

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Ordinance No. 3660-C.S.
Effective: January 6, 2017

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

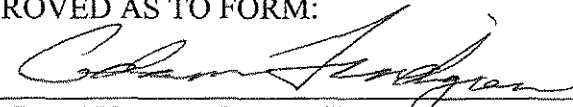
APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017

ORDINANCE NO. 3661-C.S.

AN ORDINANCE REPEALING AND REPLACING, SECTIONS 9-2.101, 9-2.201 AND 9-2.204 OF CHAPTER 2, "PLUMBING CODE" TO TITLE 9 OF THE MODESTO MUNICIPAL CODE RELATING TO BUILDING REGULATIONS TO ADOPT BY REFERENCE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5 "PLUMBING CODE"

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

Ordinance No. 3661-C.S.
Effective: January 6, 2017

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof; and

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

SECTION 1. REPEALING AND REPLACING. Section 9-2.101 of Article 1 of Chapter 2, "Plumbing Code," of Title 9, "Building Regulations" and Sections 9-2.201 and 9-2.204 of Article 2 of Chapter 2, "Plumbing Code," of Title 9, "Building Regulations" shall be repealed in their entirety and replaced as follows:

Article 1. - Adoption by Reference of the 2016 California Plumbing Code

9-2.101 - Adoption by Reference of the 2016 California Plumbing Code.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2016 California Plumbing Code, California Code of Regulations, Title 24, Part 5, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, regulating and governing the erection, alteration, installation, repair, relocation, replacement, addition to, use or maintenance of plumbing and drainage systems and parts thereof for the protection of public health and safety, providing for the issuance of permits and collection of fees, providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2016 California Plumbing Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Plumbing Code of the City of Modesto.

Article 2. - General Code Provisions

Ordinance No. 3661-C.S.
Effective: January 6, 2017

9-2.201 - Title.

These regulations shall be known as the "Plumbing Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to herein as the "Plumbing Code," the "2016 California Plumbing Code," the "California Plumbing Code," or "this Code."

9-2.204 - Appendices.

Provisions contained in the appendices of the 2016 California Plumbing Code shall not apply unless specifically adopted by the State of California or the City of Modesto.

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

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

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

By: 
ADAM U. LINDGREN, City Attorney

Ordinance No. 3661-C.S.
Effective: January 6, 2017

Ord. No. 3661-C.S.

FINAL ADOPTION CLAUSE

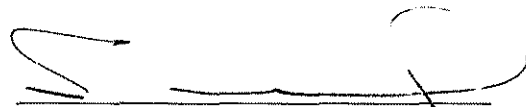
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017

Ordinance No. 3661-C.S.
Effective: January 6, 2017

ORDINANCE NO. 3662-C.S.

AN ORDINANCE ADDING CHAPTER 11, "EXISTING BUILDING CODE" TO TITLE 9 OF THE MODESTO MUNICIPAL CODE RELATING TO BUILDING REGULATIONS TO ADOPT BY REFERENCE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 10 "EXISTING BUILDING CODE"

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof; and

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

SECTION 1. ADDITION OF CODE. Chapter 11 entitled “Existing Building Code” shall be added to Title 9 “Building Regulations” as follows:

Chapter 11 – EXISTING BUILDING CODE

Article 1. - Adoption by Reference of the 20132016 California Existing Building Code

11-1.101 - Adoption by Reference of the 2016 California Existing Building Code. That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2016 California Existing Building Code, California Code of Regulations, Title 24, Part 10, as published by the International Code Council, as now existing, or hereafter amended, regulating and governing the conditions of existing building and structures; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2016 California Existing Building Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Building Code of the City of Modesto.

Article 2. - General Code Provisions

11-1.201 - Title.

These regulations shall be known as the "Existing Building Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to herein as "this Code."

11-1.202 - Scope.

The provisions of this Code shall apply to the repair, alteration, change of occupancy, addition to the relocation of existing structures in the City of Modesto.

11-1.203 - Appendices.

Provisions contained in the appendices of the 2016 California Existing Building Code shall not apply unless specifically adopted by the State of California or the City of Modesto.

11-1.204 - Most Restrictive—Specific Requirement.

Where, in any specific case, different sections of this Code specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

11-1.205 - Other Laws.

The provisions of this Code shall not be deemed to nullify any provision(s) of local, state, or federal law.

11-1.206 - Application of References.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this Code.

11-1.207 - Referenced Codes and Standards.

The codes and standards referenced in this Code shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and referenced codes and standards, the provisions of this Code shall apply, unless stated otherwise.

11-1.208 - Partial Invalidity.

In the event that any part or provision of this Code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions of this Code.

Article 3. - Building Safety Division

11-1.301 - Creation of Enforcement Agency.

The Building Safety Division is hereby created and the official in charge thereof shall be known as the Building Official.

11-1.302 - Appointment.

The Building Official shall be appointed by the Community and Economic Development Department (C&ED) Director, in accordance with the prescribed personnel procedures of the City of Modesto.

11-1.303 - Deputies.

In accordance with the prescribed personnel procedures of the City of Modesto and with the concurrence of the C&ED Director, the Building Official shall have the authority to appoint a Deputy Building Official, the related technical officers, inspectors, plan examiners, and other employees. Such employees shall have powers as delegated by the Building Official.

Article 4. - Duties and Powers of the Building Official

11-1.401 - General.

The Building Official is hereby authorized and directed to enforce all the provisions of this Code. For such purposes the Building Official shall have the powers of a law enforcement officer. The Building Official shall have the power to render interpretations of this Code and to adopt policies and procedures, and enforce policies and procedures, rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in compliance with the intent and purpose of this Code. Such policies and procedures, rules and regulations shall not have the effect of waiving the requirements specifically provided for in this Code. Such interpretations may be appealed to the Board of Building Appeals.

The language used in this Code is intended to convey the common and accepted meaning familiar to the building industry.

11-1.402 - Applications and Permits.

The Building Official shall receive applications, review construction documents, and issue permits for the erection, alteration, demolition, and moving of buildings and structures, inspect the premises for which such permits have been issued, and enforce compliance with the provisions of this Code.

11-1.403 - Notice of Violations—Notice and Orders.

The Building Official shall issue all necessary notice of violations or notice and orders to ensure compliance with this Code.

11-1.404 - Inspections.

The Building Official shall make all of the required inspections, or the Building Official shall have the authority to accept reports of inspections by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Building Official is authorized to engage such expert opinion as is deemed necessary to report upon unusual technical issues that arise. The Building Official's decision may be appealed to the Board of Building Appeals pursuant to the requirements of this Chapter.

11-1.405 - Identification.

The Building Official shall carry proper identification when inspecting structures or premises in the performance of duties under this Code.

11-1.406 - Right of Entry.

Where it is necessary to make an inspection to enforce the provisions of this Code, or where the Building Official has reasonable cause to believe that there exists in a structure or upon a premises a condition that is contrary to or in violation of this Code, which makes the structure or premises unsafe, dangerous, or hazardous, the Building Official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this Code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the Building Official shall first make a reasonable effort to locate the owner or the person having charge or control of the structure or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.

11-1.407 - Department Records.

The Building Official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required by the City of Modesto Records Retention Manual.

11-1.408 - Nonresponsibility of the City.

Neither the City, nor any department, nor any board, commission, officer, or employee thereof, shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of or failure to issue or the revocation of any permit or certificate of inspection or the making of any inspection under the provisions of this Code, or the issuance of or failure to issue a notice of violation or notice and order.

11-1.409 - Approved Materials and Equipment.

Materials, equipment, and devices approved by the Building Official shall be constructed and installed in accordance with such approval.

11-1.410 - Used Materials and Equipment.

The use of used materials that meet the requirements of this Code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the Building Official.

11-1.411 - Modifications.

Wherever there are practical difficulties involved in carrying out the provisions of this Code, the Building Official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the Building Official shall first find that special individual reason makes the strict letter of this Code impractical and the modification is in compliance with the intent and purpose of this Code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of the action granting modifications shall be recorded and entered in the files of the Building Safety Division.

11-1.412 - Alternative Materials, Design, and Methods of Construction and Equipment.

The provisions of this Code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this Code, provided that any such alternative has been approved by the Building Official. An alternative material, design, or method of construction shall be approved where the Building Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this Code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Code in quality, strength, effectiveness, fire resistance, durability, and safety. Where an alternative material, design or method of construction is not approved, the Building Official shall respond in writing stating the reasons why the alternative was not approved.

11-1.413 - Research Reports.

Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this Code, shall consist of valid research reports from approved sources.

11-1.414 - Tests.

Whenever there is insufficient evidence of compliance with the provisions of this Code, or evidence that a material or method does not conform to the requirements of this Code, or in order to substantiate claims for alternative materials or methods, the Building Official shall have the authority to require tests as evidence of compliance to be made at no expense to the City of Modesto. Test methods shall be as specified in this Code or by other recognized test standards. In the absence of recognized and accepted test methods, the Building Official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the Building Official for the period required for retention in the City of Modesto Records Retention Manual.

Article 5. - Permits

11-1.501 - Required.

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any installation which is regulated by this Code, or to cause any such work to be done, shall first make application to the Building Official and obtain the required permit.

11-1.502 - Work Exempt from Permit.

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

A permit shall not be required for the following:

- (a) Sidewalks and driveways not more than 30 inches (761mm) above grade and not over any basement or story below and that are not part of an accessible route.
- (b) Painting, papering, tiling, carpeting, cabinets, counter tops, and similar finish work.
- (c) Temporary motion picture, television and theater stage sets, and scenery.
- (d) Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
- (e) Window awnings supported by an exterior wall that do not project more than fifty-four (54) inches (1,372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
- (f) Movable cases, counter, and partitions not over 69 inches (1753mm) in height.

11-1.503 - Emergency Repairs.

Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted and the permit obtained within the next business day.

11-1.504 - Repairs.

Repairs to structures or other work affecting public health or general safety shall require application to the Building Official and permit obtained.

11-1.505 - Public Service Agencies.

A permit shall not be required for the installation, alteration, or repair of generation, transmission, distribution, or metering or other related equipment that is under the ownership and control of public service agencies by established right.

11-1.506 - Application for Permit.

To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the Building Safety Division for that purpose. Such application shall:

- (a) Identify and describe the work to be covered by the permit for which application is made.
- (b) Describe the land on which the proposed work is to be done by legal description, street address, or similar description that will readily identify and definitely locate the proposed building or work.
- (c) Indicate the use and occupancy for which the proposed work is intended.
- (d) Be accompanied by construction documents and other information as required in Article 6 of this Code.
- (e) State the valuation of the proposed work.
- (f) Be signed by the applicant or the applicant's authorized agent.
- (g) Give such other data and information as required by the Building Official.

11-1.507 - Action on Application.

The Building Official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the Building Official shall reject such application in writing, stating the reasons therefor. If the Building Official is satisfied that the proposed work conforms to the requirements of this Code and laws and ordinances applicable thereto, the Building Official shall issue a permit therefor as soon as practicable.

11-1.508 - Time Limitation of Application.

Applications for which a permit has not been issued within one hundred eighty (180) calendar days following the date of application submission shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken on the application. This request must be in writing to the Building Official prior to expiration of the application. No application shall be extended more than once. No extension shall exceed one hundred eighty (180) calendar

days. In order to renew action on the application after expiration, the applicant shall resubmit plans and pay a new plan checking fee.

11-1.509 - Validity of Permit.

The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code or of any other local, state, or federal law. Permits presuming to give authority to violate or cancel the provisions of this Code or other local, state, or federal law shall not be valid.

The issuance of a permit based on construction documents and other data shall not prevent the Building Official from requiring the correction of errors in the construction documents and other data. The Building Official is also authorized to prevent occupancy or use of a structure where in violation of this Code or of any other local, state, or federal law.

11-1.510 - Expiration.

Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) calendar days from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) calendar days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) calendar days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half (½) the amount required to obtain a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one (1) year.

Any permittee holding an unexpired permit may apply for an extension of time within which he may commence the work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) calendar days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once. In order to renew action on a permit after expiration, the permittee shall pay a new permit fee.

11-1.511 - Suspension or Revocation.

The Building Official is authorized to suspend or revoke a permit issued under the provisions of this Code whenever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this Code, or other local, state, or federal law.

Article 6. - Construction Documents

11-1.601 - Submittal Documents.

Construction documents, including but not limited to, plans and other required submittals, statement of special inspections, and other data, shall be submitted with each permit application. The required number of sets to be submitted shall be set forth by the Building Official. The construction documents shall be prepared by a registered design professional. Where special conditions exist, the Building Official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception. The Building Official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this Code.

11-1.602 - Information on Construction Documents.

Construction documents shall be dimensioned and drawn upon suitable material and to an acceptable scale. Construction documents shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this Code and relevant laws, ordinances, rules and regulations, as determined by the Building Official.

11-1.603 - Fire Protection System Shop Drawings.

Shop drawings for the fire protection system(s) shall be submitted to indicate conformance with this Code, the City of Modesto Fire Code, and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9 of the California Building Code.

11-1.604 - Means of Egress.

The construction documents shall show in sufficient detail the location, construction, size, and character of all portions of the means of egress in compliance with the provisions of this Code. In other than occupancies in Groups R-2, R-3, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor and in all rooms and spaces.

11-1.605 - Exterior Wall Envelope.

Construction documents for all buildings shall describe the exterior wall envelope in sufficient detail to determine compliance with this Code. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane and details around openings.

The construction documents shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

11-1.606 - Site Plan.

The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The Building Official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

11-1.607 - Examination of Documents.

The Building Official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this Code and other pertinent laws or ordinances.

11-1.608 - Approval of Construction Documents.

When the Building Official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One (1) set of construction documents so reviewed shall be retained by the Building Official. The other set shall be returned to the applicant, shall be kept at the site of work, and shall be open to inspection by the Building Official, or his designee.

11-1.609 - Previous Approvals.

This Code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within one hundred eighty (180) calendar days after the effective date of this Code and has not been abandoned.

11-1.610 - Phased Approval.

The Building Official is authorized to issue a permit for the construction of any part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this Code. The holder of such permit for the part(s) of a building or structure shall proceed at the holder's

own risk with the building operation and without assurance that a permit for the entire structure will be granted.

11-1.611 - Design Professional in Responsible Charge.

When it is required that documents be prepared by a registered design professional, the Building Official shall be authorized to require the owner or the owner's authorized agent to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner or the owner's authorized agent shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The Building Official shall be notified in writing by the owner or owner's authorized agent if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased submittal items, if permitted, for compatibility with the design of the building.

Where structural observation is required by the California Building Code Chapter 17 Special Inspections and Tests, the statement of special inspections shall name the individual or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur.

11-1.611.1 - Deferred Submittals.

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the deferred submittal documents have been approved by the building official.

11-1.612 - Amended Construction Documents.

Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

Article 7. - Fees and Plan Checking

11-1.701 - General.

Fees shall be assessed in accordance with the provisions of this chapter or shall be set forth in a fee schedule adopted from time to time by resolution of the City Council of the City of Modesto.

11-1.702 - Permit Fees.

A fee for each permit shall be paid to the Building Official as set forth in a fee schedule as adopted from time to time by resolution of the City Council of the City of Modesto.

In order to effectively administer the adopted fee schedule by City Council of the City of Modesto, the Building Official and or the Community and Economic Development Director are responsible for setting policies and interpreting the fee schedule. The Building Official and or Community and Economic Development Director must seek the most reasonable fee category for the project description to cover costs associated with the service of plan review and inspection.

11-1.703 - Work Commencing Before Permit Issuance.

Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee as adopted from time to time by resolution of the City Council of the City of Modesto.

11-1.704 - Plan Checking Fees.

A plan checking fee, as adopted from time to time by resolution of City Council of the City of Modesto, shall be paid to the Building Official at the time of submitting application, construction documents and required submittals as specified in Article 6, for checking.

Where plans are incomplete or changed so as to require additional plan checking, an additional plan check fee shall be charged at a rate shown in a fee schedule as adopted from time to time by resolution of the City Council of the City of Modesto. Additional fees assessed will be directly associated with the costs incurred by the division in order to assure plans are reviewed

11-1.705 - Investigation Fee.

An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be directly associated with the additional costs incurred by the division, as adopted from time to time by resolution of the City Council of the City of Modesto.

11-1.706 - Fees to Governmental Agencies.

No permit fees shall be required for the issuance of building permits to governmental agencies; however, governmental agencies that obtain permits may be charged plan checking and inspection fees to defray the actual cost of these services.

11-1.707 - Fee Refunds.

The Building Official is authorized to establish a refund policy for the Building Safety Division. The Building Official may authorize a refund in accordance with said policy.

11-1.708 - Related Fees.

The payment of the fee for the construction, alteration, removal or demolition for work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

Article 8. - Inspections

11-1.801 - General.

Construction or work for which a permit is required shall be subject to inspection by the Building Official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this Code or of any local, state, or federal law. Inspections presuming to give authority to violate or cancel the provisions of this Code or of other local, state, or federal law shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the Building Official nor the City of Modesto shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

11-1.802 - Preliminary Inspection.

Before issuing a permit, the Building Official is authorized to examine or cause to be examined buildings, structures, and sites for which an application has been filed.

11-1.803 - Required Inspections.

The Building Official, upon notification, shall make the inspections set forth in Sections 11-1.804 through 11-1.813.

11-1.804 - Types of Inspections.

For onsite construction, from time to time the Building Official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this Code. The Building Safety Division, upon notification of the permit holder or their agent, shall within a reasonable time make the inspections set forth in Sections 11-1.805 through 11-1.813.

Note: Reinforced steel or structural framework: of any part of any building or structure shall not be covered or concealed without first obtaining the approval of the Building Official.

11-1.805 - Footing and Foundation Inspection.

Inspection of the foundation and footings shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation or footing inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations. Materials for the foundation shall be on the job site except where concrete is ready-mixed in accordance with ASTM C94. Under this circumstance concrete is not required to be at the job site.

11-1.805.1 - Concrete Slab and Underfloor Inspection.

Concrete slab and underfloor inspections shall be made after in-slab or underfloor reinforcing steel and building service equipment, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

11-1.806 - Flood Plain Inspections/Lowest Floor Elevation.

For construction in areas prone to flooding as established by Table R301.2(1) of the California Residential Code upon placement of the lowest floor, including basement, and prior to further vertical construction, the Building Official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, required in Section R322. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 of the California Building Code shall be submitted to the Building Official.

11-1.807 - Frame and Masonry Inspection.

Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after chimneys and vents to be concealed are completed and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

11-1.807.1 - Moisture Content Verification.

Moisture content of framing members shall be verified in accordance with the California Green Building Standards Code (CALGreen), Chapter 4, Division 4.5.

11-1.808 - Lath and Gypsum Board Inspection.

Lath and gypsum board and gypsum panel product inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board and gypsum panel product joints and fasteners are taped and finished.

Exception. Gypsum board that is not part of a fire-resistance-rated assembly or a shear assembly.

11-1.809 - Fire-Resistant Penetrations.

Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

11-1.810 - Energy Efficiency Inspections.

Inspections shall be made to determine compliance with the California Energy Code and shall include, but not be limited to, inspections for: envelope insulation R and U values, fenestration U value, duct system R value, and HVAC and water-heating equipment efficiency.

11-1.811 - Other Inspections.

In addition to the inspections specified above, the Building Official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this Code and other laws that are enforced by the Building Safety Division.

11-1.811.1 - Fire-Resistance-Rated Construction Inspection.

Where fire-resistance-rated construction is required between dwelling units or due to location on property, the Building Official shall require an inspection of such construction after all lathing and/or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished. Protection of joints and penetrations in fire resistance rated assemblies shall not be concealed from view until inspected and approved.

11-1.812 - Special Inspections.

Special inspections shall be defined and conducted in accordance with Chapter 17 of the California Building Code.

11-1.813 - Final Inspection.

The final inspection shall be made after all work required by the building permit is completed.

11-1.814 - Reinspections.

A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when required corrections have not been made.

This provision is not to be interpreted as requiring reinspection fees the first time an inspection is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspection before the project is ready for inspection or reinspection. Reinspection fees may be assessed:

- (a) When the approved plans are not readily available to the inspector.
- (b) For failure to provide access on the date for which the inspection is requested.

- (c) For any deviation from plans requiring the approval of the Building Official.

To obtain reinspection, the applicant shall file an application therefor in writing upon a form for that purpose and pay the reinspection fee as adopted from time to time by resolution of the City Council of the City of Modesto.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

11-1.815 - Inspection Agencies.

The Building Official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

11-1.816 - Inspection Requests.

It shall be the duty of the holder of the building permit or their duly authorized agent to notify the Building Official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this Code.

11-1.817 - Approval Required.

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Building Official. The Building Official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this Code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the Building Official.

Article 9. - Certificate of Occupancy

11-1.901 - Use and Occupancy.

No building or structure shall be used or occupied and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the Building Official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this Code or of other local, state or federal law.

11-1.902 - Certificate of Occupancy.

After the Building Official inspects the building or structure and finds no violations of the provisions of this Code or other laws that are enforced by the Building Safety Division, the Building Official may issue a Certificate of Occupancy that contains the following:

- (a) The building permit number.
- (b) The address of the structure.

- (c) The name and address of the owner or owner's agent
- (d) A description of that portion of the structure for which the certificate is issued.
- (e) A statement that the described portion of the structure has been inspected for compliance with the requirements of this Code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
- (f) The name of the Building Official.
- (g) The edition of the code under which the permit was issued.
- (h) The use and occupancy in accordance with the provisions of Chapter 3 of the California Building Code.
- (i) The type of construction as defined in Chapter 6 of the California Building Code.
- (j) The design occupant load.
- (k) If an automatic sprinkler system is provided, whether the sprinkler system is required.
- (l) Any special stipulations and conditions of the building permit.

11-1.903 - Floor and Roof Designs-Live Loads Posted.

In commercial, institutional or industrial buildings the City of Modesto Fire Marshal shall require durable signage on each floor or portion thereof indicating design live loads exceeding 50 psf (2.40 kN/m²). Such signage shall be conspicuously posted by the owner or the owner's authorized agent in that part of each story in which they apply. It shall be unlawful to remove or deface such signage.

11-1.903.1 - Issuance of Certificate of Occupancy.

A certificate of occupancy required by the Building Official in 9-1.902 shall not be issued until the floor load signs, required by 9-1.902.1, have been installed.

11-1.903.2 - Restrictions on Loading.

It shall be unlawful to place, or cause or permit to be placed, on any floor or roof of a building, structure or portion thereof, a load greater than is permitted by this code.

11-1.904 - Temporary Occupancy.

If any building or structure, including Groups R3 or U occupancy, is to be occupied with the approval of the Building Official prior to the final inspection and/or final corrections, the occupant, owner, and contractor shall sign a Temporary Certificate of Occupancy prior to occupying the building agreeing to make all corrections required and/or listed within thirty (30) calendar days of occupancy. If corrections are not completed within thirty (30) calendar days, the Building Official shall have the authority to request the immediate discontinuance of the electrical service and/or the gas service by the appropriate utility and may file a notice of noncompliance with the County Recorder. The notice of noncompliance shall be removed by the Building Official only after all items requiring correction are completed.

11-1.905 - Changes in Building Occupancy.

Plumbing, mechanical, and electrical systems or equipment that are part of any building or structure undergoing a change in use or occupancy, as defined in this Code, shall comply to all requirements of this Code that may be applicable to the new use or occupancy.

11-1.906 - Revocation.

The Building Official is authorized to, in writing, suspend or revoke a Certificate of Occupancy or completion issued under the provisions of this Code whenever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any law, ordinance or regulation or any of the provisions of this Code.

11-1.907 - Occupancy Violations.

Whenever any building or structure or equipment therein regulated by this Code is being used contrary to the provisions of this Code, the Building Official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use. Such person shall discontinue the use within the time prescribed by the Building Official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this Code.

Article 10. - Service Utilities

11-1.1001 - Connection of Service Utilities.

No person shall make connections from a utility, source of energy, fuel, or power to any building or system that is regulated by this Code for which a permit is required, until released by the Building Official.

In addition, the structure or building shall pass final inspection as per Article 8 of this chapter prior to the connection to the electrical source.

11-1.1002 - Temporary Connection.

The Building Official shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel, or power.

Temporary electrical or gas connection to the electrical or gas source for a period not to exceed thirty (30) calendar days may be granted prior to the final inspection if in the opinion of the Building Official the service is safe. If after thirty (30) calendar days the structure or building has not passed final inspection, the Building Official shall have authority to request the serving utility to disconnect the service.

11-1.1003 - Authority to Disconnect Service Utilities.

The Building Official shall have the authority to authorize disconnection of utility service to the building, structure, or system regulated by this Code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The Building Official shall notify the serving utility, and whenever possible, the owner and occupant of the building, structure, or service system, of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or service system shall be notified in writing, as soon as practical thereafter.

11-1.1004 - Prior Occupancy.

If any building or structure is occupied prior to the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy as required by Section 11-1.902 or 11-1.904 of this chapter, the Building Official shall have the authority to request the immediate discontinuance of the electrical service and/or the gas service by the appropriate utility.

11-1.1005 - Connection After Order to Disconnect.

Persons shall not make connections from energy or fuel to any equipment regulated by this Code that has been disconnected or ordered to be disconnected by the Building Official or the use of which has been ordered to be discontinued by the Building Official until the Building Official authorizes the reconnection and use of such equipment.

Article 11. - Board of Appeals

11-1.1101 - General.

In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of the provisions of this Code, an Appeals Board is created in accordance with Title 9 Chapter 1 Article 11.

Article 12. - Disabled Access Appeals Board

11-1.1201 - General.

In order to hear appeals to actions taken by the City and to provide reasonable interpretations of the California Access Laws, there is hereby created a Disabled Access Appeals Board in accordance with Title 9 Chapter 1 Article 12.

Article 13. - Violations

11-1.1301 - Unlawful Acts.

It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, move, remove, demolish, or occupy any building, structure, plumbing, mechanical, or electrical system, parts thereof, or equipment regulated by this Code, or cause same to be done, in conflict with or in violation of any of the provisions of this Code.

11-1.1302 - Notice of Violation or Notice and Order.

The Building Official is authorized to serve a notice of violation or notice and order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this Code, or in violation of a permit or certificate issued under the provisions of this Code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

11-1.1303 - Method of Service.

Service of the notice of violation or notice and order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service may be made upon the record owner at his/her/their address as it appears on the last equalized assessment roll of Stanislaus County recorded documents or as known to the Building Official. A copy of the notice of violation or notice and order and any amended or supplemental notice of violation or notice and order shall also be posted on the premises.

- (a) In lieu of personally serving the owner or service by certified mail, service of the notice of violation or notice and order and any amended or supplemental notice of violation or notice and order may be made as follows:
 - (1) In the event that the owner refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:
 - (2) By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first class mail a copy to the recipient where the copy was left;
 - (3) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the

household and thereafter mailing, by first class mail, a copy to the recipient at the address where the copy was left.

- (4) In the event the owner refuses to accept certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be as set forth in subsection (a)(1) of this section upon the property manager or rental agency.
- (5) If the owner lives out of state and will not accept certified return receipt mail, then service may be made by first class mail.
- (6) If the owner of the property cannot be located, or service cannot be effected as set forth in this section, service may be made by publication in a Modesto newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any such person to receive such notice of violation or notice and order shall not affect the validity of any proceedings taken under this chapter. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

11-1.1304 - Proof of Service.

Proof of service of the notice of violation or notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice of violation or notice and order retained by the Building Official.

11-1.1305 - Recordation of Notice and Order.

If compliance is not had with the notice of violation or notice and order within the time specified therein, and no appeal has been properly and timely filed, the Building Official may file in the office of the County Recorder a certificate describing the property and certifying (a) that the building is a substandard building, and (b) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a substandard building on the property described in the certificate, the Building Official shall file a new certificate with the County Recorder certifying that the building has been demolished or all required corrections have been made and fees paid and that the building is no longer substandard, whichever is appropriate.

11-1.1306 - Right of Appeal.

Any person having any record title or legal interest in the building may appeal from any notice of violation or notice and order or any action of the Building Official under this title by filing at the office of the Building Official within thirty (30) calendar days from

the date of service of the notice of violation or notice and order, or the date of the action of the Building Official, a written appeal.

- (a) The written appeal must contain a brief statement setting forth the legal interest of each of the appellants in the building or the land subject to the action of the Building Official or involved in the notice of violation or notice and order. The written appeal must contain a brief statement in ordinary and concise language of the specific order, action and/or Building Code section under protest, together with any material facts that support the contentions of the appellant.
- (b) The written appeal must contain a brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed, why the protested order or action should be reversed, modified, or otherwise set aside.
- (c) The written appeal must contain signatures of all parties named as appellants and their official mailing addresses.
- (d) At least one (1) appellant must submit a declaration under penalty of perjury as to the truth of matters stated in the appeal. This declaration must be submitted with the written appeal itself.

11-1.1307 - Processing of Appeal.

- (a) Upon receipt of any appeal filed and payment of the appeal fee, as adopted from time to time by resolution of the City Council of the City of Modesto, the Building Official shall forward the appeal to the secretary of the Board of Building Appeals. The secretary shall calendar the appeal for a hearing.
- (b) If the appeal is received by the Building Official not later than fifteen (15) calendar days prior to the next regular meeting of the Board, it shall be calendared for hearing at said meeting.
- (c) If the appeal is received by the Building Official on a date less than fifteen (15) calendar days prior to the next regular meeting of the Board, it shall be calendared for hearing at the next subsequent meeting of the Board.

11-1.1308 - Noticing the Appeal for Hearing.

As soon as practicable after receiving a written appeal, the Building Official shall fix a date, time and place for the hearing of the appeal by the Board of Building Appeals. Such date shall be not less than ten (10) calendar days nor more than forty-five (45) calendar

days from the date the appeal was filed with the Building Official. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to the appellant(s) by the Building Official either by causing a copy of such notice to be delivered to the appellant(s) personally or by mailing a copy thereof, postage prepaid, addressed to the appellant(s) at the address(es) shown on the appeal.

11-1.1309 - Form of Notice of Hearing.

The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Board of Building Appeals at _____ on the day of 20_____, at the hour _____ upon the notice of violation/action of the Building Official/notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with the Board of Building Appeals.

11-1.1310 - Appeal Fee.

The Building Official shall collect and require an appeal fee to be paid at the time any appeal allowed by this Code is filed. The appeal fee shall be established by resolution of the City Council of the City of Modesto, as adopted from time to time. The fee shall be calculated to recover the total City costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, preparation and service of notices and staff appearance at the appeal hearing. No appeal shall proceed without payment of the fee at the time the appeal is filed. The Building Official may waive the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the decision of the Building Official, notice of violation or notice and order, and other factors indicating good faith attempts to comply with the decision of the Building Official, notice of violation or notice and order.

11-1.1311 - Effect of Failure to Appeal.

Failure of any person to file a timely appeal in accordance with the provisions of this chapter shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the decision of the Building Official, notice of violation or notice and order, or any portion thereof, subject only to review pursuant to the provisions of California Code of Civil Procedure Section 1094.5.

11-1.1312 - Further Permits or Approvals.

If a notice of violation or notice and order has not been satisfied on a particular property, and a timely appeal has not been filed, further permits or approvals for continued work permitted by this Code shall not be granted for that property unless specifically approved by the Building Official and the violation has been corrected, inspected and approved.

11-1.1313 - Prosecution of Violation.

If the notice of violation or notice and order is not complied with promptly, the Building Official is authorized to request the legal counsel of the City of Modesto to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this Code or of the order or direction made pursuant thereto.

11-1.1314 - Administrative Remedies.

In addition to all other remedies available at law, any person who violates a provision of this Code or fails to comply with any of the requirements thereof or who erects, constructs, alters, or repairs a building or structure in violation of the approved construction documents or directive of the Building Official, or of a permit or certificate issued under the provisions of this Code, shall be subject to Administrative Remedies as prescribed by Title 1, Chapter 6, of the City of Modesto Municipal Code.

11-1.1315 - Failure, Neglect or Refusal to Obey Order.

After any order of the Building Official, the Board of Building Appeals or the Disabled Access Appeals Board made pursuant to this Code becomes final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

11-1.1316 - Remedy for Failure to Obey Order.

If, after any order of the Building Official, the Board of Building Appeals, or Disabled Access Appeals Board made pursuant to this Code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Building Official may (a) cause such person to be prosecuted under Section 9-1.1318 or (b) institute any appropriate action to abate such building as a public nuisance. These remedies are in addition to all other remedies allowed by law.

11-1.1317 - Interference With Repair or Demolition Work Prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the City of Modesto or with any person who owns or holds any estate or interest in any building that has been ordered repaired, vacated or demolished under the provisions of this Code, or with any person to whom such building has been lawfully sold pursuant to the provisions of this Code, whenever such officer, employee, contractor or authorized representative of the City of Modesto, person having an interest or estate in such building or structure, or purchaser is engaged in the work or repairing, vacating and repairing, or demolishing any such building pursuant to the provisions of this Code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this Code.

11-1.1318 - Criminal Violation.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code. A violation of any of the provisions or failing to comply with any of the requirements of this Code shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one (1) year, by a fine of not exceeding five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

11-1.1319 - Administrative Penalties.

In addition to all other remedies set forth in this chapter, administrative penalties pursuant to Title 1, Chapter 6, of the Modesto Municipal Code may be imposed against any person for violating any of the requirements set forth in this chapter.

Article 14. - Stop Work Order

11-1.1401 - Authority.

Whenever the Building Official finds any work regulated by this Code being performed in a manner either contrary to the provisions of this Code or dangerous or unsafe, the Building Official is authorized to issue a stop work order.

11-1.1402 - Issuance.

The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume.

11-1.1403 - Unlawful Continuance.

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to prosecution, administratively or criminally, and subject to penalties as prescribed by law, in addition to any other remedies provided by law.

Article 15. - Unsafe Structures and Equipment

11-1.1501 - Conditions.

Structures that are or hereafter become unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the Building Official deems necessary and as provided for in this Code. A vacant structure that is not secured against entry shall be deemed unsafe.

11-1.1502 - Record.

The Building Official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

11-1.1503 - Notice.

If an unsafe condition is found, the Building Official shall serve on the owner, agent, or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the Building Official acceptance or rejection of the terms of the order.

11-1.1504 - Method of Service.

Service of the written notice of unsafe structures or equipment may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service may be upon the record owner at his/her/their address as it appears on the last equalized assessment roll of Stanislaus County recorded documents or as known to the Building Official. A copy of the written notice and any amended or supplemental written notice shall also be posted on the premises.

- (a) In lieu of personally serving the owner or service by certified mail, service of the written notice and any amended or supplemental written notice may be made as follows:
- (1) In the event that the owner refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:
 - (2) By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first class mail a copy to the recipient where the copy was left;
 - (3) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household

and thereafter mailing, by first class mail, a copy to the recipient at the address where the copy was left.

- (4) In the event the owner refuses to accept certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be as set forth in subsection (a)(1) of this section upon the property manager or rental agency.
- (5) If the owner lives out of state and will not accept certified return receipt mail, then service may be made by first class mail.
- (6) If the owner of the property cannot be located, or service cannot be effected as set forth in this section, service may be made by publication in a Modesto newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any such person to receive such written notice shall not affect the validity of any proceedings taken under this chapter. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

11-1.1505 - Proof of Service.

Proof of service of the written notice shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the written notice and retained by the Building Official.

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.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental

Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED:


TED BRANDVOLD, Mayor

ATTEST:


By:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


ADAM U. LINDGREN, City Attorney

Ord. No. 3662-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017

Ordinance No. 3662-C.S.
Effective: January 6, 2017

ORDINANCE NO. 3663-C.S.

**AN ORDINANCE REPEALING AND REPLACING
CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL
CODE AND ADOPTING BY REFERENCE AND
AMENDING THE CALIFORNIA FIRE CODE, 2016
EDITION, REGULATING AND GOVERNING THE
SAFEGUARDING OF LIFE AND PROPERTY FROM FIRE
AND EXPLOSIVE HAZARDS ARISING FROM THE
STORAGE, HANDLING, AND USE OF HAZARDOUS
SUBSTANCES, MATERIALS AND DEVICES, AND FROM
CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN
THE OCCUPANCY OF BUILDINGS AND PREMISES IN
THE CITY OF MODESTO; PROVIDING FOR THE
ISSUANCE OF PERMITS AND COLLECTION OF FEES,
PROVIDING PENALTIES FOR THE VIOLATION
THEREOF, AND REPEALING ALL ORDINANCES AND
PARTS OF THE ORDINANCES IN CONFLICT
THEREWITH**

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before

making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of this Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

SECTION 1. REPEAL OF CODE. Chapter 1 of Title 3 (Ordinance No. 3591) of the Modesto Municipal Code is hereby repealed in its entirety. The remaining Chapters of Title 3 (Chapters 2, 3, and 4) shall not be amended or repealed by this Ordinance.

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

**CHAPTER 1. ADOPTION OF THE CALIFORNIA FIRE CODE,
2016 EDITION**

ARTICLE 1. FIRE CODE

3-1.101. FINDINGS FOR ADOPTION OF THE CALIFORNIA FIRE CODE, 2016 EDITION.

The City Council of the City of Modesto hereby finds and determines: That the International Code Council is a private organization which has been in existence for at least three (3) years. That the California Fire Code, 2016 Edition, published by said organization, is a nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said California Fire Code, 2016 Edition has been printed and published as a code in book form within the meaning of Section 50022.2 et seq. of the Government Code. That one (1) copy of the California Fire Code, 2016 Edition, certified by the City Clerk of the City of Modesto to be a true copy, has been filed for use and examination by the public in the office of the City Clerk of the City of Modesto. Sections of the California Fire Code, 2016 Edition may be referred to by the number used in said published compilation, preceded by the words "California Fire Code Section" or "Fire Code Section", and may also be referred to by additional reference to the Modesto Municipal Code and sections therein pertaining to said California Fire Code, 2016 Edition.

The additional requirements and standards established herein are needed to properly protect the health, safety, and welfare of the existing and future residents and workers of the City of Modesto. Said requirements and standards are reasonably necessary because of local climatic, geological, and topographical conditions, and comply with existing state laws and regulations.

Amendment of the California Fire Code, 2016 Edition, is necessary so as to provide more stringent standards for fire extinguishing systems; fire hazard and hazardous materials controls is necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following climatic and topographical local conditions:

- (a) Summer weather conditions are very dry, hot and windy causing ordinary combustibles to be easily ignited and fires to be fast spreading;
- (b) Very dense fog conditions occur in winter. Reduced visibility causes delays in fire response;
- (c) Fire response is delayed by railroad tracks which:

- (1) Divide the City from northeast between Tully Road and McHenry Avenue to the west side of Ninth Street;
 - (2) Run parallel to Highway 99 through the City, restricting response at locations where overpasses are not provided;
 - (3) Run parallel to Yosemite Boulevard restricting access to the airport, Tuolumne Regional Park, and adjacent areas; and
 - (4) Restrict access at intersections and streets in the areas of Ninth, Tenth, D, and E Streets.
- (d) Modesto Irrigation Canal #3 restricts access to the neighborhoods and developments to the north and east of Briggsmore Avenue from Oakdale Road to Claus Road;
- (e) Fire response is delayed by rivers and creeks which:
- (1) Divide the southwest area of the City and City contract areas and restrict access to these areas; and
 - (2) Divide the City from east to southwest along Scenic Drive.

THEREFORE, for the above reasons taken individually and cumulatively and in accordance with the authority granted in Sections 17958.5 and 17958.7 of the California Health and Safety Code, the Council of the City of Modesto expressly finds there are local climatic and topographical conditions that make the increased fire protection requirements set forth in this chapter reasonably necessary.

3-1.102. ADOPTION BY REFERENCE OF THE CALIFORNIA FIRE CODE, 2016 EDITION.

- (a) That certain document, one (1) copy of which is on file in the office of the City Clerk of the City of Modesto, being marked and designated as the California Fire Code, 2016 Edition, California Code of Regulations Title 24, Part 9, including Appendix Chapter 4, and Appendix B, BB, C, CC, E, F, G, I, K, L, N and Division II Administration as published by the International Code Council, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings

and premises as herein provided; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said California Fire Code, 2016 Edition, on file in the office of the City Clerk of the City of Modesto is hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in this chapter be and is hereby adopted as the Fire Code of the City of Modesto.

- (b) These regulations shall be known as the Fire Code of the City of Modesto and may be cited as such or may be cited as the “California Fire Code, 2016 Edition,” the “2016 California Fire Code”, “the Fire Code”, or “this Code.”

3-1.103. REPEAL OF CONFLICTING ORDINANCES.

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or with the 2016 California Fire Code as adopted and amended are hereby repealed.

ARTICLE 2. AMENDMENTS, ADDITIONS AND DELETIONS TO THE 2016 CALIFORNIA FIRE CODE

3-1.201. COMBUSTIBLE WASTE MATERIAL.

Section 304.1.2 of the 2016 California Fire Code is hereby amended by adding the following:

304.1.2. Vegetation. When the Fire Code Official determines that total removal of growth is impractical due to the size or environmental factors, approved fuel breaks shall be established. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks.

Abatement of a public nuisance shall be in accordance with Article 6 of Chapter 6 of Title 1 of the Modesto Municipal Code. The Fire Department may impose a nuisance abatement lien pursuant to Section 1-6.702 of the Modesto Municipal Code.

The Fire Department may recover, from a property owner, those costs associated with the suppression costs incurred in fighting a fire and for

providing rescue or emergency medical services should a fire occur on said property after the owner has been notified to abate such public nuisance and has failed to do so.

3-1.202. VEHICLE IMPACT PROTECTION.

Section 312.2 of the 2016 California Fire Code is hereby amended to read as follows:

312.2. Posts. Guard posts or other approved means shall be provided to protect storage tanks and connected piping, valves and fittings; dispensing areas; and use areas subject to vehicular damage. When guard posts are installed, the posts shall be:

1. Constructed of steel not less than six (6) inches in diameter and concrete filled,
2. Spaced not more than four (4) feet between posts on center,
3. Set not less than three (3) feet deep in a concrete footing of not less than a fifteen (15) inch diameter,
4. Set with the top of the posts not less than three (3) feet above ground, and
5. Located not less than five (5) feet from the tank.

3-1.203. FIRE PROTECTION AND WATER SUPPLIES.

Section 507.1 of the 2016 California Fire Code is hereby amended to read as follows:

507.1. Required Water Supply.

- (a) An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, building or portions of buildings are hereafter constructed or moved into or within the jurisdiction. See Appendix-B of the 2016 California Fire Code.

- (b) Fire hydrants shall be located on the supply side of the fire suppression system check valve.
- (c) Fire hydrants shall be accessible to the Fire Department apparatus by roads meeting the requirements of Section 503.1 of the 2016 California Fire Code.

3-1.204. FUEL FIRED APPLIANCES.

Section 603.4 of the 2016 California Fire Code is hereby amended to read as follows:

603.4. Portable Unvented Heaters. The use of listed portable unvented fuel-fired heating equipment is limited to supplemental heating in Group S-2, and U occupancies.

3-1.205. INCINERATORS.

Section 603.8 of the 2016 California Fire Code is hereby amended to read as follows:

603.8. Incinerators. The use of incinerators is prohibited inside the City limits of Modesto.

EXCEPTION: Incinerators used by state licensed facilities for the cremation of human or pet remains.

Subsections 603.8.1, 603.8.2, 603.8.3, and 603.8.4 are deleted.

3-1.206. AUTOMATIC SPRINKLER SYSTEMS.

Section 903.2 of the 2016 California Fire Code is hereby amended by adding the following:

New Construction.

- (a) An approved automatic fire sprinkler system is required in all new buildings and structures constructed on or after the effective date of this ordinance, notwithstanding the use and occupancy thereof,

when the total floor area under one roof exceeds five thousand (5,000) square feet. Fire area separation walls shall not be used for the purpose of eliminating automatic fire sprinkler systems required by this section.

- (b) When automatic sprinkler systems are required by the Modesto Municipal Code or the 2016 California Fire Code for certain uses and/or occupancies, the requirements of Section 903.2 of the 2016 California Fire Code shall also apply.
- (c) An approved automatic residential fire sprinkler system shall be installed in all one and two-family dwellings and townhouses in accordance with NFPA 13D or Section R313.3 of the 2016 California Residential Code.

EXCEPTION: Carports, sheds, tanks, towers and agricultural buildings.

Existing Buildings and Structures. An approved automatic fire sprinkler system shall be installed in all existing buildings and structures when the value of additions, alterations or repairs are made within any twelve-month period that exceed fifty (50) percent of the current county assessed valuation for improvements only in the existing building or structure that exceeds five thousand (5,000) square feet or additions result in said building or structure exceeding five thousand (5,000) square feet.

EXCEPTION:

- 1. Carports, sheds, tanks, towers and agricultural buildings.
- 2. Each portion of an existing building or structure separated by one or more fire walls, constructed in accordance with the current adopted edition of the Building Code, when each portion does not exceed five thousand (5,000) square feet.

3-1.207. MONITORING.

Section 903.4.1 of the 2016 California Fire Code is hereby amended by adding the following:

Alarm, supervisory and trouble signals shall be distinctly different and shall be

automatically transmitted to a UL LISTED supervising station as defined in NFPA 72 or, when approved by the Fire Code Official, shall sound an audible signal at a constantly attended location.

3-1.208. PORTABLE FIRE EXTINGUISHERS.

Section 906.9.1 of the 2016 California Fire Code is hereby amended to read as follows:

906.9.1 Extinguishers Weighing 40 Pounds or Less. Portable fire extinguishers having a gross weight not exceeding forty (40) lbs. (18 kg) shall be installed so that their tops are not more than four (4) feet above the floor.

Existing Installations. Portable fire extinguishers shall only be required to be lowered during tenant improvements.

3-1.209. FIRE ALARM AND DETECTION SYSTEMS.

Section 907.1 of the 2016 California Fire Code is hereby amended by adding the following section:

907.1.6. Certification. A certificate from Underwriters Laboratories (UL) shall be required on all monitored commercial fire alarm systems installed after the effective date of this ordinance. UL certification shall be provided for all previously existing commercial fire alarm systems. UL certification is required to be maintained for commercial fire alarm systems throughout the life of the alarmed building.

3-1.210. FALSE FIRE ALARMS.

Section 908 of the 2016 California Fire Code is hereby amended by adding the following section:

908. 8. False Fire Alarms. False fire alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted. The City Council may adopt by resolution reasonable fees to recover the costs associated with responses to buildings or structures that have excessive false fire alarms.

3-1.211. HOT WORKS.

Section 3504.2.6 of the 2016 California Fire Code is hereby amended to read as follows:

3504.2.6 Fire Extinguisher. A minimum of one portable fire extinguisher complying with Section 906 and with a minimum 2-A:20 B:C rating shall be readily accessible within thirty (30) feet (9144 mm) of the location where hot work is performed and shall be accessible without climbing stairs. When required by the Fire Code Official, a minimum 2-A: 20-B: C rated fire extinguisher shall be mounted to each portable welding cart.

3-1.212. HAZARDOUS MATERIALS INVENTORY STATEMENT.

Section 5001.5.2 of the 2016 California Fire Code is hereby amended by adding the following:

10. Key Box. When required by the Fire Code Official, an approved key box, sized to contain emergency information, (HMMP, HMIS and Material Safety Data Sheets) shall be provided.

3-1.213 DEPOSITS OF HAZARDOUS MATERIALS; CLEANUP, ABATEMENT, OR MITIGATION REQUIRED; LIABILITY FOR COSTS.

Section 5003.3.1.4 of the 2016 California Fire Code is hereby amended to read as follows:

Responsibility for Cleanup. The person, firm or corporation responsible for an unauthorized discharge shall initiate and complete all actions necessary to remedy the effects of such unauthorized discharge, whether sudden or gradual, at no cost to the jurisdiction. When deemed necessary by the Fire Code Official, cleanup may be initiated by the Fire Department or by an authorized individual or firm. Costs associated with such cleanup shall be borne by the owner, operator or other person responsible for the unauthorized discharge. The remedy provided by this section shall be in addition to any other remedies provided by law.

For purposes of this section, costs incurred by the City shall include, but shall not necessarily be limited to, the following: actual labor costs of City personnel, including worker's compensation benefits, fringe benefits,

administrative overhead; cost of equipment operation; cost of materials obtained directly by the City; and cost of any contract labor and materials. The authority to recover costs under this section shall not include actual fire suppression services that are normally or usually provided by the Fire Department.

3-1.214. STATIONARY CONTAINERS.

Section 5504.3.1.1.3 of the 2016 California Fire Code is amended by adding the following:

Location. Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. All R-1, R-2 and R-3 zoning designations as identified in Title 10 of the Modesto Municipal Code.

3-1.215. PERMITS REQUIRED FOR EXPLOSIVES.

Section 5601 of the 2016 California Fire Code is hereby amended by adding the following:

5601.2 Permits Required. When permits are required to be issued by the Fire Code Official, the Fire Code Official may grant the authority to the agency having enforcement jurisdiction. A Permit shall be obtained:

1. To possess, store, sell, display or otherwise dispose of explosive materials at any location.
2. To transport explosive materials.
3. To use explosive materials.
4. To operate a terminal for handling explosive materials.

3-1.216. POSSESSION, MANUFACTURE, SALE, USE OR DISCHARGE OF DANGEROUS FIREWORKS.

Section 5604 of the 2016 California Fire Code is hereby amended by adding the following:

5604.1.2 Dangerous Fireworks

- (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.
- (b) It shall be unlawful for any person to possess, manufacture, sell, use or discharge dangerous fireworks, or a dangerous firework kit, unless a permit authorizing such possession, sale, manufacture, use or discharge has been issued by the Fire Code Official to the person or responsible party, as is defined in Section 1-6.207 of the Modesto Municipal Code, using, selling, manufacturing, discharging or found in possession of said fireworks or kits, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal. The Fire Code Official may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.
- (c) The Fire Code Official, or designee, shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of dangerous fireworks offered or exposed for sale, stored, or held in violation of this chapter.

3-1.217. EXPLOSIVE MATERIALS PROHIBITED AND LIMITED ACTS.

Section 5605.1 of the 2016 California Fire Code is hereby amended as follows:

5605.1 General. The assembly and testing of explosives, ammunition, blasting agents and fireworks shall comply with the requirements of this section and NFPA 495 or NFPA 1124.

5605.1.1 Manufacturing. Explosive materials shall not be manufactured within the city limits of Modesto.

5605.1.2 Limits Established by Law. The storage of explosives and blasting agents is restricted to those areas of the City zoned as Heavy

Industrial Zone (M-2).

EXCEPTION:

1. Temporary storage for use in connection with approved blasting operations conducted in accordance with all applicable provisions of this article.
2. Wholesale and retail storage and display of ammunition and gunpowder shall be in accordance with Title 19 California Code of Regulations, Division I, Chapter 10.

3-1.218 MANUFACTURING OF FIREWORKS.

Section 5605 of the 2016 California Fire Code is hereby amended by adding the following:

5605.1.3 Manufacturing. The manufacturing of fireworks is prohibited within the city limits of Modesto.

3-1.219. PERMITS: DISPLAYS OF FIREWORKS AND APPEAL PROCESS.

Section 5608 of the 2016 California Fire Code is hereby amended by adding the following:

5608.2 Permits. The Fire Code Official may grant a permit for the display of fireworks, including proximate audience displays and pyrotechnic special effects in theatrical and group entertainment as applied for, or with conditions thereto, unless s/he finds that to do so would be contrary to the public health, safety, or welfare. The decision of the Fire Code Official shall be in writing and shall be mailed, postage prepaid, to the applicant.

5608.3 Appeal. The decision of the Fire Code Official, in acting on an application for permission to conduct a public display in accordance with the provisions of this section may be appealed to the City Manager. Notice of an appeal of the Fire Code Official's decision shall be filed by the applicant with the City Clerk within ten (10) days after the date of the decision. Upon failure to file such notice within the ten (10) day period, the action of the Fire Code Official shall be final and conclusive. The

applicant may appeal the decision of the City Manager to the City Council by filing a notice of appeal to the City Clerk within ten (10) days after the date of the City Manager's decision. Upon failure to file such notice within the ten (10) day period, the action of the City Manager, or his/her designee, shall be final and conclusive.

5608.4 Fee. A nonrefundable fee as established by resolution of the City Council, from time to time, shall accompany every application for permission to conduct a public display of fireworks. This fee shall be in addition to any other fee or tax imposed by Title 6 of the Modesto Municipal Code.

3-1.220. SALES OF FIREWORKS.

Section 5608 of the 2016 California Fire Code is hereby amended by adding the following:

5608.5 Sales. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.

- (1) Effective 2005, the total number of sales permits issued in any given year shall be limited to seventy (70).
- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
 - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes, as defined by Section 501(c) of the Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Modesto. Each new organization shall provide the City with a copy of their "Letters of Incorporation" as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State's Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of

California and IRS if nonprofit status comes into question.

- (B) Public school organizations shall provide current written verification of affiliation from the school each year.
 - (C) A "local nonprofit organization" must have its principal and permanent meeting place in the City of Modesto or within the City of Modesto sphere of influence. The organization must have obtained nonprofit status and have been organized and established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least ten (10) members who reside in the City of Modesto, which will be verified each year. Applications shall be signed by two (2) bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by State laws, administrative regulations, and all stipulations of this Code and the permit if permission to operate a fireworks stand is granted to the organization.
 - (D) An "existing local for-profit organization" must have a permitted fixed business location in the City of Modesto, have been issued a fireworks sales permit the previous year, have remained under the same management and/or ownership continuously since 1999, and have paid all business license and mill tax fees due the City of Modesto by the close of the application period. In the event mill taxes and business license fees are not current the organization's application will be denied.
 - (E) If any of the above items fail to be met at the time of application, the organization's application shall be denied.
- (3) Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.
 - (4) All applications for sales permits shall be in writing to the Fire Code Official on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each

year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.

Each organization may file an application for one (1) sales permit for which there is only one tax ID number.

- (5) Applications shall set forth the proposed location of the fireworks stand including the nine (9) digit parcel number (APN) of the Stanislaus County Assessor, a site map, and other information as may be required by the Fire Code Official.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Code Official of approval or disapproval of such application. Sales permits will be issued after final inspection of the stand reveals compliance with all state and local regulations. Organizations shall not open for sales prior to the final inspection of their stand. If an organization's stand fails to pass inspection there will be a re-inspection fee charged for the third (3rd) inspection, and each inspection thereafter until final inspection is approved, as established by Resolution No. 03-446.
- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.226. Other items required at the time of application will be the organization's verification of eligibility as stated in 2(A) above, list of bona fide members, and current written permission signed by the property owner of record (with respect to lessee permission, approval shall be in the sole discretion of the Fire Code Official to sell fireworks at that location. Organizations representing public schools, as stated in 2(B) above, require written verification from the school of their affiliation.
- (8) Every application shall be accompanied by a nonrefundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of the Modesto Municipal Code.
- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously permitted since 1999) organizations will have first option for a permit.
 - (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such

permits, a lottery will be held to fill any vacancies.

- (B) This lottery will be held fourteen (14) days after the last day of the filing period specified in paragraph 4 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period. If the fourteenth (14th) day falls on a weekend the lottery will be held on the next business day.
 - (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.
 - (D) Any organization having an approved application that fails to open their stand for that sales year will automatically forfeit their permit and a new organization will be chosen the following year provided a permit is available.
- (10) A nonprofit organization may apply for a sales permit with regard to a stand located in an area annexed by the City of Modesto under the following conditions:
- (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
 - (B) The applicant has received a valid City of Modesto business license; and
 - (C) The organization must either
 - (1) Meet the criteria of set forth in Section 33-1.223(2) (A) or
 - (2) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.
 - (D) Annexed property that was previously used for a temporary

booth by an organization whose current primary meeting place is outside the city limits of Modesto is not eligible to make application for a sales permit.

Permits issued to these organizations will be issued without the necessity of being selected by lottery, even though such issuance may increase the number of permits to more than allowed herein. The addition of these organizations does not change the original intent to issue a total of seventy (70) sales permits per year.

3-1.221. SALES, STORAGE, USE, AND HANDLING OF FIREWORKS.

Section 5608 of the 2016 California Fire Code is hereby amended by adding the following:

5608.6 General. Sales, storage, use, and handling of fireworks shall be in accordance with this chapter.

1. **Sales.** Retail sale or display with the intent to sell fireworks is limited to State of California Fire Marshal approved and labeled "Safe and Sane" fireworks within the City of Modesto, by State of California licensed retailers, provided a permit to sell those fireworks has been approved and obtained from the Fire Code Official. Fireworks may be sold or offered for sale from 12:00 noon to 10:00 p.m. on June 28, 9:00 a.m. to 10:00 p.m. on June 29 through July 5, and 9:00 a.m. to 12:00 noon on July 6.

The storage of fireworks within the City of Modesto is limited to State of California Fire Marshal-approved and labeled "Safe and Sane" fireworks by State of California licensed wholesalers and retailers.

- (A) **Wholesale Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H3 occupancy classification requirements as defined by the 2016 California Building Code.
- (B) **Retailers Storage.** Retailers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with

the intent to sale, shall be stored solely in the following manner:

- (1) Within the permitted fireworks stand with a responsible adult on the premises at all times.
 - (2) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
 - (3) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.
 - (4) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
 - (5) In an approved and permitted fireworks warehouse.
2. **Operator Safety.** Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall attend a stand operator safety seminar conducted by the City of Modesto Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sale fireworks for that calendar year.
3. **Temporary Fireworks Stands.**
- (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
 - (2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during

hours of operation.

- (3) Temporary fireworks stand shall not be set up before application for permit has been approved no earlier than June 14.
- (4) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330 of the Modesto Municipal Code.
- (6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.
- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not removed by 12:00 noon on the 12th day of July.

4. Safety Precautions.

- (1) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
- (2) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
- (3) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.
- (4) Dry grass, weeds, trash, and other combustible material

shall be removed for a distance of twenty (20) feet around any fireworks stand.

- (5) Fireworks shall not be discharged within fifty (50) feet of a fireworks stand.

5. Stand Construction.

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
 - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (B) The stand shall be provided with a roof.
 - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.
 - (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.
 - (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
 - (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
 - (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
 - (H) An approved fire extinguisher having a minimum U.L. classification of 2A shall be located in the

stand, near the exit and readily accessible.

- (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Fire Code Official.
- (J) Stands will be limited to twenty-four (24) feet by eight (8) feet or one hundred ninety-two (192) square feet in size. Pre-existing stands as identified by the fireworks suppliers shall retain the right to operate their oversized stands, without change, until said stand or organization forfeits or loses their operating permit. A copy of said list shall remain on file with the Fire Code Official.

6. Operation of Fireworks Stand Only by Permittee.

- (1) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operation of such fireworks stand. Violations will result in the immediate loss of the organization's permit.
- (2) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.
- (3) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

3-1.222. REVOCATION OF PERMIT AND SEIZURE OF FIREWORKS.

Section 5608 of the 2016 California Fire Code is hereby amended by adding the following:

5608.7 Revocation of Fireworks Sales Permit. The Fire Code Official, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks sales permit of any location or organization when any of the provisions of Sections 3-1.220, 3-1.221, or 3-1.223 are violated. The Fire Code Official shall inform the permittee that permittee may seek review of the Fire Code Official's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Code Official shall provide the City Manager with written notice that a fireworks sales permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Fire Code Official, or his/her designee, that day to review the Fire Code Official's decision. The decision of the City Manager shall be final.

5608.7.1 Revocation of any sales permit will be effective for that calendar year.

3-1.223 FIREWORKS DISPLAYS INSURANCE REQUIRED.

Section 5608 of the 2016 California Fire Code is hereby amended by adding the following:

5608.8 Insurance.

1. The permittee shall furnish a certificate of insurance for each policy required, executed by the company issuing such policy, and approved as to form by the Risk Manager. Such policies shall contain a provision which holds the City as an additional insured and declaring said insurance to be primary and that no other insurance carried by an insured party shall be called upon for contribution. Notwithstanding any other provision of this section, the failure of the permittee to carry such insurance during the time covered by such permit shall automatically revoke the permit as of the date of expiration of such insurance policy or policies. A payment of one hundred and two dollars (\$102.00) shall be made to the City before any such revoked permit may be reinstated.
2. The permittee/licensee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the

Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.

- (a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of five hundred thousand dollars (\$500,000).
- (b) General Liability insurance with a minimum limit of liability per occurrence of five million dollars (\$5,000,000) for bodily injury and five hundred thousand (\$500,000) for property damage. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent permittee/licensees and subcontractors; products and completed operations; and professional liability.
- (c) Automobile Liability insurance with a minimum limit of liability per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand (\$100,000) for property damage or one million (\$1,000,000) combined single limit. This insurance shall cover any automobile for bodily injury and property damage. If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the permittee/licensee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the permittee/licensee to furnish, deliver or maintain such insurance and certificates as above provided, the permit/license is automatically revoked. Failure of the permittee/licensee to obtain and/or maintain any required insurance shall not relieve the permittee/licensee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the permittee/licensee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on

all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers. The permittee/licensee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The permittee/licensee must deliver certificates evidencing existence of the insurance listed above to the Finance Director at the time the permit is granted.

Permittee/licensee shall provide City with separate endorsements evidencing proof of the City's additional insured status as to both the general liability and automobile liability insurance policies. In addition, permittee/licensee shall provide City with a Worker's Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to a permit, the permittee/licenses insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the permittee/licensee's insurance and shall not contribute with it.

3. The permittee/licensee shall agree to hold the City of Modesto, its agents, officers, employees, and volunteers harmless from and save, defend, and indemnify them against any and all claims, losses, liabilities, and from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney fees and all costs and expenses arising directly or indirectly out of any act or omission of permittee arising out of any activity authorized by the permit.
4. The permittee/licensee shall provide at its own expense and maintain at all times the specified insurance policies with insurance companies approved by the State of California and shall provide

evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Finance Director of the City by registered mail, return receipt requested.

3-1.224 STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS IN TANKS.

Section 5704 of the 2016 California Fire Code is hereby amended to read as follows:

5704.2.9.6.1 Location Where above Ground Tanks are Prohibited.

Storage of Class I and II Liquids in aboveground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Chapter 57 of the 2016 California Fire Code. In addition, all above ground tanks shall be UL 2085 listed. The provisions of this section shall not apply to facilities for the production, generation, or transmission of electric energy that provide power to entities furnishing retail electrical services to the general public within the city of Modesto.

3-1.225 OPERATING HEATING, LIGHTING AND COOKING APPLIANCES PROHIBITED.

Section 5705 of the 2016 California Fire Code is hereby amended to read as follows:

5705.3.3. Heating, Lighting and Cooking Appliances. Heating, lighting, and cooking appliances which utilize flammable or combustible liquids shall not be operated within a building or structure.

EXCEPTION:

1. Operation in single-family dwellings.
2. Groups S-2 and U occupancies.

3-1.226 STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.

Section 5706 of the 2016 California Fire Code is hereby amended to read as follows:

5706.1. General. The capacity of temporary aboveground tanks containing Class I and Class II Liquids shall not exceed one thousand one hundred (1,100) gallons (4163.9 L). The capacity of permanent aboveground tanks containing Class I and II Liquids shall not exceed ten thousand (10,000) gallons (37,854 L). Temporary tanks of single-compartment design shall be constructed in accordance with Section 5706; permanent tanks shall be constructed in accordance with Chapter 57 of the 2016 California Fire Code.

3-1.227 STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 5706 of the 2016 California Fire Code is hereby amended to read as follows:

5706.2.4.4. Locations Where Above-Ground Tanks are Prohibited. The storage of Class I and II liquids in above-ground tanks is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. All R-1, R-2 and R-3 zoning designations as identified in Title 10 of the Modesto Municipal Code.

3-1.228 BULK PLANTS STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 5706.4 of the 2016 California Fire Code is hereby amended to read as follows:

5706.4. Bulk Plants. Portions of properties where flammable and combustible liquids are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, pipelines, tank cars, tank vehicles or containers shall be in accordance with Section 5706.4.1 through 5706.4.10.4 of the 2016 California Fire Code.

The construction of new bulk plants for storage of flammable or combustible liquids is restricted to areas of the city of Modesto zoned Heavy Industrial Zones (M-2). All existing nonconforming bulk plants for storage of flammable or combustible liquids which substantially comply with the requirements of this Code may be continued in use if a permit therefore shall be granted by the Fire Code Official.

3-1.229. BULK TRANSFER AND PROCESS TRANSFER OPERATIONS.

Section 5706.5 of the 2016 California Fire Code is hereby amended to read as

follows:

5706.5. Bulk Transfer and Process Transfer Operations. Bulk transfer and process transfer operations shall be in approved locations. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring flammable or combustible liquids. Tank vehicle and tank car transfer facilities shall be separated from buildings, aboveground tanks, combustible materials, property lines, streets, alleys or public ways by a distance of twenty (25) feet (7620 mm) for Class I liquids and fifteen (15) feet (4572 mm) for Class II and III liquids measured from the nearest position of any loading or unloading valve.

Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Unless otherwise approved, a tank car shall not be allowed to remain on a siding at the point of delivery for more than twenty-four (24) hours while connected for transfer operations.

3-1.230. PERMITS FOR LIQUIFIED PETROLEUM GASES.

Section 6101.2 of the 2016 California Fire Code is hereby amended to read as follows:

6101.2. Permits. Permit(s) shall be required as set forth in Sections 105.6 and 105.7.

EXCEPTION:

1. Residential occupancies. Containers shall not exceed ten (10) gallons water capacity with an aggregate total of twenty (20) gallons.
2. Approved containers not exceeding sixteen and four-tenths (16.4) ounces when displayed for sale in mercantile occupancies.
3. Factory installed containers for recreational vehicles not exceeding ten (10) gallon water capacity.
4. Factory installed tanks that are permanently attached to recreational vehicles.

Distributors shall not fill an LP-gas container for which a permit is required unless a permit for installation has been issued for that location

by the Fire Code Official.

3-1.231 USE OF LIQUIFIED PETROLEUM GAS CONTAINERS IN BUILDINGS.

Section 6103.2.1 of the 2016 California Fire Code is hereby amended to read as follows:

6103.2.1 Portable Containers. Portable LP-gas containers, as defined in NFPA 58 shall not be used in buildings except as specified in this section.

1. Areas undergoing construction.
 - A. Portable containers, not exceeding five (5) gallon water capacity, may be allowed in buildings or areas undergoing construction, when permitted by the Fire Code Official.
 - B. LP-gas containers shall not be used in a basement, pit, or similar location where heavier-than-air gas might collect. LP-gas containers not exceeding sixteen and four tenths (16.4) ounces may be used in an above-grade under floor space or basement only when such space is provided with an approved means of ventilation.
2. In educational, business, and institutional occupancies when used for research and experimentation provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and the aggregate capacity of all containers does not exceed two and one-half (2-1/2) gallons water capacity. When more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.
3. At demonstrations and public exhibitions for temporary use provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and when more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.
4. With self-contained torch assemblies and similar appliances provided that the individual capacity does not exceed sixteen and four-tenths (16.4) ounces.

Such containers shall not be used for commercial or residential food

preparation.

3-1.232 MAXIMUM CAPACITY OF LPG CONTAINERS.

Section 6104.2 of the 2016 California Fire Code is hereby amended to read as follows:

6104.2 Maximum capacity within established limits

The outside storage and use of liquefied petroleum gas (LP-gas) shall conform to the provisions of City of Modesto zoning ordinances. The outside storage and use of liquefied petroleum gases is restricted as specified in this section.

The aggregate capacity of any one installation shall not exceed two thousand (2,000) gallons, except that in particular installations this capacity limit may be altered by the Fire Code Official, after consideration of special features such as topographical conditions, nature of occupancy, proximity of buildings, capacity of proposed tanks, degree of private fire protection to be provided, and facilities of the local Fire Department.

1. Storage and dispensing of LP-gas for resale purposes, into approved containers and vehicles, is restricted to those areas of the City zoned as Light Industrial (M-1), Heavy Industrial (M-2), and, in addition thereto, to other commercially zoned properties used as automotive service stations. Dispensing shall be performed only by qualified persons.
2. Dispensing of LP-gas for private use is restricted to those zones identified in subsection 1, and when approved by the Fire Code Official, may be permitted in those areas of the City zoned General Commercial (C-2). Dispensing shall be performed only by qualified persons.
3. For cooking, lighting, or heating in a building, only on a property that does not have natural gas service existing on a boundary line of said property or when prohibition of such storage would cause undue hardship.
4. For temporary use on construction sites, when authorized by the Fire Code Official.
5. For use as an alternative fuel supply for an emergency standby generator, when authorized by the Fire Code Official.

6. For use with certain mobile vending and certain commercial barbecue equipment and other specific uses when authorized by the Fire Code Official.
7. For use by artisans in pursuit of their trade, when authorized by the Fire Code Official.
8. Storage of portable containers awaiting exchange may be permitted in commercial zoned areas of the City, including those zoned Neighborhood Commercial (C-1), when approved by the Fire Code Official and stored in accordance with Section 6109. Such storage shall be located a minimum of twenty (20) feet from any fuel dispenser.

EXCEPTION:

1. Storage of LP-gas in accordance with Subsections 3, 4 and 5 shall be limited to one container not to exceed two hundred fifty (250) gallons water capacity.
2. The aggregate capacity of containers in storage and use in accordance with subsections 6 and 7 shall not exceed fifteen (15) gallons. Individual containers shall not exceed five (5) gallons water capacity, unless authorized by the Fire Code Official, and shall not be manifolded.

3-1.233. STORAGE OF PORTABLE LP-GAS CONTAINERS AWAITING USE, RESALE, OR EXCHANGE.

Section 6109.12 of the 2016 California Fire Code is hereby amended to read as follows:

6109.12 Separation from exits. Containers stored inside or outside buildings accessible to the public shall be located not less than ten (10) feet from any exit door or building opening, when only one (1) exit is provided from the building or area, and not less than five (5) feet from any exit door or building opening, when two (2) or more exits are provided from the building or area.

Table 6109.12 of the 2016 California Fire Code is hereby amended to read as follows:

Quantity of LP-Gas Stored (Pounds)	Distances to a Building or Group of Buildings, Public Way, or Line of Property that can be Built Upon (feet)
720 or less	0
721 to 2,500	10
2,501 to 6,000	15
6,001 to 10,000	20
Over 10,000	25

3-1.234 ADMINISTRATIVE PROVISIONS

Sections 103.2, 103.4, 103.4.1 and 108 of the 2016 California Fire Code are hereby deleted.

3-1.235. PERMIT AMOUNTS FOR COMPRESSED GASES.

Chapter 1, Table 105.6.9 of the 2016 California Fire Code is amended to read as follows:

105.6.9 Compressed Gases. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed in Chapter 1, table 105.6.9.

EXCEPTION: Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.

Table 105.6.9-Permit Amounts for Compressed Gases¹

Type of Gas	Amount x 0.0283 for m ³
Corrosive	Any Amount
Flammable (except cryogenic fluids and liquefied petroleum gases)	200 cubic feet
Highly toxic	Any Amount
Inert and simple asphyxiant	200 cubic feet

Type of Gas	Amount x 0.0283 for m ³
Irritant	200 cubic feet
Other Health Hazards	200 cubic feet
Oxidizing (including oxygen)	200 cubic feet
Pyrophoric	Any Amount
Radioactive	Any Amount
Sensitizer	200 cubic feet
Toxic	Any Amount
Unstable (reactive)	Any Amount
Acutely hazardous (as listed in 40-CFR-355)	Threshold Planning Quantity or more.

¹See Chapter 53 of the 2016 California Fire Code for additional requirements and exceptions.

3-1.236. PERMIT AMOUNTS FOR CRYOGENS.

Chapter 1, Table 105.6.11 of the 2016 California Fire Code is amended to read as follows:

105.6.11 Cryogenic Fluids. An operational permit is required to produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed in Chapter 1, Table 105.6.11.

EXCEPTION: Permits are not required for vehicles equipped for and using cryogenic fluids as a fuel for propelling the vehicle or for refrigerating the lading.

Table 105.6.11—Permit Amounts for Cryogen¹

Type of Cryogenic Fluid	Inside Building	Outside Building
Corrosive	Over 1 gallon	Over 1 gallon
Flammable	Over 1 gallon	55 gallons
Highly Toxic	Over 1 gallon	Over 1 gallon

Type of Cryogenic Fluid	Inside Building	Outside Building
Nonflammable	55 gallons	55 gallons
Oxidizer (including oxygen)	50 gallons	50 gallons

1 See Chapter 1 of the 2016 California Fire Code.

ARTICLE 3. ADMINISTRATION

3-1.301 FEES.

- (a) **Permit Fee.** The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for any permit issued pursuant to the Fire Code.
- (b) **Plan Check Fee.** When the valuation of proposed construction exceeds one thousand dollars (\$1,000.00), or a plan is required to be submitted, a plan checking fee shall be paid at the time of submitting plans and specifications for checking.

Where plans are incomplete or changed so as to require an additional plan check, an additional plan check fee shall be charged. The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for plan checking.

3-1.302 APPEALS.

Applicant may appeal the decision of the Fire Code Official to the City Council within thirty (30) days from the date of the decision being appealed whenever the Fire Code Official:

1. Disapproves an application for use of alternate materials, methods and/or types of construction,
2. Disapproves an application for permit or refuses to grant a permit applied for,
3. When it is claimed that the provisions of the code do not apply, or
4. When it is claimed that the true intent and meaning of the code have been misconstrued or wrongly interpreted.

3-1.303 VIOLATIONS COMPLIANCE WITH ORDERS, NOTICES AND TAGS.

Section 109.3 of the 2016 California Fire Code, Chapter 1 - Administration is hereby amended to read as follows:

109.3 Criminal Violations. It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this code, any such violation constituting a misdemeanor under this code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

3-1.304 ADMINISTRATIVE PENALTIES AND REMEDIES.

In addition to any other remedies set forth in this chapter, administrative penalties may be imposed against any person, as defined in Section 1-6.207 of the Modesto Municipal Code, or any responsible party as defined herein for violating any of the requirements set forth in this chapter. Any administrative penalties assessed shall be as follows:

- (a) For violations of Section 3-1.216, possession, manufacture, sale, use or discharge of dangerous fireworks, the administrative penalty shall be one thousand dollars (\$1,000.00) for each specific act found to be in violation

of that section.

- (b) For all violations of this chapter, other than Section 3-1.216, possession, manufacture, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.
- (c) For the purposes of this chapter, the term “responsible party” means any person or person with the right of possession of the residence or other private property at which dangerous fireworks are possessed, manufactured, sold, used or discharged, including but not limited to:
 - (1) Any owner of the residence or other private property who occupies that residence or private property (hereinafter “owner-occupant”), meaning the record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;
 - (2) Any owner-occupant, lessee, licensee, or other person having control over a property, structure or parcel of land at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;
 - (3) Any person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering where dangerous fireworks are possessed, manufactured, sold, used or discharged;
- (d) Responsibility for Proper Property Management. Every owner, occupant, lessee, tenant, or holder of any possessory interest of a residence or other private property within the City is required to maintain, manage and supervise property and all persons thereon in a manner so as not to violate the provisions of this chapter. A responsible party need not be present at the time dangerous fireworks are possessed, manufactured, sold, used or discharged in order for the City to issue an administrative citation under this section.
- (e) Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code.

SECTION 2. FINDINGS AND DECLARATION. As required by the 2016 California Fire Code, Section 101.1 the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to the 2016 California Fire Code are reasonably necessary because of local climate and geographic conditions. This ordinance also prescribes local procedures to be used in the administration and enforcement of this Code; provides for local interpretations of this Code, and makes other changes in this Code consistent with local custom and practice as reflected in the prior local Fire Code.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption and its provisions shall become applicable on January 1, 2017.

SECTION 4. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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

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

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case the activity in question is not a project and will not have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November, 2016, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: January 06, 2017

ORDINANCE NO. 3664-C.S.

**AN ORDINANCE ADDING ARTICLE 11 TO CHAPTER 6 OF TITLE 5
OF THE MODESTO MUNICIPAL CODE, PERTAINING TO DENTAL AMALGAM**

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

Section 1. Title 5, Sanitation and Health, Chapter 6, “Wastewater,” is hereby amended to add Article 11, “Dental Amalgam,” to read as follows:

Article 11. - Dental Amalgam

- 5-6.1101 – Requirements
- 5-6.1102 – Best Management Practices, (BMPs)
- 5-6.1103 – Dental vacuum suction systems
- 5-6.1104 – Vacuum suction systems exemption
- 5-6.1105 – Exemptions
- 5-6.1106 – Monitoring and Reporting Conditions
- 5-6.1107 – Falsifying Information or Tampering with Process
- 5-6.1108 – Inspections and Sampling Conditions
- 5-6.1109 – Right of Entry
- 5-6.1110 – Notification of Spill
- 5-6.1111 – Notification of Planned Changes
- 5-6.1112 – Harmful discharge.
- 5-6.1113 – Determination of Non-Compliance
- 5-6.1114 – Compliance Schedule
- 5-6.1115 – Suspension and/or Termination of Wastewater Service
- 5-6.1116 – Violation—Penalty
- 5-6.1117 – Appeals
- 5-6.1118 – Failure to Comply

5-6.1101 – Requirements

(a) Definitions. For the purposes of this section the following words and phrases shall be as defined herein.

1. “Amalgam separator” is a device that employs filtration, settlement, centrifugation, or ion exchange to remove amalgam and its metal constituents from a dental office vacuum system before it discharges to the sewer.
2. “Amalgam waste” means and includes non-contact amalgam (amalgam scrap that has not been in contact with the patient); contact amalgam (including, but not limited to, extracted teeth containing amalgam); amalgam sludge captured by chairside traps, vacuum pump filters, screens, and other amalgam trapping devices; used amalgam capsules; and leaking or unusable amalgam capsules.
3. “ISO 11143” is the International Organization for Standardization’s standard for amalgam separators.

Ordinance No. 3664-C.S.
Effective: January 13, 2017

5-6.1102 – Best Management Practices, (BMPs):

1. No person shall rinse chairside traps, vacuum screens, or amalgam separators equipment in a sink or other connection to the sanitary sewer.
2. Owners and operators of dental facilities shall ensure that all staff members who handle amalgam waste are trained in the proper handling, management and disposal of mercury-containing material and fixer-containing solutions, and shall maintain training records that shall be available for inspection by the City during normal business hours.
3. Amalgam waste shall be stored and managed in accordance with the instructions of the recycler or hauler of such materials.
4. Bleach and other chlorine-containing disinfectants shall not be used to disinfect the vacuum line system.
5. The use of bulk mercury is prohibited. Only precapsulated dental amalgam is permitted.

5-6.1103 – Dental vacuum suction systems

1. An ISO 11143 certified amalgam separator device shall be installed on each dental vacuum suction system for existing dental facilities. Newly constructed on and after the effective date of this ordinance shall include an installed amalgam separator device certified by the most current ISO 11143 standard. The amalgam separator must remove at a minimum 95 % of the amalgam or conform to the removal efficiency as specified by the most current ISO 11143 standard and shall be certified at flow rates comparable to the flow rate of the actual vacuum suction system operation. Neither the separator device nor the related plumbing shall include an automatic flow bypass. For facilities that require an amalgam separator that exceeds the practical capacity of ISO 11143 test methodology, a non-certified separator will be accepted, provided that smaller units from the same manufacturer and of the same technology are ISO-certified. Alternative materials and methods may be proposed to the City for approval, provided ISO equivalent. Proof of certification and installation records shall be submitted to the City within 45 days of installation.
2. Amalgam separators shall be maintained in accordance with manufacturer recommendations. Installation, certification, and maintenance records shall be available for immediate inspection upon request by the City during normal business hours. In addition, the City may request that the owner or operator submit to the City a certification statement that they have complied with the requirements listed in this Article.

5-6.1104 – Vacuum suction systems exemption

1. The system(s) was installed before 2003.
2. The system is a dry vacuum pump system with an air-water separator.
3. The sedimentation tank is non-bottom draining, with the drain above the anticipated maximum level of accumulated sludge.
4. Evidence of regular pump outs (a minimum of once a year, or more often if either

- directed by the manufacturer or necessary to keep solids from exiting through the drain) is maintained and open to inspection by the City during normal business hours.
5. The system has no direct discharge pipe to the sewer on the bottom of the sedimentation tank.

An owner or operator whose facility meets conditions (1) through (5) may apply for this exemption by written letter to the City Environmental Services Section. The City Environmental Services Section will review the system and, if the exemption is approved, shall provide a written letter of exemption.

An exemption obtained pursuant to this section shall expire upon installation of a new vacuum system. Upon expiration of the exemption, the facility shall comply with this section before commencing further operation.

5-6.1105 – Exemptions

The following types of dental practices are exempt from this section, provided that removal or placement of amalgam fillings occurs at the facility no more than 3 days per year: (1) Orthodontics; (2) Periodontics; (3) Oral and maxillofacial surgery; (4) Radiology; (5) Oral pathology or oral medicine; (6) Endodontistry and prosthodontistry.

5-6.1106 – Monitoring and Reporting Conditions

1. The Director may require periodic reporting of the status of implementation of BMPs, in accordance with Article 11.
2. The Director may require visual monitoring at the sole expense of the Responsible Person to observe the actual conditions of the Dental Facility/Office private sewer lateral.
3. The Director may require reports for self-monitoring of wastewater constituents and dental amalgam characteristics of the Responsible Person needed for determining compliance with any conditions or requirements as specified in this Chapter 6. Monitoring reports of the analyses of wastewater constituents and dental amalgam characteristics shall be in a manner consistent with this chapter and form approved by the Director and shall be submitted upon request of the Director. Failure by the Responsible Person to perform any required monitoring, or to submit monitoring reports required by the Director constitutes a violation of Chapter 6, and shall be cause for the City to initiate all necessary tasks and analyses to determine the wastewater constituents and dental amalgam characteristics for compliance with any conditions and requirements specified in Chapter 6. The Responsible Person shall be responsible for any and all costs and expenses of the City in undertaking such monitoring analyses and preparation of reports.
4. Other reports may be required, such as compliance schedule progress reports, dental amalgam control monitoring reports, and any other reports deemed reasonably appropriate by the Director to ensure compliance with Chapter 6.

5-6.1107 – Falsifying Information or Tampering with Process

It shall be unlawful to make any false statement, representation, record, report, plan or other document that is filed with the City and/or the Director, or to tamper with or knowingly render inoperable any separator, vacuum system, monitoring device or method or access point required under Chapter 6.

5-6.1108 – Inspections and Sampling Conditions.

1. The Director may inspect or order the inspection and sample the wastewater discharges of any dental office/facility to ascertain whether the intent of these regulations is being met and the Responsible Person is complying with all requirements. The Responsible Person shall allow access to premises, during normal business hours, for purposes of inspecting the dental amalgam BMPs records, separators, and vacuum systems, reviewing the bills of lading, receipts and invoices relating to disposal maintenance and inspection of separators and vacuum systems.
2. The Director shall have the right to place or order the placement on the dental office/facility property, or other locations as determined by the Director, such devices as are necessary to conduct sampling or metering operations. Where a dental office/facility has security measures in force, the Responsible Person shall make necessary arrangements so that the Director shall be permitted to enter without delay for the purpose of performing their specific responsibilities.
3. In order for the Director to determine the wastewater characteristics for purposes of determining compliance with Chapter 6, the Responsible Person shall make available for inspection to the Director, all notices, monitoring reports, waste bills of lading, and records including, but not limited to, those related to wastewater generation and wastewater disposal. All such records shall be kept by the Responsible Person a minimum of three (3) years.

5-6.1109 – Right of Entry.

The Responsible Person of the dental office/facility where amalgam waste is created or discharged shall allow the Director reasonable access to all parts of the facility for the purposes of inspection and sampling during all times the dental office/facility is open, operating, or any other reasonable time. No persons or occupants of premises shall interfere with, delay, resist or refuse entrance to the Director attempting to inspect any facility involved directly or indirectly with a discharge of wastewater to the collection system. In the event of an emergency involving an actual or imminent discharge of amalgam waste to sewer, the Director may access adjoining businesses or properties that share a private sewer lateral with a dental office/facility in order to prevent or remediate the actual or imminent discharge of amalgam waste.

5-6.1110 – Notification of Spill.

1. In the event a Responsible Person is unable to comply with any provision of Article 11 due to a breakdown of equipment, accidents, or human error or the Responsible Person has reasonable opportunity to know that their discharge will exceed the discharge provisions of Chapter 6, the Responsible Person shall immediately notify the Wastewater Division by telephone. If the material discharged to the collection

- system has the potential to adversely impact the City's Wastewater Treatment Plant, the Responsible Person shall immediately notify the Wastewater Division.
2. Confirmation of Responsible Person's notification shall be made in writing to the Director postmarked no later than five (5) calendar days from the date of the incident. The written notification shall state the date of the incident, the reasons for the discharge or spill, what steps were taken to immediately correct the problem, and what steps are being taken to prevent the problem from recurring.
 3. Such notification shall not relieve the Responsible Person of any expense, loss, damage or other liability which may be incurred as a result of damage or loss to the City or any other damage or loss to persons or property; nor shall such notification relieve the Responsible Person of any fees or other liability which may be imposed by these regulations or other applicable law.

5-6.1111 – Notification of Planned Changes

The Responsible Person shall notify the Director least sixty (60) days prior to any facility expansion or remodeling, or process modifications that may result in new or substantially increased amalgam waste quantity, procedures, separator, or vacuum systems. The Responsible Person shall notify the Director in writing of the proposed expansion or remodeling and shall submit any information requested by the Director regarding the effect of such expansion or remodeling related to the generation of dental amalgam.

5-6.1112 – Harmful discharge.

1. The City may suspend or terminate the wastewater service when such suspension or termination is necessary, in the opinion of the Director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or which causes obstruction to the collection system or the City's Wastewater Treatment Plant, or causes the City to violate any condition of its permits.
2. Any Responsible Person notified of a suspension or termination of wastewater service shall immediately stop or eliminate all discharges to the collection system. In the event of a failure of the Responsible Person to comply voluntarily with the suspension or termination order, the Director shall take such steps as he or she deems necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the collection system or the City's Wastewater Treatment Plant. The Director shall reinstate the wastewater service only upon proof of the elimination of the nonconforming discharge. A detailed written statement submitted by the Responsible Person describing the causes of the harmful discharge and the measures taken to prevent any future occurrence shall be submitted to the Director within five (5) days of the date of occurrence.

5-6.1113 – Determination of Non-Compliance Sampling and Inspection Procedures:

1. Sampling and inspection of dental office/facilities shall be conducted in the time, place, manner, and frequency determined at the sole discretion of the Director.
2. Noncompliance with any discharge provisions of these regulations may be determined by an inspection of the BMPs, Separator, vacuum systems, or associated manifest and documentation, or analysis of a grab or composite sample of the effluent of a dental office/facility.
3. Any sample taken from a sample point must be considered representative of the discharge to the collection system, as determined by the Director.

Any Responsible Person found to be in violation with the terms and conditions specified in any provision of Article 11 may be issued a notice of violation and/or correction order in which there will be a specified time period to correct the violation. If the violation is not corrected within the specified time period, the Responsible Person shall be considered in noncompliance.

5-6.1114 – Compliance Schedule.

1. Upon determination that a Responsible Person is in noncompliance with the terms and conditions specified in any provision of Article 11, or needs to construct and/or acquire and install an amalgam separator, the Director may require the Responsible Person to enter into a compliance schedule on terms and conditions specified by the Director.
2. The compliance schedule may contain terms and conditions including, but not limited to, requirements for installation of an amalgam separator, submittal of drawings or reports, audit of amalgam waste hauling records, BMPs and waste minimization practices, payment of fees, or other provisions to ensure compliance with Article 11.
3. If compliance is not achieved in accordance with the terms and conditions of a compliance schedule during its term, the Director may issue an order suspending or terminating wastewater service pursuant to Article 8 of this Chapter 6.

5-6.1115 – Suspension and/or Termination of Wastewater Service

The City may suspend and/or terminate wastewater service when the Director determines that a Responsible Person:

1. Fails to comply with the terms and conditions of a compliance schedule order.
2. Knowingly provides a false statement, representation, record, report, or other document to the City and/or the Director.
3. Refuses to provide records, reports, plans, or other documents required by the City and/or the Director to determine discharge compliance or compliance with Article 11.
4. Falsifies, tampers with or knowingly renders inaccurate any monitoring device or sample collection method.
5. Refuses reasonable access to the dental facility/offices for the purpose of inspection and monitoring.
6. Fails to make timely payment of all amounts owed to the City for charges or any other fees imposed pursuant to Chapter 6.
7. Causes a violation of the City's Permits.

8. Violates Permit Requirements or provisions of this Chapter 6.
9. Fails to report significant changes in operations, or wastewater constituents and characteristics.

5-6.1116 – Violation—Penalty.

1. Any violation of Article 11, or the orders, rules and regulations issued under Chapter 6 is unlawful and shall be an infraction or misdemeanor as determined by the City Attorney.
2. Any Responsible Person in violation of Article 11, or the orders, rules and regulations issued under Chapter 6 may be ordered by the Director to cease and desist operations until the violation is cured. Continuance of operations after issuance to the Responsible Person of a notice to cease and desist shall be unlawful, and an infraction or misdemeanor as determined by the City Attorney. Each day in which any such violation shall continue shall be deemed a separate offense.
3. The violation of any of the provisions of Article 11, or the orders, rules and regulations issued under Chapter 6, or the doing of any act prohibited or the failure or omission to do any act required by Article 11, or the orders, rules and regulations issued under Chapter 6, is a public nuisance and may be enjoined by the City Attorney.
4. If any violation of Article 11, or the orders, rules and regulations issued under Chapter 6, causes damage to the collection system or the City's Wastewater Treatment Plant, the Director may seek to recover civil damages from the Responsible Person causing such damage.
5. The Director is authorized to levy against any person administrative civil penalties as prescribed in Charter 6 of Title 1 of the City Municipal Code per day for each violation of the rules and regulations issued under Chapter 6. The notice and order shall provide information as to the reason for the administrative fine and the authority and the notice shall also specify the person's right to appeal. In determining the amount of the civil penalty, the Director may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurred, and any remedial action attempted or taken by the violator.
6. The remedies and provisions of this section are cumulative, and are in addition to any other remedy or provision of law.

5-6.1117 – Appeals

Any Responsible Person affected by a decision, action, or determination, including suspension, revocation, refusal or termination of wastewater service, cease and desist order, or imposition of civil penalties issued by the Director, or any other action of the

Director in interpreting or implementing the provisions of this Chapter, may file an appeal in accordance with the City of Modesto's Municipal Code Title 1 Chapter 4 Appeals.

5-6.1118 – Failure to Comply

1. Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the administrative enforcement order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs and obtain compliance with the administrative enforcement order.
2. After the Administrative Hearing Officer issues an administrative enforcement order, the Director shall monitor the violations and determine compliance.

SECTION 2. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

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.

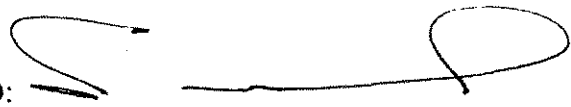
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of December, 2016, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Ridenour, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Madrigal

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:

By:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

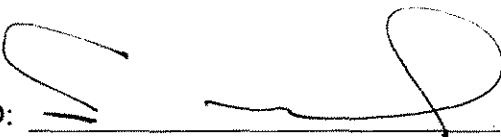
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of December, 2016, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: January 13, 2017