

ORDINANCE NO. 3789-C.S.

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

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of the Modesto

Municipal Code is amended to read as follows:

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

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

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue *ES10	45 miles per hour	February 1, 2012
BLUE GUM AVENUE, between Morse Road and Carpenter Road *ES7	40 miles per hour	December 27, 2019
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks *ES10	45 miles per hour	December 22, 2011
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	September 18, 2024

BRIGGSMORE AVENUE, between McHenry Avenue and Coffee Road	45 miles per hour	September 18, 2024
BRIGGSMORE AVENUE, Between Oakdale Road and Claus Road	50 miles per hour	September 18, 2024
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	September 18, 2024
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 18, 2024
BRIGHTON AVENUE, between Coffee Road and Locke Road *ES10	30 miles per hour	May 8, 2013
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive *ES10	30 miles per hour	January 17, 2013
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue *ES7	40 miles per hour	December 27, 2019
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 18, 2024
CARPENTER ROAD, between Maze Boulevard and Paradise Road *ES7	50 miles per hour	December 20, 2019
CARVER ROAD, between Bangs Avenue and Pelandale Avenue *ES10	35 miles per hour	December 22, 2011
CARVER ROAD, between Pelandale Avenue and Brixton Lane	30 miles per hour	September 18, 2024
CARVER ROAD, between Brixton Lane and Briggsmore Avenue *ES10	30 miles per hour	December 28, 2011
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	25 miles per hour	September 18, 2024

CARVER ROAD, between Orangeburg Avenue and 9th Street *ES10	30 miles per hour	December 28, 2011
CELESTE DRIVE, between Coffee Road and Oakdale Road *ES10	30 miles per hour	May 8, 2013
CLARATINA AVENUE, between Coffee Road and Oakdale Road	55 miles per hour	August 6, 2018
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue *ES10	50 miles per hour	January 26, 2012
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive *ES7	45 miles per hour	December 19, 2019
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 18, 2024
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	August 6, 2018
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue *ES7	40 miles per hour	December 20, 2019
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue *ES7	40 miles per hour	December 20, 2019
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive *ES7	40 miles per hour	December 20, 2019
COLLEGE AVENUE, between Rumble Road and Bowen Avenue *ES7	30 miles per hour	December 20, 2019
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue *ES10	35 miles per hour	September 29, 2015
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue *ES10	25 miles per hour	September 29, 2015

CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard *ES7	35 miles per hour	December 27, 2019
CROWS LANDING ROAD, between 7th Street and Hatch Road *ES10	35 miles per hour	May 8, 2013
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue *ES7	40 miles per hour	December 20, 2019
DALE ROAD, northbound and southbound, between Bangs Avenue and Kiernan Avenue*ES10	40 miles per hour	December 20, 2011
DALE ROAD, between Bangs Avenue and Snyder Avenue*ES10	35 miles per hour	February 1, 2012
DALE ROAD, between Snyder Avenue and Veneman Avenue	35 miles per hour	September 18, 2024
DALE ROAD, between Veneman Avenue and Standiford Avenue*ES10	30 miles per hour	February 1, 2012
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive *ES7	30 miles per hour	December 29, 2019
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	September 18, 2025
EMERALD AVENUE, between Maze Boulevard and California Avenue *ES7	35 miles per hour	December 20, 2019
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road *ES10	30 miles per hour	February 22, 2012
FINE AVENUE, between Hillglen Avenue and Merle Avenue *ES10	30 miles per hour	May 8, 2013

FLOYD AVENUE, between Coffee Road and Oakdale Road*ES10	30 miles per hour	February 23, 2012
FLOYD AVENUE, between McHenry Avenue and Coffee Road*ES10	30 miles per hour	February 24, 2012
FLOYD AVENUE, eastbound and westbound, between Oakdale Road and Roselle Avenue	35 miles per hour	September 18, 2024
FLOYD AVENUE, between Roselle Avenue and Claus Road	40 miles per hour	September 18, 2024
G STREET, between 9 th Street and 17 th Street	25 miles per hour	August 7, 2018
GRANGER AVENUE, between Tully Road and McHenry Avenue *ES7	35 miles per hour	December 27, 2019
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue *ES7	35 miles per hour	December 27, 2019
H STREET, between 9 th Street and 17 th Street *ES7	25 miles per hour	December 20, 2019
HASHEM DRIVE, between Sylvan Avenue and Oakdale Road*ES10	30 miles per hour	April 23, 2012
HATCH ROAD, between Carpenter Road and Crows Landing Road*ES10	45 miles per hour	February 15, 2012
JEFFERSON STREET, between Maze Boulevard and Paradise Road *ES10	25 miles per hour	March 25, 2015
KANSAS AVENUE, between Morse Road and Rosemore Avenue *ES10	40 miles per hour	March 30, 2015
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road *ES7	35 miles per hour	December 20, 2019

KANSAS AVENUE, between Carpenter Road and Emerald Avenue *ES7	35 miles per hour	December 20, 2019
KANSAS AVENUE, between Emerald Avenue and Franklin Street*ES10	30 miles per hour	December 20, 2011
KODIAK DRIVE, between La Force Drive and Roselle Avenue *ES10	30 miles per hour	May 8, 2013
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 18, 2024
LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive *ES7	40 miles per hour	December 20, 2019
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 18, 2024
MABLE AVENUE, between Coffee Road and Oakdale Road*ES10	30 miles per hour	March 21, 2012
MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road*ES10	30 miles per hour	February 16, 2012
MCCLURE ROAD, between Dry Creek Drive and Yosemite Ave *ES10	30 miles per hour	January 13, 2013
MERLE AVENUE, between Oakdale Road and Roselle Avenue*ES 10	30 miles per hour	December 23, 2014
MERLE AVENUE, between Roselle Avenue and Claus Road *ES7	35 miles per hour	December 20, 2019
MILLBROOK AVENUE, between Sylvan Avenue and Floyd Avenue *ES10	25 miles per hour	January 10, 2013
MILLER AVENUE, between La Loma Avenue and El Vista Avenue *ES7	35 miles per hour	December 27, 2019

MITCHELL ROAD, between Finch Road and the southerly City limits *ES10	50 miles per hour	December 29, 2011
MORRIS AVENUE, between McHenry Avenue and Coffee Road *ES10	30 miles per hour	March 22, 2012
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue*ES10	40 miles per hour	February 22, 2012
MT. VERNON DRIVE, between Prescott Road and College Avenue *ES10	30 miles per hour	February 3, 2010
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue*ES10	35 miles per hour	February 22, 2012
NEEDHAM STREET, between 9th Street and L Street*ES10	35 miles per hour	March 6, 2012
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road *ES7	35 miles per hour	December 20, 2019
OAKDALE ROAD, between Mable Road and Sylvan Avenue *ES7	45 miles per hour	January 8, 2020
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue *ES7	45 miles per hour	January 8, 2020
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue *ES10	40 miles per hour	February 3, 2015
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive *ES7	40 miles per hour	September 18, 2024
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	September 18, 2024

ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	35 miles per hour	September 18, 2024
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	September 18, 2024
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	September 18, 2024
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	September 18, 2024
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road *ES10	35 miles per hour	May 23, 2013
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive*ES10	35 miles per hour	May 23, 2012
PARADISE ROAD, between Martin Luther King Drive and Washington Street*ES10	30 miles per hour	May 23, 2012
PARKER ROAD, between Santa Fe and Church Street *ES7	50 miles per hour	December 19, 2019
PELANDALE AVENUE, between Sisk Road and Dale Road	50 miles per hour	September 18, 2024
PELANDALE AVENUE, between Dale Road and Prescott Avenue *ES7	50 miles per hour	December 20, 2019
PELANDALE AVENUE, between Prescott Avenue and Carver Road *ES7	50 miles per hour	December 20, 2019
PELANDALE AVENUE, between Carver Road and Tully Road *ES7	50 miles per hour	December 20, 2019

PELANDALE AVENUE, between Tully Road and McHenry Avenue *ES7	50 miles per hour	December 20, 2019
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	35 miles per hour	September 28, 2018
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	September 17, 2024
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	September 18, 2024
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard *ES10	30 miles per hour	February 3, 2015
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	September 28, 2018
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	September 28, 2018
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	September 14, 2016
ROSEBURG AVENUE, between Tully Road and McHenry Avenue *ES7	30 miles per hour	December 27, 2019
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue *ES7	30 miles per hour	December 27, 2019
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue *ES7	45 miles per hour	December 27, 2019
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue *ES7	45 miles per hour	December 27, 2019

ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	30 miles per hour	September 28, 2018
ROUSE AVENUE, between Colorado Avenue and Neece Drive *ES7	30 miles per hour	December 20, 2019
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	August 7, 2018
RUMBLE ROAD, between Conant Avenue and Tully Road *ES7	30 miles per hour	December 27, 2019
RUMBLE ROAD, between Tully Road and McHenry Avenue *ES7	30 miles per hour	December 27, 2019
RUMBLE ROAD, between McHenry Avenue and Coffee Road *ES10	30 miles per hour	April 21, 2015
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive *ES7	30 miles per hour	December 27, 2019
SCENIC DRIVE, between Burney Street and Coffee Road	30 miles per hour	September 18, 2024
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	September 18, 2024
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue *ES7	45 miles per hour	December 20, 2019
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	September 18, 2024
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	September 18, 2024
SIERRA DRIVE, between G Street and 7th Street *ES7	30 miles per hour	December 27, 2019

SISK ROAD, between Pelandale Avenue and Standiford Avenue *ES10	40 miles per hour	December 20, 2011
SISK ROAD, between Standiford Avenue and Briggsmore Avenue *ES10	40 miles per hour	December 20, 2011
SNYDER AVENUE, between Dale Road and Prescott Road *ES10	30 miles per hour	March 25, 2015
SNYDER AVENUE, between Prescott Road and Tully Road *ES10	30 miles per hour	April 21, 2015
STANDIFORD AVENUE, between Sisk Road and Prescott Road *ES7	45 miles per hour	December 20, 2019
STANDIFORD AVENUE, between Prescott Road and Tully Road *ES7	40 miles per hour	December 20, 2019
STANDIFORD AVENUE, between Tully Road and McHenry Avenue *ES7	40 miles per hour	December 20, 2019
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue *ES7	30 miles per hour	December 20, 2019
SUTTER AVENUE, between Paradise Road and Robertson Road *ES7	30 miles per hour	December 20, 2019
SYLVAN AVENUE, between McHenry Avenue and Coffee Road *ES7	45 miles per hour	December 20, 2019
SYLVAN AVENUE, between Coffee Road and Oakdale Road *ES7	45 miles per hour	December 20, 2019
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue *ES7	50 miles per hour	December 19, 2019

SYLVAN AVENUE, between Roselle Avenue and Claus Road *ES10	45 miles per hour	January 8, 2015
SYLVAN MEADOWS DRIVE, between Dragoo Park Drive and Coffee Road *ES10	25 miles per hour	August 2, 2012
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive *ES10	30 miles per hour	December 29, 2011
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	August 6, 2018
TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	September 18, 2024
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	September 18, 2024
TULLY ROAD, between Coldwell Avenue and 9 th Street	35 miles per hour	September 18, 2024
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street *ES7	40 miles per hour	December 20, 2019
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 7, 2018
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	August 7, 2018
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street *ES 10	30 miles per hour	December 11, 2010
WHITMORE AVENUE, between Ustick Road and Crows Landing Road *ES7	45 miles per hour	December 27, 2019

WHITMORE AVENUE, between Crows Landing Road and Morgan Road *ES7	45 miles per hour	December 27, 2019
WOODLAND AVENUE, between Morse Road and Carpenter Road *ES7	35 miles per hour	January 2, 2020
WOODLAND AVENUE, between Carpenter Road and 9th Street *ES10	30 miles per hour	March 25, 2015
WOODROW AVENUE, between Tully Road and McHenry Avenue *ES10	30 miles per hour	March 25, 2015
5TH STREET, between L Street and Sierra Drive *ES7	35 miles per hour	December 20, 2019
6TH STREET, between M Street and Sierra Drive *ES10	30 miles per hour	February 26, 2015
7TH STREET BRIDGE, between B Street and River Road	25 miles per hour	August 7, 2018
9TH STREET, between Carpenter Road and Tully Road *ES7	45 miles per hour	December 20, 2019
9TH STREET, between Tully Road and L Street *ES7	35 miles per hour	December 20, 2019
9TH STREET, between D Street and Morton Boulevard	35 miles per hour	December 30, 2019

SCHOOL ZONE REDUCED SPEED LIMITS

BEAR CUB LANE, between Kodiak Dr and Hillglen Avenue	15 miles per hour
BOWEN AVENUE, between Fremont Avenue and College Avenue	15 miles per hour

BOWIE AVENUE, between School Ave and El Paso Ave	15 miles per hour
BRADY AVENUE, between Coldwell Ave and Griswold Ave	15 miles per hour
CALIFORNIA AVENUE, between Champagne Lane and S. Emerald Ave	15 miles per hour
CHEYENNE WAY, between Seminole Lane and Agate Drive	15 miles per hour
COLDWELL AVENUE, between Brade Ave and Enslin Ave	15 miles per hour
CONANT AVENUE, between Budd Street and Southridge Drive	15 miles per hour
N. CONEJO AVENUE, between Haddon Ave and Encina Ave	15 miles per hour
ELSIE STREET, between Hudson Lane And Sutter Avenue	15 miles per hour
ENCINA AVENUE, between North Conejo Ave and Severin Ave	15 miles per hour
ENSLIN AVENUE, between Coldwell Ave And Griswold Ave	15 miles per hour
ESCUELITA AVENUE, between North Santa Ana Avenue and Las Palmas Avenue	15 miles per hour
FINE AVENUE, between Landing Way and Mallard Lane	15 miles per hour
FINE AVENUE, between Merle Avenue And Banyan Tree Court	15 miles per hour
FLOYD AVENUE, between Langford Avenue and Maxine Drive	15 miles per hour

GLENN AVENUE, between Las Vegas Street and Rutherford Street	15 miles per hour
HAMMOND STREET, between Robertson Road and Red Pine Drive	15 miles per hour
HUDSON LANE, between Northern Limit And Elsie Street	15 miles per hour
JANET DRIVE, between Sheldon Drive And Innsbrook Drive	15 miles per hour
JANNA AVENUE, between Blanche Street And Trent Drive	15 miles per hour
KIRSCHEN DRIVE, between Crippen Avenue And Pine Tree Lane	15 miles per hour
KODIAK DRIVE, between Litt Road And Fine Avenue	15 miles per hour
KODIAK DRIVE, between Brookside Drive and Temescal	15 miles per hour
LAS VEGAS STREET, between Butte Avenue and Glenn Avenue	15 miles per hour
LUCERN AVENUE, between Coffee Road and El Camino Avenue	15 miles per hour
MAID MARIANE LANE, between Friar Truck Way and Sharon Avenue	15 miles per hour
MERLE AVENUE, between Oakdale Road And Woodcrest Way	15 miles per hour
MONTEREY AVENUE, between Kerr Avenue and Empire Avenue	15 miles per hour
MOUNT VERNON DRIVE, between Fay Avenue And Earlmor Drive	15 miles per hour
NORTHVIEW DRIVE, between Mable Avenue And Sylvan Meadows Drive	15 miles per hour

PATTON DRIVE, between Shawnee Drive And Warmerdam Lane	15 miles per hour
PEQUINO AVENUE, between Las Palmas Avenue and N. Santa Ana Avenue	15 miles per hour
POUST AVENUE, between Sussex Place And Scandia Court	15 miles per hour
ROSINA AVENUE, between Haddon Avenue And Encina Avenue	15 miles per hour
ROBERTSON ROAD, between Pine Tree Lane and Hammond Street	15 miles per hour
E. RUMBLE ROAD, between Niabell Place And Hampshire Lane	15 miles per hour
W. RUMBLE ROAD, between Conant Avenue and Boardwalk	15 miles per hour
W. RUMBLE ROAD, between Ashland Way and Holiday Lane	15 miles per hour
N. SANTA ANA AVENUE, between La Loma Avenue and Yosemite Boulevard	15 miles per hour
SCHOOL AVENUE, between Crows Landing Road and Bowie Avenue	15 miles per hour
SHARON AVENUE, between Maid Mariane Lane and Fine Avenue	15 miles per hour
SHAWNEE DRIVE, between Cheyenne Way and Patton Drive	15 miles per hour
SHELDON DRIVE, between Carver Road And Pembroke Drive	15 miles per hour
SONOMA AVENUE, between East Orangeburg Avenue and Laramie Drive	15 miles per hour

SUNRISE AVENUE, between East Granger Avenue and East Orangeburg Avenue	15 miles per hour
SUTTER AVENUE, between Rouse Avenue and Chicago Avenue	15 miles per hour
TERESA STREET, between Seasons Way and Grape Avenue	15 miles per hour
TOKAY AVENUE, between O'Farrel Avenue And La Cienega Drive	15 miles per hour
WARM SPRINGS DRIVE, between Eastport Drive and Mercer Drive	15 miles per hour
WISDOM WAY, between Merle Avenue and Southern Limit	15 miles per hour
WOODROW AVENUE, between Colonial Drive And Fremont Street	15 miles per hour
WOODROW AVENUE, between Colonial Drive And Load Avenue	25 miles per hour (Extension)
WOODROW AVENUE, between Tully Road and Lord Avenue	15 miles per hour

*EXTEND SURVEY (ES) 5, 7, 14 years per California Vehicle Code section 40802.

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. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.


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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of January 2025, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Escutia-Braaton

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

By: 
DIANE NAYARES-PÉREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
JOSE M. SANCHEZ, 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 January 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright,
Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

By: 
DIANE NAVARES-PEREZ, City Clerk

Effective Date: February 27, 2025

ORDINANCE NO. 3790-C.S.

AN ORDINANCE AMENDING SECTION 1-3-8 OF THE ZONING MAP TO REZONE 22.6 ACRES FROM SPECIFIC PLAN (SP), TO PLANNED DEVELOPMENT ZONE, P-D(617), PROPERTY LOCATED AT THE NORTHWEST CORNER OF PELANDALE AVENUE AND AMERICAN AVENUE (LENNAR HOMES OF CALIFORNIA, LLC)

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

SECTION 1. ZONING CHANGE. Section 1-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Specific Plan, SP, to Planned Development Zone, P-D(617):

SP to P-D(617)

All that certain real property in the City of Modesto, County of Stanislaus, State of California, situate in a portion of the North half of the Southwest Quarter of Section 1, Township 3 South, Range 8 East, Mount Diablo Meridian, described as follows:

Adjusted Parcels 2 and 3 as described in that certain Certificate of Approval of Lot Line Adjustment filed for record October 25, 2024 as Document No. 2024-0051886, Stanislaus County Records.

Also including that portion of abandoned Wagner Way as described in Modesto City Council Resolution No. 2024-410, filed for record December 10, 2024 as Document No. 2024-0059400, Stanislaus County Records.

Also including the westerly one-half of American Avenue, the easterly one-half of future Bruno Parkway, and the northerly one-half of Pelandale Avenue, all immediately adjacent to the above-described area.

Subject to all easements and/or rights-of-way of record.

22.6 Acres, more or less.

APNs: 078-018-054 and 078-018-055

SECTION 2. USES. The following uses shall be permitted in said P-D(617)

Zone if the plan for construction conforms in principle to the approved plan:

1. Uses as allowed in the Medium High Density Residential (MHDR) land use designation of the Kiernan Business Park Specific Plan, as outlined in Section III-B.5 of the Specific Plan.

SECTION 3. ZONING MAP. Section Map 1-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

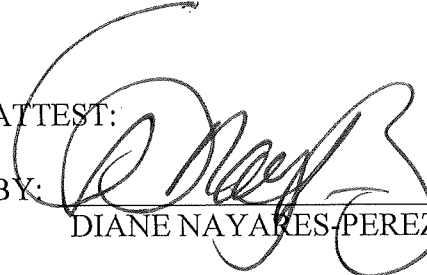
The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of March 2025, by Councilmember Williams, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

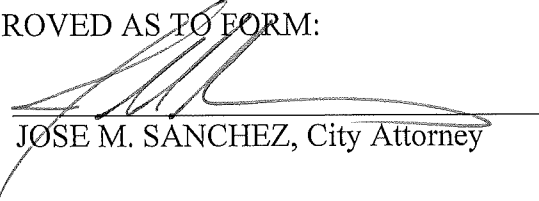
ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor


ATTEST: 
BY: DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development Department,
Planning Division

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 March, 2025, Councilmember Escutia-Braaton moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: None

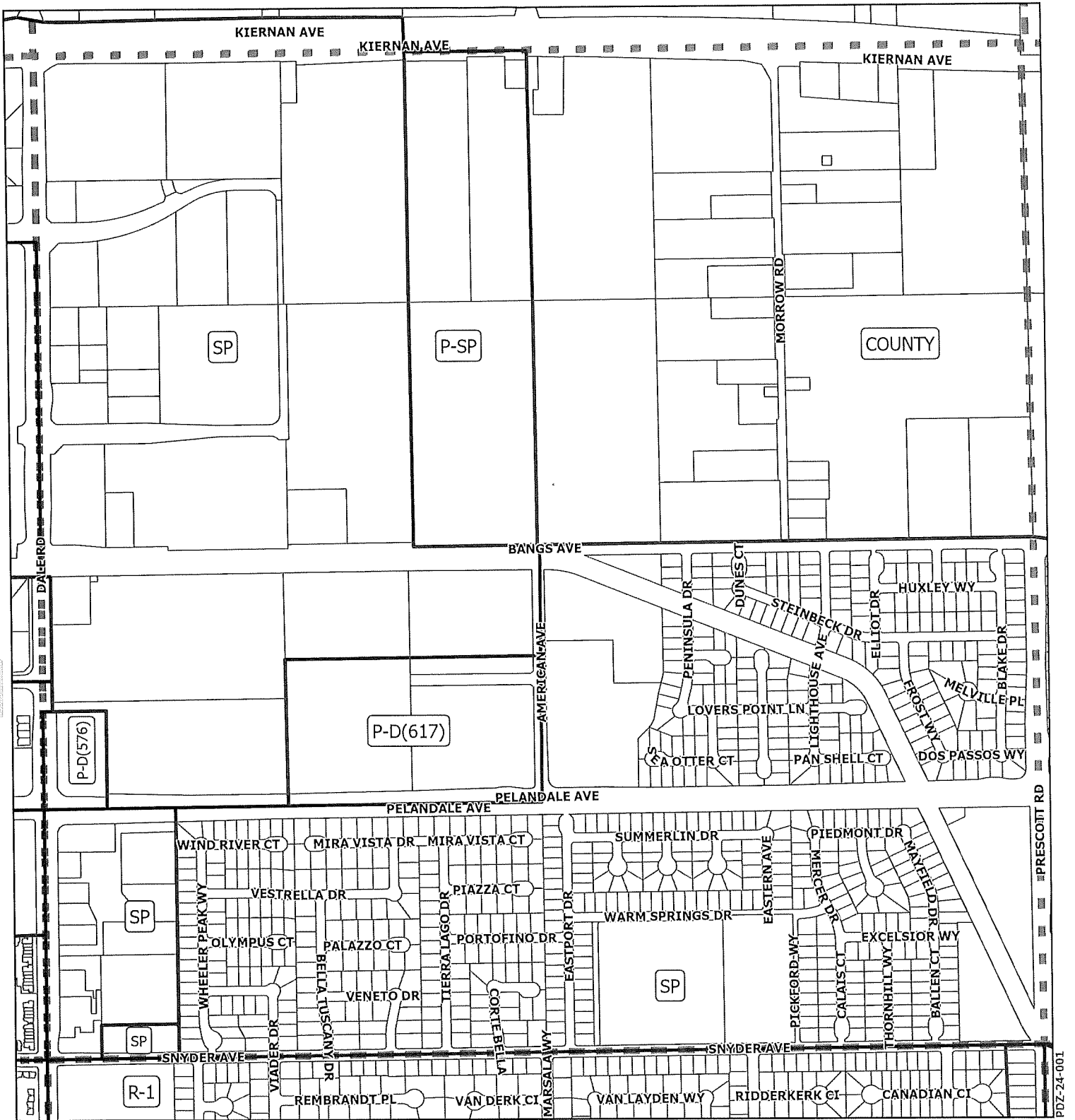
APPROVED: 

SUE ZWAHLEN, MAYOR

ATTEST: 

DIANE NAYARES-PEREZ, City Clerk

Effective Date: April 3, 2025



ZONING MAP OF THE CITY OF MODESTO

1-3-8



Scale: 1:8,400
Ord. 3790-CS

PDZ-24-001

ORDINANCE NO. 3791-C.S.

AN ORDINANCE AUTHORIZING THE LEVY OF SPECIAL TAXES WITHIN THE CITY OF MODESTO HELD WITHIN CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2025-1 (KIERNAN BUSINESS PARK SOUTH #2)

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

WHEREAS, on May 1, 2012, the City established the City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (“CFD No. 2012-1”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (the “Act”); and

WHEREAS, on January 28, 2025, this City Council adopted Resolution No. 2025-41, stating its intention to form City of Modesto Community Facilities District No. 2025-1 (Kiernan Business Park South #2) (the “Community Facilities District”), to replace CFD No. 2012-1, and designate certain property for future annexation to the Community Facilities District (the “Future Annexation Area”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain facilities and 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, including the designation the Future Annexation Area, 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. 2025-1 (Kiernan Business Park South #2), Conditionally Authorizing the Levy of Special Taxes” (the

“Resolution of Formation”), and Resolution of the City Council of the City of Modesto, California, acting as the Legislative Body of the City of Modesto Community Facilities District No. 2025-1 (Kiernan Business Park South #2), Calling a Special Election,” 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 (a) the levy of special taxes in accordance with the rate and method of apportionment of special tax set forth in the Resolution of Formation (the “Special Taxes”); and

WHEREAS, an election was held on March 11, 2025, within the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the Proposition.

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2025-1 (Kiernan Business Park South #2), DOES ORDAIN as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

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, or as may be modified or amended from time to time by a resolution of change or resolution of annexation adopted pursuant to the provisions of the Act (the “Rate and Method”).

By passage of this Ordinance, the City Council authorizes the levy of a special tax for any approved future annexations in accordance with the then-existing 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 and any resolution of change or resolution of annexation adopted from time to time by the City Council. 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, and to be described in any resolution of change or resolution of annexation adopted from time to time by the City Council.

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.

The One-Time Facilities Special Tax shall be collected at the times as provided in the Rate and Method.

SECTION 7. This Ordinance relating to the levy of the special tax takes effect and shall be in force immediately after the date of final passage pursuant to Government Code Section 36937(a).

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 Council of the City of Modesto held on the 11th day of March 2025, by Councilmember Ricci, who moved its introduction and passage to print, its which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLÉN, Mayor

ATTEST:

BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, 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 8th day of April 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Wright,
Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: Williams

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: May 8, 2025

ATTACHMENT A

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2025-1 (KIERNAN BUSINESS PARK SOUTH #2)

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. 2025-1 (Kiernan Business Park South #2) shall be levied and collected according to the tax liability determined by the City Council through the application of the appropriate amount or rate for Taxable Property, as described below. All property in the CFD, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed into the CFD unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Part 1, Division 2 of Title 5 of the California Government Code.

“Administrative Expenses” means any or all of the following: the expenses of the City in carrying out its duties with respect to the CFD, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs associated with foreclosure and collection of delinquent 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 Maintenance Special Tax Requirement, as defined below.

“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” means a unique number assigned to an Assessor's Parcel by the County Assessor for purposes of identifying a property.

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

“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.

“Building Permit” means a permit that allows for vertical construction of a building or buildings, which shall not include a separate permit issued for construction of the foundation thereof.

“CFD” means the City of Modesto Community Facilities District No. 2025-1 (Kiernan Business Park South #2).

“CFD Formation” means the date on which the Resolution of Formation to form the CFD 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 the CFD.

“County” means the County of Stanislaus.

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

For purposes of levying the Annual Maintenance Special Tax:

- for Single Family Detached Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2024;
- for Single Family Attached Property, all Parcels for which a Building Permit was issued prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2024;
- for Other Property, all parcels for which a Building Permit was issued prior to June 30 of the preceding Fiscal Year.

For purposes of levying the One-Time Facilities Special Tax: all Parcels for which a Building Permit was issued prior to June 30 of the preceding Fiscal Year.

“Development Class” means, individually, Developed Property and Undeveloped Property.

“Development Plan” means a condominium plan, apartment plan, site plan or other development plan that identifies such information as the type of structure, the acreage, the square footage, and/or the number of Units that will be developed on Single Family Attached Property or Other Property.

“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, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq*) that creates Single Family Detached Lots. The term “Final Map” shall not include any large-lot subdivision map, Assessor’s Parcel Map, or subdivision

map or portion thereof, that does not create Single Family Detached Lots, including Assessor's Parcels that are designated as remainder parcels.

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

“Future Annexation Area” means that geographic area that, at the time of CFD Formation, was considered potential annexation area for the CFD and which was, therefore, identified as “future annexation area” on the recorded CFD boundary map. Such designation does not mean that any or all of the Future Annexation Area will annex into the CFD, but should property designated as Future Annexation Area choose to annex, the annexation may be processed pursuant to the streamlined annexation procedures provided in the Act.

“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.

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

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

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

“One-Time Facilities Special Tax” means a special tax, levied on Taxable Property to pay the One-Time Facilities Special Tax Requirement and collected by the City prior to a Building Permit being issued on a Parcel of Taxable Property.

“One-Time Facilities Special Tax Requirement” means, for a Parcel of Taxable Property in the CFD, the amount needed to pay the Parcel's share of the cost of Authorized Facilities as determined by the City, which amount shall not exceed the Maximum One-Time Facilities Special Tax assigned to the Parcel pursuant to this RMA.

“Original Parcel” means an Assessor's Parcel in the CFD at the time of CFD Formation, or added to the CFD upon annexation, as identified in Attachment 1 (which shall be updated after each annexation). A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C below.

“Owners Association” means a homeowners association or property owners association that provides services to, and collects assessments, fees, dues, or charges from, property within the CFD.

“Owners Association Property” means any property within the boundaries of the CFD that is owned in fee or through easement by the Owners Association, not including any such property that is located directly under a residential structure.

“Other Property” means any Parcel of Developed Property in the CFD that is not Single Family Attached Property or Single Family Detached Property.

“Proportionately” means, for each Development Class, that 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 parcels assigned to the Development Class.

“Public Property” means any property within the boundaries of the CFD that is owned by the federal government, State of California, County, City, or other public agency.

“Resultant Parcel” means one of the legal parcels created as a result of the lot line adjustment recorded with the Stanislaus County Recorder on October 25, 2024 as document #2024-0051886.

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

“SFD Unit” means a residential dwelling unit that does not share a common wall with another residential dwelling unit.

“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls and are offered as for-sale Units, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

“Single Family Detached Lot” means an individual residential lot, identified and numbered on a recorded Final Map, on which a Building Permit has been or is permitted to be issued for construction of an SFD Unit without further subdivision of the lot and for which no further subdivision of the lot is anticipated pursuant to an approved Tentative Map.

“Single Family Detached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a Building Permit was issued or will be issued for construction of a SFD Unit.

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

“Subdivision Map” means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

“Successor Parcel” means an Assessor’s Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel on which construction of a residential or non-residential structure is permitted.

“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 G below.

“Tentative Map” means a tentative map or substantial conformance exhibit for property in the CFD, including any adjustments or amendments thereto.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within the CFD that are not Developed Property.

“Unit” means (i) for Single Family Detached Property, an SFD Unit and (ii) for Single Family Attached Property, an individual residential unit within a duplex, triplex, fourplex, townhome, or condominium structure.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also: (i) assign each Parcel of Taxable Property to the appropriate Development Class; (ii) determine whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) for Developed Property, categorize each Parcel as Single Family Detached Property, Single Family Attached Property, or Other Property, (iv) for Parcels of Single Family Attached Property, determine the number of Units on each Parcel, (v) for Other Property, determine the Acreage of each Parcel, and (vi) determine the Maintenance Special Tax Requirement.

For Single Family Attached Property, the number of Units shall be determined by referencing the relevant Development Plan. If, in any Fiscal Year, an Assessor’s Parcel includes both Developed Property and Undeveloped Property, the Administrator shall determine the acreage associated with the Developed Property, subtract this acreage from the total Acreage of the Assessor’s Parcel, and use the remaining acreage to calculate the Special Tax that will apply to Undeveloped Property within the Assessor’s Parcel. The Special Tax shall then be calculated for Developed Property on the Parcel, and the total Special Tax levied on the Assessor’s Parcel shall be the sum of the Special Taxes determined separately for the Undeveloped Property and Developed Property on the Parcel.

C. CALCULATING THE MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in the CFD in each Fiscal Year.

1. Original Parcels

The Maximum Special Taxes for each Original Parcel in the CFD as of CFD Formation are identified in Attachment 1. Attachment 1 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations.

2. Successor Parcels

a. All Successor Parcels are Single Family Detached Lots

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels created by the subdivision:

Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Divide the Maximum Special Taxes from Step 1 by the number of Single Family Detached Lots created by the Subdivision Map to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. *No Successor Parcels are Single Family Detached Lots*

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

- Step 1:** Identify the Maximum Special Taxes assigned to the Original Parcel;
- Step 2:** Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;
- Step 3:** Divide the Maximum Special Taxes from Step 1 by the Acreage from Step 2 to calculate Maximum Special Taxes per acre;
- Step 4:** Multiply the per-acre Maximum Special Taxes from Step 3 by the Acreage in each Successor Parcel to calculate the Maximum Special Taxes for each Successor Parcel.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

c. *Some, But Not All, Successor Parcels are Single Family Detached Lots*

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

- Step 1:** Identify the Maximum Special Taxes assigned to the Original Parcel;
- Step 2:** Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;
- Step 3:** Determine the total Acreage of Single Family Detached Property created by the subdivision by taking the sum of the Acreage in the individual Single Family Detached Lots;
- Step 4:** Divide the Maximum Special Taxes from Step 1 by the Acreage calculated in Step 2 to calculate Maximum Special Taxes per Acre;
- Step 5:** Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of Single Family Detached Property calculated in Step 3 to determine the total Maximum Special Taxes to be assigned to the Single Family Detached Property created by the subdivision;

Step 6: Divide the amount calculated in Step 5 by the number of Single Family Detached Lots created by the subdivision to determine the Maximum Special Taxes for each Single Family Detached Lot;

Step 7: Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of each Successor Parcel that is not Single Family Detached Property to calculate the Maximum Special Taxes for such Parcels.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2025 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Annual Maintenance Special Tax

Beginning in January 2025 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF SPECIAL TAXES

1. One-Time Facilities Special Tax

Prior to issuance of a Building Permit for a Parcel of Taxable Property, the One-Time Facilities Special Tax shall be levied on the Parcel in the amount of the One-Time Special Tax Requirement for the Parcel, as determined by the City.

2. Annual Maintenance Special Tax

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

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

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

F. COLLECTION OF SPECIAL TAXES

The One-Time Facilities Special Tax shall be collected prior to a Building Permit being issued for any residential or non-residential structure on Taxable Property and shall be immediately delinquent if not so paid.

The Annual Maintenance 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 Annual Maintenance Special Taxes through foreclosure or other available methods. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that Annual Maintenance Special Tax revenues are no longer needed to pay for Authorized Services.

G. EXEMPTIONS

No Special Taxes shall be levied on Public Property or Owners Association Property, as defined herein. Notwithstanding the foregoing, if in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. In such case, the City shall determine the appropriate Maximum Special Taxes for the Parcel based on the land uses to be constructed on the Parcel.

H. INTERPRETATION OF SPECIAL TAX FORMULA

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

ATTACHMENT 1

**CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2025-1
(KIERNAN BUSINESS PARK SOUTH #2)**

Maximum Special Taxes Assigned to Each Original Parcel

Assessor's Parcel Number	Fiscal Year 2024-25 Maximum One-Time Facilities Special Tax [1]	Fiscal Year 2024-25 Maximum Annual Maintenance Special Tax [2]
078-018-018	\$91,059	\$2,323
078-018-031	\$1,315,865	\$33,567
078-018-035	\$843,408	\$21,515
078-018-036	\$0	\$5,084
Resultant Parcel #1	\$929,241	\$23,705
Resultant Parcel #2	\$1,047,916	\$26,732
Resultant Parcel #3	\$653,828	\$16,679

1. Beginning in January 2025 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.
2. Beginning January 2025 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the Escalation Factor. Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

ORDINANCE NO. 3792-C.S.

AN ORDINANCE IN CONNECTION WITH CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2012-1 (KIERNAN BUSINESS PARK SOUTH), AUTHORIZING THE CESSATION OF THE LEVY OF RELATED SPECIAL TAXES AND THE EXTINGUISHMENT AND CANCELLATION OF ALL RELATED LIENS, AND DISSOLVING SAID COMMUNITY FACILITIES DISTRICT

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

WHEREAS, pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (the “Act”), on May 1, 2012, the City established the City of Modesto Community Facilities District No. 2012-1 (Kiernan Business Park South) (“CFD No. 2012-1”) and pursuant to an election held on such date, levied a special tax in accordance with Ordinance No. 3563-C.S. adopted on June 8, 2012 (the “2012 Ordinance”) and a rate and method of apportionment (the “Rate and Method”); and

WHEREAS, two special taxes for CFD No. 2012-1 (One-Time Facilities Tax for facilities and Annual Maintenance Services Tax for annual services) were authorized to be levied; and

WHEREAS, CFD No. 2012-1 has never levied Annual Maintenance Special Tax as there are currently no services being performed in CFD No. 2012-1 and has not levied One-Time Facilities Special Tax on certain parcels in the CFD No. 2012-1 since the formation; and

WHEREAS, at the request of certain property owners within CFD No. 2012-1, on February 25, 2025, this Council formed City of Modesto Community Facilities District No. 2025-1 (Kiernan Business Park South #2) (the “CFD No. 2025-1”), to replace CFD No. 2012-1; and

WHEREAS, the City now desires to cease the levy of any CFD No. 2012-1 special tax within CFD No. 2012-1, transfer all special taxes previously collected and remaining in the CFD No. 2012-1 fund to CFD No. 2025-1, extinguish and cancel all CFD No. 2012-1 liens on property within CFD No. 2012-1, and dissolve CFD No. 2012-1.

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

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. With the formation of CFD No. 2025-1 and the adoption of the Ordinance levying special taxes related thereto, this Council, acting on behalf of itself and CFD No. 2012-1, declares and determines that the obligation to pay special taxes relating to CFD No. 2012-1 against all of the parcels of CFD No. 2012-1 shall cease, and the recorded liens against such parcels shall be extinguished and cancelled.

SECTION 3. The City finds and determines that CFD No. 2012-1 is not obligated to pay any outstanding debt and has no authorization to levy any future special tax.

SECTION 4. CFD No. 2012-1, and all associated liens, if any, are hereby dissolved.

SECTION 5. Any moneys remaining in the fund related to CFD No. 2012-1 shall be transferred to a fund relating to CFD No. 2025-1.

SECTION 6. The City, on behalf of CFD No. 2025-1, hereby assumes liability for any outstanding debts of CFD No. 2012-1 discovered to exist after the dissolution of CFD No. 2012-1.

SECTION 7. The City Clerk is hereby directed to cause an addendum to be recorded in the office of the Stanislaus County Recorder to the Notice of Special Tax Lien for CFD No. 2012-

1 which shall state that the obligation to pay all special taxes relating to CFD No. 2012-1 has ceased, all associated liens have been extinguished and CFD No. 2012-1 is dissolved.

SECTION 8. This Ordinance shall take effect thirty (30) days upon its final passage.

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of March 2025, by Councilmember Wright, who moved its introduction and passage to print, its which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

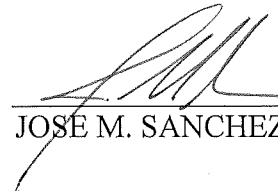
APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, 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 8th day of April 2025, Councilmember Bavaro moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Wright,
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Williams

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: May 8, 2025

ORDINANCE NO. 3793-C.S.

AN ORDINANCE AMENDING SECTION 13-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE 5.3-ACRES FROM PLANNED DEVELOPMENT ZONE P-D (179) TO MIXED USE HIGHWAY (MU-H) ZONE, PROPERTY LOCATED AT 2800 SISK ROAD (FERNANDEZ).

WHEREAS, a verified application for an amendment to Section 13-3-8 of the Zoning Map was filed by Jonathan Fernandez on November 7, 2024, to rezone a 5.3-acre property from Planned Development Zone P-D (179) to Mixed Use Highway (MU-H) Zone, property located at 2800 Sisk Road, and

WHEREAS, after a public hearing held on February 24, 2025, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because the rezone will allow for the redevelopment of the site into commercial or multi-family residential uses compatible with surrounding existing commercial and multi-family residential uses to the north, east, and south of the project site, the requested zone change will result in an orderly planned use of land because the rezone will allow for redevelopment of the site for uses as permitted by the Mixed-Use Highway (MU-H) zone, including Highway Commercial (C-3) Zone uses and multi-family development at densities consistent with the Medium-High Density Residential (R-3) Zone, and 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 site is designated as Commercial (C) in the Land Use Element of the City's General Plan which provides for commercial development, and Policy III.E.3 of the General Plan encourages residential infill development along major transportation corridors, in support of the City's Housing Element, and

WHEREAS, by Resolution No. 2025-07, adopted on February 24, 2025, the Planning Commission recommended to the Council that the application of Jonathan Fernandez to amend Section 13-3-8 of the Zoning Map to rezone the hereinafter described property from Planned Development Zone P-D (179) to Mixed Use Highway (MU-H) Zone, be approved.

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

SECTION 1. After a public hearing held on April 8, 2025, 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 the proposed rezone will allow for the redevelopment of the site into commercial or multi-family residential uses compatible with surrounding existing commercial and multi-family residential uses to the north, east, and south of the project site.
2. The requested change will result in an orderly planned use of land because the proposed rezone will allow for redevelopment of the site for uses as permitted by the Mixed-Use Highway (MU-H) zone, including Highway Commercial (C-3) Zone uses and multi-family development at densities consistent with the Medium-High Density Residential (R-3) Zone.
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 site is designated as Commercial (C) in the Land Use Element of the City's General Plan which provides for commercial development, and Policy III.E.3 of the General Plan encourages residential infill development along major transportation corridors, in support of the City's Housing Element.

SECTION 2. ZONING CHANGE. Section 13-3-8 of the Zoning Map is hereby amended to rezone the following described property from Planned Development Zone P-D (179) to Mixed Use Highway (MU-H) Zone:

P-D (179) to MU-H

Parcel 1

The land referred to herein below is situated in the City of Modesto, County of Stanislaus, state of California and described as follows:

All of Parcel '1' as shown on that Parcel Map recorded on March 28, 1978, in Volume 26 of Parcel Maps, page 103, Stanislaus County Records, being a portion of the Northwest ¼ of Section 13, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California.

Including also the Easterly one-half of the Sisk Road right-of-way immediately adjacent to the above description.

Totaling 5.3 acres, more or less.

APN 005-037-025

SECTION 3. ZONING MAP. Section 13-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 2025, by Councilmember Escutia-Braaton, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Wright,
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Williams

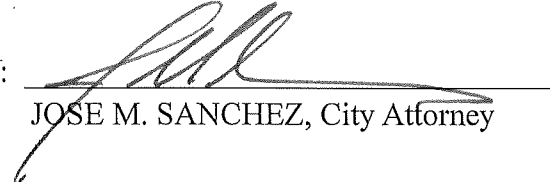
APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:


BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development Department,
Planning Division

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 April 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Escutia-Braaton, Ricci, Williams, Wright,
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Bavaro

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: May 22, 2025

ORDINANCE NO. 3794-C.S.

ORDINANCE APPROVING THE MODESTO POLICE DEPARTMENT’S MILITARY EQUIPMENT USE POLICY (POLICY 710) IN ACCORDANCE WITH CA ASSEMBLY BILL 481, AND APPROVING THE PURCHASE OF ADDITIONAL EQUIPMENT THAT QUALIFIES AS “MILITARY EQUIPMENT” IN FISCAL YEAR 2025-2026 AND RESCINDING ORDINANCE NO. 3782-C.S.

WHEREAS, the Modesto Police Department is committed to using the most up-to-date tools and equipment to safeguard the residents of Modesto; and

WHEREAS, Assembly Bill 481 (AB 481), codified at Government Code sections 7070 through 7075 requires a law enforcement agency to obtain approval from the applicable governing body, via adoption of a “military equipment” use policy by ordinance, prior to funding, acquiring, or using military equipment; and

WHEREAS, items deemed to be “military equipment” by AB 481 are used as a component of overall best practices for law enforcement agencies (LEAs) throughout the country; and

WHEREAS, the term “military equipment”, as used in AB 481, in fact does not necessarily indicate equipment that has been used by the military; and

WHEREAS, pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, and flashbangs; and

WHEREAS, these items provide peace officers with the ability to safely resolve volatile situations which otherwise might rise to the level of a lethal force encounter; and

WHEREAS, this policy outlines each item identified in Government Code section 7070, that is currently owned by MPD and the City of Modesto and also includes the current use and cost of each item; and

WHEREAS, these particular items have been in place prior to the implementation of AB 481 and any future acquisitions of any item deemed to be “military equipment” will require policy update and Council approval; and

WHEREAS, the Modesto City Council approved Ordinance No. 3782-C.S. on May 14, 2024 approving the MPD Military Equipment Use Policy (MPD Policy 710); and

WHEREAS, the Modesto City Council has reviewed the annual military equipment report and found that each type of military equipment identified in that report has complied with the standards for approval; and

WHEREAS, MPD staff has conducted a review of the equipment needs for the department and determined that there is a need to purchase additional items that fall under the Military Equipment Use Policy and these items, their uses and cost are outlined in Attachment B; and

WHEREAS, the Modesto Police Department has held a well-publicized community engagement meeting; and

WHEREAS, AB 481 requires an annual renewal of the MPD Military Equipment Use Policy (MPD Policy 710) by ordinance, therefore staff requests Ordinance No. 3782-C.S. be rescinded with the approval of this ordinance.

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

SECTION 1. FINDINGS

The City Council of the City of Modesto finds that all of the above Recitals within this Ordinance are true and correct and incorporated herein by reference and makes the following findings:

1. The City Council hereby approves the Modesto Police Department Military Equipment Use Policy 710, attached hereto.
2. The City Council finds that the purchase of the requested military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; the use of the equipment under the military equipment use policy will safeguard the public’s welfare, safety, civil rights, and civil liberties; and the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
3. Ordinance No. 3782-C.S. is hereby rescinded.

SECTION 2. SEVERABILITY.

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application any other person or circumstance. The City Council or the City of Modesto hereby declares that it would have adopted each section, sentence, clause, or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of this Ordinance be declared invalid, unenforceable or unconstitutional.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

The City Council hereby finds that the adoption of this Ordinance is exempt from 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 structures or other physical changes to the environment.

SECTION 4. EFFECTIVE DATE.

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

SECTION 5. PUBLICATION.

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of May 2025, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Vice-Mayor Bavaro, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bavaro, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Alvarez, Escutia-Braaton

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

By: 
DIANE NAYERES-PEREZ, City Clerk

(SEAL)

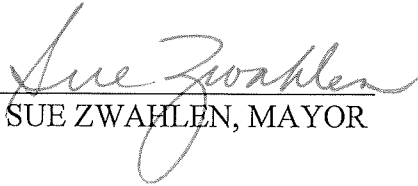
APPROVED AS TO FORM:

By: 
JOSE M. SANCHEZ, 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 May 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: June 12, 2025

ORDINANCE NO. 3795-C.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MODESTO AND DASCO OLIVEWOOD LLC REGARDING AREA PLAN NO. 6 OF THE TIVOLI SPECIFIC PLAN (DASCO OLIVEWOOD LLC AND CITY OF MODESTO)

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

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

WHEREAS, by City Council Resolution No. 2011-075, adopted on March 8, 2011, the City Council modified said procedures and requirements for the consideration of development agreements; and

WHEREAS, an application for Planning Commission consideration and approval of Tivoli Area Plan No. 6, located at the northwest corner of Sylvan Avenue and Roselle Avenue was filed by Mid Valley Engineering on October 19, 2021 and revised on May 18, 2022 in accordance with Section 9.4.1 of the Tivoli Specific Plan; and

WHEREAS, said application was made concurrently with an application for Final Development Plan (Project ID: FDP-21-003) and a Vesting Tentative Subdivision Map “Olivewood” (Project ID: TSM-21-006) to divide 9.41 acres into 74 small-lot single-family residential lots, 17 landscape/paseo lots, 12 common driveway and utility

easement lots, and one Remainder lot within Area Plan No. 6, located between McReynolds Avenue and Roselle Avenue, north of Sylvan Avenue; and

WHEREAS, on October 6, 2023, DASCO Olivewood, LLC applied for a Development Agreement with the City in order to facilitate the development of the Olivewood project, in particular off-site improvements including the installation of a roundabout at the intersection of McReynolds Avenue and future “Street C” of the Olivewood Vesting Tentative Subdivision Map, attached hereto and referenced as **Exhibit “A”**; and

WHEREAS, a public hearing was scheduled for the May 6, 2024 Planning Commission meeting, and after the publication of the public hearing notice for the above hearing, the developer submitted a revised Vesting Tentative Subdivision Map for review by staff and outside agencies, and as a result Planning staff requested that the hearing be continued to the May 20, 2024 Planning Commission meeting; and

WHEREAS, to allow for additional time to review the revised Vesting Tentative Subdivision Map, at the May 20, 2024 Planning Commission meeting, Planning staff requested that the matter be continued to the June 3, 2024 Planning Commission meeting, for which the Commission made a motion to continue the item to the June 3, 2024 hearing; and

WHEREAS, on May 29, 2024 Planning staff received a request from the developer for continuance of the matter to a date uncertain, for which the Commission made a motion at the June 3, 2024 hearing to continue the matter to a date uncertain; and

WHEREAS, on October 28, 2024, the developer submitted a revised Vesting Tentative Subdivision Map for review by staff and outside agencies, and based on

comments provided, the developer submitted a revised Vesting Tentative Subdivision Map on February 7, 2025; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on April 21, 2025 in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, for the purpose of considering the abovementioned Area Plan No. 6, Final Development Plan and Vesting Tentative Subdivision Map, and making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolutions No. 2025-15, 2025-16 and 2025-17, adopted on April 21, 2025, approved the abovementioned Area Plan No. 6, Final Development Plan, and Vesting Tentative Subdivision Map of the Olivewood project, and

WHEREAS, by Resolution No. 2025-17, also adopted on April 21, 2025, the Modesto City Planning Commission recommended to the City Council approval of the proposed Development Agreement by and between the City of Modesto and DASCO Olivewood LLC regarding Area Plan No. 6 of the Tivoli Specific Plan, because the proposed Development Agreement is consistent with the goals, objectives, policies, standards, programs and uses in the General Plan and Tivoli Specific Plan of the City of Modesto because the resulting development would be consistent with the Tivoli Specific Plan in land use and intensity; the proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, the City's subdivision and zoning provisions of the Modesto Municipal Code, and

Government Code Section 65864 et se.; as per Sections 15162, 15168(c) and 15182 of the California Environmental Quality Act ("CEQA") Guidelines, this project is within the scope of the projects covered by the Tivoli Specific Plan Final EIR and no new environmental document or findings are required by CEQA; and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on May 13, 2025, in the City Council Chambers, City Hall, 1010 - 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement by and between the City and DASCO Olivewood LLC regarding Area Plan No. 6 of the Tivoli Specific Plan; and

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

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

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

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

1. The Development Agreement is consistent with the goals, objectives, policies, standards, programs and uses in the General Plan and Tivoli Specific Plan of the City of Modesto because the resulting development would be consistent with the Tivoli Specific Plan in land use and intensity.

2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65864 et se.
3. As per Sections 15162, 15168(c) and 15182 of the California Environmental Quality Act ("CEQA") Guidelines, this project is within the scope of the projects covered by the Tivoli Specific Plan Final EIR and no new environmental document or findings are required by CEQA.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Development Agreement between DASCO Olivewood LLC and City, is hereby approved. A copy of which is on file in the Office of the City Clerk.

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

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

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

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of May 2025, by Councilmember Ricci, who moved its introduction and passage to print, which motion being duly seconded by Mayor Zwahlen, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

By: DIANE NAYERES-PEREZ, City Clerk

(SEAL)


APPROVED AS TO FORM:


By: 
JOSE M. SANCHEZ, 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 3rd day of June 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Bavaro, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: July 3, 2025

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Modesto
1010 10th Street
PO Box 642
Modesto, CA 95342
Attn: Community Development Director

Exempt from Recording Fees
Pursuant to Government
Code Sections 6103 and 27383

APN: 083-004-060
083-004-059

(Space Above This Line Reserved for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MODESTO

AND

DASCO OLIVEWOOD, LLC

OLIVEWOOD SUBDIVISION

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Development Agreement**” or this “**Agreement**”) is entered into as of _____, 2025 (the “**Agreement Date**”) by and between the City of Modesto, a charter city (“**City**”), and DASCO Olivewood, LLC, a California Limited Liability Company (“**Developer**”). City and Developer are referred to individually as “**Party**,” and collectively as the “**Parties**.”

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public.

B. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (the “**Development Agreement Legislation**”), which authorizes City to enter into a development agreement for real property with any person having a legal or equitable interest in such property in order to establish certain development rights in the property. Pursuant to Government Code Section 65865(c), City has adopted procedures and requirements for the consideration of Development Agreements within the City.

C. The Developer is the owner of certain property located in the City, known as County Assessor’s Parcel Numbers 083-004-059 and 083-004-060 (the “**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

D. Developer intends to construct a residential subdivision consisting of seventy-four (74) single family homes (the “**Project**”). Construction of the Project includes construction of a number of public improvements, including but not limited to a traffic roundabout located at the intersection of McReynolds and Street C of the Project’s tentative subdivision map.

E. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

F. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in

City; (2) development will proceed in accordance with the goals and policies set forth in the City of Modesto General Plan (the “**General Plan**”) and Tivoli Specific Plan (the “**Specific Plan**”) and will implement City’s stated General Plan and Specific Plan policies; (3) City will receive increased property tax revenues; and (4) City will benefit from increased housing for residents of City that are created by the Project.

G. Developer has applied for, and City has granted, the Project Approvals (as defined in Section 1.5) in order to protect the interests of its citizens in the quality of their community and environment.

H. On February 26, 2008, the City Council previously adopted Resolution #2008-141 certifying an environmental impact report for the Specific Plan entitled, “Tivoli Specific Plan Project Final Environmental Impact Report (SCH # 2005072125) (the “Tivoli Specific Plan EIR”), and adopting a Mitigation Monitoring and Report Program for the Project. The Project was contemplated by the Tivoli Specific Plan EIR. The City has determined that no circumstances exist that would require the preparation of a subsequent EIR for the Project pursuant to California Environmental Quality Act (“CEQA”) Guidelines Section 15162.

I. City has also undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, hereinafter “**CEQA**”), the required analysis of the environmental effects that would be caused by the Project. Pursuant to the CEQA Guidelines, (Title 14 California Code of Regulations Section 15000 *et seq.*), the City Council has determined that the Project is within the scope of the Tivoli Specific Plan Final EIR and is exempt from further environmental review pursuant to CEQA Regulations 15162, 15168(c), and 15182 on _____, 2025.

J. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.5.4), in connection with development of the Project.

K. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City’s General Plan and Specific Plan.

L. On _____, 2025, the City of Modesto Planning Commission (the “**Planning Commission**”), the initial hearing body for purposes of development agreement review, recommended approval of this Development Agreement pursuant to Resolution No. ____.

M. On _____, 2025, the City of Modesto City Council (the “**City Council**”) adopted its Ordinance No. ____ (the “**Approving Ordinance**”) approving this Development Agreement and authorizing its execution. The Approving Ordinance will take effect on _____, 2025.

N. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (including the

Subsequent Approvals), thereby encouraging planning for, investment in and commitment to develop the Property in a manner beneficial to the City and surrounding properties. Continued use and development of the Property will in turn provide substantial employment and property tax benefits, and contribute to the provision of needed infrastructure enhancements and public benefits, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted and ensuring consistency with the City's General Plan and Specific Plan.

O. The terms and conditions of this Development Agreement have undergone extensive review by City staff, the Planning Commission and the City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan, Specific Plan, and the Development Agreement Legislation, and, further, the City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

ARTICLE 1.
GENERAL PROVISIONS

1.1. Parties.

1.1.1. City. City is a California municipal corporation, with offices located at 1010 10th Street, Modesto, CA 95342. "**City**," as used in this Development Agreement, includes the City of Modesto and any assignee of or successor to its rights, powers and responsibilities.

1.1.2. Developer. Developer is a California Limited Liability Company located at 1117 L Street; Modesto, California, 95354. "**Developer**," as used in this Development Agreement, includes any permitted assignee or successor-in-interest as herein provided.

1.2. Property Subject to this Development Agreement.

The Property known as APNs 083-004-059 and 083-004-060, as more particularly described in Exhibit A, is subject to this Development Agreement.

1.3. Term of the Agreement.

The term ("**Term**") of this Development Agreement will commence upon the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless earlier terminated as provided in this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the benefits of the Project.

1.4. The Project.

1.4.1. General. Developer intends to subdivide the Property and construct seventy-four (74) single family homes on the Property (the "**Project**"). Construction of the

Project includes construction of a number of public improvements, including but not limited to design and construction of a new traffic roundabout described in this Section 1.4.

1.4.2. Community Facilities District. Developer has agreed to consent to the inclusion of the Property within the City's planned Community Facilities District for the Tivoli Specific Plan Area, to be known as Community Facilities District No. 2024-1 (Tivoli) (the "**District**") formed under the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 *et. seq.*). The District will be established to fund certain infrastructure and various services. Formation of the District shall occur prior to the recording of the final map for the Project. The District will impose a specified One-Time Facilities Special Tax, Annual Facilities Special Tax, and Annual Maintenance Special Tax. The taxes imposed by the District on the Project shall not exceed the maximum amounts set forth in Exhibit C, attached hereto and incorporated herein. The One-Time Facilities Special Tax and Annual Maintenance Special Tax shall increase annually on July 1 by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4%). The Annual Facilities Special Tax shall increase annually on July 1 by two percent (2%).

1.4.3. Improvements.

a. Public Subdivision Improvements. Developer shall construction all public improvements identified in the vesting tentative subdivision map ("**VTSM**") attached hereto and incorporated herein by reference as Exhibit B and all other Project Approvals, and dedicate such improvements to the City.

b. Traffic Roundabout. Without limiting section (a) above, the Developer shall design and construct a traffic roundabout at McReynolds and Street C of the Project's tentative subdivision map (the "**Roundabout**"). The Roundabout shall be designed and constructed in accordance with the VTSM attached hereto and incorporated herein as Exhibit B. Developer's actual and reasonable cost to design and construct the Roundabout (the "**Roundabout Cost**"), shall be a credit against the One-Time Facilities Special Taxes imposed by the District and due for the Project upon building permit issuances. If the Roundabout Cost exceeds the One-Time Facilities Special Taxes due for the Project, the Developer shall be entitled to be reimbursed by the District from the proceeds of One Time Facilities Special Tax received by the District from other development projects within the District, if and when such special taxes are received by the District. The Developer shall not be entitled to receive payment or reimbursement from any other source. The actual cost of constructing the Roundabout and the amount of the One-Time Facilities Special Taxes credited for the Project shall either be (i) reimbursed to Developer if the actual cost of constructing the Roundabout exceeds the total amount of the One-Time Facilities Special Taxes credited by the District or; (ii) paid by the Developer if the actual cost of constructing the Roundabout is less than the total amount of the One-Time Facilities Special Taxes credited by the District. The Roundabout Cost shall be as approved by the City Engineer upon the submittal by Developer of all documentation reasonably required by the City Engineer. Developer shall cause all work performed in connection with the Roundabout to be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation and to the

extent applicable, California prevailing wage laws pursuant to Labor Code Section 1770 et seq., and the regulations pursuant thereto.

c. Roundabout at C Street and McReynolds Avenue. Developer shall plan, design, bid, and construct a traffic Roundabout “as required by and consistent with the terms and conditions contained in this subsection b and the VTSM. The obligation to construct the Roundabout shall be an obligation of this Development Agreement. Prior to, or at the time the first final map for the Project is recorded, Developer shall make an irrevocable offer to dedicate real property it owns to the City as necessary to accommodate the Roundabout. If construction of the Roundabout as planned requires property not owned by the Developer, then the Developer shall make a good faith effort to obtain the minimum amount of such real property necessary to facilitate construction and operation of the proposed Roundabout roadway (“**Third-Party Dedication**”). For the purposes of this section, a good faith effort shall mean, at a minimum, that the Developer contacted the relevant property owners in writing via certified mail at least four times to negotiate the acquisition or dedication of such Third-Party Dedication. If the relevant owners do not respond after four (4) attempts or are unwilling to transfer such required Third-Party Dedication, then Developer shall have satisfied this obligation. If Developer is required to purchase the Third-Party Dedication through the City’s efforts to obtain, the purchase price shall be added to the Roundabout Cost and fully reimbursable to Developer.

Prior to recording the first final map for the Project, the Developer shall submit to the City Engineer and receive approval of complete design plans for the Roundabout. The Developer shall complete construction of the Roundabout prior to the earlier of either obtaining a building permit for the 65th single family home in the Project or the first building permit for any of the parcels that back McReynolds Avenue.

Without limiting the foregoing, Developer shall not be required to start construction of the Roundabout until all of the following events occur:

1. The City approves design and construction drawings for the Roundabout;
2. The City has reviewed and approved the Engineer’s Estimate of the cost of the Roundabout. The cost of the Roundabout shall be a credit against the One-Time Facilities Special Taxes imposed by the District and due for the Project upon building permit issuances.
3. City and Developer have entered into an agreement providing that the difference between the actual cost of constructing the Roundabout and the amount of the One-Time Facilities Special Taxes credited for the Project shall either be (i) reimbursed to Developer if the actual cost of constructing the Roundabout exceeds the total amount of the One-Time Facilities Special Taxes credited by the District or; (ii) paid by the Developer if the actual cost of constructing the Roundabout is less than the total amount of the One-Time Facilities Special Taxes credited by the District (“**Acquisition and Shortfall Agreement**”);
4. All necessary right-of-way to construct the Roundabout has been dedicated to the City and/or obtained by the City for any areas outside the Developer’s Property; and

5. As an affirmative obligation of the City under this Agreement, the City shall obtain any right-of-way or easement necessary to extend sewer services north in the Tivoli Specific Plan's proposed Aria Way, and then east within the future right-of-way of dedication to serve the Project.

6. Prior to the approval of the Improvement Plans, the City shall be responsible to ensure that the land for the dual-use basin, including any right-of-way or easements necessary to construct the storm drainage conveyance system to the dual-use basin to serve the Project, has been obtained. The City shall not impose any fees or costs on the Project to obtain said land, right-of-way, or easements. If the City does not obtain the required land, right-of-way, or easements necessary to meet the storm drainage needs of the Olivewood development, the City shall allow the construction of a temporary basin and reimburse the Developer the construction cost for any and all temporary improvements required that do not follow the Tivoli Facilities Master Plan.

d. Temporary Improvements at C Street and McReynolds Avenue. As part of the off-site development of the Project, Developer shall construct a three way stop sign control at the intersection of C Street and McReynolds Avenue. The Parties shall regard this as a temporary improvement and it shall be removed when constructing the Roundabout.

e. Compliance with Applicable Laws. Developer shall cause all work performed in connection with the Roundabout to be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation and to the extent applicable, California prevailing wage laws pursuant to Labor Code Section 1770 et seq., and the regulations pursuant thereto.

1.4.4. Nuisance. Developer shall not use or permit the use of any portion of the Project for any offensive, noisy or dangerous trade, business manufacturing activity or occupation; for any activity which constitutes a nuisance or violated public policy; in violation of any law, ordinance rule or regulation of any governmental authority with jurisdiction over any portion of the Project.

1.5. Project Approvals.

Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term "**Project Approvals**" means all of the approvals, plans and agreements described in this Section 1.5 and shall include all Project Approvals to (i) subdivide the Property into seventy-four (74) parcels (ii) construct seventy-four (74) new single-family homes on such newly created parcels, (iii) construct certain infrastructure improvements to serve the new single-family residences, and (iv) construct those other improvements as more fully set forth and described in that certain City of Modesto development application (DEV-23-001) submitted by Developer to the City on October 13, 2021, together with those plans and other information approved by the Planning Commission on _____, 2025 by Resolution No. _____. City and Developer agree to work diligently and in good faith toward appropriate planning entitlements and building permit approvals for each phase of construction.

1.5.1. CEQA Exemption. Pursuant to the CEQA, on _____, 2025 The City Council determined that the Project is within the scope of the Tivoli Specific Plan Final EIR and is exempt from further environmental review pursuant to CEQA Regulations 15162, 15168(c), and 15182 by Ordinance No _____ .

1.5.2. Development Agreement. On _____, 2025, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved this Development Agreement and authorized its execution.

1.5.3. Other Concurrent Project Approvals. In order to develop the Project as contemplated in this Development Agreement, the following land use approvals shall be required

a. Tentative Subdivision Map. A tentative subdivision map is required for the creation of the new lots. A tentative subdivision map was approved by the Planning Commission on _____ by Resolution No. _____ which is attached hereto and incorporated herein by reference as though set forth fully herein as Exhibit F. The Final Map shall be reviewed and approved by in accordance with Sections 4-4.604 of the City of Modesto Municipal Code;

b. Development Plan Review. Development Plan Review is required for the construction of the seventy-four (74) single family residences pursuant to Section 10-9.1002 of the City of Modesto Zoning Code. The Development Plan Review was approved by the Planning Commission on _____ by Resolution No. _____.

c. Area Plan Approval. Area Plan approval is required for development of the Project pursuant to Section 9.4 of the Specific Plan. Tivoli Area Plan No. 6 was approved by the Planning Commission on _____ by Resolution No. _____.

1.5.4. Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Section 1.5 above, which may include, without limitation: development plans, amendments to applicable conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, design review, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals (collectively, “**Subsequent Approvals**”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

ARTICLE 2.
DEVELOPMENT OF THE PROPERTY

2.1. Project Development.

Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 2.2).

2.2. Vested Elements.

The permitted uses of the Property, the minimum and maximum density, the intensity of use, the maximum height and size of the proposed dwellings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

- a. The City of Modesto General Plan and Tivoli Specific Plan as of the Effective Date, including any General Plan Amendments (“**Applicable General Plan**”);
- b. The Zoning Ordinance of City on the Effective Date (“**Applicable Zoning Ordinance**”);
- c. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Effective Date, except for any and all fees applicable to the development, which shall be vested as set forth in Section 2.6.2 of this Agreement, (collectively, together with the Applicable General Plan and the Applicable Zoning Ordinance, the “**Applicable Rules**”); and
- d. The Project Approvals, as they may be amended from time to time with Developer’s consent; and are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the “**Vested Elements**”). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer’s compliance with the terms and conditions of this Development Agreement.

2.3. Development Construction Completion.

2.3.1. Timing of Development; Pardee Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties’ agreement, it is the Parties’ intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

2.3.2. Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Development Agreement; provided, however, the provisions of this Section 2.3.2 shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

2.3.3. No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all, or liability in Developer under this Development Agreement if the development fails to occur.

2.4. Effect of Project Approvals and Applicable Rules; Future Rules.

2.4.1. Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals and (b) the Applicable Rules.

2.4.2. Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, "**Future Rules**") are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project.

b. To the maximum extent permitted by law, City shall prevent any Future Rules from invalidating or prevailing over all or any part of this Development Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. City shall not support, adopt or enact any Future Rule, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals. Developer reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Development Agreement or reduce the development rights provided by this Development Agreement.

c. A Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council confirming that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety, that there are no feasible alternatives to the imposition of such change or

provision and how such change or provision would alleviate the dangerous condition; (iii) it is required by changes in State or Federal law as set forth in Section 2.4.3 below; (iv) it consists of changes in, or new fees permitted by, Section 2.6; or (v) it is otherwise expressly permitted by this Development Agreement.

d. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Project Approvals and Applicable Rules, one (1) set for City and one (1) set for Developer. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Rules.

2.4.3. Changes in State or Federal Laws. In accordance with California Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date (“**State or Federal Law**”) prevent or preclude compliance with one or more provisions of this Development Agreement, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Development Agreement that may be necessary to comply with such State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Development Agreement, together with any required modifications, shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless (i) Developer fails to commence construction under valid permits under the Term of this Development Agreement, or (ii) Developer fails to submit a written request to City prior to the expiration date of any construction permits for an extension of time as allowed under the Zoning Ordinance.

2.4.4. Conflicts. In the event of an irreconcilable conflict between the provisions of the Project Approvals (on the one hand) and the Applicable Rules (on the other hand), the provisions of the Project Approvals shall apply. In the event of a conflict between the Project Approvals (on the one hand) and this Development Agreement, in particular, (on the other hand), the provisions of this Development Agreement shall control.

2.5. Processing Subsequent Approvals. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Development Agreement.

2.5.2. Scope of Review of Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the

public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements and the Applicable Rules (except as otherwise provided by Section 2.4), and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Project.

2.6. Development Fees, Exactions; and Conditions. General. All fees, exactions, dedications, reservations or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as “**Processing Fees**” (as defined in Section 2.6.1) or “**Capital Facilities Fees**” (as defined in Section 2.6.2).

2.6.1. Processing Fees. “**Processing Fees**” mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Project shall be charged Processing Fees to allow City to recover its actual and reasonable costs of processing Developer’s Subsequent Approvals with respect to the Project.

2.6.2. Impact Fees.

a. “**Capital Facilities Fees**”, also known as CFF means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for the Project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, or operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed on the Project which is not a Processing Fee is a Capital Facilities Fees. Developer agrees to pay the specific Capital Facilities Fees in the amounts listed in Exhibit D, attached hereto and incorporated herein. Such amounts may only be adjusted annually by the City on or about July 1 for inflation, as measured by the change in the San Francisco Bay Area Engineering News Record Construction Cost Index through the month of December the year preceding each inflationary adjustment.

b. The Developer shall pay the Impact Fees prior to the issuance of the building permit for each unit of the Project, except that the Developer may defer payment until the issuance of a certificate of occupancy in accordance with the requirements of Government Code Section 66000 et seq. Developer may request to defer payment of, or receive credit for payment of, the Capital Facilities Fees as provided in the City Capital Facilities Fee Policies and Procedures adopted September 22, 2020 by Resolution No. 2020-407.

c. The Parties agree that in the event of a transfer of all or a portion of the Subject Property to a third party (“Subsequent Property Owner”), Owner may retain the right to receive fee credits so long as the Subsequent Property Owner pays the applicable capital facility fee without any Credits provided for in this Agreement and the obligations relative to

Owner and any Subsequent Property Owner are clearly allocated in an Assignment and Assumption Agreement.

2.6.3. Conditions of Subsequent Approvals. In connection with any Subsequent Approvals, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement.

b. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the Project Approvals. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Sections 2.6.1 and 2.6.2 herein.

2.7. Life of Project Approvals and Subdivision Maps.

2.7.1. Life of Tentative Map. The terms of any tentative map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such tentative maps remain in effect for a period of time coterminous with the Term of this Development Agreement.

2.7.2. Life of Other Project Approvals. The term of all other Project Approvals, shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the Term of this Development Agreement.

2.7.3. Termination of Agreement. In the event that this Development Agreement is terminated prior to the expiration of the Term of the Development Agreement, the term of any tentative map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval (including any extensions), which shall commence to run on the date that the termination of this Development Agreement takes effect.

2.8. Further CEQA Environmental Review.

2.8.1. Reliance on CEQA Exemption. City has also undertaken, pursuant to the CEQA, the required analysis of the environmental effects that would be caused by the Project. The City Council has determined that the Project is within the scope of the Tivoli Specific Plan Final EIR and is exempt from further environmental review pursuant to CEQA Regulations 15162, 15168(c), and 15182. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on this determination to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration, EIR or subsequent or supplemental EIR unless required by CEQA.

2.8.2. Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible.

2.9. Developer's Right to Rebuild. Developer may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the Vested Elements, shall comply with the Project Approvals, the building regulations existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

ARTICLE 3. ANNUAL REVIEW

3.1. Annual Review. The annual review required by California Government Code Section 65865.1 will be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of that review, City and Developer shall have a reasonable opportunity to assert action(s) that either Party believes have not been undertaken in accordance with this Development Agreement, to explain the basis for such assertion, and to receive from the other Party a justification for the other Party's position with respect to such action(s), and to take such actions as permitted by law. The procedure set forth in this Article shall be used by Developer and City in complying with the annual review requirement. The City and Developer agree that the annual review process will review compliance by Developer and City with the obligations under this Development Agreement but will not review compliance with other Project Approvals or other agreements between City and Developer.

3.2. Commencement of Process; Developer Compliance Letter.

At least sixty (60) days prior to the anniversary of the Effective Date each year, Developer shall submit a letter to the City's Community Development Director requesting annual review of this Agreement and demonstrating Developer's good faith compliance with the material terms and conditions of this Development Agreement and shall include in the letter a statement that the letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1. Developer shall include with its letter any materials and information reasonably requested by the Community Development Director. Notwithstanding the foregoing, the Development Agreement shall remain in full force and effect and shall automatically renew each year, continuing its validity irrespective of whether Developer submits the letter or commences the annual review process.

3.3. Community Development Director Review.

Within sixty (60) days after the receipt of Developer's letter, the Community Development Director shall review Developer's submission and determine whether Developer has, for the year under review, demonstrated good faith compliance with the material terms and

conditions of this Development Agreement. If Developer has demonstrated good faith compliance, then the Community Development Director shall make such a finding and send a letter back to Developer describing the Community Development Director's finding and any comments. Upon the request of the Developer, the Community Development Director may issue "Finding of Compliance", in a form approved by the City Attorney, to be recorded at Developer's expense in the Stanislaus County's Recorder's Office to reflect the results of the annual review.

3.4. Community Development Director Noncompliance Finding.

If the Community Development Director finds and determines that there is substantial evidence that Developer has not complied in good faith with the material terms and conditions of this Development Agreement and that Developer is in material breach of this Development Agreement for the year under review, the Community Development Director shall issue and deliver to Developer a written "**Notice of Default**" specifying in detail the nature of the failures in performance that the Community Development Director claims constitutes material noncompliance, all facts demonstrating substantial evidence of material noncompliance, and the manner in which such noncompliance may be satisfactorily cured in accordance with the Development Agreement. In the event that the material noncompliance is an Event of Default pursuant to ARTICLE 5 herein, the Parties shall be entitled to their respective rights and obligations under both ARTICLE 3 and 5 herein, except that the particular entity allegedly in default shall be accorded only one of the 60-day cure periods referred to in Sections 3.5 and 5.1 herein.

3.5. Cure Period.

If the Community Development Director finds that Developer is not in compliance, the Community Development Director shall grant a reasonable period of time for Developer to cure the alleged noncompliance. The Community Development Director shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed. At the conclusion of the cure period, the Community Development Director shall either (i) find that Developer is in compliance; or (ii) find that Developer is not in compliance. If the Developer is not in compliance, the Community Development Director may record a Finding of Noncompliance against the Property in the Stanislaus County Recorder's Office.

3.6. Appeal of Noncompliance Finding to City Council.

Upon the expiration of the cure period and a finding that the Developer is not in compliance, the Developer may file a written appeal of such determination, along with the applicable fee, with the City Clerk within fifteen (15) days of delivery of the Community Development Director's determination. If no appeal is timely filed, the determination of non-compliance is final. Any appeal of the Director's decision shall be heard by the City Council. Notice of such appeal shall be provided in the same manner as required by Government Code section 65867. The Community Development Director shall prepare a staff report to the City Council which shall include, in addition to Developer's letter, (i) demonstration of City's good

faith compliance with the terms and conditions of this Development Agreement; (ii) the Notice of Default; and (iii) a description of any cure undertaken by Developer during the cure period.

3.7. Delivery of Documents.

At least five (5) days prior to any City hearing regarding Developer's compliance with this Development Agreement, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearing. At the hearing the City Council shall consider oral and written testimony and evidence submitted by the Developer and Community Development Director.

3.8. City Council Compliance Finding.

If the City Council, following a noticed public hearing pursuant to Section 3.6, determines that Developer is in compliance with the material terms and conditions of this Development Agreement, the annual review shall be deemed concluded. City shall, at Developer's request, issue and have recorded a Certificate of Compliance indicating Developer's compliance with the terms of this Development Agreement.

3.9. City Council Noncompliance Finding.

If the City Council, at a properly noticed public hearing pursuant to Section 3.6, finds and determines that Developer has not complied in good faith with the material terms or conditions of this Development Agreement and that Developer is in material breach of this Development Agreement, the Community Development Director shall record a Finding of Noncompliance against the Property in the Stanislaus County Recorder's Office.

3.10. Termination due to Non-Compliance.

If the City records a Finding of Noncompliance pursuant to the procedures set forth herein, thereafter the City Council shall hold a public hearing regarding termination or modification of this Development Agreement. Notification of intention to modify or terminate this Development Agreement shall be delivered to Developer by certified mail containing: (i) the time and place of the City Council hearing; (ii) a statement as to whether City proposes to terminate or modify this Development Agreement and the terms of any proposed modification; and (iii) any other information reasonably necessary to inform Developer of the nature of the proceedings. At the time of the hearing, Developer shall be given an opportunity to be heard. The City Council may impose conditions to the action it takes as necessary to protect the interests of City; provided that any modification or termination of this Development Agreement pursuant to this provision shall bear a reasonable nexus to, and be proportional in severity to the magnitude of, the alleged breach, and in no event shall termination be permitted except in accordance with ARTICLE 5 herein.

3.11. Relationship to Default Provisions.

The above procedures supplement and do not replace that provision of Section 5.1 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development

Agreement by delivering a written Notice of Default and following the procedures set forth in Section 5.1.

3.12. Reimbursement of City's Costs Incurred in Bringing About Cure.

Developer shall be obligated to reimburse to City all costs, expenses, damages and attorneys' fees incurred as a result of any Developer default including all costs incurred in bringing about Developer's cure of any such default.

ARTICLE 4.
AMENDMENTS

4.1. Amendments to Development Agreement Legislation.

This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation as those provisions existed at the Effective Date. No amendment or addition to those provisions or any other federal or state law and regulation that would materially adversely affect the interpretation or enforceability of this Development Agreement or would prevent or preclude compliance with one or more provisions of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the change in law, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Development Agreement, and in the event such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect. The Term of this Development Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Development Agreement.

4.2. Amendments to or Cancellation of Development Agreement.

This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement

shall be recommended for approval by the Planning Commission and approved by the City Council and, upon such approval, will become part of the Project Approvals.

4.3. Operating Memoranda.

The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 4.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 4.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

4.4. Amendments to Project Approvals.

Notwithstanding any other provision of this Development Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals (including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 4.2 herein).

4.4.1. Amendments to Project Approvals. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 4.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Section 2.4. All amendments to the Project Approvals shall automatically become part of the Project Approvals, except to the extent such amendments are considered by the Community Development Director, in his or her sole discretion, to constitute a major amendment. In such case, Developer consents to any major amendment's review before the Planning Commission for approval or recommendation to the City Council, whose review and approval or denial shall be final. The maximum height and size of the proposed buildings, the conditions, terms, restrictions and requirements for subsequent discretionary actions, and the other terms and conditions of development as set forth in all such amendments, except those considered by the Community Development Director to be a major amendment, shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 2.4. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent unless a Project Approval has not been activated within two

(2) years of commencement of the Term of this Development Agreement or a Project Approval has expired.

4.4.2. Administrative Amendments. Upon the request of Developer for an amendment or modification of any Project Approval, the Community Development Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Rules. If the Community Development Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an “**Administrative Amendment,**” and the Development Services Director/City Engineer or his or her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, and minor adjustments to the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Rules and this Agreement.

ARTICLE 5.
DEFAULT, REMEDIES AND TERMINATION

5.1. Events of Default.

Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays and a Mortgagee’s right to cure pursuant to Section 8.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an “**Event of Default,**” (i) if such defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is not in addition to any (60) day cure period under Article 3, if Article 3 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the

time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

5.2. Meet and Confer.

During the time periods specified in Section 5.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 60-day cure period referred to in Section 5.1 (even if the 60-day cure period itself is extended pursuant to Section 5.1) unless the Parties agree otherwise in writing.

5.3. Remedies and Termination.

If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 5.5 herein. In the event that this Development Agreement is terminated pursuant to Section 5.5 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

5.4. Legal Action by Parties.

5.4.1. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

5.4.2. No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to

enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

5.5. Termination.

5.5.1. Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3.

5.5.2. Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

5.5.3. Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to ARTICLE 3 herein or this ARTICLE 5 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies.

ARTICLE 6.

COOPERATION AND IMPLEMENTATION

6.1. Further Actions and Instruments.

Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of

this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

6.2. Regulation by Other Public Agencies.

Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement unless required to by any State or Federal law.

6.3. Other Governmental Permits and Approvals; Grants.

Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and (b) any grants for the Project for which Developer applies.

6.4. Cooperation in the Event of Legal Challenge.

6.4.1. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

6.4.2. In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, the Project Approvals for the Project or the portions of the LRPMP applicable to the Property and this Project ("**Initial Litigation Challenge**"), Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel, and to control its participation and conduct in the litigation in all respects permitted by law. If an Initial Litigation Challenge is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines.

If, after meeting and conferring, the Parties mutually agree to defend against the Initial Litigation Challenge, then the following shall apply: (i) the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement

in order to share and protect information, under the joint defense privilege recognized under applicable law; (ii) for the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Initial Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Developer (each in its sole discretion), at the Developer's sole cost and expense; and (iii) if the Parties cannot reach timely and mutual agreement on a joint counsel, and Developer continues to elect (in its sole discretion) to defend against the Initial Litigation Challenge, then Developer shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, in which case, City, at its expense, may elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding. The City Manager is authorized to negotiate and enter into a joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion.

As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time. If Developer elects, in its sole and absolute discretion, not to defend against the Initial Litigation Challenge, it shall deliver written notice to the City regarding such decision. If Developer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, at its sole cost and expense. If Developer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement and consider the Developer's application for any related Project Approvals withdrawn. The City shall not settle any third party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

6.5. Revision to Project.

In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

6.6. State, Federal or Case Law.

Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Development Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Development Agreement.

6.7. Defense of Agreement.

City shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Development Agreement. If this Development Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Development Agreement to render it valid and enforceable to the extent permitted by applicable law. Developer shall pay all of City's costs, including attorneys' fees and experts' costs, incurred to modify or defend this Development Agreement.

ARTICLE 7.
TRANSFERS AND ASSIGNMENTS

7.1. Right to Assign.

Developer shall have the right to sell, assign or transfer ("**Transfer**") in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the Term of this Development Agreement upon providing notice to City no later than ten (10) days after the effective date of said sale, assignment or transfer. Assignment and assumption of this Development Agreement shall be administered through the form of Assignment and Assumption Agreement attached to this Agreement as Exhibit E, attached hereto and incorporated herein. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals among the transferred Property and the retained Property.

7.2. Release upon Transfer.

Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 7.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written Assignment and Assumption agreement, in substantially the form attached hereto in Exhibit E, in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Development Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Development Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such

transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Development Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 7.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

7.3. Covenants Run with the Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

ARTICLE 8.

MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

8.1. Mortgagee Protection.

This Development Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

8.2. Mortgagee Not Obligated.

Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules.

8.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure.

If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice.

8.4. No Supersedure.

Nothing in this ARTICLE 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this ARTICLE 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

8.5. Technical Amendments.

City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 9.
MISCELLANEOUS PROVISIONS

9.1. Limitation on Liability.

Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall any member, officer, agent or employee of City be personally liable for any breach

of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

9.2. Force Majeure.

The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, litigation involving this Agreement or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project; or (iii) there is any mediation, arbitration, litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Project; or the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements, or Project Approvals. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of Developer's inability to obtain any other required permit or approval, then the Term of this Development Agreement shall be extended by the period of any such delay.

9.3. Notices, Demands and Communications Between the Parties.

Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 9.3.

City:

City of Modesto

1010 10th Street
PO Box 642
Modesto, CA 95342
Attn: Community Development Director

With copies to: City of Modesto
1010 10th Street
PO Box 642
Modesto, CA 95342
Attn: City Attorney

Developer: DASCO Olivewood, LLC
1117 L Street
Modesto, CA 95354

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a “hard” copy is delivered as provided above.

9.4. Project as a Private Undertaking; No Joint Venture or Partnership. The Project constitutes private development, neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Agreement. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making City and Developer joint venturers or partners.

9.5. Severability.

If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice of such termination to City.

9.6. Section Headings.

Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

9.7. Construction of Agreement.

This Development Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

9.8. Entire Agreement.

This Development Agreement, including the Recitals, and exhibits attached hereto and incorporated by reference herein, together with the Project Approvals, constitutes the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

- Exhibit A Legal Description of the Property
- Exhibit B Vesting Tentative Subdivision Map
- Exhibit C CFD Taxes
- Exhibit D Capital Facilities Fees
- Exhibit E Assignment & Assumption Agreement

9.9. Estoppel Certificates.

Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or her designee shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

9.10. Recordation.

Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of the Parties' execution of this Development Agreement or the Effective Date, the City Clerk shall record this Development Agreement with the Contra Costa County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the Contra Costa County Recorder.

9.11. No Waiver.

No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.12. Time Is of the Essence.

Time is of the essence for each provision of this Development Agreement for which time is an element.

9.13. Applicable Law.

This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

9.14. Attorneys' Fees.

Should any legal action be brought by either Party because of a breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court.

9.15. Third Party Beneficiaries.

Except as otherwise provided herein, City and Developer hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.16. Constructive Notice and Acceptance.

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.17. Counterparts.

This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

9.18. Authority.

The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

DASCO Olivewood, LLC
1117 L Street
Modesto, CA 95354

By: _____

Title: _____

CITY:

CITY OF MODESTO
a charter city

By: _____
Joseph P. Lopez, City Manager

ATTESTATION:

By: _____
Diane Nayares-Perez, City Clerk

APPROVED AS TO FORM:

By: _____
Jose M. Sanchez, City Attorney

SIGNATURES MUST BE NOTARIZED

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN AN UNINCORPORATED AREA, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 (APN 083-004-060)

PARCEL 1, PER MAP FILED MARCH 24, 1970 IN VOLUME 8 OF PARCEL MAPS, AT PAGE 62, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBONS AND ALL CHEMICAL GAS, NOW OR HEREAFTER FOUND, SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREIN DESCRIBED LYING THEREIN OR THEREUNDER, AS EXCEPTED AND RESERVED IN THE DEED FROM EDWIN K. HOATSON AND BETTY JEAN HOATSON, HUSBAND AND WIFE, DATED APRIL 26, 1965 AND RECORDED MAY 3, 1965 IN VOLUME 2029 OF OFFICIAL RECORDS, PAGE 95, INSTRUMENT NO. 17320.

PARCEL 2 (APN 083-004-059)

PARCEL 2, PER MAP FILED MARCH 24, 1970 IN VOLUME 8 OF PARCEL MAPS, AT PAGE 62, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM, NAPHTHA AND OTHER HYDROCARBONS AND ALL CHEMICAL GAS, NOW OR HEREAFTER FOUND, SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREIN DESCRIBED LYING THEREIN OR THEREUNDER, AS EXCEPTED AND RESERVED IN THE DEED FROM EDWIN K. HOATSON AND BETTY JEAN HOATSON, HUSBAND AND WIFE, DATED APRIL 26, 1965 AND RECORDED MAY 3, 1965 IN VOLUME 2029 OF OFFICIAL RECORDS, PAGE 95, INSTRUMENT NO. 17320.

EXHIBIT B
VESTING TENTATIVE SUBDIVISION MAP

EXHIBIT C
COMMUNITY FACILITIES DISTRICT TAXES

EXHIBIT D

**CITY OF MODESTO
CAPITAL FACILITY FEES (CFF)**

Single-Family Dwelling

TYPE OF FEE/CHARGE FEE	FEE AMOUNT/PER DWELLING
1) Administration Fee	\$357.00
2) Police Fee	\$766.00
3) Fire Fee	\$477.00
4) Parks & Air Quality Fee	\$7,551.00
5) General Government Fee	\$631.00
6) Streets Fee	\$8,244.00
7) Transit Fee	\$120.00
Total:	\$18,146.00

EXHIBIT E

ASSIGNMENT & ASSUMPTION AGREEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Modesto
1010 10th Street
PO Box 642
Modesto, CA 95354
Attention: Com.Dev. Director

Recording fees exempt (Gov. Code §§ 6103, 27383) (Space above line for recorder's use only)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") shall be deemed effective as of _____, 20__ ("Effective Date"), by and between _____, a _____ ("Assignor") and _____, a _____ ("Subsequent Landowner").

RECITALS

A. Assignor has entered into a Development Agreement with the City of Modesto, dated _____, 20__ , which was recorded on _____, 20__ as Document No. _____ in the Official Records of Stanislaus County, California (the "Development Agreement").

B. Assignor has agreed to develop property pursuant to the Development Agreement, which is now proposed for assignment pursuant to this Agreement, and is more particularly described as _____, as set forth in more detail in the Legal Description attached and incorporated hereto as **Exhibit A** (the "Assigned Parcels").

C. Subsequent Landowner desires to assume [all of Assignor's rights, duties and obligations under the Agreement] [a portion of Assignor's rights, duties and obligations as set forth in this Agreement] with respect to the Assigned Parcels and Assignor seeks to be relieved of said assigned rights, duties and obligations in reference to the Assigned Parcels.

NOW, THEREFORE, Assignor and Subsequent Landowner hereby agree as follows:

AGREEMENT

1. Assignor hereby assigns, effective as of [the Effective Date or Assignor's conveyance of the Assigned Parcels to Subsequent Landowner], [all of] or [if only a portion of, describe] the rights, interests, burdens and obligations of Assignor under the Agreement with respect to the Assigned Parcels. Assignor retains all of the rights, interests, burdens and obligations under this Agreement with respect to all property other than the Assigned Parcels within the Subject Property owned by Assignor.

2. Subsequent Landowner hereby assumes all of the rights, interests, burdens and obligations of Assignor under this Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcels. It is the express intention of both Assignor and Subsequent Landowner that, upon the Effective Date, Subsequent Landowner shall become substituted for Assignor as a "Developer" under the Development Agreement with respect to the Assigned Parcels. Assignor acknowledges that Assignor shall remain subject to the duties and obligations of the Development Agreement if Assignor retains any portion of the Subject Property subject to the Development Agreement.

3. All of the covenants, terms, and conditions of this Agreement and set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. Subsequent Landowner's address for all notices, as described in Section ____ of the Development Agreement, shall be as follows:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the above-referenced Effective Date.

ASSIGNOR:

_____, a

SUBSEQUENT LANDOWNER:

_____, a

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED:

City Manager

EXHIBIT F

RESOLUTION NO. _____

ORDINANCE NO. 3796-C.S.

ORDINANCE AMENDING SECTION 8-10.102 “MEMBERSHIP OF COMMISSION” OF TITLE 8 CHAPTER 10, “CITIZENS’ TRANSPORTATION SALES TAX COMMISSION”

WHEREAS, on October 4, 2016, Ordinance 3656-C.S. was approved by the City Council, adding Chapter 10 to Title 8 of the Modesto Municipal Code to establishing the Citizens’ Transportation Sales Tax Commission; and

WHEREAS, on August 2, 2017, by Resolution 2017-291, Council appointed the initial nine members to the Commission. On September 5, 2017, by Resolution 2017-331, Council appointed the remaining two members to constitute the full Commission pursuant to Ordinance No. 3656-C.S.; and

WHEREAS, on April 11, 2023, by Resolution 2023-169, Council approved the bylaws for the Citizens’ Transportation Sales Tax Commission; and

WHEREAS, in recent years, the staff has noted challenges in filling the Commission seats. The current criteria for membership are too restrictive for many potential applicants and has resulted in difficulties in attracting and appointing suitable candidates to serve on the Commission; and

WHEREAS, the proposed changes to the ordinance would change the Commission from eleven members to nine members ensuring at least one member from each Council district and three at-large members.

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

SECTION 1. Amendment. Section 8-10.102 is hereby amended to read as follows:

8-10.102 – Membership of Commission.

The Commission shall consist of nine (9) qualified electors residing within the City and shall be appointed by the City Council by resolution pursuant to the provisions below:

- (a) Be a citizen of Modesto
 - (i) one (1) citizen from each City Council District
 - (ii) three (3) at large citizens from anywhere within the city limits
- (b) Strong consideration shall be given to composing the Commission of:
 - (i) a bona fide local taxpayer's association with tax-exempt status under the relevant provisions of the Internal Revenue Code;
 - (ii) a 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) a 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) a bona fide association representing business such as a chamber of commerce;
 - (v) a member from a large business located in the City;
 - (vi) a member from a small business located in the City; and
 - (vii) a member from a bona fide labor union with members residing in the City.
- (c) 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.
- (d) 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, except retirement benefits.
- (e) 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.
- (f) Members of the Commission shall serve without compensation.
- (g) 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 10th day of June 2025 by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Zwahlen

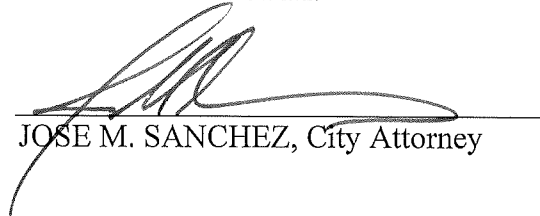
APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, 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 24th day of June 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Williams, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: July 24, 2025

*Amended due to department clerical error. Section 5, 10-4.104 (c) should read as "22 units per net acre,"...

ORDINANCE NO. 3797-C.S.

ORDINANCE OF THE CITY COUNCIL OF MODESTO AMENDING TITLE 10 (ZONING REGULATIONS) OF THE MODESTO MUNICIPAL CODE, AMENDING CHAPTER 2 (DEFINITIONS), ARTICLE 1 (DEFINITIONS); CHAPTER 3 (LAND USE REGULATIONS), ARTICLE 1 (PERMITTED AND CONDITIONAL LAND USES); CHAPTER 3, ARTICLE 2 (SPECIFIC LAND USE REGULATIONS); CHAPTER 4 (DEVELOPMENT STANDARDS), ARTICLE 1 (RESIDENTIAL ZONES); AND CHAPTER 4, ARTICLE 5 (ACCESSORY DWELLING UNITS)

WHEREAS, on December 5, 2023, the City Council adopted Resolution 2023-532, adopting the Modesto 2023-2031 Housing Element (hereinafter "the Housing Element"); and

WHEREAS, on April 10, 2024, the California Department of Housing and Community Development found the Housing Element in substantial compliance with State Housing Element Law per Gov. Code § 65580 et seq; and

WHEREAS, the Housing Element includes Program A-3, General Plan and Zoning Densities, which requires the City to revise the densities of the residential zones in the zoning code and align them with the General Plan; and

WHEREAS, the City is concurrently proposing an Amendment to the General Plan (GPA-24-999) that aligns with the proposed residential density herein as required by the adopted Housing Element; and

WHEREAS, the Housing Element also includes Program A-11, Facilitate Missing Middle/Middle Income Housing, which requires the City to amend the zoning code to allow to allow duplexes to be approved ministerially on all lots in the Low Density Residential (R-1) zone with a single-family residential use; and

WHEREAS, an Initial Study has been prepared as required by CEQA, which concluded that an Environmental Impact Report should be prepared; and

WHEREAS, a Programmatic Environmental Impact Report for the Modesto Urban Area General Plan was prepared, which concluded that the City Council would need to adopt a statement of overriding considerations as well as written findings in accordance with State CEQA Guidelines Section 15091 and 15093; and

WHEREAS, a 45-day public review period for the proposed draft Environmental Impact Report began on February 28, 2025, and concluded on April 15, 2025; and

WHEREAS, the City received two (2) public comment letters on the draft Environmental Impact Report and has made changes to the document as a result, addressing their contents and providing responses thereto within the Final EIR; and

WHEREAS, a public hearing was held by the Planning Commission on May 5, 2025, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, on May 5, 2025, the Planning Commission recommended in Resolution 2025-28 that the City Council certify the Environmental Impact Report in accordance with State CEQA Guidelines Section 15090 and adopt a Statement of Overriding Considerations as well as written findings in accordance with State CEQA Guidelines Section 15091 and 15093; and

WHEREAS, on May 5, 2025, the Planning Commission recommended in Resolution 2025-29 that the City Council approve an Ordinance amending the Modesto Municipal Code as described in Sections 2 through 7 below; and

WHEREAS, a public hearing was held by the City Council on June 10, 2025, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered.

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

SECTION 1. FINDINGS. The City Council finds and determines as follows:

- A. The proposed changes will not be detrimental to the public health, safety, or welfare. The residential density changes will benefit the community by allowing higher density development, which the Housing Element promotes and encourages. The changes to allow duplexes ministerially in R-1 zones allow for additional options for landowners to provide housing, and also allow for additional units in areas that would otherwise be considered built out. These changes benefit the public welfare by providing the opportunity for additional housing units to be built, and additional housing development and codification of duplexes will discourage substandard housing and ensure that housing is built compliant with Building and Fire Codes.
- B. The proposed changes will result in an orderly planned use of land. The residential density changes provide consistency between the zoning ordinance and the General Plan, which makes preparing and reviewing plans for compliance with the regulations more reliable and allows for orderly development. The duplex changes build on the existing Code’s allowance for duplexes on corner lots in the R-1 zone, extending the permission to all lots, providing consistency throughout the zone.
- C. The proposed changes are in accordance with the community’s objectives as set forth in the General Plan and any applicable specific plans. These changes implement the requirements of the Housing Element, which is a component of the General Plan.

SECTION 2. AMENDMENT OF CODE.

Title 10 of the Modesto Municipal Code, Chapter 2, “Definitions”, Article 1, “Definitions”, is hereby amended to read as follows (with deletions in ~~striketrough~~ and additions in underline):

10-2.101 Purpose and Intent.

The words and phrases used in Title 10 shall have the meanings respectively ascribed to them in this Article unless otherwise apparent from the context. Words not listed in this Article shall be interpreted as defined in a dictionary or other standard reference manual.

...

10-2.121(B) Duplex

Two primary single-family dwelling units on a single parcel that have separate entrances. A duplex is not a multiple-family dwelling as defined in Section 10-2.122 even if the two units share walls or are otherwise connected.

...

10-2.1107 Yard, Street-Side.

An area extending across the full lot depth between the street-side lot line and the buildings, structures, and parking area.

SECTION 3. AMENDMENT OF CODE.

Title 10 of the Modesto Municipal Code, Chapter 3, “Land Use Regulations”, Article 1, “Permitted and Conditional Land Uses”, is hereby amended to read as follows (with deletions in ~~striketrough~~ and additions in underline):

10-3.101 Land Use Table.

The following Land Use Table identifies those uses that are permitted, conditional, and not permitted for each listed zoning district.

- (a) The land use symbols shown on Table 3.1-1 have the following meaning:
 - (1) "P" indicates that the use is permitted
 - (2) "C" indicates that the use is conditional (A conditional use permit is required)
 - (3) "-" indicates that the use is not permitted
 - (4) The zoning district symbols and corresponding zoning district names are as follows:
 - R-1 Low Density Residential
 - R-2 Medium Density Residential
 - R-3 Medium-High Density Residential
 - MU-P Mixed Use Pedestrian Oriented
 - MU-H Mixed Use Highway Oriented
 - P-O Professional Office
 - C-1 Neighborhood Commercial
 - C-2 General Commercial
 - C-3 Highway Commercial
 - C-M Commercial-Industrial
 - M-1 Light Industrial
 - M-2 Heavy Industrial

See Chapter 4, Land Use Regulations, for the definition and purpose and intent of the zoning districts.

- (b) Refer to the Chapter 9, Administration, to determine the required application and process for permitted and conditional uses.
- (c) Refer to the notes column for additional information.

Table 3.1-1 Permitted and Conditional Land Uses

Land Use	Zoning Districts												Notes
	R-1	R-2	R-3	MU-P	MU-H	P-O	C-1	C-2	C-3	C-M	M-1	M-2	
AGRICULTURAL													
Community Gardens	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-2.114
Fruit and nut trees, vines, row crops, horticulture stock	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
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
Personal Cannabis Cultivation	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-3.601 et seq.
Dwellings													
Accessory Buildings	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-4.114
Accessory Dwelling Unit, Junior Accessory Dwelling Unit	P	P	P	<u>P</u>	<u>P</u>	-	-	-	-	-	-	-	See Section 10-4.115
Single Family Dwelling	P	P	P	-	-	-	-	-	-	-	-	-	In R-1, 1 unit per lot. For corner lots, — <u>For duplexes,</u> see Section 10-3.217
Manufactured Homes	P	P	P	-	-	-	-	-	-	-	-	-	See Section 10-3.209
Multiple Family	-	P	P	<u>P</u>	<u>P</u>	C	C	C	C	-	-	-	See Sections 10-9.1002 b 3, 10-9.1002 b 5, and 10-4.115. ADUs and JADUs are allowed in conjunction with multiple

													family development on commercial properties for which a CUP has been issued in accordance with Section 10-4.115.
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	<u>C</u>	<u>C</u>	C	C	C	C	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 2 dwellings on a lot)	-	C	P	<u>C</u>	<u>C</u>	C	C	C	C	-	-	-	See Section 10-3.208
CIVIC/INSTITUTIONAL													
Educational Facilities													
School - Private (including charter schools)	C	C	C	<u>P</u>	<u>P</u>	P	P	P	P	C	C	C	
School - Public (including charter schools)	C	C	C	<u>P</u>	<u>P</u>	P	P	P	P	C	C	C	
School - Vocational	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Healthcare Facilities													
Hospital	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Substance Abuse Clinic/Facility	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Veterinary Hospital (large animals)	-	-	-	-	-	-	-	-	-	P	P	P	See Section 10-2.1100
Veterinary Hospital (small animals)	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-2.1101
Non-Profit Organization													
No Retail (office, classroom, meeting hall)	C	C	C	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Retail	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	
Public Facilities													
Library	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Museum	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	

Public Buildings and Grounds (i.e. corporation yard)	C	C	C	<u>C</u>	<u>C</u>	C	C	C	C	P	P	P	
Public Facilities, Minor (wells, pumps)	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Public Parks	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Storm Drainage Facilities	P	P	P	<u>P</u>	<u>P</u>	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	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Utilities													
Solar Energy Systems (accessory use)	P	P	P	<u>P</u>	<u>P</u>	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	<u>C</u>	<u>C</u>	C	C	C	C	P	P	P	
Utilities and Railroads													See Section 10-3.221
COMMERCIAL													
Communication													
Broadcasting Studio (radio or television)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Radio or Television Transmitter	-	-	-	<u>C</u>	<u>C</u>	-	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)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Title 4, Chapter 1, Article 4
Circus (entertainment permit required)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Title 4, Chapter 1, Article 4
Entertainment Establishment (entertainment permit required)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Title 4, Chapter 1, Article 4
Theater, Motion Picture (indoor)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Commercial Cannabis Uses													See Chapter 3, Article 7
Commercial Marijuana Activity	-	-	-	-	-	-	-	-	-	-	-	-	See Section 10-3.210
Lodging													
Motel, Hotel	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	

Bed and Breakfast (2 rooms for lodging, owner resides on site)	P	P	P	-	-	-	-	-	-	-	-	-	
Office													
General	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-2.159
Medical	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-2.160
Outdoor Sales and Activities													
Auction Yard	-	-	-	-	-	-	-	-	-	-	P	P	
Commercial													
Certified Farmers' Market	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-3.212 a
Food and Drink Stands	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-3.212 b
Fund Raisers (nonprofit organizations)	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-3.212 c
Outdoor Dining Areas	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-3.212 d
Outdoor Display, major	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Section 10-3.212 e (2)
Outdoor Display, minor	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-3.212 e (1)
Outdoor Sales (products customarily sold indoor)	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-3.212 f
Promotions	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-3.212 g
Seasonal Sales (fireworks, pumpkins, Christmas trees)	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-3.212 h
Mobile Food Facilities	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Sections 10-3.210 and 10-3.212 i
Flea Market - Indoor	-	-	-	<u>P</u>	<u>P</u>	-	-	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	-	-	-	-	<u>C</u>	-	-	-	C	P	P	P	
Health Club	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	
Private Club, Lodge,	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	

Social Club, Cultural Center													
Recreation Facility - Indoor	-	-	-	<u>P</u>	<u>P</u>	-	C	P	P	P	P	P	See Section 10-2.165
Recreation Facility - Outdoor	-	-	-	<u>C</u>	<u>C</u>	-	-	C	C	P	P	P	See Section 10-2.166
Recycling (Collection)													
Recycling Facility, Large (more than 500 SF area)	-	-	-	<u>C</u>	<u>C</u>	-	-	C	C	P	P	P	
Recycling Facility, Small (500 SF max area)	-	-	-	<u>P</u>	<u>P</u>	-	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)	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	
Restaurants													
Banquet Hall	-	-	-	<u>C/P</u>	<u>C/P</u>	-	-	C/P	C/P	C/P	C/P	C/P	See Section 10-3.203
Bar, Cocktail Lounge, Tavern	-	-	-	<u>C/P</u>	<u>C/P</u>	-	-	C/P	C/P	C/P	C/P	C/P	See Section 10-3.203
Restaurants (w/ alcohol)	-	-	-	<u>C/P</u>	<u>C/P</u>	-	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.203
Restaurants (w/o alcohol)	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	
Retail													
General Retail	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Section 10-2.174
Neighborhood Retail	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-2.175
Services													
General Services													
Ambulance Service	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Armored Car Service	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Business Services	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-2.178
Car Wash	-	-	-	<u>C/P</u>	<u>C/P</u>	-	-	C/P	C/P	C/P	C/P	C/P	See Section 10-3.222
Equipment Rental (indoors)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Exterminating Service	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	

Fortune Telling	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Funeral Home (includes cremation)	-	-	-	<u>C</u>	<u>C</u>	-	-	C	C	P	P	P	
Janitor Service	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Kennel	-	-	-	<u>C</u>	<u>C</u>	-	-	C	C	P	P	P	
Laboratory (research and testing)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Package Delivery Service	-	-	-	-	<u>C</u>	-	-	-	C	P	P	P	
Personal Services	-	-	-	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	See Section 10-2.179
Security Company	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Self Storage	-	-	-	-	<u>C</u>	-	-	-	C	P	P	P	
Sign Painting Shop	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Stone Monument	-	-	-	<u>C</u>	<u>C</u>	-	C	C	C	P	P	P	
Taxicab Service	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Taxidermist Shop	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Towing Services (no impound yard)	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Trade Services	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Section 10-2.182
Repair Services													
Major Repair	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	See Section 10-2.180
Minor Repair	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	See Section 10-2.181
Social Assistance Services													
Assisted Living Facility	C	C	P	<u>P</u>	<u>P</u>	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	<u>P</u>	<u>P</u>	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
Child Day Care Center	C	C	C	<u>P</u>	<u>P</u>	C	P	P	P	P	P	P	See Section 10-3.204 b

Convalescent and Other Care Facility	C	C	C	<u>P</u>	<u>P</u>	C	P	P	P	P	P	P	Commercial facility
Emergency Shelter	-	-	-	-	-	-	C	C	P	C	C	C	See Section 10-3.205
Homeless Shelter	-	-	-	-	-	-	C	C	P	C	C	C	See Section 10-3.205
Low Barrier Navigation Center	-	-	-	P	P	P	P	P	P	C	C	C	See Sections 10-2.149.1 and 10-3.208.1
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	<u>P</u>	<u>P</u>	P	P	P	P	-	-	-	See Section 10-2.192
Transitional Housing	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	-	-	-	See Section 10-2.194
Vehicle Related													
Heavy Vehicles													See Section 10-2.198
Farm Equipment Sales, Rental, Repair, & Service	-	-	-	-	<u>C</u>	-	-	-	C	P	P	P	
Truck & Trailer Sales, Rental, Repair, & Service	-	-	-	-	<u>C</u>	-	-	-	C	P	P	P	
Light Vehicles													See Section 10-2.199
Minor Maintenance (minor tune up, smog check)	-	-	-	<u>C/P</u>	<u>C/P</u>	-	C/P	C/P	C/P	C/P	C/P	C/P	See Section 10-3.222
Parts Store	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	
Rental and Sales	-	-	-	<u>P</u>	<u>P</u>	-	-	P	P	P	P	P	
Repair and Service, Major	-	-	-	-	-	-	-	-	-	C/P	C/P	C/P	See Sections 10-2.199 a and 10-3.222
Repair and Service, Minor	-	-	-	<u>C/P</u>	<u>C/P</u>	-	-	C/P	C/P	C/P	C/P	C/P	See Sections 10-2.199 b and 10-3.222
Service Station	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	
Stereo Installation	-	-	-	<u>C/P</u>	<u>C/P</u>	-	-	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	
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/P	C/P	C/P	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 Buildings														
Customarily incidental to permitted & conditional uses	P	P	P	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	P	See Section 10-3.201 a
Incidental Manufacturing, Processing, Packaging, Storage, or Wholesale Sales	-	-	-	<u>P</u>	<u>P</u>	-	P	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	-	-	-	<u>P</u>	<u>P</u>	-	P	P	P	P	P	P	P	
Recreational Vehicles	P	P	P	<u>P</u>	<u>P</u>	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	<u>P</u>	<u>P</u>	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	<u>P</u>	<u>P</u>	P	P	P	P	P	P	P	P	See Section 10-3.219
Legend														
P Permitted Use — Not Permitted C Conditional Use Note: A blank box means the land use is not applicable and/or refer to notes. P* Low Barrier Navigation Centers as a Permitted Use in the Mixed Use and Commercial Zones shall be repealed on January 1, 2027.														

SECTION 4. AMENDMENT OF CODE.

Title 10 of the Modesto Municipal Code, Chapter 3, “Land Use Regulations”, Article 2, “Specific Land Use Regulations”, Section 10-3.217, “Corner Lots in the R-1 Zone” is hereby amended to read as follows (with deletions in ~~strikethrough~~ and additions in underline):

10-3.217 ~~Corner Lots Duplexes~~ in the R-1 Zone.

- (a) ~~Two (2) single family dwellings or a duplex on any corner lot are~~ is allowed on any lot in the R-1 Zone subject to all other standards of the R-1 zone including but not limited to lot coverage, setbacks, height, parking, and fencing but not including density. ~~provided that the driveway serving the off street parking for each unit shall take access from different streets. If the lot has access to an alley, one (1) or both driveways may access the alley.~~
- (b) ~~An accessory dwelling unit is allowed on any interior lot in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling in accordance to Section 10-4.115. A lot in the R-1 zone that has an existing or proposed duplex is eligible for~~ Accessory Dwelling Units as per Section 10-4.505(a), Lots with a Single-family Dwelling.

SECTION 5. AMENDMENT OF CODE.

Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards”, Article 1, “Residential Zones (R-1, R-2, R-3)”, Section 10-4.104, “Density”, is hereby amended to read as follows (with deletions in ~~strikethrough~~ and additions in underline):

10-4.104 Density.

- (a) ~~In the R-2 Zone, there shall be a minimum density of one (1) dwelling unit per four thousand (4,000) square feet of lot area, for sites smaller than one (1) acre, and a minimum density of approximately eleven (11) dwelling units per net acre for sites one (1) acre or larger. A maximum density of one (1) dwelling unit shall be permitted for each three thousand (3,000) square feet of lot area, for sites smaller than one (1) acre, and a maximum density of approximately fourteen and one half (14.5) dwelling units per net acre shall be permitted for sites one (1) acre or larger. In the R-1 zone, there shall be a maximum density of 10.9 dwelling units per net acre.~~
- (b) ~~In the R-3 Zone, there shall be a minimum density of more than one (1) dwelling unit per three thousand (3,000) square feet of lot area, for sites smaller than one (1) acre, and a minimum density of more than fourteen and one half (14.5) dwelling units per net acre for sites larger than one (1) acre. A maximum density of one (1) dwelling unit shall be permitted for each one thousand five hundred (1,500) square feet of lot area, for sites~~

~~smaller than one (1) acre, and a maximum density of approximately twenty-nine (29) dwelling units per net acre shall be permitted for sites larger than one (1) acre. In the R-2 zone, there shall be a minimum density of 10.9 dwelling units per net acre, and a maximum density of 22 dwelling units per net acre.~~

(c) In the R-3 zone, there shall be a minimum density of ^{*}22 units per net acre, and a maximum density of 45 dwelling units per net acre.

(e)(d) In the R-2 and R-3 zones, the minimum density shall be provided unless the applicant demonstrates, and the Director makes the following findings:

- (1) The proposed development is on an existing lot where the lot cannot accommodate a development of the minimum density due to configuration of existing buildings or shape or size of the lot, or
- (2) A lower density will not adversely affect the City's ability to accommodate and provide its remaining share of the Regional Housing Needs Allocation for very-low and low-income households based on the remaining acreage of Medium Density Residential (R-2) or Medium-High Density Residential (R-3) zoned land at the time of application, provided, that if an adverse impact as described could otherwise occur, that such impact will be mitigated by one (1) of the following means:
 - (i) An equivalent parcel of land of the same or greater acreage is provided by the applicant and rezoned to the same or greater density simultaneously, or
 - (ii) The applicant agrees to construct and covenant for affordable units on the subject site or another site in a number sufficient to ensure no net loss of units based on the minimum density set forth herein.

SECTION 6. AMENDMENT OF CODE.

Title 10 of the Modesto Municipal Code, Chapter 4, "Development Standards", Article 5, "Accessory Dwelling Units", Section 10-5.505, "Accessory Dwelling Units", is hereby amended to read as follows (with deletions in ~~strike through~~ and additions in underline):

10-4.505 Number and type of Accessory Dwelling Units Permitted.

- (a) **Lots with a Single-family Dwelling or Duplex.** On a lot developed with an existing or proposed single family dwelling or duplex, an applicant may choose from any of the following ADU types (i.e., attached, detached, converted) or a JADU, or a combination thereof not to exceed two (2) additional units beyond the primary single-family residence.
- (1) An Attached (new construction) ADU meeting the requirements of this chapter.
 - (2) A Detached (new construction) ADU:
 - (i) Minimum four (4) foot side and four (4) foot rear yard setbacks are required.

- (3) A Converted ADU may be located within an existing single-family dwelling (i.e., in living space to be converted to an ADU, e.g., a master bedroom suite), or within an existing detached accessory structure (e.g., a detached garage).
 - (i) The ADU located within an existing or proposed single-family dwelling must have exterior access.
 - (ii) The side and rear setbacks of the existing accessory structure to be converted must be sufficient for fire and safety.
- (4) One (1) Junior Accessory Dwelling Unit (JADU) is allowed per lot zoned for single-family residential, where there is only one (1) existing or one (1) proposed single family dwelling.
 - (i) Junior Accessory Dwelling Units shall conform to the requirements in Section 10- 4.509, below.

(b) Lots with Multi-family Residential Dwellings.

- (1) Multiple accessory dwelling units are allowed within the portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to, storage rooms, boiler rooms, passageway, attics, basements, or garages, if each unit complies with state building standards for dwellings.
- (2) The number of ADUs shall not exceed twenty-five (25) percent of the existing multifamily units, except that at least one (1) ADU is allowed.
- (3) Not more than two (2) detached ADUs may be added to a lot that has a proposed multifamily dwelling, and not more than eight (8) detached ADUs may be added to a lot that has an existing multifamily dwelling.

(c) ADUs developed on a lot with an existing or proposed Place of Worship.

- (1) An ADU may be developed on a lot, meeting the following requirements:
 - (i) Zoned Residential or Commercial, and excluding the Industrial Zones (C-M, M-1, and M-2);
 - (ii) Developed with an existing or proposed place of worship; and
 - (iii) Where the church or place of worship meets the Internal Revenue Service (IRS) requirements for tax exempt status under Internal Revenue Code (IRC) Section 501 (c)(3).
- (2) Not more than two (2) detached ADUs may be built.
- (3) Each ADU may not exceed 1,200 square feet in floor area.
- (4) Each ADU shall meet the required front setbacks of the respective zoning district.
- (5) Each ADU shall meet the required street-side setbacks of the respective zoning district.
- (6) Each ADU shall have a minimum four (4) foot interior side and rear yard setbacks.

- (7) No additional off-street parking is required for the ADUs, if at least one (1) existing off-street parking space is reserved for tenants in each proposed ADU.
- (8) The ADUs shall have a maximum height of sixteen (16) feet.

SECTION 7. AMENDMENT OF CODE.

Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards”, Article 5, “Accessory Dwelling Units”, Part 10-4.506, “Accessory Dwelling Units (ADUs): Maximum Sizes”, is hereby amended to read as follows (with deletions in ~~strike through~~ and additions in underline):

10-4.506 Accessory Dwelling Units (ADUs): Maximum Sizes.

- (a) **Attached ADUs.** The total floor area of an attached accessory dwelling unit shall not exceed fifty (50) percent of the primary dwelling. For a duplex, the total floor area of an attached accessory dwelling unit shall not exceed fifty (50) percent of the primary unit or units that the accessory dwelling unit is proposed to be attached to. This limitation shall not preclude development of an attached ADU of up to 800 square feet.
- (b) **Detached ADUs.**
 - (1) The total floor area for a detached ADU shall not exceed twelve hundred (1,200) square feet.
 - (2) A detached ADU shall not exceed the square footage (in floor area) of the existing or proposed single family dwelling.
- (c) **Converted ADUs.**
 - (1) When an existing detached accessory structure is converted to an ADU, a maximum one-hundred-fifty (150) square-foot expansion beyond the dimensions of the existing accessory structure is allowed, provided the expansion is used solely for accommodating ingress and egress.
 - (2) Any expansion to an existing structure that is nonconforming as to its setbacks, shall provide a minimum four (4) foot interior side yard and four (4) foot rear yard setbacks.

SECTION 8. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

An Initial Study/Environmental Impact Report, Environmental Assessment No. EA/C&ED No. 2024-38, has been prepared by the City of Modesto that analyzed the proposed changes to the Municipal Code, which the City Council certified and adopted a Statement of

Overriding Considerations as well as written findings in accordance with State CEQA Guidelines Section 15091 and 15093 by Resolution 2025-___, adopted on June 10, 2025.

SECTION 9. 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 10. PUBLICATION.

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of June 2025, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright

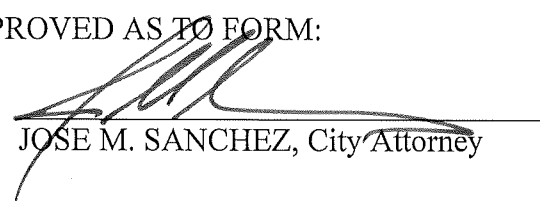
NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Zwahlen

APPROVED: 
SUE ZWAHLÉN, Mayor

ATTEST:
BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
BY: 
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:
By: 
Community & Economic Development Department,
Planning Division

FINAL ADOPTION CLAUSE

The foregoing Ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 24th day of June 2025, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Williams, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


SUE ZWAHLEN, MAYOR

ATTEST:


DIANE NAYARES-PEREZ, City Clerk

Effective Date: July 24, 2025

ORDINANCE NO. 3798-C.S.

AN ORDINANCE AMENDING SECTION 5-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO PREZONE TO SPECIFIC PLAN (P-SP) ZONE FOR THE FOUNDERS POINT EAST SPECIFIC PLAN, APPROXIMATELY 220 ACRES LOCATED NORTH OF PELANDALE AVENUE, SOUTH OF KIERNAN AVENUE, EAST OF TULLY ROAD AND WEST OF THE FORMER TIDEWATER RAILROAD/FUTURE VIRGINIA TRAIL CORRIDOR (FITZPATRICK LAND DEVELOPMENT, LLC)

WHEREAS, a verified application for an amendment to Section 5-3-9 of the Zoning Map was filed by Fitzpatrick Land Development, LLC on April 11, 2024, to prezone the Founders Point East Specific Plan area to Prezone Specific Plan (P-SP) Zone, properties located north of Pelandale Avenue, south of Kiernan Avenue, east of Tully Road, and west of the former Tidewater Railroad/future Virginia Trail Corridor, and

WHEREAS, after a public hearing held on May 5, 2025, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because the prezone of unincorporated area to Prezone Specific Plan (P-SP) Zone for the Founders Point East Specific Plan will allow for implementation of the Specific Plan upon annexation of the area to the City of Modesto, the requested zone change will result in an orderly planned use of land because the prezone to Prezone Specific Plan (P-SP) Zone will allow for development of the area upon annexation with uses that would be compatible with surrounding uses in accordance with the Specific Plan, and 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 allowed uses would be consistent with the General Plan Land Uses of Business Park (BP) and Residential (R), and the Founders Point Specific Plan, and

WHEREAS, by Resolution No. 2025-26 adopted on May 5, 2025, the Planning Commission recommended to the Council that the application of Fitzpatrick Land Development LLC to amend Section 5-3-9 of the Zoning Map to prezone the hereinafter described property to Prezone Specific Plan (P-SP) Zone be approved.

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

SECTION 1. After a public hearing held on June 10, 2025, 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 the prezone of unincorporated area to Prezone Specific Plan (P-SP) Zone for the Founders Point East Specific Plan will allow for implementation of the Specific Plan upon annexation of the area to the City of Modesto.
2. The requested change will result in an orderly planned use of land because the prezone to Prezone Specific Plan (P-SP) Zone will allow for development of the area upon annexation with uses that would be compatible with surrounding uses in accordance with the Specific Plan.
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 allowed uses would be consistent with the General Plan Land uses of Business Park (BP) and Residential (R), and the Founders Point East Specific Plan.

SECTION 2. ZONING CHANGE. Section 5-3-9 of the Zoning Map is hereby amended to prezone the following described property to Prezone Specific Plan (P-SP) Zone:

Prezone to P-SP:

All that land situated in the West Half of Section 5 of Township 3 South, Range 9 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, described as follows:

Assessor's Parcel No. 046-002-001

All that portion of the Southwest Quarter of Section 5, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, bounded and particularly described as follows, to wit:

Beginning at the Northwest corner of the said Southwest Quarter of said Section 5, and running thence Easterly along the North line of said Southwest Quarter a distance of 1697.73 feet, more or less, to the Northwest corner of land conveyed to Charles Luchessa, et at, by Deed recorded in Volume 16 of Official Records, at Page 406, in the County Recorder's Office of said Stanislaus County; thence South along the West line of land so conveyed to Charles Luchessa a distance of 17.77 chains; thence North 88 ° 17' West a distance of 1699.05 feet, more or less, to the West line of said section 5; thence North along said last named line, a distance of 17.77 chains to the point of beginning.

EXCEPTING THEREFROM the East 20 acres thereof.

ALSO, EXCEPTING THEREFROM that parcel conveyed to County of Stanislaus by Deed recorded March 13, 1986, in Reel 101, Image 1834, described as follows:

All that portion of the Southwest Quarter of Section 5, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, state of California, described as follows:

Beginning at the intersection of the present South line of 40 foot wide Bangs Avenue with the present East line of 40 foot wide Tully Road; thence South 88° 35' East, 20.00 feet South of and parallel with the centerline of said Bangs Avenue, 40.00 feet; thence South 53° 42' 06" West 49.00 feet to a point on the East line of said Tully Road; thence North 0° 57' West, 20.00 feet East of and parallel with the centerline of said Tully Road, 30.00 feet to the point of beginning.

ALSO, EXCEPTING THEREFROM that parcel conveyed to the City of Modesto by that certain Grant Deed recorded September 1, 2005, Instrument No. 2005-0158866 Stanislaus County Records.

ALSO, EXCEPTING THEREFROM that parcel conveyed to the City of Modesto by that certain Final Order of Condemnation recorded October 2, 2007, Instrument No. 2007- 0123525 Stanislaus County Records.

ALSO, EXCEPTING THEREFROM that parcel conveyed to the City of Modesto by that certain Grant Deed recorded December 15, 2009, Instrument No. 2009-0119104 Stanislaus County Records.

Assessor's Parcel No. 046-002-001

Parcel One:

The East 20 acres of the following described property:

All that portion of the Southwest quarter of Section 5, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of said Southwest quarter of said Section 5 and running thence Easterly along the Northerly line of said Southwest quarter, a distance of 1697.73 feet, more or less, to the Northwest corner of land conveyed to Charles Luchessa, et at, by Deed recorded in Vol. 16 of Official Records, at page 406, said Stanislaus County Records; thence South, along the West line of land so conveyed to Charles Luchessa, a distance of 17.77 chains; thence North 88 degrees 17' West, a distance of 1699.05 feet, more or less, to the West line of said Section 5; thence North along said last named line a distance of 17.77 chains to the point of beginning.

EXCEPTING THEREFROM all that portion of said land as Granted to the City of Modesto in that certain Grant Deed recorded December 1, 1999, as Instrument No. 1999-0112066.

ALSO EXCEPTING THEREFROM all that portion contained in the "Final Order of Condemnation Action in Eminent Domain", recorded August 22, 2007, as Instrument No. 2007-0108074, of Official Records.

Parcel Two:

The East 936.53 feet of the following:

All that portion of the Southwest quarter of Section 5, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Commencing at a post set for the interior quarter corner of said Section 5, above, Township and Range; thence South 0 degrees 43' East, 17.77 chains; thence North 88 degrees 17' West, 39.63 chains and 20 feet to the center of a Country road running North and South between Sections 5 and 6 of said Township and Range; thence North 0 degrees 40' West, 17.77 chains along the centerline of said country Road to the Northwest corner of the Southwest quarter of said Section 5; thence South 88 degrees 18' East, 39.61 chains and 20 feet to the point of beginning.

EXCEPTING THEREFROM all that portion of said land as Granted to the City of Modesto in that certain Grant Deed recorded December 1, 1999, as Instrument No. 1999-0112066.

ALSO EXCEPTING THEREFROM all that portion contained in the "Final Order of Condemnation Action in Eminent Domain", recorded August 22, 2007, as Instrument No. 2007-0108074, of Official Records.

Also including the following land as described below:

All that land situated in the Northwest Quarter of Section 5 of Township 3 South, Range 9 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, described as follows:

Beginning at the Northwest corner of Section 5 of Township 3 South, Range 9 East, thence east along the northerly line of said Section 5 a distance of 2625 feet; thence South 1° 39' 47" East a distance of 2686 feet; thence North 89° 13' 27" West a distance of 2612 feet; thence North 1° 2' 2" West a distance of 2671 feet to the Point of Beginning.

ALSO INCLUDING all of the right-of-way of Tully Road and Kiernan Avenue/State Highway CA-219, and the right-of-way of the former Tidewater Railroad/future Virginia Trail Corridor, all being immediately adjacent to the above descriptions.

220 acres, more or less.

SECTION 3. ZONING MAP. Section 5-3-9of 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 24th day of June, 2025, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Bavaro, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:


BY: 
DIANE NAVARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development Department,
Planning Division

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 July 2025, Councilmember Williams moved its final adoption, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Wright

APPROVED:


SUE ZWAHLEN, MAYOR

ATTEST:


DIANE NAYARES-PEREZ, City Clerk

Effective Date: August 21, 2025

ORDINANCE NO. 3799-C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF MODESTO AMENDING
PRECISE PLAN NO. 35 SOUTH OF THE VILLAGE ONE SPECIFIC
PLAN TO MODIFY THE CIRCULATION PLAN AND ADOPTING THE
15162 ANALYSIS AND CEQA EXEMPTION**

WHEREAS, the City Council, on October 16, 1990, adopted the Village One Specific Plan, pursuant to California Government Code Section 65450 et. seq., to implement the Modesto Urban Area General Plan in this area; and

WHEREAS, the Village One Specific Plan is divided into 35 precise plan areas, and a precise plan is required prior to development in each area; and

WHEREAS, a Precise Plan for the portion of Area No. 35 located south of Milnes Road, known as Precise Plan No. 35 South, was approved by the City Council by Ordinance No. 3777-C.S. on January 23, 2024; and

WHEREAS, an application has been filed by DR Horton Bay Inc. for an amendment to the circulation plan of Precise Plan No. 35 South, to facilitate the development of 527 single-family homes, five landscape lots, and a 3.5-acre park, on property located east of Claus Road and north of E. Briggsmore Avenue; and

WHEREAS, said application was made concurrently with an application for the Amendment of the Final Development Plan for the Crossings, in Precise Plan 35, in the Village One Specific Plan, for architectural substitutions; and

WHEREAS, an evaluation, EA/C&ED No. 2025-04 has been performed by staff in accordance with the requirements of Section 15162 of the CEQA Guidelines; and

WHEREAS, the evaluation under Section 15162 of the CEQA Guidelines concluded that no further documentation with regard to CEQA is required for this project; and

WHEREAS, due to the conclusions reached by the Section 15162 analysis, staff has determined that the project is exempt from CEQA pursuant to Section 15182 of the CEQA Guidelines, which exempts residential projects implementing Specific Plans that are undertaken pursuant to and in conformity to the associated Specific Plan, and has prepared a Notice of Exemption, EA/C&ED 2025-03; and

WHEREAS, a public hearing was held by the Planning Commission on April 21, 2025, in Chambers, Tenth Street Place, 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission, at its April 21, 2025, meeting, by a vote of 7-0 recommended approval of the proposed Amendment to Precise Plan No. 35 South; and

WHEREAS, a public hearing was held by the City Council of the City of Modesto on June 24, 2025, in Chambers, Tenth Street Place, 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered,

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

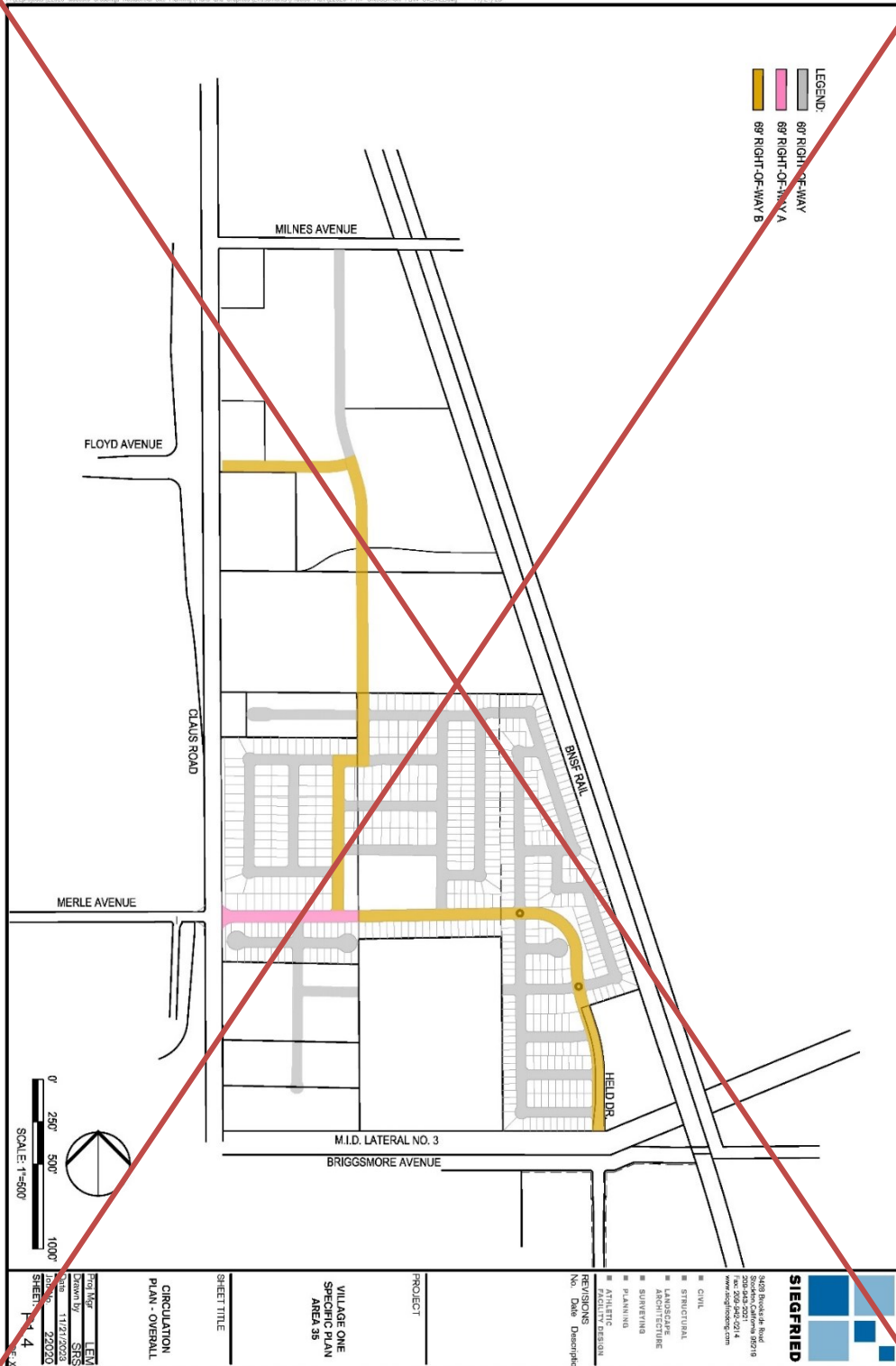
SECTION 1. FINDINGS. The City Council finds and determines as follows:

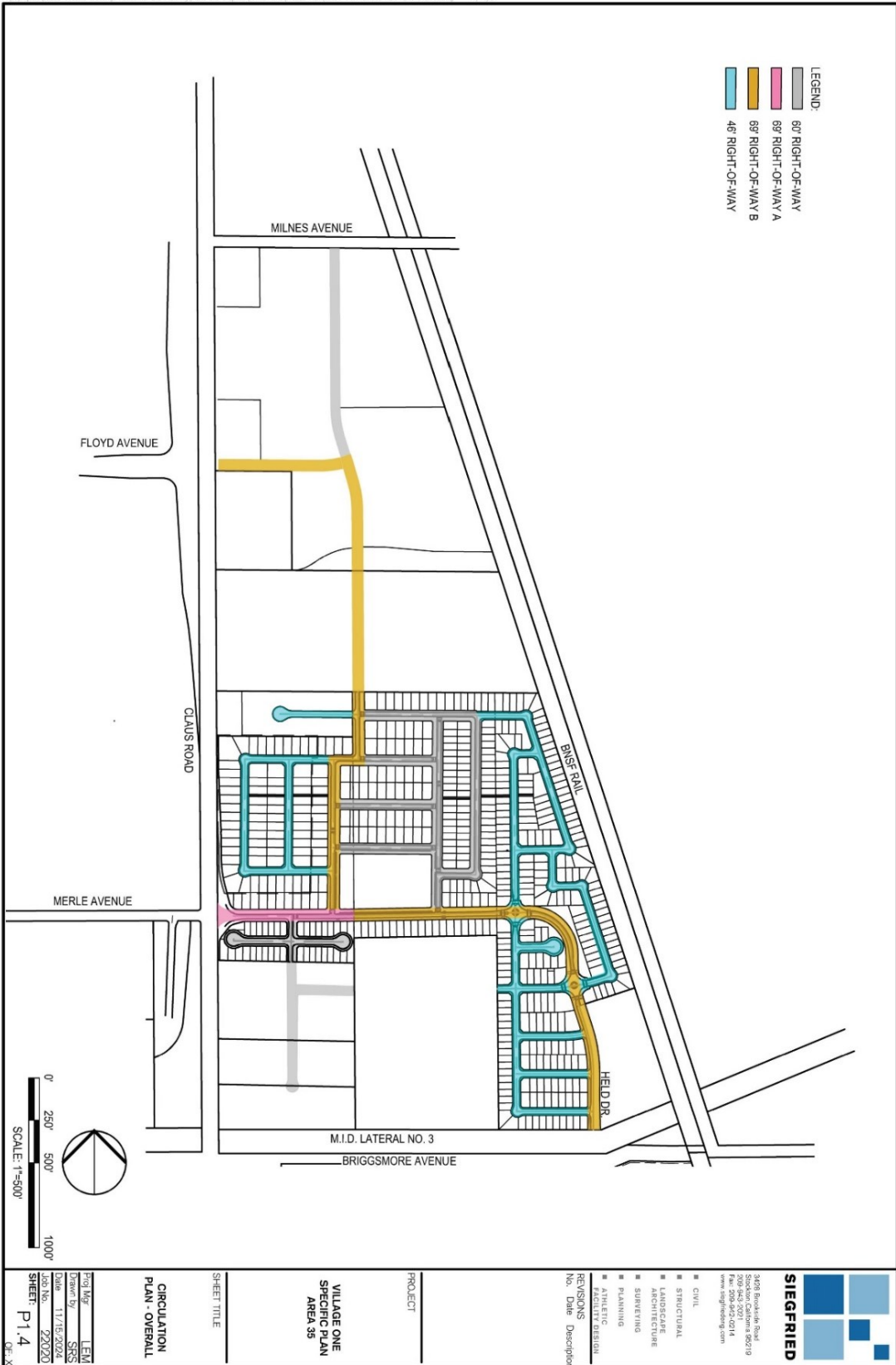
- A. The proposed amendment to Precise Plan No. 35 South will not be detrimental to the public health, safety, or welfare. The applicant cites that the revised circulation plan provides a number of benefits, including reduced street and landscape maintenance costs and additional on-street parking that would be beneficial to the public welfare.
- B. The proposed amendment to Precise Plan No. 35 South will result in an orderly planned use of land. This proposal revises the circulation element and provides an orderly and planned layout for the subdivision.
- C. The proposed amendment to Precise Plan No. 35 South is in accordance with the community's objectives as set forth in the General Plan and Village One Specific Plan, because the amendment to the Circulation plan would allow for the development of single-family residential uses that is consistent with the Village

One Specific Plan. The amendment revises the Circulation plan to modify several streets shown in the original plan as having a 60-foot right of way to instead have a 48-foot right of way, with a different cross-section. The amendment would allow for reduced CFD costs, reduced street and landscape maintenance costs, allow for additional on-street parking, and enable larger overall front and rear yards within the development. The General Plan designates the proposed development site as Residential (R), which allows for single-family residential uses.

SECTION 2. AMENDMENT OF PRECISE PLAN NO. 35 SOUTH OF THE VILLAGE ONE SPECIFIC PLAN.

The circulation plan for Precise Plan No. 35 south of the Village One Specific Plan, is hereby amended as follows (with deletions in ~~striketrough~~ and additions in underline):





REVISED CIRCULATION PLAN FOR PRECISE PLAN NO. 35 SOUTH

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

On the basis of evaluation EA/C&ED 2025-004, performed in accordance with the requirements of Section 15162 of the CEQA Guidelines, Subsequent EIRs and Negative Declarations, the City Council has determined that no further documentation with regard to CEQA is required for this project.

The City Council has further determined that this project is exempt from CEQA pursuant to Section 15182 of the CEQA Guidelines, Projects Pursuant to a Specific Plan, part c, subpart 1, which exempts residential projects implementing Specific Plans that are undertaken pursuant to and in conformity to the associated Specific Plan, and hereby adopts Notice of Exemption EA/C&ED 2025-003.

SECTION 4. EFFECTIVE DATE.

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

SECTION 5. PUBLICATION.

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


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of June 2025, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

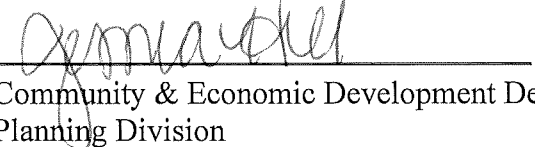
ATTEST:
BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development Department,
Planning Division

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 July 2025, Councilmember Alvarez moved its final adoption, which motion being duly seconded by Councilmember Bavaro, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams,
Mayor Zwahlen

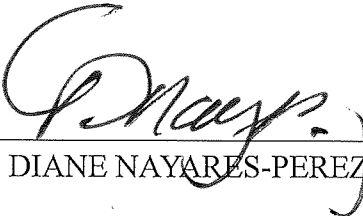
NOES: Councilmembers: None

ABSENT: Councilmembers: Wright

APPROVED:


SUE ZWAHLEN, MAYOR

ATTEST:


DIANE NAYARES-PEREZ, City Clerk

Effective Date: August 21, 2025

ORDINANCE NO. 3800-C.S.

AN ORDINANCE AUTHORIZING THE LEVY OF SPECIAL TAXES WITHIN THE CITY OF MODESTO HELD WITHIN CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2025-2 (VILLAGE ONE TRIANGLE)

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

WHEREAS, on June 10, 2025, this City Council adopted Resolution No. 2025-196 stating its intention to form City of Modesto Community Facilities District No. 2025-2 (Village One Triangle) (the “Community Facilities District”), and designate certain property for future annexation to the Community Facilities District (the “Future Annexation Area”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain facilities and 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, including the designation the Future Annexation Area, 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. 2025-2 (Village One Triangle), Conditionally Authorizing the Levy of Special Taxes Therein, and Conditionally Establishing an Annual Appropriations Limit of \$12,400,000” (the “Resolution of Formation”), and Resolution of the City Council of the City of Modesto, California, acting as the Legislative Body of the City of Modesto Community Facilities District No. 2025-2 (Village One Triangle), Calling a Special Election,” 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 (a) the levy of special taxes in accordance with the rate and method of apportionment of special tax set forth in the Resolution of Formation (the “Special Taxes”), and (b) the establishment of an appropriations limit for the Community Facilities District (the “Proposition”); and

WHEREAS, an election was held on July 22, 2025, within the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the Proposition.

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2025-2 (Village One Triangle), DOES ORDAIN as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

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, or as may be modified or amended from time to time by a resolution of change or resolution of annexation adopted pursuant to the provisions of the Act (the “Rate and Method”).

By passage of this Ordinance, the City Council authorizes the levy of a special tax for any approved future annexations in accordance with the then-existing 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 and any resolution of change or resolution of annexation adopted from time to time by the City Council. 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, and to be described in any resolution of change or resolution of annexation adopted from time to time by the City Council.

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.

The One-Time Facilities Special Tax shall be collected at the times as provided in the Rate and Method.

SECTION 7. This Ordinance relating to the levy of the special tax takes effect and shall be in force immediately after the date of final passage pursuant to Government Code Section 36937(a).

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 Council of the City of Modesto held on the 22nd day of July 2025, by Councilmember Williams, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Wright

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

BY: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
JOSE M. SANCHEZ, 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 12th day of August 2025, Councilmember Williams moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: Wright

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: September 11, 2025

ORDINANCE NO. 3801-C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MODESTO AMENDING TITLE 10 OF THE MODESTO MUNICIPAL
CODE TO ADD CHAPTER 3, ARTICLE 8, “SMOKE SHOPS,”
AMENDING TITLE 4 OF THE MODESTO MUNICIPAL CODE TO ADD
CHAPTER 24, “SMOKE SHOPS,” ESTABLISHING REGULATIONS
AND REQUIREMENTS FOR SMOKE SHOPS, INCLUDING
PERMITTING AND ENFORCEMENT, WITHIN THE CITY**

WHEREAS, the City of Modesto (“City”) is a municipal corporation duly organized as a Charter City under the constitution and laws of the State of California; and

WHEREAS, the City Council has broad discretion pursuant to Article II, Sections 200 and 201 of the City Charter; California Constitution Article XI, Section 5 and Section 7; and the general law of the state, including, but not limited to, the California Planning and Zoning Law (Gov. Code section 65000 et seq.), to legislate for public purposes and for the general welfare, including, but not limited to, matters of public health and safety; and

WHEREAS, the City protects the public health, safety, and welfare of the community through numerous avenues, including by establishing and enforcing zoning, licensing, and health and safety regulations on specified commercial activities; and

WHEREAS, over the last few years, the City has seen a proliferation of smoke shops within the City that continue to engage in illegal sales and activity; and

WHEREAS, the City is concerned about this proliferation of smoke shop businesses, locations of smoke shops, illegal sales and activity at smoke shops, and the harmful effects of tobacco on the health, safety, and welfare of City residents, especially the youth; and

WHEREAS, many state laws have been adopted that acknowledge the public health impacts of tobacco, especially flavored tobacco products, and specifically their effect on minors. For example, state law was amended to increase the minimum age for purchasing tobacco from 18 years old to 21. State law also prohibits smoking in playgrounds. State law also prohibits smoking within 20 feet of the main entrances and exits of public buildings; and

WHEREAS, on November 8, 2022, California voters approved Proposition 31 to uphold the state law (“SB 793”) prohibiting a tobacco retailer, or any of the tobacco retailer’s agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, most flavored tobacco products including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers in retail locations; and

WHEREAS, on October 7, 2023, Governor Newsom signed into law AB 935, strengthening the enforcement of the flavored tobacco retail law and broadening the definition of retail location; and

WHEREAS, on September 23, 2024, the California Department of Public Health (“CDPH”) promulgated emergency regulations related to industrial hemp and the threat to public health, safety, and welfare, particularly to minors; and

WHEREAS, the CDPH regulations come after California Governor Gavin Newsom directed the CDPH to draft emergency regulations, citing the increasing amounts of safety concerns from the adverse health effects of intoxicating hemp food and beverage products; and

WHEREAS, the emergency regulations aim to combat hemp products containing tetrahydrocannabinol (“THC”) that skirt the age and sale restrictions that have been placed on recreational marijuana sold through licensed and regulated dispensaries; and

WHEREAS, hemp products have been found to be sold in tobacco retailer businesses or smoke shops, with marketing aimed toward children featuring colorful packaging designs and sweet candy flavors; and

WHEREAS, as currently defined under state law, “industrial hemp” is permitted to contain a delta-9 THC concentration of no more than 0.3 percent on a dry weight basis; however, the emergency regulations prohibit industrial hemp final form food and beverage products, specifically, from containing any detectable level of THC; and

WHEREAS, the emergency regulations expand on the number of psychoactive cannabinoids that will need to be undetectable in industrial hemp final food form products, including edibles such as gummies, other candies, and drinks, as well as restricting the serving sizes such products contain to five servings or less and limiting sales of the products to consumers who are at least 21 years of age; and

WHEREAS, the City has no specific regulations for smoke shops aimed at protecting minors, such as distance requirements from schools and/or youth-oriented areas; and

WHEREAS, smoke shops have been found to be affiliated with the sale of illegal products and drug paraphernalia. Smoke shops have also been seen to encourage illegal activity; and

WHEREAS, within the last year, the Modesto Police Department conducted inspections at various tobacco retailers throughout the City, resulting in the seizure of marijuana/cannabis-infused items, illicit drugs, flavored tobacco products, illegal drug paraphernalia, and illegal gambling machines. These inspections also resulted in the arrest of several individuals involved in these illegal activities; and

WHEREAS on October 8, 2024, the City Council of the City of Modesto adopted Urgency Ordinance No.3785-C.S., imposing a forty-five (45) day moratorium on the establishment of new and the relocation or physical expansion of existing tobacco retailer businesses; and

WHEREAS, on November 12, 2024, the City subsequently extended the moratorium by 10 months and 15 days; and

WHEREAS, the City has further studied and analyzed the effects of smoke shop businesses; and

WHEREAS, the Modesto Police Department conducted inspections after the adoption of the October 8, 2024 moratorium and November 12, 2024 moratorium extension and continued to find illegal activities and items for sale; and

WHEREAS, on March 20, 2025, the Modesto Police Department inspected eight smoke shop businesses, where all eight businesses were found to be out of compliance with State tobacco laws, and 1,635 prohibited products were seized; and

WHEREAS, on March 27, 2025, the Modesto Police Department inspected an additional eight smoke shop businesses, and all eight businesses were found to be out of compliance with State Tobacco laws. 1,621 tobacco products were seized, in addition to 129 illegal hemp/CBD products and 349 pieces of drug paraphernalia; and

WHEREAS, on April 28, 2025, the Modesto Police Department inspected five smoke shop businesses. All five businesses were found to be out of compliance, including one business, which was a repeat offender. The Police Department seized 1,733 illegal tobacco products, 80 hemp/CBD/Delta products, two gambling machines, and 195 pieces of drug paraphernalia; and

WHEREAS, on May 5, 2025, the Modesto Police Department inspected 13 smoke shop businesses, and 12 were found to be out of compliance. The Modesto Police Department seized flavored tobacco, hemp consumables, and/or CBD drinks at the twelve noncompliant businesses; and

WHEREAS, on May 6, 2025, the Modesto Police Department inspected six smoke shop businesses in the City and all six businesses were found to be out of compliance. 1,829 tobacco products were seized in addition to 63 Hemp/CBD/Delta products; and

WHEREAS, on May 14, 2025, the Modesto Police Department inspected ten smoke shop businesses in the City, and nine were found to be out of compliance. 995 tobacco products and 155 hemp/CBD/delta products were seized, as well as one firearm; and

WHEREAS, on May 22, 2025, the Modesto Police Department inspected eight smoke shop businesses. Six businesses were found to be out of compliance. 1,338 illegal tobacco products were seized, in addition to 30 hemp/CBD/delta products; and

WHEREAS, smoke shop inspections have resulted in a variety of violations, including offering flavored tobacco products and hemp/CBD products for sale, such as gummies and drinks, in violation of State law, and operating illegal gambling machines; and

WHEREAS, on March 26, 2025, the City Council held a workshop to discuss the potential regulation of smoke shop businesses in the City; and

WHEREAS, the City, through its police power, is authorized to regulate local zoning to promote public health, safety, and welfare; and

WHEREAS, the City, through its police power, is authorized to require the licensing of a specific class of business in order to promote public health, safety, and welfare; and

WHEREAS, staff recommends requiring a permit to sell tobacco products and smoke paraphernalia in the City, due to the potential to create significant negative effects on the community and surrounding properties; and

WHEREAS, staff additionally recommends amending the Zoning Code to prohibit the establishment of smoke shops within certain sensitive areas and locations; and

WHEREAS, a public hearing was held by the Planning Commission on June 2, 2025, in the Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence, both oral and documentary, was received and considered; and

WHEREAS, a public hearing was held by the City Council on July 22, 2025, in the Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence, both oral and documentary, was received and considered; and

WHEREAS, the proposed Code text amendments are exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The City currently does not regulate the number, location, or operating standards of smoke shops, and the proposed Ordinance would place limits on the number, location, and operating standards of smoke shops, which will limit their environmental impact in comparison to the status quo. Accordingly, it can be seen with certainty that there is no possibility that the proposed action may result in a significant effect on the environment, and the proposed revisions to the Municipal Code are exempt from further review under CEQA; and

WHEREAS, the City Council of the City of Modesto now desires to add Article 8 “Smoke Shops,” to Chapter 3, Land Use Regulations, of Title 10, Zoning Regulations, of the Modesto Municipal Code, requiring certain location and proximity requirements; and

WHEREAS, the City Council of the City of Modesto further desires to add Chapter 24, Smoke Shops, to Title 4, Public Welfare, Safety, and Health, of the Modesto Municipal Code, requiring a Smoke Shop Permit.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MODESTO DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS.

The recitals above are true and correct and hereby made a part of this Ordinance by reference.

SECTION 2. FINDINGS.

Based on the whole of the record related to the Ordinance, including but not limited to, the Recitals above and the Agenda Report related to this Ordinance, the City Council hereby finds and determines as follows:

- A. The requested change will not be detrimental to the public health, safety, or welfare because it establishes reasonable regulations to address illegal activity currently occurring at smoke shops within the City and reduce the negative impacts caused by smoke shops.
- B. The requested change will result in an orderly planned use of land because it limits new smoke shops to certain zoning districts where such uses are appropriate and compatible with other allowed uses, mandates separation between new smoke shops, and requires separation from other sensitive uses.
- C. 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 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 amend is consistent with, and furthers, the goals and policies of the General Plan.

SECTION 3. AMENDMENT TO MODESTO MUNICIPAL CODE TITLE 10 – ADDITION OF TITLE 10, CHAPTER 3, ARTICLE 8.

The Modesto Municipal Code is hereby amended by adding Article 8, “Smoke Shops,” to Chapter 3, Land Use Regulations,” of Title 10, “Zoning Regulations,” to read as follows:

“Article 8. – Smoke Shops

- 10-3.801 Purpose
- 10-3.802 Definitions
- 10-3.803 Location and Minimum Proximity Requirements
- 10-3.804 Smoke Shop Permit Required
- 10-3.805 Existing Smoke Shops

10-3.801 Purpose

The purpose of this Article is to regulate the locations in the City where Smoke Shops may be established in order to preserve and protect public health, safety, and welfare.

10-3.802 Definitions

- (a) “Existing Smoke Shop” shall mean any Smoke Shop lawfully established with a City business license and all other required permits, licenses, and/or land use entitlements as of October 8, 2024.

- (b) “Hookah Lounge” shall mean a business establishment that qualifies as a smokers’ lounge, as defined in California Labor Code section 6404.5(e), and in which the entire premises is dedicated exclusively to the Smoking of Shisha or Shisha Tobacco, and which does not sell Tobacco Products for off-site consumption.
- (c) “Premium Cigar Retailer” shall mean a retailer that sells no tobacco products other than premium cigars and looseleaf tobacco as defined under California Health and Safety Code section 104559.5.
- (d) “Smoke Shop” shall mean a retailer or any person that primarily sells, offers for sale, or offers to exchange for any form of consideration Tobacco Products and/or Tobacco Paraphernalia. A retailer or person who is primarily engaged in such activities includes, but is not limited to, a retailer or person that has fifteen percent (15%) or more of the square feet in the establishment, or more than fifteen (15) linear feet of display area projected to the floor (whether contiguous or non-contiguous), used for the sale, distribution, delivery, furnishing, marketing display, or storage of Tobacco Products or Tobacco Paraphernalia. Smoke Shop, for purposes of this Article, does not include a Premium Cigar Retailer, Hookah Lounge, or establishments operating as a Cannabis Dispensary under Title 10, Chapter 3, Article 7. Nothing herein is intended to permit a Premium Cigar Retailer, Hookah Lounge, or Cannabis Dispensary, except as otherwise authorized by Title 10 of this Code.
- (e) “Smoke Shop Permit” shall mean a permit to operate a Smoke Shop issued by the Chief of Police pursuant to Chapter 4-24 of the Modesto Municipal Code.
- (f) “Tobacco Paraphernalia” shall mean any device, product, equipment, or material of any kind that is intended or designed for use for smoking, inhaling, or ingesting tobacco, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting cannabis or and any controlled substance. Tobacco paraphernalia includes, but is not limited to, all of the following: (i) metal, ivory, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured bowls; (ii) water pipes; (iii) bongs; (iv) chillums; (v) ice pipes or chillers; (vi) cigarette papers or wrappers; (vii) cigarette rolling machines; (viii) blunt wraps, as defined in Section 308 of the Penal Code; (ix) hookahs and similar devices constructed with a receptacle or container in which water or some other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested; and (x) any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah. Tobacco Paraphernalia shall include any component, part, or accessory of the foregoing, whether or not sold separately.
- (g) “Tobacco Product” shall mean any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any

other means, including, but not limited to, cigarettes, an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including an electronic cigarette, cigar, pipe, or hookah (with or without flavoring), cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, or vaping accessories. Tobacco Product shall include any component, part, or accessory of the foregoing, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes, where the product is marketed and solely for such an approved purpose.

- (h) “Youth facility or center” shall have the same meaning as in Health and Safety Code section 11353.1, as may be amended from time to time: any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

10-3.803 Location and Minimum Proximity Requirements

- (a) Smoke Shops are permitted in the zones identified in Table 3.8-1 and prohibited in all other zones.

Use	C-2	C-3	C-M	M-1	M-2
Smoke Shop	SSL	SSL	SSL	SSL	SSL

- (b) Additionally, the following location and proximity requirements shall apply:
 - (1) No Smoke Shop shall be located within one thousand (1,000) feet, as measured from the nearest property lines, of the following locations:
 - (i) A public or private State-licensed or accredited school providing instruction to students in kindergarten or any grades 1 through 12;
 - (ii) State-licensed childcare center;
 - (iii) Public park, playground, or recreational area, including a trail that is immediately adjacent to a public park or public library;
 - (iv) Youth facility or center; or
 - (v) An alcohol or other drug abuse recovery or treatment facility.
 - (2) No Smoke Shop use shall be located within one thousand (1,000) feet of any Commercial Cannabis Uses or another Smoke Shop, as measured from the nearest property lines.
 - (3) No Smoke Shop use shall be located within one hundred (100) feet of any residential use; this distance shall be measured from any building or structure containing a Smoke Shop use to an existing residential structure used for residential purposes.

- (4) Smoke Shops are prohibited in the Downtown Cannabis Prohibition Overlay, regardless of a property’s zoning designation. The Downtown Cannabis Prohibition Overlay is that area shown in Figure 3.7.1 under Title 10, Chapter 3, Article 7 of this Code, and further described as the area including all properties that front either side of or are within the area bound by the following streets: Kansas Avenue, from Highway 99 to 9th Street; Needham Street; Downey Avenue, from McHenry Avenue to Burney Street; Burney Street, from Downey Avenue to Jennie Street; D Street, from Jennie Street to Highway 99; and the area fronting Highway 99 within the boundary. If any parcel is partially within the Downtown Cannabis Prohibition Overlay, Smoke Shops shall be prohibited on the entire parcel.

10-3.804 Smoke Shop Permit Required

- (a) All Smoke Shops permitted by Section 10.3.803 must, prior to establishing and operating any such Smoke Shop use, obtain and maintain at all times a valid Smoke Shop Permit from the City pursuant to Chapter 4-24 of the Modesto Municipal Code.

10-3.805 Existing Smoke Shops

- (a) Notwithstanding Section 10-3.803, any existing and lawfully operating Smoke Shop that holds a City business license and all other required permits, licenses, and/or land use entitlements as of October 8, 2024, may continue to lawfully operate subject to the requirements of this Section.
- (b) All Existing Smoke Shop shall apply for a Smoke Shop Permit pursuant to Chapter 4-24 of the Modesto Municipal Code and comply with all related requirements no later than November 14, 2025. An Existing Smoke Shop that fails to timely obtain a Smoke Shop Permit and comply with all related requirements shall cease to be an Existing Smoke Shop under Subsection (a) and shall be subject to all requirements of Section 10-3.803.
- (c) Notwithstanding anything in Section 10-3.502, “nonconforming uses,” to the contrary, any Existing Smoke Shop that ceases to operate for a period of sixty (60) consecutive days shall be discontinued, except that the Director of Community Economic and Development may extend this period by ninety (90) days if the Director determines that the cessation of the business is due to a cause outside of the preexisting Smoke Shop’s reasonable control, such as a natural disaster or declared emergency.
- (d) Notwithstanding anything in Section 10-3.502, “nonconforming uses,” to the contrary, an Existing Smoke Shop shall not expand the square footage of the establishment or display area dedicated to tobacco products or tobacco paraphernalia as of July 22, 2025, without first complying with Section 10-3.803.”

**SECTION 4. AMENDMENT TO MODESTO MUNICIPAL CODE TITLE 4 –
ADDITION OF TITLE 4, CHAPTER 24.**

The Modesto Municipal Code is hereby amended by adding Chapter 24, “Smoke Shops,” to Title 4, “Public Welfare, Safety, and Health,” to read as follows:

“Chapter 24. – Smoke Shops

- 4-24.101 Purpose**
- 4-24.102 Definitions**
- 4-24.103 Smoke Shop Permit Requirements, Total Number and Limitations**
- 4-24.104 Smoke Shop Permit Application and Permit Procedures**
- 4-24.105 Operational Standards**
- 4-24.106 Security Requirements**
- 4-24.107 Training**
- 4-24.108 Inspections**
- 4-24.109 Violations and Enforcement**
- 4-24.110 Appeal of Denial, Suspension, or Revocation**

4-24.101 Purpose

The purpose of this Chapter is to establish a licensing requirement and regulations for the operation of Smoke Shops in the City of Modesto in order to preserve and protect public health, safety, and welfare.

4-24.102 Definitions

- (a) “Existing Smoke Shop” shall mean any Smoke Shop lawfully established with a City business license and all other required permits, licenses, and/or land use entitlements as of October 8, 2024.
- (b) “Chief of Police” shall mean the Chief of Police of the City of Modesto, or their designee, or such other person designated by the City Manager of the City of Modesto to carry out the duties of the Chief of Police hereunder.
- (c) “Hookah Lounge” shall mean a business establishment that qualifies as a smokers’ lounge, as defined in California Labor Code section 6404.5(e), and in which the entire premises is dedicated exclusively to the Smoking of Shisha or Shisha Tobacco, and which does not sell Tobacco Products for off-site consumption.
- (d) “Premium Cigar Retailer” shall mean a retailer that sells no tobacco products other than premium cigars and looseleaf tobacco as defined under California Health and Safety Code section 104559.5.
- (e) “Smoke Shop” shall mean a retailer or any person that primarily sells, offers for sale, or offers to exchange for any form of consideration Tobacco Products and/or

Tobacco Paraphernalia. A retailer or person who is primarily engaged in such activities includes, but is not limited to, a retailer or person that has fifteen percent (15%) or more of the square feet in the establishment, or more than fifteen (15) linear feet of display area projected to the floor (whether contiguous or non-contiguous), used for the sale, distribution, delivery, furnishing, marketing display or storage of Tobacco Products or Tobacco Paraphernalia. Smoke Shop, for purposes of this Article, does not include a Premium Cigar Retailer, Hookah Lounge, or establishments operating as a Cannabis Dispensary under Title 10, Chapter 3, Article 7.

- (f) “Smoke Shop Operator” shall mean all individuals or entities who own or operate a Smoke Shop. An owner is any individual or entity that has any ownership interest, regardless of size, in the Smoke Shop.
- (g) “Smoke Shop Permit” shall mean a permit to operate a Smoke Shop issued by the Chief of Police pursuant to Chapter 4-24 of the Modesto Municipal Code.
- (h) “Tobacco Paraphernalia” shall mean any device, product, equipment, or material of any kind that is intended or designed for use for smoking, inhaling, or ingesting tobacco, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting cannabis or any controlled substance. Tobacco paraphernalia includes, but is not limited to, all of the following: (i) metal, ivory, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured bowls; (ii) water pipes; (iii) bongos; (iv) chillums; (v) ice pipes or chillers; (vi) cigarette papers or wrappers; (vii) cigarette rolling machines; (viii) blunt wraps, as defined in Section 308 of the Penal Code; (ix) hookahs and similar devices constructed with a receptacle or container in which water or some other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested; and (x) any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah. Tobacco Paraphernalia shall include any component, part, or accessory of the foregoing, whether or not sold separately.
- (i) “Tobacco Product” shall mean any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including an electronic cigarette, cigar, pipe, or hookah (with or without flavoring), cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, or vaping accessories. Tobacco Product shall include any component, part, or accessory of the foregoing, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes, where the product is marketed and solely for such an approved purpose.

4-24.103 Smoke Shop Permit Requirements, Total Number, and Limitations

- (a) All Smoke Shops must obtain a Smoke Shop Permit prior to commencing operations, in addition to a City business license and any other permit, licenses, or approval required by the City, State, or other public agency.
- (b) The total number of Smoke Shop Permits within the City shall be limited to one (1) per twenty-five thousand (25,000) residents in the City. For the purposes of this Subsection, the total population of the City shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the permit application is filed. Existing Smoke Shops may apply for a Smoke Shop Permit prior to November 14, 2025, regardless of whether or not the maximum number of permits established by this Section has been reached. No Smoke Shop Permit may be issued to any Smoke Shop, other than to an Existing Smoke Shop, prior to November 14, 2025.
- (c) If, at any time after all applications for a Smoke Shop Permit submitted by Existing Smoke Shops by November 14, 2025 have been approved or denied, the number of Smoke Shop Permits that have been issued is fewer than the number authorized by Section 4-24.103(b), the Chief of Police shall, within a reasonable period of time, open an application period for available Smoke Shop Permit(s). If at the end of the application period, the number of eligible applicants exceeds the number of available permits, the Chief of Police shall award the Smoke Shop Permits by random lottery. Notwithstanding the foregoing, in no event shall a Smoke Shop Permit be awarded for a proposed location if there are already two (2) other Smoke Shops operating in the same Council-District.
- (d) No new Smoke Shop Permit may be issued if the number of issued Smoke Shop Permits equals or exceeds the total number authorized pursuant to Section 10-3.804(b) above. A new proprietor that has not had a business in violation of this Chapter may apply for a Smoke Shop Permit to continue operating in the same location as an existing Smoke Shop, and such Permit shall not be considered a new Smoke Shop Permit for purposes of this Section, as long as the existing Smoke Shop has not ceased operating.
- (e) An Existing Smoke Shop that is ineligible to receive or renew a Smoke Shop Permit for a location pursuant to Section 10-3.803, and any Smoke Shop operating lawfully that becomes ineligible to receive or renew a Smoke Shop Permit due to the creation of a new sensitive use under Section 10-3.803(b), may apply for and receive a Smoke Shop Permit for that location as long as all the following conditions are met:
 - (1) The Smoke Shop Permit application is submitted no later than November 14, 2025;
 - (2) The Smoke Shop is not closed for business for more than sixty (60) consecutive days, except that the Police Chief may extend this period by

ninety (90) days if the Police Chief determines that the cessation of the business is due to a cause outside of the Smoke Shop's reasonable control, such as a natural disaster or declared emergency;

- (3) The Smoke Shop Operator retains the right to operate under all other applicable laws; and
- (4) The Smoke Shop has complied with all Operating Standards under Section 4-24.105, Security Requirements under Section 4-24.106, and Training Requirements under Section 4-24.107 of this Article no later than November 14, 2025.

4-24.104 Smoke Shop Permit Application and Permit Procedures

- (a) An application for a Smoke Shop Permit shall be submitted on forms provided by the City and accompanied by the appropriate application fee established by the City Council by Resolution. The application form provided by the City shall include, but not be limited to, the following information:
 - (1) The name, address, email address, and telephone number of the property owner.
 - (2) The name, address, email address, and telephone number of all Smoke Shop Operators.
 - (3) The name, address, email address, and telephone number of the individual designated as the primary point of contact for the management of the Smoke Shop.
 - (4) A site plan of the property.
 - (5) Such other information as the Chief of Police deems reasonably necessary to administer this Chapter.
- (b) The Chief of Police may refer the application to other City departments to determine whether the Smoke Shop's location will comply with building, health, zoning, and fire ordinances or other applicable ordinances or laws. City departments may conduct an inspection of the premises to determine compliance with the ordinances and other laws they administer. They may subsequently prepare reports summarizing their inspections and recommend whether to approve or deny the application based on their inspections.
- (c) A Smoke Shop Permit shall be non-transferable, shall not run with the land, and shall be valid only at the site described in the application.
- (d) A Smoke Shop Permit shall be valid for one (1) year from the date of issuance and may be renewed upon submission of a renewal application and fee established by the City Council by Resolution to the City.
- (e) The Chief of Police may deny an application for a new Smoke Shop Permit or renewal of an existing Smoke Shop Permit for any of the following reasons:
 - (1) The application is incomplete, or the full application fee has not been paid;

- (2) The application contains a false or misleading statement or omission of a material fact;
- (3) The property is subject to an enforcement action under any provision of the Modesto Municipal Code or state law;
- (4) The applicant is delinquent on any payment to the City of any fees, penalties, taxes, or any other monies related to the property or business;
- (5) The applicant has previously owned, in whole or in part, or been an officer for a Smoke Shop found to be in violation of applicable law or that had its Smoke Shop Permit revoked.
- (6) Within twenty-four (24) months of application, a Smoke Shop Permit was revoked or renewal denied at the property subject to the application;
- (7) The operation of a Smoke Shop at the property is a threat to the public health, safety, or welfare; or
- (8) The Smoke Shop does not comply with, or has violated, one or more of the applicable requirements of this Chapter, the Modesto Municipal Code, or any other applicable law, including the Modesto Building Code or Fire Code.
- (9) For Existing Smoke Shops applying for a Smoke Shop Permit prior to November 14, 2025, noncompliance with a requirement of Section 4-24.105 occurring after August 12, 2025, but before November 14, 2025, shall not be a basis to deny an application, unless such conduct is also a violation of another section of applicable law, including, but not limited to, the sale of flavored tobacco or other illegal products.

4-24.105 Operational Standards

All Smoke Shops shall comply with the operational standards listed in this Section.

- (a) **Lighting.** The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the Smoke Shop, shall be illuminated in accordance with the lighting requirements of the underlying zoning district.
- (b) **Litter and Graffiti.** Trash and recycling receptacles shall be provided near public entrances to and exits from the building. The Smoke Shop Operator shall provide for daily removal of trash, litter, and debris from the premises and on all sidewalks that abut the premises, including the Smoke Shop's parking areas. The Smoke Shop Operator shall remove graffiti from the building and premises within forty-eight (48) hours.
- (c) **Vending Machines.** Internal and external vending machines of any and all kinds are prohibited.
- (d) **Signage.**
 - (1) All signs on the premises of the Smoke Shop shall comply with Chapter 6, Signs of Title 10, Zoning, of the Modesto Municipal Code.
 - (2) The Smoke Shops shall comply with the requirements of the California

Cigarette and Tobacco Products Licensing Act of 2003, and all other applicable state and federal laws and regulations, including any amendments and successor statutes or regulations.

- (3) In addition to the requirements above, the following copy is required to be prominently posted in a readily visible manner on an interior wall or fixture and not on windows of the Smoke Shop:
 - (i) “California State Law Prohibits the Sale of Tobacco Products to Persons Under 21 Years of Age.”
 - (ii) “No Persons Under the Age of Twenty-One (21) Shall be Allowed on the Premises.”
 - (iii) “No Loitering is Allowed on or in Front of These Premises.”
 - (iv) “No Smoking or Vaping Allowed on These Premises.”
 - (v) “Sale of Flavored Tobacco is Prohibited.”
- (4) In the event of a conflict between any of the above requirements, the most restrictive requirements shall apply.

(e) **Windows & Doors.**

- (1) At least fifty percent (50%) of any street-facing facade must be glazed with a clear, non-tinted material.
- (2) No more than five percent (5%) of the square footage of each window that is visible to the public from a public thoroughfare, sidewalk, or parking lot of Smoke Shop shall bear advertising, signs, or other obstructions of any sort.
- (3) Doors must be free from signs, regardless of door type or material. The area covered by signs or advertising shall be measured using the border of such sign and shall include all areas within a sign or advertisement that may not include writing, such as the clear area within neon signs.
- (4) Signage, advertising, or other obstructions inside or outside the Smoke Shop that are not physically attached to the windows or doors but are visible from a public thoroughfare, sidewalk, or parking lot in the same manner as if they were physically attached are included in the five percent (5%) limitation.
- (5) Any signage required by law shall not count towards the five percent (5%) limitation but shall nonetheless follow the rules related to visual obstruction.
- (6) Advertising and signage on windows shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the business. Including the area in which the cash registers are maintained, from exterior public sidewalks,

parking lots, or the entrance to the business.

- (7) Any Smoke Shop located within one thousand (1,000) feet of uses listed in Section 10-3.803(b)(1) or within one hundred (100) feet of uses listed in Section 10-3.803(b)(3), shall not advertise Tobacco Product sales in a manner visible from the outside of the Smoke Shop, such as from a public thoroughfare, sidewalk, or parking lot.
- (f) **Hours of Operation.** Smoke Shops are prohibited from operating except from 8:00 a.m. to 10:00 p.m.
- (g) **Consumption of Tobacco Products.** Smoke Shops are prohibited from selling Tobacco Products for onsite consumption.
- (h) **Consumption of Alcohol & Cannabis.** The consumption of alcoholic beverages or cannabis in any form is prohibited on the premises of a Smoke Shop.
- (i) **Minimum Age Requirement.**
 - (1) Smoke Shop Operators and Smoke Shop employees must be twenty-one (21) years of age or older.
 - (2) No person under the age of twenty-one (21) shall be allowed on the premises of a Smoke Shop.
- (j) **Loitering and Other Nuisance Activities.**
 - (1) The operation of a Smoke Shop shall not result in nuisance activities on the property, which may include, but are not limited to, disturbances of the peace, illegal drug activity, public intoxication, drinking in public, tobacco product sales to minors, harassment of members of the public, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, graffiti, illegal parking, excessively loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or other violations of City, state, or federal laws
 - (2) The Smoke Shop Operator shall post the property with readily visible signs advising that consumption of alcoholic beverages and cannabis, gambling, trespassing, or loitering on private property is a violation of the Modesto Municipal Code and providing appropriate citations to the relevant Sections of this Code.
 - (3) At least every twelve (12) months, the Smoke Shop Operator must provide the Modesto Police Department, on a form provided by the City, with written authorization for the Modesto Police Department

peace officers to enter the Smoke Shop premises and remove trespassers when the business is closed to the public, in accordance with Penal Code section 602(0), including any amendments or successor statutes thereto. Such a form shall include the notarized signature of the Smoke Shop Operator.

(4) Any violations of this Section shall be considered an egregious violation of this Chapter and a public nuisance that is imminently dangerous to life, health, safety, or adjacent property, such that it requires immediate correction or elimination. Such a violation shall subject the Smoke Shop Operator to immediate suspension or revocation of the Smoke Shop Permit.

(k) **Prohibited Products.** The sale or distribution of one or more of the following is prohibited:

- (1) Cannabis or Cannabis products as defined in Modesto Zoning Code section 10-3.702.
- (2) Drug paraphernalia, as defined in Health and Safety Code section 11014.5, not directly related to legal Tobacco Products.
- (3) Nitrous oxide.
- (4) Flavored tobacco products as defined in California Health and Safety Code section 104559.5.
- (5) Other products prohibited by law.

(l) **Gambling Prohibited.** On-site or online gambling activities not related to the California Lottery are prohibited on the Smoke Shop premises.

(m) **Code Requirements.** The Smoke Shop shall comply with such other requirements as established by the Modesto Municipal Code, including the Modesto Building Code.

4-24.106 Security Requirements

- (a) **Security Plan Required.** Smoke Shop Operators/Applicants shall submit a security plan consistent with the Modesto Police Department policy on the sale of age-restricted materials. Prior to the approval of the Smoke Shop Permit, the applicant shall prepare and submit, for review by the Modesto Police Department Chief of Police or their designee, a security plan for approval. Approval of the security plan by the Chief of Police or their designee shall not be unreasonably denied. The content of the security plan shall be incorporated as conditions of approval for the Smoke Shop Permit. As a part of the annual inspection process, the security plan shall be resubmitted for approval by the Chief of Police or their designee.
- (b) Additional security measures such as reduced hours of operation, security guards, door monitors, and burglar alarm systems may be required if harm, nuisance, or

related problems are demonstrated to occur as a result of business practices or operations. This will be determined on a case-by-case basis upon review by the Police Department.

- (c) **Video Surveillance.** Smoke Shops must maintain a fully functional color digital video camera system meeting the following requirements:
- (1) Security surveillance cameras and a video recording system shall be installed to monitor the interior, main entrance, all entries and exits (from both the inside and outside of the building), and the exterior Smoke Shop area to discourage loitering, crime, and illegal or nuisance activities.
 - (2) The camera and recording system must be of adequate quality (at least HD), color rendition, and resolution to allow the identification of any individual present in the Smoke Shop area.
 - (3) At each point-of-sale location, camera coverage must enable recording of the customer(s) and employee(s) facial features with sufficient clarity to determine identity.
 - (4) In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Chief of Police or his/her designee(s) using such software as designated by the Chief of Police. The Smoke Shop Operator shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Chief of Police or his/her designee(s), and that it is compatible with the City's software and hardware.
 - (5) All surveillance equipment, records, and recordings must be stored in a secure area that is only accessible to management staff. Operators must keep a current list of all authorized employees who have access to the surveillance system and/or alarm system.
 - (6) Video from the security surveillance cameras shall be maintained for a period of not less than forty-five (45) days and shall be made available to the City upon request.

4-24.107 Training

- (a) **Initial Training.** The Smoke Shop Operator and all employees of the Smoke Shop who are involved in the sale of Tobacco Products must complete approved course(s) in training of Tobacco Product sales and handling within sixty (60) days after approval of the Smoke Shop Permit becomes final, or for employees hired after the approval of the Smoke Shop Permit, within sixty (60) days from the date of hire. Existing Smoke Shops Operators and employees shall have until November 14, 2025, to come into compliance with the training requirement, and thereafter, new employees shall obtain the necessary training within sixty (60) days of the date of hire. To satisfy this requirement, a certified program must meet the standards of the California Department of Public Health on the Stop Tobacco Access to Kids Enforcement (“STAKE”) Act or other certifying or licensing body designated by the State of California. If the Smoke Shop Operator is a legal entity, the manager or executive

responsible for the Smoke Shop shall obtain the requisite training.

- (b) **Annual Training.** The Smoke Shop Operator and all employees shall also be required to complete annual trainings which comply with State standards, including changes to tobacco sales laws and regulations.
- (c) **Records.** Smoke Shops shall be required to keep up to date records which prove that all individuals listed above have completed the requisite trainings and shall furnish these records to the City during inspections and upon a reasonable request from the City.

4-24.108 Inspections

- (a) Smoke Shops shall be subject to routine unannounced inspections at least annually to ensure compliance with this Chapter and any additional conditions of the Smoke Shop Permit.
- (b) In the event that the inspection identifies violations, the Smoke Shop Operator shall pay a reinspection fee to reimburse the City for the cost of the City performing a follow-up inspection to ensure all identified violations have been corrected. The amount of such reinspection shall be established by the City Council by Resolution.
- (c) If an annual inspection results in a finding that a Smoke Shop Operator is not in compliance with this Chapter or the specific conditions of the Smoke Shop License, that finding may be used as a basis for enforcement pursuant to Section 4-24.109.

4-24.109 Violations & Enforcement

If the Smoke Shop violates any provision of this Chapter, or if any of the circumstances identified in 4-24.104(e) exist, the Smoke Shop and Smoke Shop operator may be subject to one or more of the following.

- (a) Suspension or Revocation of the Smoke Shop Permit. The Chief of Police may suspend or revoke the Smoke Shop Permit of any business violating this Chapter.
- (b) Administrative Enforcement.
 - (1) Notwithstanding the schedule of fines established in Section 1-6.404(b) for administrative citations, the penalties assessed for each violation of this Chapter shall be as follows:
 - (i) A fine of five hundred dollars (\$500) to two thousand dollars (\$2,000) for the first violation.
 - (ii) A fine of one thousand dollars (\$1,000) to three thousand dollars (\$3,000) for the second violation within a five (5) year period.

- (iii) A fine of two thousand dollars (\$2,000) to five thousand dollars (\$5,000) for the third violation and all subsequent violations within a five (5) year period.
 - (iv) Notwithstanding the foregoing, operating a Smoke Shop without a valid Smoke Shop Permit shall be subject to a fine of up to twenty thousand dollars (\$20,000).
- (c) Criminal Enforcement. Violation of this Chapter shall be punishable as a misdemeanor pursuant to Chapter 1-2 of this Code. The property owner of the site on which the Smoke Shop is located, the Smoke Shop Operator(s), and the Smoke Shop's employees may all be subject to criminal enforcement consistent with applicable laws.
- (d) Notwithstanding anything to the contrary in this Code, the property owner of the site on which the Smoke Shop is located, as well as the Smoke Shop Operator(s), and all responsible parties who cause or permit a violation of this Chapter, may be jointly and severally liable for violations of this Chapter.
- (e) Additional Signage. The Chief of Police, or designee, may require any Smoke Shop that violates this Ordinance to post a sign in a prominent location near the cash register identifying that the business has violated applicable law and the specific violations. The text of the sign shall be as specified by the Chief of Police or designee and shall be readily readable. The Chief of Police shall determine the length of time that the sign shall remain posted, which shall not exceed one (1) year.
- (f) Any other remedy authorized by Chapter 1-6 of this Code or other applicable law, including but not limited to California Health and Safety Code section 104559.5.
- (g) These remedies are cumulative and not exclusive of each other. Each violation and each day on which the same violation occurs constitutes a separate offense for which a separate penalty may be imposed.
- (h) The Chief of Police shall select the remedy and penalty based on the severity of the violation, as well as any past violations committed by the Smoke Shop or Smoke Shop Operator, including violations that occurred prior to the issuance of the Smoke Shop Permit.

4-24.110 Appeal of Denial, Suspension, Revocation, or Nonrenewal

- (a) Appeal of Proposed Denial, Suspension, Revocation, or Nonrenewal. Any applicant or Smoke Shop Permit holder may appeal a proposed Smoke Shop denial, suspension, revocation, or nonrenewal by filing a written appeal with the City Manager's office within ten (10) days from the date of the notice of denial, suspension, revocation, or nonrenewal. The written appeal must contain the following:

- (1) A brief, clear statement, including material facts, to support the appellant's position and the relief sought;
 - (2) The signature of the Smoke Shop Permit holder with verification under penalty of perjury of the truth of the statements in the written appeal; and
 - (3) Any required appeal fee, which may be approved via Resolution of the City Council.
- (b) Appeal Hearing Procedure.
- (1) Upon receipt of a valid written appeal, the City Manager shall schedule an appeal hearing no earlier than twenty (20) days from the receipt of the appeal.
 - (2) A Hearing Officer, appointed by the City Manager, will conduct the appeal hearing.
 - (3) The Hearing Officer may only consider evidence that is relevant to whether the Smoke Shop Permit should be denied, suspended, revoked, or not renewed. However, the formal rules of evidence shall not apply to the hearing.
 - (4) The person contesting the action will be given the opportunity to testify and present witnesses and evidence concerning the action. Unless requested in advance by the person contesting the action, a representative of the City is not required to attend the hearing, provided that any such appearance may be made at the discretion of the City Manager.
 - (5) The Hearing Officer may continue the hearing and request additional information from either party prior to issuing a written decision.
 - (6) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer must issue a written decision within a reasonable time after the hearing to uphold or deny the recommended action and must list in the decision the reasons for that decision. The Hearing Officer will use the preponderance of evidence as the standard of evidence in deciding issues. The decision of the Hearing Officer will be final.
 - (7) If the Hearing Officer determines that the action should not be upheld, the City will promptly refund the applicable amount of the appeal hearing fee.
 - (8) The City shall serve the recipient of the notice of appeal or nonrenewal with a copy of the Hearing Officer's written decision by first-class mail.”

SECTION 5. AMORTIZATION OF OPERATIONAL STANDARDS AND SECURITY REQUIREMENTS UNDER SECTIONS 4-24.105, 4-24.106, and 4-24.107 OF THIS ORDINANCE.

Nothing in this Ordinance prohibits a Smoke Shop lawfully established with a City business license and all other required permits, licenses, and/or land use entitlements as of October 8, 2024, from continuing to operate as long as the Smoke Shop complies with the licensing, operational, security, and training requirements established by this Ordinance by November 14, 2025, which is more than ninety (90) days after adoption of the Ordinance.

While compliance with the requirement of this Ordinance will create new costs for existing Smoke Shops, such requirements do not place a significant burden on existing Smoke Shops because the Ordinance does not place a limit on how long Smoke Shops in compliance may continue operating. Accordingly, the owners and operators of Smoke Shops will be able to recover the cost of complying with these new requirements. For this reason, the benefits to the public health and safety of these regulations far outweigh any minor hardship to the owners/operators of Smoke Shops or the owners of the property on which a Smoke Shop is located.

SECTION 6. TERMINATION OF MORATOIRUM

The temporary moratorium on the establishment of new and relocation or physical expansion of existing tobacco retailer businesses enacted by Ordinance No. 3785-C.S. and extended by Ordinance No. 3788-C.S. is terminated as of the effective date of this Ordinance.

SECTION 7. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”) FINDINGS.

The City Council has reviewed the proposed activity for compliance with the California Environmental Quality Act (“CEQA”) and determined that the proposed Code text amendments are exempt from the CEQA pursuant to CEQA Guidelines section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The City currently does not regulate the number, location, or operating standards of smoke shops, and the proposed Ordinance would place limits on the number, location, and operating standards of Smoke Shops, which will limit their environmental impact in comparison to the status quo. Accordingly, it can be seen with certainty that there is no possibility that the proposed action may result in a significant effect on the environment, and the proposed revisions to the Municipal Code are exempt from further review under CEQA.

SECTION 8. SEVERABILITY.

The provisions of this Ordinance are severable, and if any provision, clause, sentence, section, word, or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such holding shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts thereof, or their applicability to other persons or circumstances.

SECTION 9. PUBLICATION AND EFFECTIVE DATE.

This Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause this Ordinance to be published or be posted in at least three (3) public places in the City in accordance with Section 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of July 2025, by Councilmember Bavaro, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Mayor Zwahlen

NOES: Councilmembers: None

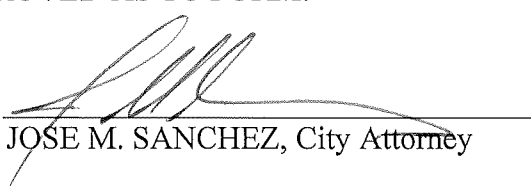
ABSENT: Councilmembers: Wright

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

BY: DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: JOSE M. SANCHEZ, 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 12th day of August 2025, Councilmember Bavaro moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams,
Mayor Zwahlen
NOES: Councilmembers: None
ABSENT: Councilmembers: Wright

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: September 11, 2025

ORDINANCE NO. 3802-C.S.

AN ORDINANCE REPEALING AND REPLACING CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE AMENDING THE CITY'S FIRE CODE TO ADOPT THE 2025 CALIFORNIA FIRE 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, 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 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.

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

SECTION 1. REPEAL AND REPLACEMENT OF CODE. Chapter 1 of Title 3 of the Modesto Municipal Code is hereby repealed in its entirety and replaced with the following.

Chapter 1. ADOPTION OF THE CALIFORNIA FIRE CODE, 2025 EDITION

(Ord. No. 3760-C.S., § 1, effective May 4, 2023 repealed the former ch. 1, articles 1—3, §§ 3-1.101—3-1.304, and enacted a new ch. 1, as set out herein. The former ch. 1 pertained to adoption of the California Fire Code, 2019 edition, and derived from Ord. No. 3712-C.S., §§1, 2, effective Jan. 2, 2020.; Previously, Ord. 826 N.S., Ord. 160-C.S., Ord. 417-C.S., Ord. 1086-C.S., Ord. 1219-C.S., Ord. 1299-C.S., Ord. 1699-C.S., Ord. 2035-C.S., Ord. 2110-C.S., Ord. 2158-C.S., Ord. 2273-C.S., Ord. 2687-C.S., Ord. 2724-C.S., Ord. 2789-C.S., repealed and reenacted by Ord. 2828-C.S., as amended by Ord. 2905-C.S., Ord. 2950-C.S., Ord. 2976-C.S., Ord. 3003-C.S., Ord. 3055-C.S., Ord. 3143-C.S., § 1, Ord. 3145-C.S., Ord. 3187-C.S., § 1, Ord. 3277-C.S., § 1, Ord. 3378-C.S., § 1, Ord. 3416-C.S., § 1, Ord. 3439-C.S., § 1, effective 6-7-07; Ord. 3466-C.S., § 1, effective 1-3-08; Ord. 3515-C.S., § 1, effective 6-12-09; amended in its entirety by Ord. 3545-C.S., § 1, effective 1-13-11; amended in its entirety by Ord. 3663-C.S., § 1, effective 1-6-17; repealed and replaced by Ord. No. 3712-C.S., §§1, 2, effective 1-2-2020.

Article 1. Fire Code

3-1.101 Findings for Adoption of the California Fire Code, 2025 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, 2025 Edition, published by said organization, is a nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said California Fire Code, 2025 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, 2025 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, 2025 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, 2025 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, 2025 Edition, is necessary so as to provide more stringent standards for fire extinguishing systems; fire hazard and hazardous materials controls are 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, 2025 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, 2025 Edition, California Code of Regulations Title 24, Part 9, including Appendix Chapter 4, and Appendix B, BB, C CC, D, F, G, I, K, N, O and Division I California Administration and Division II Scope and Administration but deleting Sections 112.1 through 112.4 and adopting Sections 104.1, 104.10, 104.10.1, 104.11 through 104.11.3, 104.4, 104.4.1, 105.6.10, 106, 108.1, 109, 110, 114, 115 , 303, 305, 306, 307, 308.1.6.3, 309, 311, 321, 403.10.5, 503, 510.3, 805, 806, 807, 808, 1103.2, 1106, and chapter 26 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, 2025 Edition, on file in the office of the City Clerk of the City of Modesto is hereby referred to, adopted, and made a part in accordance with, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in this chapter 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, 2025 Edition," the "2025 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 2025 California Fire Code as adopted and amended are hereby repealed.

Article 2. Amendments, Additions and Deletions to the 2025 California Fire Code

3-1.201 Combustible Waste Material.

Section 304.1.3 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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 three (3) 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 507.5 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Fire hydrant systems. Fire hydrant systems shall comply with section 507.5.1 through 507.5.6 and Appendix C or by an approved method. Fire hydrants shall be located on the supply side of the fire suppression system check valve and accessible from the apparatus roads in compliance with Section 503.1 and Appendix D. The fire code official may require a looped underground fire service for large projects when deemed necessary.

Section 507.5.1 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Where required. When a portion of the facility or building here after constructed or moved into or within the jurisdiction is more than 300 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

Exception: For Group R-3 and Group U occupancies equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3, the distance requirement shall be not more than 500 feet.

Section 507.5.1.1 of the 2025 California Fire Code is hereby adopted by reference, and amended to read as follows:

Hydrants for Standpipe systems. Buildings equipped with a standpipe system installed in accordance with section 903 shall have a fire hydrant within 75 feet of the fire department connection.

Section 507 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Spacing. Fire hydrants shall be spaced nominally every 500 liner feet in residential areas and 300 liner feet in commercial or industrial areas and shall comply with city building standards. Divided streets shall have hydrants on both sides of the street and shall, where applicable, be installed in alternative or staggered positions so that hydrants will not be directly opposite from each other.

Section 905.3.1 of the 2025 California Fire Code is hereby adopted by reference, with the additional of the following:

Height. Occupancies three or more stories in height shall be provided with a Class 1 standpipe system approved by the Fire Chief. (Except Group R-3 and R-3.1)

Garden type apartment complexes may be required to install Class 1 standpipe systems approved by the Fire Chief.

Section 912 of the 2025 California Fire Code is hereby added to read as follows:

A fire hydrant shall be located within 75' of all required fire department connections. Fire hydrants serving sprinkler systems shall be located on the City side of the back flow prevention device.

3-1.204 Where Required. - Vacant

3-1.205 Incinerators.

Section 605.7 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Incinerators. The use of incinerators is prohibited inside the city limits.

EXCEPTION: Incinerators used by state licensed facilities for the cremation of human or pet remains.

3-1.206 Open burning, recreational fires, and portable outdoor fireplaces

Section 307.1 of the 2025 California Fire Code is hereby adopted by reference, with the following additions and amendments:

General. No person shall kindle, conduct, or maintain any burning of grass, weeds, agricultural trimmings, or other combustibles or authorize any such fire to be kindled, conducted, or maintained without a permit as required by the San Joaquin Valley Unified Air Pollution Control District and compliance with all safeguards pursuant thereto. Any such permitted burning shall be restricted to agricultural purposes and confined to areas in the city limits in which agricultural uses are lawful or as regulated or prohibited by other municipal codes.

Section 307.4.1 of the 2025 California Fire Code is hereby deleted.

Section 307.4.2 of the 2025 California Fire Code is hereby amended to read as follows:

Recreational Fire. Recreational Fire shall be prohibited except for religious ceremonies and shall comply with other regulation or prohibitions of other city municipal codes or uses. Permit required.

Section 307.4.3 of the 2025 California Fire Code is hereby amended to read as follows:

Portable Outdoor Fireplaces. Shall comply with other regulation or prohibitions of other city municipal codes or uses.

Section 307.5 of the 2025 California Fire Code is hereby amended to read as follows:

Attendance. Open burning or use of portable outdoor fireplaces as used at one and two-family dwellings shall be constantly attended until the fire extinguished. Not fewer than one portable fire extinguisher complying with section 906 with a 4A minimum rating and a water hose, water truck or medium of dirt/sand shall be immediately available.

3-1.207 Automatic Sprinkler Systems.

Section 903 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

- (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 any fire area, as defined in the California Fire Code exceeds five thousand (5,000) square feet.
 - 1) Fire area calculations shall include all floors, mezzanine, basements and any attached projections greater than four (4) feet.
 - 2) Structures which are within six (6') feet of each other as measured from the outside walls, or any projection therefrom, or are attached by a

breezeway or a covered walkway, the measured floor area of each shall be aggregated.

- 3) Buildings three (3) stories or more, irrespective of height; including basements, cellars and or mezzanines.
 - 4) Any Group A occupancy as defined in the California Building Code or modified for Group A use.
 - 5) CFC 901.4.4 may not be exercised to add fire walls to avoid the installation of fire sprinklers in new buildings or to existing buildings during remodel/ addition.
- (b) Condominium /apartment buildings up to 4 stories may be approved with NFPA 13R fire sprinkler systems with full attic protection. Attic protection shall consist of quick-response sprinklers spaced throughout the attic in accordance with NFPA 13. Attic hydraulic calculations shall be based on flowing a minimum four sprinklers. Piping in the attic shall be listed steel piping. Listed CPVC piping may be utilized under attic insulation with special application sprinklers installed in accordance with their listing and the manufacturer's guidelines.
- (c) The sprinklers are to have interior warning devices approved by the Fire Chief.
- (d) Existing buildings and structures shall have approved automatic fire sprinklers installed when any of the following exist:
- 1) When doing a remodel or addition the value of additions, alterations or repairs 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.
 - 2) The remodel or addition cause the building to exceed five thousand (5,000) square feet as outlined in this code above.

Nothing in this subsection is intended to provide a lesser degree of protection than that required in the presently adopted version of the California Building Code or provide for a waiver of its provisions unless such provision of this subsection provides for sprinkler protection in an area or areas not required in the building.

3-1.208 Monitoring.- Vacant

3-1.209 Portable Fire Extinguishers.

Section 309 of the 2025 California Fire Code is hereby adopted by reference in addition to the following:

Forklifts. All LPG or natural gas driven equipment which operate inside shall have a minimum 1A:10BC fire extinguisher mounted to the equipment and shall comply with Section 906.

Section 3504.2.6 of the 2025 California Fire Code is hereby adopted by reference and amended to read as follows:

Portable Fire Extinguishers. Not less than one portable fire extinguisher complying with section 906 and with a minimum 2-A:20BC rating shall be provided with ready access within 30 feet of the location where the hot works is being performed and without climbing stairs.

3-1.210 Fire Alarm and Detection Systems.

Section 907 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

- (a) All new fire alarm/ monitoring systems shall be UL certified for which permits are required, on or after 1/1/2020.
- (b) Any existing fire alarm system in a commercial occupancy wherein the fire alarm control panel and alarm system components require replacement, shall be considered newly installed for the purposes of this section and shall require the system to be UL certified on or after 1/1/2026.
- (c) When UL certification is required by this code, it shall be maintained for commercial fire alarm/monitoring systems throughout the life of the alarmed/monitored building.
- (d) Central Station Service in accordance with NFPA 72 is required on all fire alarm/ monitoring systems, existing or new

Exception. Supervisory service is not required for:

- i) Automatic sprinkler systems in one and two-family dwellings.

3-1.211 False Fire Alarms.

Section 907 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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. Excessive false alarms shall be defined as more than three (3) false alarms in twelve (12) consecutive months.

3-1.212 Hazardous Materials Occupancies.

Section 5001.2 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Definition: Hazardous materials are those chemicals or substances which are physical hazards or health hazards as defined and classified in Chapter 50, or as defined in the California Health and Safety Code, Division 20, Chapter 6.95, commencing with Section 25500, whether the materials are in useable or waste condition.

NFPA 704 placards shall be required on all commercial buildings/structures with hazardous materials as required by the Fire Chief.

3-1.213 Deposits of Hazardous Materials; Cleanup, Abatement, or Mitigation Required; Liability for Costs.

Section 5003.3.1.4 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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, 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 2025 California Fire Code is adopted by reference, in addition to the following:

Location. Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established by law. All R-1, R-2 and R-3 zoning designations as identified in Title 10 of the Modesto Municipal Code.

3-1.215 Possession, Manufacture, Sale, Use or Discharge of Dangerous Fireworks.

Section 5604 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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 3-1.304 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 dangerous fireworks offered or exposed for sale, stored, or possessed in violation of this chapter.

3-1.216 Explosive Materials Prohibited and Limited Acts.

Section 5605.1 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Exceptions:

4. Manufacturing. Explosive materials shall not be manufactured within the city limits of Modesto.
5. 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).

3-1.217 Manufacturing of Fireworks.

Section 5605 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Manufacturing. The manufacturing of fireworks is prohibited within the city limits of Modesto.

3-1.218 Sales of Fireworks.

Section 5608 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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.

- (a) Effective 2005, the total number of sales permits issued in any given year shall be limited to seventy (70).
- (b) 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.
 - (1) 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, private, or charter 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.
 - (2) Public school organizations shall provide current written verification of affiliation from the school each year.
 - (3) 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. 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.

(4) 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.

(5) If any of the above items fail to be met at the time of application, the organization's application shall be denied.

- (c) Sales permits for retail sales of California State Fire Marshall approved "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.
- (d) 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 (1) tax ID number.

- (e) 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.
- (f) 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.
- (g) Every application shall be accompanied by proof of insurance as specified in Section 3-1.22(3). 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.

- (h) 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.
- (i) 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.
 - (1) 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.
 - (2) 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.
 - (3) One (1) 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.
 - (4) 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.
- (j) 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:
 - (1) 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;
 - (2) The applicant has received a valid City of Modesto business license; and
 - (3) The organization must either:
 - (i) Meet the criteria of set forth in Section 33-1.223(2) (A) or
 - (ii) 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.

(iii) 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.

3-1.219 Sales, Storage, Use, and Handling of Fireworks.

Section 5608 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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 California State Fire Marshall approved "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 2025 California Building Code.
- (b) **Retailers Storage.** Retailers may store California State Fire Marshall approved "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:
 - (1) Within the permitted fireworks stand with a responsible adult on the premises at all times.
 - (2) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
 - (3) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.

(4) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.

(5) In an approved and permitted fireworks warehouse.

2. **Operator Safety.** Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall attend a stand operator safety seminar conducted by the City of Modesto Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sale fireworks for that calendar year.

3. **Temporary Fireworks Stands.**

- (a) All retail sales of California State Fire Marshall approved "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.
- (b) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.
- (c) Temporary fireworks stand shall not be set up before application for permit has been approved no earlier than June 14.
- (d) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (e) 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.
- (f) 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.
- (g) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (h) 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.
- (i) 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.**

- (a) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
- (b) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
- (c) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.

- (d) Dry grass, weeds, trash, and other combustible material shall be removed for a distance of twenty (20) feet around any fireworks stand.
- (e) Fireworks shall not be discharged within fifty (50) feet of a fireworks stand.

5. Stand Construction.

- (a) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (b) Merchandise may be displayed in stands constructed in the following manner:
 - (1) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (2) The stand shall be provided with a roof.
 - (3) 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.
 - (4) 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.
 - (5) 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.
 - (6) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
 - (7) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
 - (8) An approved fire extinguisher having a minimum classification of 2A10BC shall be located in the stand, near the exit and readily accessible.
 - (9) 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.
 - (10) 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.

- (a) 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.

- (b) 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.
- (c) 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.

3-1.220 Revocation of Permit and Seizure of Fireworks.

Section 5608 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

(a) 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.

Revocation of any sales permit will be effective for that calendar year.

3-1.221 Fireworks Displays Insurance Required.

Section 5608 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Insurance.

- (a) 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.
- (b) 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.

(1) 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).

(2) 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.

(3) 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/licensees 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.

(c) 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.

(d) 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.

3-1.222 Storage of Flammable and Combustible Liquids in Tanks.

Section 5704 of the 2025 California Fire Code is hereby adopted by reference.

Section 5704.2.9.5 of the 2025 California Fire Code is amended to include the following:

Above-ground Tanks Inside of Buildings. The storage of Class I, II, and III A/B flammable and combustible liquids in aboveground tanks inside of buildings shall be in an approved double walled/protected tank. The tank shall be approved by the Fire Chief and installed per the CFC/NFPA.

Section 5704.2.9.6.1 of the 2025 California Fire Code is amended to read as follows:

Location Where above Ground Tanks are Prohibited. Storage of Class I and II Liquids in above-ground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Chapter 57 of the 2025 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.

The storage of Class I, II and III A/B flammable and combustible liquids in above-ground tanks outside a building is prohibited. Exception: Protected/ double

walled aboveground tanks shall be approved by the Fire Chief. Aboveground tanks shall be installed per the CFC/NFPA.

3-1.223 Storage of Flammable and Combustible Liquids.

Section 5706 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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.

3-1.224 Bulk Plants Storage of Flammable and Combustible Liquids.

Section 5706.4 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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 2025 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.

Section 105.5.18(3) of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

To store, handle or use Class II, Class III-A and Class III-B liquids in excess of twenty-five (25) gallons in a building or in excess of fifty-five (55) gallons outside a building.

3-1.225 Bulk Transfer and Process Transfer Operations.

Section 5706.5 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

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.

Section 5706.5.1.1 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Tank Vehicles delivering to or receiving from flammable and combustible liquid tanks shall stand entirely on private property. Dispensing into any Tank Truck cargo tank with service station dispensing facilities is prohibited.

3-1.226 Permits for Liquefied Petroleum Gases.

Section 6101.2 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Permit(s) shall be required as set forth in Sections 105.5 and 105.6.

EXCEPTION:

1. Residential occupancies. Containers shall not exceed five (5) gallons water capacity used for “barbecue” cooking, when used and stored outside of buildings.
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 the Fire Code Official has issued a permit for installation at the location.

3-1.227 Access

Section 504.1 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

For commercial projects the clear walkway shall have the minimum following: 32 inch gate in fences and a 36 inch clear path. The clear path may be grass, soil or solid surface.

Section 503.2.3 of the California Fire Code is hereby adopted by reference, in addition to the following:

All weather shall be concrete or asphalt only.

Section 506 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

- (a) All commercial projects (new, remodel, addition and change of occupancy, or occupancy inspection) in the City may be required to provide a Knox Box (key box). A Knox Box capable of containing Material Data Safety Sheets (MSDS) sheets and Hazardous Materials plans will be required at commercial sites with significant amounts of hazardous materials. The Fire Chief may require additional Knox Boxes and padlocks to large buildings or projects.

3-1.228 Premise Identification

Section 505.1 of the 2025 California Fire Code is adopted by reference, in addition to the following:

Residential numbers shall be illuminated from dusk to dawn.

New commercial buildings, commercial buildings undergoing occupancy change and commercial buildings undergoing renovation shall have a minimum of 6 inch Arabic numerals or alphabet letters indicating the building's street address. The numerals and letters are to have a 3/4 inch stroke and contrast with their background. The address shall be internally or externally illuminated from dusk until dawn. The address shall face the street or road fronting the property. Buildings which set back from the road or street over 100 feet may be required to have larger numerals/letters as required by the Fire Chief. Rear addresses may be required due to property configuration.

3-1.229 Electric Disconnects and Photovoltaic (PV) Systems

Section 603.4.1 of the California Fire Code is hereby adopted by reference, in addition to the following:

The main electrical service to any commercial building must be accessible for emergency shut-off from the outside of the building. This may be accomplished by providing a (one) main disconnect or a shunt trip device. If a generator system activates automatically when the shunt trip or main disconnect is shut down, a control to stop the generator must be located with the main disconnect or shunt trip. Photovoltaic (PV) power disconnects shall be located with the main electrical disconnect. Shunt trips or main disconnects, PV and generator controls shall be identified by signs approved by the Fire Chief. All disconnects shall not be separated by obstruction or fences.

Exception: Electrical control room with a marked door that is accessible from the outside of the building.

3-1.230 Heating Appliances

Section 605.5 of the California Fire Code is hereby adopted by reference, in addition to the following:

Portable, unvented heating appliances which produce carbon monoxide (CO) shall not be used in occupied buildings. Exception: When approved, listed portable unvented oil burning heating appliances may be used in any occupancy during construction when such use is necessary for the construction and does not represent a hazard to life or property.

3-1.231 Spray Booth

Section 2401.1 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

- (e) Flammable spraying, combustible spraying, bedliner spraying and powder coating operations shall be conducted in a listed spray booth. Existing operations to be upgraded at change of occupancy.

Section 2402 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Spray booth is a listed mechanically ventilated appliance of varying dimensions and construction provided to enclose or accommodate a spraying operation and to confine and limit the escape of spray vapor and residue and to exhaust it safely.

3-1.232-Heating and Cooking Equipment

Section 5705.3.3 of the California Fire Code is hereby adopted by reference, in addition to the following:

Heating, lighting or cooking appliances which utilize Class I, II or III liquids shall not be operated within a building or structure within the city limits.

3-1.233 Liquefied Petroleum Gas Restrictions

Section 6103 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Prohibited. LP-gas installations pertinent to systems are not permitted in any residential (R) zones regardless of water capacity.

Section 6104.2 of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested commercial areas, the aggregate capacity of any one installation shall not exceed 2,000 gallon water capacity.

The storage of liquefied petroleum gases is restricted to those areas of the City zoned Commercial-Industrial zone; M-1 and M-2 Industrial zones and in addition thereto to properties used as Automotive Service Stations located in the areas of the City zoned for commercial use.

Whenever the Fire Chief, in his discretion, determines the storage of liquefied petroleum gases is necessary in other areas, the aggregate capacity of any such installation shall not exceed 2,000 gallon water capacity, except that in particular installations this capacity limit may be altered at the discretion of the Fire Chief, after consideration of special features such as topographical condition, nature of occupancy and proximity of buildings, capacity of proposed tanks, degree of private fire protection to be provided and facilities of

the local Fire Department. The storage of liquefied petroleum gas shall conform to the provisions of the local zoning ordinance.

3-1.234 Requirement for Outdoor Operation

Section 1106 of the California Fire Code is hereby adopted by reference, in addition to the following:

Pallet Storage, Manufacturing and/or Recycling Facilities shall be maintained in accordance with Section 2810 of the California Fire Code.

3-1.235 Appendix D

Appendix D Section D101.1 of the California Fire Code is hereby adopted by reference, in addition to the following:

Appendix D shall only be enforced on private roadways, property and streets not public roadways.

Appendix D Section D103.5(1) of the California Fire Code is hereby adopted by reference, in addition to the following:

Where a fire apparatus road consists of a divided roadway, the gate width shall not be less than 15 feet.

Appendix D Section D103.5(5) of the California Fire Code is hereby adopted by reference, in addition to the following:

Electric gates shall be operable by means of a Knox key switch accessible by both police and fire. Electric gates at housing complexes, gated communities or rental storage facilities shall also be dual equipped with Opticom strobe light system or as required by the Fire Chief. All Gate shall automatically open upon power failure.

Appendix D Section D103.5(6) of the California Fire Code is hereby adopted by reference, in addition to the following:

Manual opening access gates may not be locked with a chain and padlock unless a Knox padlock is installed in the chain. Dual keyed access for the Police Department shall be required.

ARTICLE 3. ADMINISTRATION

3-1.301 Fees and Related 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.

Sections 108.1 and 108.5 of the 2025 California Fire Code is hereby adopted by reference.

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 Administrative Penalties, Remedies, and Social Host Liability.

Illegal fireworks pose a danger to life and property and are offensive to the public peace and morals of the community. The City Council hereby declares the possession, manufacture, sale, use or discharge of dangerous and illegal fireworks to be a public nuisance. Such nuisance may be abated in the manner set forth in the Modesto Municipal Code and provided by law for the abatement of public nuisances.

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 3-1.215 manufacture and sale, of dangerous fireworks, the administrative penalty shall be ten thousand dollars (\$10,000.00) for each specific act found to be in violation of that section. For violations of Section 3-1.215, possession, use, or discharge of dangerous fireworks, the administrative penalty shall be two thousand dollars (\$2,000.00) for the first violation, three thousand dollars (\$3,000.00) for a second violation within any thirty-six-month period, and four thousand dollars (\$4,000.00) for any subsequent violations within any thirty-six-month period.
- (b) For all violations of this chapter, other than Section 3-1.215 possession, manufacture, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be five hundred dollars (\$500.00) for the first violation, one thousand (\$1,000.00) for a second violation within any twelve-month period, and one thousand five hundred (\$1,500.00) for any subsequent violations within any twelve-month period.

- (c) For the purposes of this chapter, the term "responsible party" means any person or persons 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 the 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.

3-1.304 Third-Party Administrative Citations.

- (a) Whenever two or more private, adult persons observe a violation of Section 3-1.215 of the Modesto Municipal Code pertaining to possession, manufacture, sale, use or discharge of dangerous fireworks, they may request that an administrative citation be issued to a responsible party by an enforcement officer. The private persons will be required to sign an affidavit under penalty of perjury verifying that they personally observed a violation of Section 3-1.215, and may be required to testify at an administrative hearing as provided in the Modesto Municipal Code if the administrative citation is appealed. Failure of the private persons to testify at an administrative hearing if required by the department prosecuting the violation on behalf of the private persons may result in a dismissal of the administrative citation. The enforcement officer shall have the discretionary authority to issue an administrative citation to a responsible party where, on the basis of an affidavit and any other available evidence, a violation of Section 3-1.215 of the Modesto Municipal Code has occurred.
- (b) Each third-party administrative citation shall contain:
 - (1) The date of the violation;

- (2) The address or a definite description of the location where the violation occurred;
- (3) The section of this Code violated and a description of the violation;
- (4) The amount of the fine for the Code violation;
- (5) A description of the fine payment process, including a description of the time within which and the place to which the fine must be paid;
- (6) An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;
- (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
- (8) The name, signature and department issuing the citation on behalf of the private persons.

(c) Each third-party administrative citation shall be accompanied by an affidavit from the private persons setting forth a description of the violation as observed by the private persons signed under penalty of perjury. **3-1.305 Response Cost.**

(a) In addition to any fines or penalties which may otherwise be levied by the City pursuant to this article, the City shall be entitled to recover from any person found to be in violation of any provision of this article, the City's full response costs.

(b) For purposes of this article, the term "response costs" shall mean those reasonable and necessary costs directly incurred by the City for a response to a complaint of discharging illegal fireworks prohibited under this article and shall include the cost of providing police, code enforcement, fire, and/or other emergency response services at the scene to include, but not limited to:

(1) Salaries and benefits of code and/or law enforcement and/or fire and/or emergency personnel for the full amount of time spent responding to, remaining at, or otherwise dealing with such illegal fireworks, and the administrative costs attributable to such responses;

(2) The cost of any medical treatment to or for any code and/or law enforcement and/or fire and/or emergency personnel injured while responding to, remaining at, or leaving the scene; and

(3) The cost of repaying for any City equipment or property damaged and the cost of the use of any such equipment used in responding to, remaining at or leaving the scene.

(c) The expense of a response cost shall be a charge against the responsible party liable for expenses under this article. The charge constitutes a debt of that person and is collectible by the City in the same manner as in the case of an obligation under a contract, expressed or implied, except that liability for the expenses provided for in

this article shall not be insurable and no insurance policy shall provide or pay for the expenses.

3-1.306 Agency and Authority

Section 103 1of the 2025 California Fire Code is hereby adopted by reference, in addition to the following:

The MODESTO FIRE DEPARTMENT official in charge shall be known as the fire code official. The function of the agency shall be the implantation, administration, and enforcement of the provisions of this code.

Section 103.3 of the California Fire Code is hereby adopted by reference, in addition to the following:

The Fire Chief, Division Chiefs, Fire Marshal, and members of the Fire Department conducting Prevention Bureau and/or Fire Investigation unit duties shall have the powers of a Police Officer in performing their duties under this Code.

SECTION 2. FINDINGS AND DECLARATION. As required by the 2025 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 2025 California Fire Code are reasonably necessary because of local climate and geographic conditions. The 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 practices as reflected in the prior local Fire Code.

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

SECTION 4. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions

of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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

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 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 7. 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 4th day of November 2025, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Williams, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:


BY: _____
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:


BY: _____
JOSE M. SANCHEZ, 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 9th day of December 2025, Councilmember Bavaro moved its final adoption, which motion being duly seconded by Councilmember Williams, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, MAYOR

ATTEST: 
DIANE NAYARES-PEREZ, City Clerk

Effective Date: January 8, 2025

ORDINANCE NO. 3803-C.S.

**AN ORDINANCE AMENDING SECTION 25-3-9 OF
THE ZONING MAP OF THE CITY OF MODESTO
TO REZONE FROM HIGHWAY COMMERCIAL (C-
3) ZONE, TO LOW DENSITY RESIDENTIAL (R-1)
ZONE, PROPERTY LOCATED AT 3401 N.
MCCLURE ROAD (SELF HELP ENTERPRISES)**

WHEREAS, a verified application for an amendment to Section 25-3-9 of the Zoning Map was filed by Self Help Enterprises on June 5, 2025, to rezone a 4.15 acre property located at 3401 N. McClure Road from Highway Commercial (C-3) Zone, to Low Density Residential (R-1) Zone; and

WHEREAS, after a public hearing held on October 20, 2025, at which hearing evidence both oral and documentary was received and considered, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because it will facilitate affordable homeownership opportunities to a currently vacant site and will be served by City infrastructure, the requested zone change will result in an orderly planned use of land because it will establish residential zoning consistent with adjacent R-1 and Planned Development 446 zones, and will ensure a logical transition and compatible neighborhood design, and 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 plan(s) because it supports infill housing, promotes the production of affordable housing and is aligned with General Plan policies that encourage diverse housing typologies; and

WHEREAS, by Resolution No. 2025-41, adopted on October 20, 2025, the Planning Commission recommended to the Council that the application of Self-Help

Enterprises to amend Section 25-3-9 of the Zoning Map to rezone the hereinafter described property from Highway Commercial, (C-3), to Low Density Residential, (R-1), be approved; and

WHEREAS, the City prepared an Initial Study (EA/C&ED No. 2025-19) in accordance with the California Environmental Quality Act (CEQA), and a Mitigated Negative Declaration was prepared which determined that, with specific mitigation measures, the project would not have a significant effect on the environment.

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

SECTION 1. After a public hearing held on December 2, 2025, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, this Council hereby finds and determines as follows:

1. The City Council hereby certifies and adopts Initial Study EA/C&ED No. 2025-19 in accordance with CEQA, which concluded that with the incorporation of mitigation measures, the project would not have a significant impact on the environment.
2. All feasible mitigation measures set forth in EA/C&ED No. 2025-19 which are appropriate to the project shall be incorporated in the project.
3. The Initial Study, EA/C&ED No. 2025-19 provides substantial evidence to support findings 1 and 2 above.
4. The requested change will not be detrimental to the public health, safety or welfare because it will facilitate affordable homeownership opportunities to a currently vacant site and will be served by City infrastructure.
5. The requested change will result in an orderly planned use of land because it will establish residential zoning consistent with adjacent

zoning of R-1 and Planned Development 446, and will ensure a logical transition and compatible neighborhood design.

6. 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 it supports infill housing, promotes the production of affordable housing and is aligned with General Plan policies that encourage diverse housing typologies.

SECTION 2. ZONING CHANGE. Section 25-3-9 of the Zoning Map is hereby amended to rezone the following described property from Highway Commercial (C-3), to Low Density Residential (R-1):

C-3 to R-1

APN: 033-089-041

SECTION 3. ZONING MAP. Section 25-3-9 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 25th day of November 2025, by Councilmember Bavaro, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright, Mayor Zwahlen

NOES: Councilmembers: None

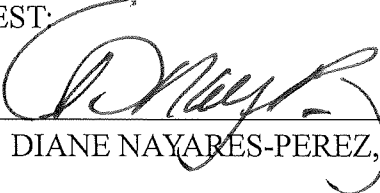
ABSENT: Councilmembers: None

APPROVED:


SUE ZWAHLEN, Mayor

ATTEST:

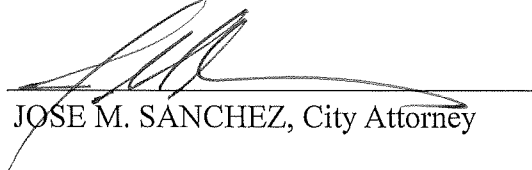
BY:


DIANE NAYARÉS-PEREZ, City Clerk

(SEAL)


APPROVED AS TO FORM:

BY:


JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By:


Community & Economic Development Department,
Planning Division

FINAL ADOPTION CLAUSE

The foregoing Ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of December 2025, Councilmember Bavaro moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams,
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Wright

APPROVED: 

SUE ZWAHLEN, MAYOR

ATTEST: 

DIANE NAYARBS-PEREZ, City Clerk

Effective Date: January 1, 2026

ORDINANCE NO. 3804- C.S.

**AN URGENCY ORDINANCE AMENDING THE CITY OF
MODESTO MUNICIPAL CODE TITLE 4, CHAPTER 23,
“RESTRICTIONS ON USE OF SPECIFIED ITEMS DURING
PUBLIC ASSEMBLY,” PROVIDING VARIOUS REVISIONS
TO THE TIME, PLACE AND MANNER REGULATIONS AS
TO PUBLIC ASSEMBLIES**

SECTION 1. FINDINGS

A. The City Council of the City of Modesto hereby finds as follows: revisions to the City’s Municipal Code implemented by this Urgency Ordinance are immediately necessary as an emergency measure in order to preserve the public health, safety, and welfare. Specifically, the revisions and amendments to Municipal Code Title 4, Chapter 23 included in this Urgency Ordinance are essential and immediately necessary to improve the City’s regulation of public assemblies and thereby ensure the immediate preservation of the public peace, health, safety, and general welfare in the City of Modesto.

B. The City Council desires to amend Title 4 entitled “Public Welfare, Safety and Health” of its Municipal Code by revising certain sections of Chapter 23, entitled “Restrictions on Use of Specified Items During Public Assembly” to provide refinement to the critically important rules regulating the use of face coverings subject to certain exceptions; regulating using umbrellas as potential weapons; and restrictions on the use of tactical clothing and hardshell helmets during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property so as to safeguard against violence and promote peaceful assembly for Modesto citizens, Modesto businesses and property owners, along with protection of the police and visitors alike. These regulations serve to deter violence, property damage and any bodily harm to individuals that wish to engage in peaceful protests and demonstrations.

C. In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as sidewalks, streets, and public parks. The City Council does not intend to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place and manner regulations that address the need to prevent violent, dangerous and hazardous situations from arising and to promote the safety of both the public, Modesto residents, Modesto business owners along with the police.

D. The revisions to the City’s Municipal Code implemented by this Urgency Ordinance are immediately necessary as an emergency measure in order to respond to recent developments regarding various public protests/assemblies that are occurring in the City, and which raise serious safety concerns regarding protecting citizens, businesses, property, and police alike from any violent disputes, and in order to reduce the threat of serious bodily injury or property damage for all future public protests/assemblies in Modesto. Specifically, the amendments to the City’s Municipal Code Title 4, Chapter 23 that are included in this Urgency Ordinance are essential

and immediately necessary to ensure the orderly implementation of restrictions on specified items used at public assemblies and masks concealing identity, to reduce the likelihood of violence and property damage and to ensure the safety of the general public, event attendees, counter-protestors and the police, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

E. The City supports peaceful protests, demonstrations, and events. Unfortunately, some individuals have used protests and other public assembly events as “cover” to commit acts of violence, arson, and vandalism. This is especially true for those individuals who wear face coverings in hopes of remaining anonymous and in order to commit criminal acts without fear of accountability. It is the intent of the City in enacting this Urgency Ordinance to ensure that public assembly events are peaceful and safe.

F. The City of Modesto has a history of the Proud Boys attending various events in the City, including the annual Straight Pride event where many participants arrive wearing identity obscuring masks. (See e.g. Exhibits 8-11.) The Proud Boys have an established reputation for violence and the organization has been designated as a hate group by the Southern Poverty Law Center. The City takes note of its prior experience with the Straight Pride event, which has attracted the participation of the Proud Boys, with event organizers specifically having invited the Proud Boys to attend past Straight Pride events. The Proud Boy members are known to participate in white supremacist rallies, events, and organizations and are reported to have been violent during prior protests. The organizer of the Straight Pride event has also previously identified his straight pride organization as a “peaceful racist” group. In response, MoPRIDE, a Modesto organization providing support to the LGBTQ+ community, has offered safe places for people during the Straight Pride event as concerns for individuals’ personal safety and the likelihood of potential violence against members of the LGBTQ+ community is a serious concern.

G. As well, Anti-fascist (“Antifa”) groups track the various public protests/assemblies in Modesto and have attended events in Modesto to counter-protest. Antifa groups are known to wear masks to obscure their identities and have engaged in violence during prior protests.

H. There is an increased risk that if individuals wear masks or use other apparel to cover their faces during protests or public assemblies to conceal their identities, do so in order to utilize their anonymity to commit acts of violence or vandalism without concern of identification and apprehension, disturbing the ability of others to safely assemble and demonstrate peacefully.

I. As well, based on the Chief of Police’s experience and expertise, tactical gear worn at prior protests in the City, and other forms of tactical gear such as gas masks, bullet-resistant vests, flak jackets, stab resistant vests, and/or load bearing vests, are all associated with the potential for violent clashes. The presence of such tactical gear escalates tensions and/or becomes a trigger for confrontation between protestors and counter-protestors or between protestors/counter-protestors and police. Some examples of tactical gear, such as tactical vests, impact resistant helmets and other hardshell helmets are shown in the attached exhibits of photos drawn from various City protests. (See e.g. Exhibits 1-3, 14-17.) Past events demonstrate that when members of the public wear tactical gear to protests/counter-protests, it is used as an intimidation tactic, to cause an aggressive atmosphere, cause confusion, and/or create a “battlefield” mentality, all of which increases the likelihood of violence. (See e.g. Exhibits 1-4,

14-17.) Additionally, certain gear, such as hardshell helmets can be easily removed and weaponized, increasing the risk of bodily harm if confrontations arise. (See e.g. Exhibits 16-18.)

J. Specific examples of conduct prohibited under Section 4-23.02 *et seq.* also include August 2020, 2021 and 2022 protests and counter-protests, where groups of participants arrived wearing tactical gear and/or concealing a wood block inside a tactical vest. (See Exhibits 8 – 20.) During these protests, several individuals wore hard helmets and face-coverings, and donned tactical gear that is associated with a paramilitary “battle ready” build up. (See Exhibits 1, 14 – 17.) Umbrellas were used not simply for shade, but as shields or to obscure movement and vision. (See Exhibits 3, 21-22.) The Police Chief has also documented various events where masked participants, including those wearing ski masks, balaclavas, and neck gaiters/tubes, have used masks to hide identity and/or as a means to intimidate, including when acting in coordinated masked groups. (See e.g. Exhibits 1-11.)

K. Since the City’s adoption of Chapter 23 in August 2019, there have been numerous public protests that have taken place in the City. The City has a reasonable basis to believe that the Chapter 23 regulations, and their consistent enforcement, have resulted in reduced violence at these public protests. Additionally, since 2022, there has been a notable decline in violations and incidents at demonstrations, as the consistent enforcement of Section 4-23.02 *et seq.* set a clear expectation that Modesto is not a place for groups to come with a “battle ready” or “battlefield” mentality. This has resulted in a more inviting environment for individuals to safely exercise their First Amendment rights in the City.

L. The City has a reasonable basis to believe that the low incidents of violence compared to what it believes would have occurred without the 2019 adoption of Section 4-23.02 is due to the consistent enforcement of the mask covering prohibition, the prohibition on tactical gear such as gas masks, impact resistant helmets or other hardshell helmets, bullet-resistant vests, flak jackets, or stab resistant vests, and/or load bearing vests set forth in subsections (a)(14)-(19) of Section 4-23.02, along with the prohibition on bringing various items to public protests that can be converted into weapons such as flagpoles, large sticks, umbrellas, glass and metal water bottles and the like.

M. There are significant concerns about violence at public events and about violent clashes between those with opposing views. These incidents of violence have been particularly heightened during the public protests that have unfolded in connection with the various ICE raids that have occurred within California and continue to escalate with the prior deployment of the National Guard to Los Angeles, Portland, and Chicago. Numerous public protests, demonstrations and rallies conducted throughout the nation in cities such as Los Angeles, Portland, and Chicago, have erupted in violence between demonstrators and counter-demonstrators, and violence against law enforcement personnel.

N. Accordingly, it is necessary for the City to maintain the restrictions set forth in Section 4-23.02, including maintaining the face covering restriction but to further refine the exceptions to the face covering prohibition for both medical and religious reasons in order to maintain the public safety issues that are achieved by having this provision in play while allowing for the noted limited exceptions.

O. The City’s regulations set forth in Section 4-23.02, including the masking regulations, restrictions on items that can be weaponized and restrictions on tactical gear are viewpoint and content neutral and apply with equal application regardless of the message of any speaker, protest or demonstration. The City recognizes that recently there continues to be an elevated level of tension between groups from different sides of the political aisle and the regulations in Section 4-23.02 will continue to help reduce the likelihood of violence during public assemblies between these deeply divided groups.

P. At various protests, devices such as poles, sticks, signs, umbrellas, wood and metal pipes, bats, chains, as well as certain types of containers including but not limited to glass bottles, metal water bottles, filled with flammable or noxious substances (such as urine) and aerosol sprays deployed to cause flames or attack olfactory systems, and other items have been used as improvised weapons resulting in injuries and property damage. Demonstrators have also carried shields, outfitted themselves in ballistic protection gear, including hiding large wooden blocks, in order to be able to throw objects at police, and to be emboldened to instigate violence against others without fear of identification and accountability when they cover their faces.

Q. The City of Modesto has seen an increase in public protests in the community and wants to ensure that the City Council is proactive in protecting the health, safety and welfare of the protestors, counter protestors and community at large versus taking a “wait-and-see” approach. The City Council has a reasonable basis to believe that the face mask restriction is necessary to make sure that protestors, counter protestors and observers are not shielding their identity in order to commit criminal acts and go undetected while maintaining the rights of protestors to exercise their First Amendment rights in a safe environment. Indeed, the City Council has a reasonable basis to believe that protestors will be deterred from exercising their First Amendment rights to peacefully assemble if they are fearful for their own public safety at such an event. The City Council has a reasonable basis to believe that the face mask prohibition serves the public health, safety and welfare and serves to prevent violence from occurring at public protests/ assemblies in the City.

R. The adoption of this Urgency Ordinance is a necessary and critical tool for the City to update the time, place and manner regulations setting limits on the use of specified items at public assembly events or at any of the various public venues in the City for public protests/assemblies in order to ensure the safety of the general public and police.

S. In addition to the above factual findings, the City Council in enacting this Ordinance does hereby also take legislative notice of the various principles and decisions regarding the regulation of public assemblies, including but not limited to, the following:

1. Public streets, sidewalks and parks are the archetypes of a traditional public forum where the government cannot favor one speaker over another based on the viewpoint of the speaker. *See Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988); *see also Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828 (1995). The government may regulate First Amendment activities in traditional public fora, such as streets, sidewalks, and parks when such restrictions are reasonable time, place and manner restrictions that are: content neutral; narrowly tailored to serve a significant government interest; and leave open ample alternative channels of communication. *See Cornelius v. NAACP Legal*

Defense and Educational Fund, 473 U.S. 788, 799-800 (1985); *see also*; *Bay Area Peace Navy v. United States*, 914 F. 2d 1224 (9th Cir. 1990).

2. The First Amendment does not protect violence. *See N.A.A.C.P v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982).

3. The Supreme Court has established that the government may not regulate speech based on its substantive content or the message it conveys. *Members of the City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). Nor may the government favor one view or one speaker over another. *Rosenberger*, 515 U.S. at 828.

4. In response to potential angry or inflammatory speech, the City of Modesto may increase its police presence; enact security measures to ensure the safety of the public; arrest those who actually engage in violent conduct; and may enact time, place, and manner regulations to maintain safety during public events. *See Collins v. Jordan*, 110 F. 3d 1363, 1372 (9th Cir. 1996); *see also Walker v. City of Birmingham*, 388 U.S. 307 (1967); *Long Beach Area Peace Network v. City of Long Beach*, 574 F. 3d 1011, 1024 (9th Cir. 2009).

5. The City of Modesto has a substantial interest in safeguarding its citizens against violence and in protecting police and demonstrators alike. *See Hill v. Colorado*, 530 U.S. 703, 724-25 (2000); *see also Vlasak v. Superior Court*, 329 F. 3d 683, 689 (9th Cir. 2003). Specifically, case law has confirmed that Modesto may enact regulations to make sure that materials along with other similar objects such as glass or metal water bottles and umbrellas are not used as weapons. The City takes legislative notice of the City of Los Angeles' regulations restricting certain objects at demonstrations and has modeled this regulation in keeping with the Los Angeles provisions validated by the Ninth Circuit in the *Vlasak* decision. *See Vlasak*, 329 F.3d at 689; *see also Edwards v. City of Coeur D'Alene*, 262 F. 3d 856, 863 & 866 (9th Cir. 2001).

T. It is imperative that individuals engaging in peaceful expressive public activity do so without fear of violence and that law enforcement personnel dedicated to protecting such activity be allowed to do so without suffering injury. This Urgency Ordinance provides a narrowly tailored content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counterprotests, picket lines, marches, or public assemblies in the City of Modesto. The restrictions limit the use of facial coverings that obscure one's identity at these specific public events (with exceptions for religious and medical reasons) without banning costumes or other expressive clothing. The restrictions in Section 4-23.02 are also directed at limiting other items such as umbrellas, hardshell helmets and glass or metal water bottles that can, and have been weaponized, while still allowing for peaceful expressive activity. The restrictions also limit the use of tactical gear by members of the general public as such items have a high potential to be used for intimidation and/or to increase the likelihood of violent confrontation and this limitation addresses the significant government interest in maintaining the peace at protests while also allowing for peaceful expressive activity.

U. Modesto's restriction precluding face coverings subject to religious and medical exemptions means that individuals attending public protests on public streets and in public spaces

cannot generally speaking hide their identity. While some concerns have been raised for the need to have public protestors remain anonymous, the City Council recognizes that in our current digital age individuals understand that cameras are recording us constantly out in public spaces such as at City Hall, at the 10th Street Plaza or on major public rights-of ways. This fact when added with the extensive technology at play that is recording our daily activities in public spaces via the prevalence of iPhone cameras, Ring cameras and the like establishes that virtually all of our movements within the public rights of ways are subject to possible video recordation. And, in fact several of the individuals who participated in protests and expressed the concern for anonymity appeared at the Modesto City Council meeting unmasked, although the meetings are regularly recorded and broadcast to a large audience.

V. The City Council also finds that none of the individuals urging anonymity here have public safety concerns of the nature that was at play in *Ghafari v. Municipal Court*, 87 Cal. App. 3d 255, 260 (1978), where Iranian students were protesting in front of the Iranian consulate and all parties agreed that the protestors and their families back in Iran would be subject to potential violence and retaliation based on their presence at the protest.

W. The City Council also takes note that the numerous cases offered in support of anonymity are predominately drawn from case law assessing the constitutional permissibility of mandating the disclosure of membership names or leaflet sponsorship for the offering of handbills or other publicly disseminated materials. See *NAACP v. State of Alabama*, et al., 357 U.S. 449, 460 (1958) [finding it constitutionally impermissible to require the NAACP to produce membership lists in support of registering as a foreign corporation] and *Talley v. California*, 362 U.S. 60, 64 (1960) [finding the City of LA requirement to identify names of individuals who prepared, distributed or sponsored handbills to be constitutionally infirm] and *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341 (1995) [finding a right to anonymity in the publishing of leaflets]. The issue as to identity being revealed on a public street is markedly different than the concerns for anonymity found in the noted case law. The issues at play in Modesto addressing the need for anonymity for First Amendment expression and assembly on a public right-of way is simply significantly different as people appear in plain view on a daily basis and are in fact subject to extensive recording when present in public spaces and public streets.

X. The City Council has reasonable basis to believe based on the experiences of the Modesto Police Department at prior public protests that the face covering prohibition is justified based on safety concerns. As well, the City takes note of experiences of other jurisdictions outside California upholding a face mask prohibition. See *Ryan v. County of DuPage*, 45 F. 3d 1090 (7th Cir. 1995) [upheld rule prohibiting wearing masks in courthouse based on heightened security concerns]; and *State of Georgia v. Miller*, 260 Ga. 669 (1990) [Georgia's Supreme Court upheld anti-mask statute that proscribed wearing a mask by a KKK member to hide their identity and intimidate others].

Y. On December 2, 2025, the City Council held a public meeting during which it considered the adoption of this Urgency Ordinance pursuant to California Government Code § 36937 and the Modesto Charter § 716. Both California Government Code § 36937 and Modesto Charter § 716 allow the adoption of such urgency ordinances to take effect immediately to ensure the immediate preservation of the public peace, health, safety, and general welfare in the City of Modesto.

Z. The restrictions on use of specified items during public assembly adopted in Section 4-23.02 and revised herein are necessary in order to protect the public health, safety, and welfare by providing a mechanism to limit and prevent violence and promote peaceful assembly. These are content-neutral time, place and manner restrictions that allow for peaceful public expressive activity. The restrictions are narrowly tailored to address the City’s interest in safety and preventing violence and to the extent they burden expressive activity they leave ample alternatives for communication. The regulations make public assembly safer by banning objects that can readily be weaponized and help ensure the safety of all protestors, counter-protestors and observers by making sure that individuals do not hide their identity to allow for criminal activity without depriving people of the opportunity to demonstrate, rally, protest, counter-protest, picket, march, assemble or otherwise engage in peaceful free speech activities.

AA. These regulations adopted herein are necessary in order to protect the public health, safety, and welfare by providing a mechanism to address the potential violence and companion property damage and personal injuries that have accompanied public protests, rallies, and demonstrations in cities such as Los Angeles, Portland, and Chicago.

SECTION 2. AMENDMENT OF MUNICIPAL CODE.

The City of Modesto Municipal Code Title 4 (Public Welfare, Safety and Health), Chapter 23, titled “Restrictions on Use of Specified Items During Public Assembly,” Sections 4-23.02 (a) (13), (a) (15) and (a) (17) are hereby amended as follows (with additions underlined and deletions in ~~strike through~~):

Section 4-23.02 Restrictions

(a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:

(13) The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer’s face from view and conceals the wearer’s identity, except for:

(i) coverings worn due to religious beliefs, practices, or observances. For purposes of this section, the religious exemption will apply to any individual wearing a religious garment that covers their face including, but not limited to hijabs, niqabs, burkas and the functional equivalent;

(ii) ~~or~~ coverings worn due to medical necessity. For purposes of this section, the medical necessity exemption shall apply to any individuals who are wearing medical grade masks including but not limited to a surgical mask, disposable face mask, N95 mask, KN95 mask, elastomeric mask, and/or the functional equivalent but not for balaclavas, ski masks or the like; and

(iii) the restrictions of Section 4-23.02 (a)(13) do not apply to costumes which obscure the face as part of the expressive function of the costume including, coverings worn as part of a costume in connection with a holiday event (e.g. Halloween), masquerade event (e.g. Mardi Gras), theatrical or other entertainment event, and/or the functional equivalent.

(15) Any **hardshell** impact resistant helmet, including, but not limited to: motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets; **This provision does not include softshell bicycle/sports helmets;**

(17) Any umbrellas in the absence of rain- **or being used to protect from extreme heat.** ~~During rainy weather an~~ **When an umbrella may be used based on these weather conditions, the** umbrella shall not exceed sixteen (16) inches in its longest dimension when fully collapsed and shall have a blunt end;

SECTION 3. SEVERABILITY.

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Modesto hereby declares that it would have adopted each section, sentence, clause, or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

SECTION 3. EFFECTIVE DATE/URGENCY.

This Urgency Ordinance shall be passed and adopted at one and the same meeting and shall become effective immediately. The reasons for this urgency are set forth in Paragraphs A-W inclusive.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of December 2025, by Councilmember Bavaro, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Wright, was upon roll call carried and ordered printed and published by the following votes:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:
By: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
JOSE SANCHEZ, 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 2nd day of December, 2025, by Councilmember Bavaro, which motion being duly seconded by Councilmember Wright was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams,
Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Sue Zwahlen*
SUE ZWAHLEN, Mayor

ATTEST:
By: *Diane Nayas-Perez*
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

Effective Date: December 2, 2025

6345441

ORDINANCE NO. 3805- C.S.

AN ORDINANCE AMENDING THE CITY OF MODESTO MUNICIPAL CODE TITLE 4, CHAPTER 23, “RESTRICTIONS ON USE OF SPECIFIED ITEMS DURING PUBLIC ASSEMBLY,” PROVIDING VARIOUS REVISIONS TO THE TIME, PLACE AND MANNER REGULATIONS AS TO PUBLIC ASSEMBLIES

SECTION 1. FINDINGS

A. The City Council of the City of Modesto hereby finds as follows: revisions to the City’s Municipal Code implemented by this Ordinance are necessary in order to respond to preserve the public health, safety and welfare. Specifically, the revisions and amendments to Municipal Code Title 4, Chapter 23 included in this Ordinance are essential and necessary to improve the City’s regulation of public assemblies, and thereby ensure the preservation of the public peace, health, safety and general welfare in the City of Modesto.

B. The City Council desires to amend Title 4 entitled “Public Welfare, Safety and Health” of its Municipal Code by revising certain sections of Chapter 23, entitled “Restrictions on Use of Specified Items During Public Assembly” to provide refinement to the critically important rules regulating the use of face coverings subject to certain exceptions; regulating using umbrellas as potential weapons; and restrictions on the use of tactical clothing and hardshell helmets during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property so as to safeguard against violence and promote peaceful assembly for Modesto citizens, Modesto businesses and property owners, along with protection of the police and visitors alike. These regulations serve to deter violence, property damage and any bodily harm to individuals that wish to engage in peaceful protests and demonstrations.

C. In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as sidewalks, streets, and public parks. The City Council does not intend to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place and manner regulations that address the need to prevent violent, dangerous and hazardous situations from arising and to promote the safety of both the public, Modesto residents, Modesto business owners along with the police.

D. The revisions to the City’s Municipal Code implemented by this Ordinance are necessary in order to respond to recent developments regarding various public protests/assemblies that are occurring in the City, and which raise serious safety concerns regarding protecting citizens, businesses, property, and police alike from any violent disputes, and in order to reduce the threat of serious bodily injury or property damage for all future public protests/assemblies in Modesto. Specifically, the amendments to the City’s Municipal Code Title 4, Chapter 23 that are included in this Ordinance are essential and necessary to ensure the orderly implementation of restrictions on specified items used at public assemblies and masks concealing identity, to reduce the

likelihood of violence and property damage and to ensure the safety of the general public, event attendees, counter-protestors and the police, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

E. The City supports peaceful protests, demonstrations, and events. Unfortunately, some individuals have used protests and other public assembly events as “cover” to commit acts of violence, arson, and vandalism. This is especially true for those individuals who wear face coverings in hopes of remaining anonymous and in order to commit criminal acts without fear of accountability. It is the intent of the City in enacting this Ordinance to ensure that public assembly events are peaceful and safe.

F. The City of Modesto has a history of the Proud Boys attending various events in the City, including the annual Straight Pride event where many participants arrive wearing identity obscuring masks. (See e.g. Exhibits 8-11.) The Proud Boys have an established reputation for violence and the organization has been designated as a hate group by the Southern Poverty Law Center. The City takes note of its prior experience with the Straight Pride event, which has attracted the participation of the Proud Boys, with event organizers specifically having invited the Proud Boys to attend past Straight Pride events. The Proud Boy members are known to participate in white supremacist rallies, events, and organizations and are reported to have been violent during prior protests. The organizer of the Straight Pride event has also previously identified his straight pride organization as a “peaceful racist” group. In response, MoPRIDE, a Modesto organization providing support to the LGBTQ+ community, has offered safe places for people during the Straight Pride event as concerns for individuals’ personal safety and the likelihood of potential violence against members of the LGBTQ+ community is a serious concern.

G. As well, Anti-fascist (“Antifa”) groups track the various public protests/assemblies in Modesto and have attended events in Modesto to counter-protest. Antifa groups are known to wear masks to obscure their identities and have engaged in violence during prior protests.

H. There is an increased risk that if individuals wear masks or use other apparel to cover their faces during protests or public assemblies to conceal their identities, do so in order to utilize their anonymity to commit acts of violence or vandalism without concern of identification and apprehension, disturbing the ability of others to safely assemble and demonstrate peacefully.

I. As well, based on the Chief of Police’s experience and expertise, tactical gear worn at prior protests in the City, and other forms of tactical gear such as gas masks, bullet-resistant vests, flak jackets, stab resistant vests, and/or load bearing vests, are all associated with the potential for violent clashes. The presence of such tactical gear escalates tensions and/or becomes a trigger for confrontation between protestors and counter-protestors or between protestors/counter-protestors and police. Some examples of tactical gear, such as tactical vests, impact resistant helmets and other hardshell helmets are shown in the attached exhibits of photos drawn from various City protests. (See e.g. Exhibits 1-3, 14-17.) Past events demonstrate that when members of the public wear tactical gear to protests/counter-protests, it is used as an intimidation tactic, to cause an aggressive atmosphere, cause confusion, and/or create a “battlefield” mentality, all of which increases the likelihood of violence. (See e.g. Exhibits 1-4, 14-17.) Additionally, certain gear, such as hardshell helmets can be easily removed and weaponized, increasing the risk of bodily harm if confrontations arise. (See e.g. Exhibits 16-18.)

J. Specific examples of conduct prohibited under Section 4-23.02 *et seq.* also include August 2020, 2021 and 2022 protests and counter-protests, where groups of participants arrived wearing tactical gear and/or concealing a wood block inside a tactical vest. (See Exhibits 8 – 20.) During these protests, several individuals wore hard helmets and face-coverings, and donned tactical gear that is associated with a paramilitary “battle ready” build up. (See Exhibits 1, 14 – 17.) Umbrellas were used not simply for shade, but as shields or to obscure movement and vision. (See Exhibits 3, 21-22.) The Police Chief has also documented various events where masked participants, including those wearing ski masks, balaclavas, and neck gaiters/tubes, have used masks to hide identity and/or as a means to intimidate, including when acting in coordinated masked groups. (See e.g. Exhibits 1-11.)

K. Since the City’s adoption of Chapter 23 in August 2019, there have been numerous public protests that have taken place in the City. The City has a reasonable basis to believe that the Chapter 23 regulations, and their consistent enforcement, have resulted in reduced violence at these public protests. Additionally, since 2022, there has been a notable decline in violations and incidents at demonstrations, as the consistent enforcement of Section 4-23.02 *et seq.* set a clear expectation that Modesto is not a place for groups to come with a “battle ready” or “battlefield” mentality. This has resulted in a more inviting environment for individuals to safely exercise their First Amendment rights in the City.

L. The City has a reasonable basis to believe that the low incidents of violence compared to what it believes would have occurred without the 2019 adoption of Section 4-23.02 is due to the consistent enforcement of the mask covering prohibition, the prohibition on tactical gear such as gas masks, impact resistant helmets or other hardshell helmets, bullet-resistant vests, flak jackets, or stab resistant vests, and/or load bearing vests set forth in subsections (a)(14)-(19) of Section 4-23.02, along with the prohibition on bringing various items to public protests that can be converted into weapons such as flagpoles, large sticks, umbrellas, glass and metal water bottles and the like.

M. There are significant concerns about violence at public events and about violent clashes between those with opposing views. These incidents of violence have been particularly heightened during the public protests that have unfolded in connection with the various ICE raids that have occurred within California and continue to escalate with the prior deployment of the National Guard to Los Angeles, Portland, and Chicago. Numerous public protests, demonstrations and rallies conducted throughout the nation in cities such as Los Angeles, Portland, and Chicago, have erupted in violence between demonstrators and counter-demonstrators, and violence against law enforcement personnel.

N. Accordingly, it is necessary for the City to maintain the restrictions set forth in Section 4-23.02, including maintaining the face covering restriction but to further refine the exceptions to the face covering prohibition for both medical and religious reasons in order to maintain the public safety issues that are achieved by having this provision in play while allowing for the noted limited exceptions.

O. The City’s regulations set forth in Section 4-23.02, including the masking regulations, restrictions on items that can be weaponized and restrictions on tactical gear are viewpoint and content neutral and apply with equal application regardless of the message of any

speaker, protest or demonstration. The City recognizes that recently there continues to be an elevated level of tension between groups from different sides of the political aisle and the regulations in Section 4-23.02 will continue to help reduce the likelihood of violence during public assemblies between these deeply divided groups.

P. At various protests, devices such as poles, sticks, signs, umbrellas, wood and metal pipes, bats, chains, as well as certain types of containers including but not limited to glass bottles, metal water bottles, filled with flammable or noxious substances (such as urine) and aerosol sprays deployed to cause flames or attack olfactory systems, and other items have been used as improvised weapons resulting in injuries and property damage. Demonstrators have also carried shields, outfitted themselves in ballistic protection gear, including hiding large wooden blocks, in order to be able to throw objects at police, and to be emboldened to instigate violence against others without fear of identification and accountability when they cover their faces.

Q. The City of Modesto has seen an increase in public protests in the community and wants to ensure that the City Council is proactive in protecting the health, safety and welfare of the protestors, counter protestors and community at large versus taking a “wait-and-see” approach. The City Council has a reasonable basis to believe that the face mask restriction is necessary to make sure that protestors, counter protestors and observers are not shielding their identity in order to commit criminal acts and go undetected while maintaining the rights of protestors to exercise their First Amendment rights in a safe environment. Indeed, the City Council has a reasonable basis to believe that protestors will be deterred from exercising their First Amendment rights to peacefully assemble if they are fearful for their own public safety at such an event. The City Council has a reasonable basis to believe that the face mask prohibition serves the public health, safety and welfare and serves to prevent violence from occurring at public protests/ assemblies in the City.

R. The adoption of this Ordinance is a necessary and critical tool for the City to update the time, place and manner regulations setting limits on the use of specified items at public assembly events or at any of the various public venues in the City for public protests/assemblies in order to ensure the safety of the general public and police.

S. In addition to the above factual findings, the City Council in enacting this Ordinance does hereby also take legislative notice of the various principles and decisions regarding the regulation of public assemblies, including but not limited to, the following:

1. Public streets, sidewalks and parks are the archetypes of a traditional public forum where the government cannot favor one speaker over another based on the viewpoint of the speaker. *See Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988); see also *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828 (1995). The government may regulate First Amendment activities in traditional public fora, such as streets, sidewalks, and parks when such restrictions are reasonable time, place and manner restrictions that are: content neutral; narrowly tailored to serve a significant government interest; and leave open ample alternative channels of communication. *See Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 799-800 (1985); see also; *Bay Area Peace Navy v. United States*, 914 F. 2d 1224 (9th Cir. 1990).

2. The First Amendment does not protect violence. See *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982).

3. The Supreme Court has established that the government may not regulate speech based on its substantive content or the message it conveys. *Members of the City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). Nor may the government favor one view or one speaker over another. *Rosenberger*, 515 U.S. at 828.

4. In response to potential angry or inflammatory speech, the City of Modesto may increase its police presence; enact security measures to ensure the safety of the public; arrest those who actually engage in violent conduct; and may enact time, place, and manner regulations to maintain safety during public events. See *Collins v. Jordan*, 110 F. 3d 1363, 1372 (9th Cir. 1996); see also *Walker v. City of Birmingham*, 388 U.S. 307 (1967); *Long Beach Area Peace Network v. City of Long Beach*, 574 F. 3d 1011, 1024 (9th Cir. 2009).

5. The City of Modesto has a substantial interest in safeguarding its citizens against violence and in protecting police and demonstrators alike. See *Hill v. Colorado*, 530 U.S. 703, 724-25 (2000); see also *Vlasak v. Superior Court*, 329 F. 3d 683, 689 (9th Cir. 2003). Specifically, case law has confirmed that Modesto may enact regulations to make sure that materials along with other similar objects such as glass or metal water bottles and umbrellas are not used as weapons. The City takes legislative notice of the City of Los Angeles' regulations restricting certain objects at demonstrations and has modeled this regulation in keeping with the Los Angeles provisions validated by the Ninth Circuit in the *Vlasak* decision. See *Vlasak*, 329 F.3d at 689; see also *Edwards v. City of Coeur D'Alene*, 262 F. 3d 856, 863 & 866 (9th Cir. 2001).

T. It is imperative that individuals engaging in peaceful expressive public activity do so without fear of violence and that law enforcement personnel dedicated to protecting such activity be allowed to do so without suffering injury. This Ordinance provides a narrowly tailored content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counterprotests, picket lines, marches, or public assemblies in the City of Modesto. The restrictions limit the use of facial coverings that obscure one's identity at these specific public events (with exceptions for religious and medical reasons) without banning costumes or other expressive clothing. The restrictions in Section 4-23.02 are also directed at limiting other items such as umbrellas, hardshell helmets and glass or metal water bottles that can, and have been weaponized, while still allowing for peaceful expressive activity. The restrictions also limit the use of tactical gear by members of the general public as such items have a high potential to be used for intimidation and/or to increase the likelihood of violent confrontation and this limitation addresses the significant government interest in maintaining the peace at protests while also allowing for peaceful expressive activity.

U. Modesto's restriction precluding face coverings subject to religious and medical exemptions means that individuals attending public protests on public streets and in public spaces cannot generally speaking hide their identity. While some concerns have been raised for the need to have public protestors remain anonymous, the City Council recognizes that in our current digital age individuals understand that cameras are recording us constantly out in public spaces such as

at City Hall, at the 10th Street Plaza or on major public rights-of ways. This fact when added with the extensive technology at play that is recording our daily activities in public spaces via the prevalence of iPhone cameras, Ring cameras and the like establishes that virtually all of our movements within the public rights of ways are subject to possible video recordation. And, in fact several of the individuals who participated in protests and expressed the concern for anonymity appeared at the Modesto City Council meeting unmasked, although the meetings are regularly recorded and broadcast to a large audience.

V. The City Council also finds that none of the individuals urging anonymity here have public safety concerns of the nature that was at play in *Ghafari v. Municipal Court*, 87 Cal. App. 3d 255, 260 (1978), where Iranian students were protesting in front of the Iranian consulate and all parties agreed that the protestors and their families back in Iran would be subject to potential violence and retaliation based on their presence at the protest.

W. The City Council also takes note that the numerous cases offered in support of anonymity are predominately drawn from case law assessing the constitutional permissibility of mandating the disclosure of membership names or leaflet sponsorship for the offering of handbills or other publicly disseminated materials. See *NAACP v. State of Alabama*, et al., 357 U.S. 449, 460 (1958) [finding it constitutionally impermissible to require the NAACP to produce membership lists in support of registering as a foreign corporation] and *Talley v. California*, 362 U.S. 60, 64 (1960) [finding the City of LA requirement to identify names of individuals who prepared, distributed or sponsored handbills to be constitutionally infirm] and *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341 (1995) [finding a right to anonymity in the publishing of leaflets]. The issue as to identity being revealed on a public street is markedly different than the concerns for anonymity found in the noted case law. The issues at play in Modesto addressing the need for anonymity for First Amendment expression and assembly on a public right-of way is simply significantly different as people appear in plain view on a daily basis and are in fact subject to extensive recording when present in public spaces and public streets.

X. The City Council has reasonable basis to believe based on the experiences of the Modesto Police Department at prior public protests that the face covering prohibition is justified based on safety concerns. As well, the City takes note of experiences of other jurisdictions outside California upholding a face mask prohibition. See *Ryan v. County of DuPage*, 45 F. 3d 1090 (7th Cir. 1995) [upheld rule prohibiting wearing masks in courthouse based on heightened security concerns]; and *State of Georgia v. Miller*, 260 Ga. 669 (1990) [Georgia's Supreme Court upheld anti-mask statute that proscribed wearing a mask by a KKK member to hide their identity and intimidate others].

Y. On December 2, 2025, the City Council held a public meeting during which it considered the adoption of this Ordinance pursuant to the City of Modesto Charter § 716.

Z. The restrictions on use of specified items during public assembly adopted in Section 4-23.02 and revised herein are necessary in order to protect the public health, safety, and welfare by providing a mechanism to limit and prevent violence and promote peaceful assembly. These are content-neutral time, place and manner restrictions that allow for peaceful public expressive activity. The restrictions are narrowly tailored to address the City's interest in safety and preventing violence and to the extent they burden expressive activity they leave ample alternatives

for communication. The regulations make public assembly safer by banning objects that can readily be weaponized and help ensure the safety of all protestors, counter-protestors and observers by making sure that individuals do not hide their identity to allow for criminal activity without depriving people of the opportunity to demonstrate, rally, protest, counter-protest, picket, march, assemble or otherwise engage in peaceful free speech activities.

AA. These regulations adopted herein are necessary in order to protect the public health, safety, and welfare by providing a mechanism to address the potential violence and companion property damage and personal injuries that have accompanied public protests, rallies, and demonstrations in cities such as Los Angeles, Portland, and Chicago.

SECTION 2. AMENDMENT OF MUNICIPAL CODE.

The City of Modesto Municipal Code Title 4 (Public Welfare, Safety and Health), Chapter 23, titled “Restrictions on Use of Specified Items During Public Assembly,” Sections 4-23.02 (a) (13), (a) (15) and (a) (17) are hereby amended as follows (with additions underlined and deletions in ~~strikethrough~~):

Section 4-23.02 Restrictions

(a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:

(13) The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer’s face from view and conceals the wearer’s identity, except for:

(i) coverings worn due to religious beliefs, practices, or observances. For purposes of this section, the religious exemption will apply to any individual wearing a religious garment that covers their face including, but not limited to hijabs, niqabs, burkas and the functional equivalent;

(ii) ~~of~~ coverings worn due to medical necessity. For purposes of this section, the medical necessity exemption shall apply to any individuals who are wearing medical grade masks including but not limited to a surgical mask, disposable face mask, N95 mask, KN95 mask, elastomeric mask, and/or the functional equivalent but not for balaclavas, ski masks or the like; and

(iii) the restrictions of Section 4-23.02 (a)(13) do not apply to costumes which obscure the face as part of the expressive function of the costume including, coverings worn as part of a costume in connection with a holiday event (e.g. Halloween), masquerade event (e.g. Mardi Gras), theatrical or other entertainment event, and/or the functional equivalent.

(15) Any **hardshell** impact resistant helmet, including, but not limited to: motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets; **This provision does not include softshell bicycle/sports helmets;**

(17) Any umbrellas in the absence of rain- **or being used to protect from extreme heat.** ~~During rainy weather an~~ **When an umbrella may be used based on these weather conditions, the** umbrella shall not exceed sixteen (16) inches in its longest dimension when fully collapsed and shall have a blunt end;

SECTION 3. SEVERABILITY.

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Modesto hereby declares that it would have adopted each section, sentence, clause, or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases of the Ordinance be declared invalid, unenforceable 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 2nd day of December 2025, by Councilmember Bavaro, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following votes:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams
Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

By: 
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
JOSE SANCHEZ, 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 9th day of December 2025, Councilmember Alvarez moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the Ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST: 
By: DIANE NAYARES-PEREZ, City Clerk

(SEAL)

Effective Date: January 8, 2026