

ORDINANCE NO. 3582-C.S.

AN ORDINANCE AMENDING ARTICLES 1 AND 2 OF
CHAPTER 15 OF TITLE 4 OF THE MODESTO MUNICIPAL
CODE RELATING TO OUTDOOR DINING

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

SECTION 1. AMENDMENT OF CODE. Articles 1 and 2 of Chapter 15 of Title
4 of the Modesto Municipal Code are hereby amended as follows:

ARTICLE 1. OUTDOOR DINING ENCROACHMENT PERMIT REQUIRED.

4-15.101. PURPOSE.

This article establishes uniform regulations and operational standards for outdoor dining in the public right-of-way, primarily in the downtown area. These outdoor dining regulations are intended to ensure public safety and welfare, protect public property and promote the attractive use of public right-of-way, by regulating the location, height, design and use of outdoor dining barriers and fixtures. The purposes of these regulations are also to:

- (a) Assist property owners and tenants establishing outdoor dining areas in the public right-of-way;
- (b) Protect public safety and maintain accessibility of the sidewalk or street;
- (c) Encourage outdoor dining area designs that provide a good design relationship, spacing and location relative to other improvements in the public right-of-way;
- (d) Encourage new business development and facilitate the expansion of existing businesses in downtown Modesto;
- (e) Promote downtown Modesto as a vital and attractive pedestrian district;
- (f) Maintain meaningful public circulation;

- (g) Create a dynamic and lively atmosphere by encouraging attractive and functional designs for outdoor dining.

4-15.102. OUTDOOR DINING DEFINED.

Outdoor dining is defined as a permitted area within the public right-of-way consisting of tables and chairs for the consumption of food or beverages and which provides on-premises customer seating.

4-15.103. OUTDOOR DINING ENCROACHMENT PERMIT REQUIRED.

No owner or operator of a business establishment shall occupy any portion of a public sidewalk, court, plaza, alley or street with tables and chairs for outdoor dining without first obtaining a revocable encroachment permit in accordance with the provisions of this article.

4-15.104. AUTHORITY TO ISSUE OUTDOOR DINING ENCROACHMENT PERMITS.

The City Engineer, or his or her designated representative, is hereby authorized to issue outdoor dining encroachment permits to owners or operators of business establishments. The location and configuration of any outdoor dining area shall be subject to the approval of the City Engineer who shall consider public safety issues unique to the pedestrian and vehicular needs of a specific location. The City Engineer shall have the authority to deny any encroachment permit application if its issuance is determined to be detrimental to the public health, safety or general welfare. The decision of the City Engineer may be appealed to the City Manager or to a designee of the City Manager, pursuant to the provisions of Modesto Municipal Code Section 4-15.203(g). The decision of the City Manager or designated representative shall be final.

4-15.105. APPLICATION FOR OUTDOOR DINING ENCROACHMENT PERMIT.

- (a) An encroachment permit shall be required for all outdoor dining areas in the public right-of-way. An application shall be filed with the Community and Economic Development Department on a form provided by that department. Every owner or operator of a business establishment desiring to place tables and chairs in a public sidewalk, court, alley or street shall first submit an application for the issuance of an outdoor dining revocable

encroachment permit to the Community and Economic Development Department.

- (b) The application shall be accompanied by a space-use plan showing the location, number and arrangement of the tables and chairs to be used, the location of the entrance to the establishment, and the location of any existing sidewalk obstructions in the proposed area to be occupied by the tables and chairs. Trees and/or tree wells, traffic signs, planters, lamp posts, fire hydrants, parking meters, benches, barriers delimiting the dining area and all similar obstacles shall constitute obstructions.
- (c) Each application for an outdoor dining encroachment permit shall be submitted in accordance with the following requirements:
 - (1) Application Fee. The amount of the application fee is in an amount as shall be set forth from time to time by resolution of the City Council. The application must be signed by the business owner. This fee includes costs for review of the application and insurance, as well as pre-inspection and post-inspection of the outdoor dining site. No application fee shall be assessed for existing permit holders unless a new/revised permit is required.
 - (2) Proof of Insurance. Each application shall be accompanied by proof of insurance, as set forth in Section 4-15.109 of this article.
 - (3) Business License. Applicant must submit a copy of applicant's City of Modesto business license with the outdoor dining encroachment permit application.
 - (4) Outdoor Dining Areas With Barriers. Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that meets the requirements of this chapter and of the Alcoholic Beverage Control Board.
 - (5) Barrier Removal Deposit. A removal deposit shall be submitted at the time of application where a fixed barrier is proposed. If, at the time of cessation of outdoor dining use and/or revocation of use permit, the barrier is removed by the business owner or other responsible party, any removal deposit will be refunded. The deposit will also be refunded if the encroachment use permit is

denied. A removal deposit is not required for portable barriers. Existing permittees shall not be required to make a removal deposit unless a new/revised permit is required.

4-15.106. ISSUANCE OF OUTDOOR DINING ENCROACHMENT PERMIT.

- (a) No permit shall be issued until the permit applicant has paid the required application fee(s) associated with a one-time fee for the permit. The amount of the permit fee is in an amount as shall be set forth from time to time by resolution of the City Council.
- (b) No permit shall be issued until the applicant has complied with the Modesto Municipal Code and other applicable City standards as amended from time to time.
- (c) The permittee shall display a copy of the permit within the business establishment in an area clearly visible.

4-15.107. INDEMNIFICATION FOR USE OF PUBLIC PROPERTY.

The permittee shall indemnify, defend and hold harmless the City, its officials, officers, agents and employees from any and all claims, causes of action, losses, injuries or damages arising directly or indirectly from the negligent acts, errors or omissions of the permit holder, its officers, agents, employees or anyone rendering services on its behalf. This indemnity shall include all reasonable costs and attorney's fees incurred in defending any action covered by this section.

4-15.108. CONDITIONS AND RESTRICTIONS PERTAINING TO OUTDOOR DINING ENCROACHMENT PERMITS.

- (a) Location, Dimensions and Design.
 - (1) Sidewalk Minimum Clear Path. The outdoor dining area shall leave a minimum of not less than five (5) consecutive feet of sidewalk width of clear continuous path measured from the curb line to ensure adequate space for pedestrian traffic on the adjacent sidewalk. The minimum width stated above must be free of all obstacles and obstructions for a clear path of travel. For the purpose of minimum clear path, traffic signs, trees, street furniture

and all similar obstacles shall constitute obstructions. The specific requirements for this minimum clear path are set out on a diagram available to the applicant from the Community and Economic Development Department.

- (2) Clear Zones. Outdoor dining areas on public sidewalks may not intrude on pedestrian clear zones at corners and thus must be set back a minimum of six (6) feet from any crosswalk.
 - (3) Curbs, Ramps and Driveways. The outdoor dining area must not interfere with curbs, ramps or driveways.
 - (4) Building Access. No element of the outdoor dining area may interfere with access to any building including all paths of travel or exit.
 - (5) Egress From Dining Establishment. A clear path of travel from the doors of the dining establishment to the sidewalk and street must be provided. The width of the clear path of travel shall be no smaller than the width of the dining establishment door(s) and no less than three (3) feet.
 - (6) Barrier Height. Barriers shall maintain a minimum height of forty-two (42) inches and a maximum height of forty-eight (48) inches.
 - (7) Barrier Materials. Sectional fencing must be constructed of decorative metal (aluminum, steel or iron) and must be of a dark color (either painted or stained) to compliment downtown furnishings.
 - (8) Rope or Chain Barriers. Rope or chain barriers are permitted. The rope or chain must have a minimum diameter of one inch. Vertical support posts must be constructed of wood or metal.
- (b) Dining Areas Without Barriers or With Portable Barriers.
- (1) Outdoor dining areas without fixed barriers shall use portable barriers and/or portable fixtures (i.e. chairs, planters, table, etc.) that do not have any permanent or temporary attachments to buildings, sidewalks or other improvements.

- (2) Portable barriers and fixtures shall not be allowed in the outdoor dining area more than sixty (60) minutes prior to business opening or more than sixty (60) minutes following close of business.

(c) Dining Areas with Fixed Barriers.

- (1) Fixtures (i.e. chairs, planters, table, etc.) may remain in the outdoor dining area during non-business hours only if bolted or secured so as to prevent removal from the premises and to also ensure public safety.
- (2) Upon discontinuation of use of the outdoor dining area or the adjacent associated business, any and all items used to secure the tables and chairs (bolts, screws, etc.) shall be removed from the sidewalk and the sidewalk shall be repaired subject to the satisfaction of the City Engineer.
- (3) Fences and other barriers shall not be attached to the building.

(d) Fixtures in Dining Areas.

- (1) Permitted fixtures must be contained within the approved dining area and shall be limited to tables, chairs, landscape planters, umbrellas, heaters and menu boards.

(e) Landscape Planters.

- (1) Planters may be used in addition to or in place of other barrier designs.
- (2) Planters shall not exceed a height of thirty-two (32) inches. Plants shall not exceed a height of seventy-two (72) inches (six feet) above the sidewalk.
- (3) Planters shall contain plant materials in healthy condition.
- (4) Planters shall have a self-contained watering reservoir system that prevents any leakage onto the sidewalk.

- (5) Debris or litter caused by landscape planters shall be maintained or cleaned by the encroachment permit holder or property owner.
- (f) Signage.
 - (1) All signage in the outdoor dining area shall conform to Title 10 of the Modesto Municipal Code.
- (g) Maintenance and Operational Standards.
 - (1) Lighting. Adequate lighting must be provided by the operator to ensure safety of customers and pedestrians. Lighting shall be maintained in good working order.
 - (2) Litter and Debris. The outdoor dining area must remain clear of litter, food scraps, soiled utensils and dishes at all times. The permittee shall maintain the tables and chairs in the permitted outdoor dining area in a clean condition at all times. No debris shall be swept, washed or blown into the sidewalk, gutter or street.
 - (3) Pedestrian Access. It is the responsibility of the permittee to keep this sidewalk pedestrian zone clear and unimpeded for pedestrian movement. Movable items, like barriers, chairs or tables shall be positioned in accordance with the approved space-use plan at all times (outdoor dining occurs).
 - (4) Code Compliance. Outdoor dining areas must conform to and comply with all relevant regulations in this Code and all applicable building laws, fire and life safety laws including State laws and regulations.
- (h) Permit Not Deed or Easement. Permission to encroach upon a portion of a public sidewalk with tables and chairs granted through issuance of an outdoor dining encroachment permit under this chapter shall not constitute a deed or grant of an easement by the City.
- (i) Exceptions. All businesses with a valid outdoor dining permit at the time of Council's final adoption of the ordinance codified in this chapter are exempt from the requirements of Sections 4-15.107(a), (b) and (c), but shall maintain existing permitted conditions including, but not limited to,

the height, length, width, and placement of presently installed barriers. Said business will remain exempt until:

- (1) A total or partial change of ownership for any reason;
- (2) The business ceases to do business in its current location.

4-15.109. INSURANCE.

- (a) Each outdoor dining permittee shall provide evidence of insurance coverage as approved by the City's Risk Manager. The permittee shall obtain and maintain in force comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least one million dollars (\$1,000,000) covering the property and the permitted area on which the outdoor dining will be located.
- (b) The City of Modesto, its elected and appointed officials, officers, agents and employees shall be named as additional insureds on this policy. An endorsement must be issued as part of the policy reflecting compliance with this requirement.
- (c) A certificate of insurance shall contain provisions prohibiting cancellations, modifications, or lapse without thirty (30) days prior written notice to City. Said insurance shall apply as primary insurance and shall stipulate that any insurance maintained by the City shall be in excess of the permit holder's insurance and shall not contribute with it.
- (d) All new and existing permits must comply with these insurance requirements.

4-15.110. OUTDOOR DINING ENCROACHMENT PERMIT ANNUAL RENEWAL.

Annual Renewal Fee. An annual, non-refundable renewal fee shall be assessed for the costs of reviewing compliance, maintenance and insurance. The amount of the renewal fee is in an amount as shall be set forth from time to time by resolution of the City Council.

**ARTICLE 2. ALCOHOLIC BEVERAGE RESTRICTIONS
APPLICABLE TO OUTDOOR DINING AREAS.**

4-15.201. ALCOHOLIC BEVERAGE RESTRICTIONS.

The service of alcoholic beverages in an outdoor dining area shall be limited to a “bona fide public eating place” as defined by the California Business and Professions Code. Bona fide public eating places are licensed premises that are maintained in good faith and used for the regular service of meals to patrons. The premises must have suitable kitchen facilities and supply an assortment of foods commonly ordered at various hours of the day. Each of the following standards apply to outdoor dining areas which provide alcoholic beverage service:

- (a) Barriers. The outdoor dining area must be clearly and physically separated from pedestrian traffic. All barriers, railings or fences placed around the dining area shall be in place during hours of operation to clearly define the area. The spacing, if any, between barriers, railings, fences or planters must prevent pedestrian traffic through them.
- (b) Written Notice. The business operator shall post a written notice to customers that drinking or carrying an open container of alcohol is prohibited outside the outdoor dining area.
- (c) State Licensure. The outdoor dining area operation must be duly licensed by the State Department of Alcoholic Beverage Control. The City of Modesto requirements and restrictions for the service of alcoholic beverages in outdoor dining areas shall not be less than those required by the State Department of Alcoholic Beverage Control.
- (d) Exits. Any and all exits from the bona fide public eating place to be used for the service of alcoholic beverages to the outdoor dining area must be included in the outdoor dining encroachment permit issued pursuant to this chapter.
- (e) The service of alcoholic beverages shall be restricted solely to on-premise consumption by customers within the outdoor dining area.
- (f) Outdoor dining areas shall not be used primarily for alcoholic beverage consumption, and the opportunity to order food from the dining establishment’s menu shall be made available at all times when alcohol is served.

- (g) Police Department approval is required for alcohol sales after midnight in outdoor dining areas.

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

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

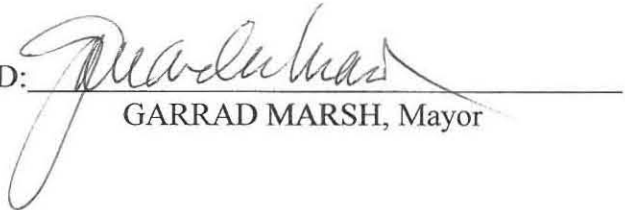
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of January , 2013, by Councilmember Burnside , who moved its introduction and passage to print, which motion being duly seconded by Councilmember Geer, was upon roll call carried and ordered printed and published by the following vote:

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


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

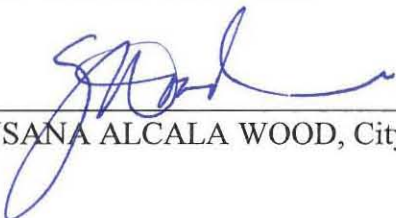

GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3582-C.S.

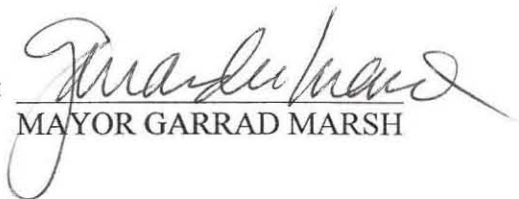
FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 22nd day of January, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR GARRAD MARSH

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: February 22, 2013

ORDINANCE NO. 3583-C.S.

AN ORDINANCE AMENDING SECTION 12-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PROFESSIONAL OFFICE ZONE, P-O, PROPERTY LOCATED AT 3724 DALE ROAD (FRANKLIN VAN KONYNENBURG).

WHEREAS, a verified application for an amendment to Section 12-3-8 of the Zoning Map was filed by Franklin Van Konynenburg on October 31, 2012, to rezone from low Density Residential Zone, R-1, to Professional Office Zone, P-O, property located at 3724 Dale Road, and

WHEREAS, after a public hearing held on December 17, 2012, it was found and determined by the Planning Commission that the requested change will not be detrimental to the public health, safety or welfare because the rezone to Professional Office (P-O) would provide for development that is compatible with surrounding land uses which include professional offices, a convalescent care facility and medical offices; the requested zone change will result in an orderly planned use of land because this section of Dale Road is transitioning to medical office uses, 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 allowable uses of the Professional Office (P-O) Zone is consistent with the Site's General Plan Land Use Designation of "Mixed Use" which allows for professional office uses, and

WHEREAS, by Resolution No. 2012-17, adopted on December 17, 2012, the Planning Commission recommended to the Council that the application of Franklin Van Konynenburg to amend Section 12-3-8 of the Zoning Map to rezone the hereinafter described

property from Low Density Residential Zone, R-1, to Professional Office Zone, P-O, be approved,

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

SECTION 1. After a public hearing held on February 5, 2013, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested zone change is required by public convenience or necessity, the requested zone change will result in an orderly planned use of land resources, the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan.

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

1. The requested change will not be detrimental to the public health, safety or welfare because the rezone to Professional Office Zone (P-O) would provide for development that is compatible with surrounding land uses which include professional office, a convalescent care facility, and residential uses.
2. The requested change will result in an orderly planned use of land because this section of Dale Road is transitioning to medical office uses.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the allowable uses of the Professional Office (P-O) Zone is consistent with the Site's General Plan Land Use Designation of "Mixed Use", which allows for professional office uses.

SECTION 2. ZONING CHANGE. Section 12-3-8 of the Zoning Map is hereby amended to rezone the following described property from Low Density Residential Zone, R-1, to Professional Office Zone, P-O:

R-1 to P-O

All of the Remainder parcel as shown on the Parcel Map filed in Book 51 of Parcel Maps at Page 35, Stanislaus County Records, lying in Section 12, Township 3 South, Range 8 East, Mount Diablo Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

BEGINNING at the Southwest corner of said Remainder parcel, being a point on the East line of Dale Road as shown on said Parcel Map; thence along said East line, North 00°19'04" West, 321.20 feet to the Northwest corner of said Remainder parcel; thence along the North line of said Remainder parcel, North 89°16'30" East, 500.11 feet to Northeast corner of said Remainder parcel; thence along the East line of said Remainder parcel, South 00°19'19" East, 321.20 feet to the Southeast corner of said Remainder parcel; thence along the South line of said Remainder parcel, South 89°16'30" West, 500.13 feet to the point of beginning.

Containing: 3.69 acres, more or less.

APN: 076-034-007

SECTION 3. ZONING MAP. Section 12-3-8 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 5th day of February, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Gunderson, Lopez

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Muratore and Mayor Marsh

APPROVED: _____


GARRAD MARSH, Mayor

ATTEST:


By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3583-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of February, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Gunderson, Lopez and Mayor Marsh

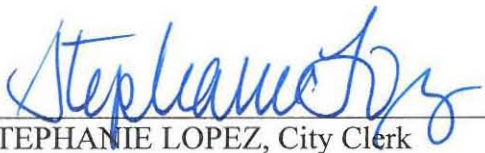
NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Muratore

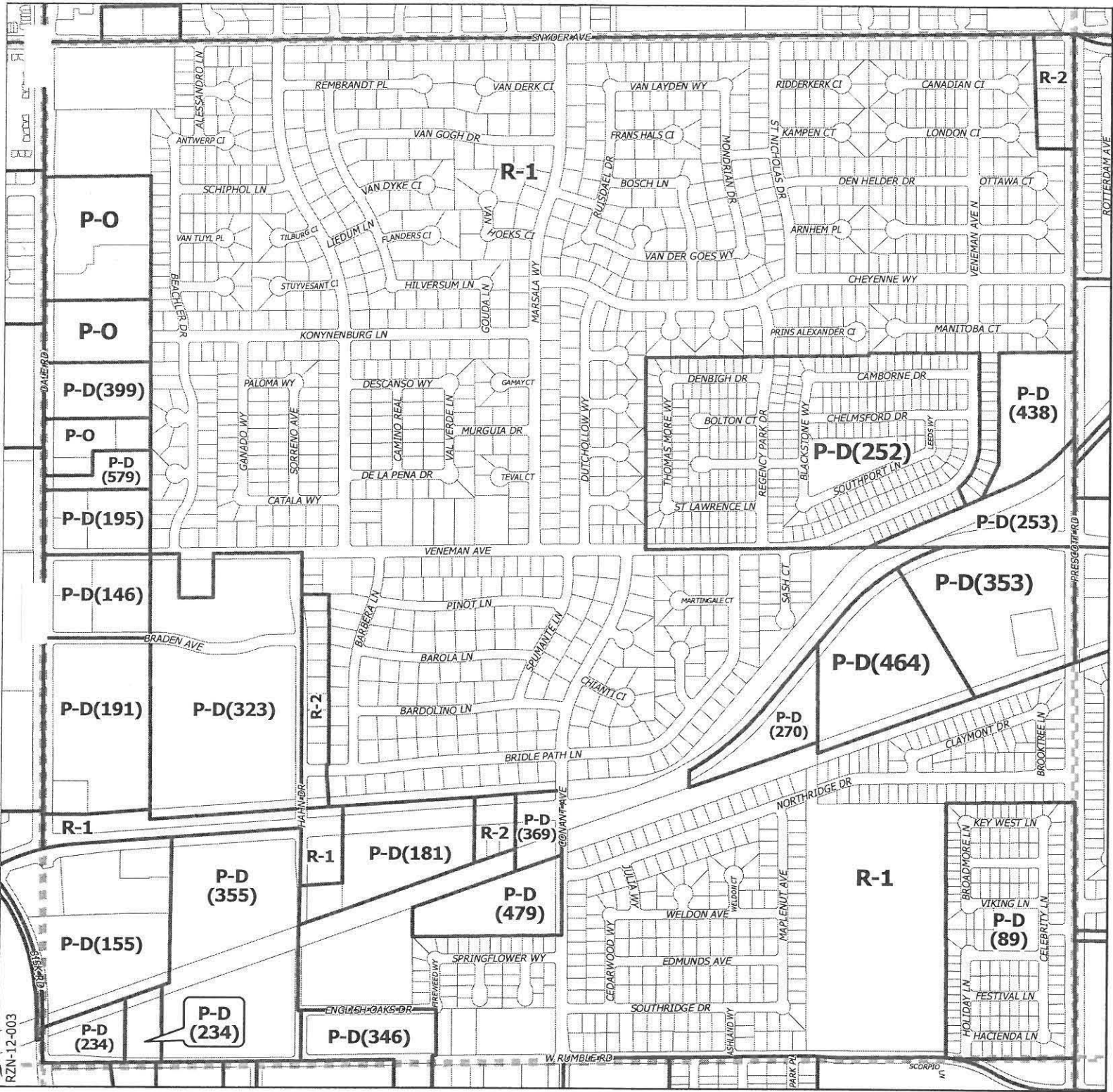
APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: March 12, 2013



1 inch = 700 feet
 3583-C.S.

ZONING MAP OF THE CITY OF MODESTO

12-3-8

ORDINANCE NO. 3584-C.S.

AN ORDINANCE AMENDING SECTIONS 4-1.414 AND 4-1.428 OF ARTICLE 4 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO ENTERTAINMENT ESTABLISHMENTS

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

SECTION 1. AMENDMENT OF CODE. Sections 4-1.414 and 4-1.428 of Article 4 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

4-1.414. PERMIT REQUIREMENT EXEMPTIONS.

The provisions of Section 4-1.406 relating to a permit shall not apply to any place of entertainment used exclusively for any of the following purposes:

This exemption does not relieve any exempt entertainment establishment from complying with all other applicable laws, particularly those laws related to noise levels and nuisances.

The Entertainment Commission reserves the right to remove an established exemption from a qualified establishment if the establishment poses a threat to public safety or welfare.

- (a) Entertainment provided for invited guests at a private event, such as a wedding reception, banquet, worship services, or where the event takes place at a property that is a residential occupancy.
- (b) Performances by students at educational institutions as defined by the Education Code where such performances are part of an educational or instructional curriculum or program;
- (c) Motion picture theaters not providing live entertainment;
- (d) Dance lessons, theatrical and performing arts lessons and student recitals;
- (e) Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;

- (f) Entertainment consisting of ambient or incidental music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, traditional jukebox, karaoke, guitarist or band. However, if there is an admission charge required to observe or attend such entertainment, the music will not be considered ambient or incidental;
- (g) Any establishment, venue or assemblage of seventy-five (75) persons or less, as described in the maximum occupancy load of the business;
- (h) Entertainment lawfully conducted at any of the following regulated businesses that is regulated or excluded by other established City Municipal Ordinances:
 - (1) "Adult-related establishments," regulated under Chapter 5-9.101, et seq.;
 - (2) "Amusement arcades," regulated under Chapter 4-1.100, et seq. However, if entertainment, other than the operation of amusement machines, is conducted on the premises of any amusement arcade, such amusement arcade shall not, by virtue of this provision, be exempt from the permit requirement of this Article;
- (i) Billiard and Pool Parlors. However, if entertainment, other than the playing of billiard or pool, is conducted on the premises of any billiard or pool parlor, such entertainment establishment shall not, by virtue of this provision, be exempt from the permit requirement of this Article.
- (j) Miniature Golf. However, if entertainment, other than the playing of miniature golf, is conducted on the premises of any miniature golf establishment, such miniature golf establishment shall not, by virtue of this provision, be exempt from the permit requirement of this Article.
- (k) The normal and customary fitness services provided by an athletic club or fitness center.
- (l) Parades.
- (m) Sporting Events.
- (n) Fundraisers that are for non-profit gain and meet the following requirements:

- (1) Capacity under 399;
- (2) Conduct the entire event within the building/structure; and
- (3) Do not change the usage of the facility.

4-1.428. RENEWAL OF PERMITS.

- (a) A permittee shall apply for permit renewal by submitting to the Permit Administrator before the expiration of any permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the City Council.
- (b) If a timely and complete application for renewal is filed, the permit's expiration shall be stayed until a decision on the renewal application is issued by the Entertainment Commission.
- (c) The Entertainment Commission shall either approve or deny the renewal of a permit within forty-five (45) calendar days of receipt of the complete application. The Entertainment Commission may extend the time for consideration of the application for up to an additional fifteen (15) calendar days with the written consent of the applicant. The failure of the Entertainment Commission to timely act shall constitute a conditional approval of the renewal of the permit.
- (d) The Entertainment Commission may approve the renewal of a permit if it finds that no circumstances existed during the term of the permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal that is inconsistent with any finding required for approval of a new permit for the applicant or location as specified in Section 4-1.413 or would justify the suspension, modification or revocation of the permit as specified in Section 4-1.417 or 4-1.419. Notwithstanding the above, the Entertainment Commission may add, delete or modify the permit conditions as a condition of permit renewal, using the criteria set forth in Section 4-1.413.
- (e) If a permit expires prior to the applicant filing a timely and complete application for renewal, the permittee may, for a fee, receive a one-time thirty (30) day extension, and within the thirty (30) day grace period the applicant must have turned in a complete entertainment application to the

Permit Administrator. The Entertainment Commission recommended the fee for this extension to be \$525.00.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of February, 2013, by Councilmember Burnside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore and Mayor Marsh

APPROVED: 
GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3584-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of February, 2013, Councilmember Gunderson, who moved its final adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Burnside, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: March 12, 2013

ORDINANCE NO. 3585-C.S.

AN ORDINANCE ADDING SECTION 5-4.405 TO ARTICLE 4
OF CHAPTER 4 OF TITLE 5 OF THE MODESTO MUNICIPAL
CODE RELATING TO DISPOSITION OF STRAY ANIMALS

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

SECTION 1. AMENDMENT OF CODE. Section 5-4.405 is hereby added to
Article 4 of Chapter 4 of Title 5 of the Modesto Municipal Code to read as follows:

5-4.405. DISPOSITION OF STRAY ANIMALS.

- (a) It shall be unlawful and a misdemeanor offense for any person who contains any stray animal (including cats) found at large or on their property to abandon the animal.

For the purposes of this section only the following definitions shall apply:

- (1) "Contains" shall mean traps, corners, confines or in some manner restricts the animal's freedom from continuing to roam.
 - (2) "Stray animal" means an animal that is running loose and at large with no owner present, and/or an animal that is trespassing on another's property.
 - (3) "Abandons" means once the animal is contained, the person transports the animal to a location other than where it was originally contained and releases the animal to freely roam.
- (b) Within twenty-four (24) hours after containing any such animal, the person doing so shall do one of the following:
- (1) Release the animal where it was originally contained or return the animal to the owner, if the owner is known;
 - (2) Report to City of Modesto Animal Control officials the fact that such animal is contained and include the location where the animal is contained, a description of the animal and license number of such animal, if any; or

- (3) Transport the animal to the Stanislaus Animal Services Agency facility and provide the date, time and location of when and where the animal was located when surrendering the animal to facility staff.
- (c) Animal Control Officers shall pick up and dispose of such animal in the same manner as though such animal had been found at large and impounded.
- (d) This section shall not be interpreted to apply to a person or organization registered with the Stanislaus Animal Services Agency as a caretaker for feral cats when that person is caring for feral cats.

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

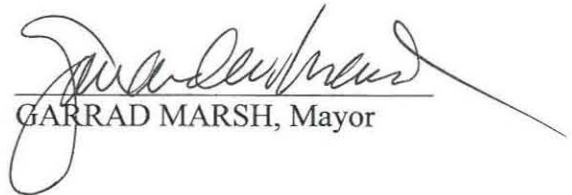
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of March, 2013, by Councilmember Muratore, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

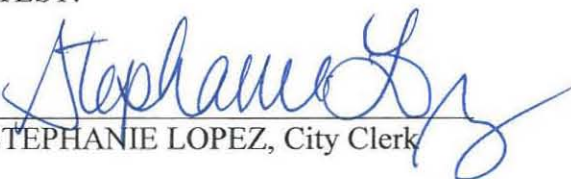
AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None



GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3585-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of March, 2013, Councilmember Burnside, who moved its final adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: March 12, 2013

ORDINANCE NO. 3586-C.S.

AN ORDINANCE AMENDING SECTIONS 5-4.203 AND 5-4.204 OF CHAPTER 4 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO DOGS

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

SECTION 1. AMENDMENT OF CODE. Sections 5-4.203 and 5-4.204 of Chapter 4 of Title 5 of the Modesto Municipal Code are hereby amended to read as follows:

5-4.203. LEASH REQUIRED.

- (a) No dog shall be permitted in or upon any public street, alley, park, parkway, or other public place in the City or in or upon any property belonging to said City, unless said dog shall be on a leash and is under the complete control of the person owning or at the time in possession of said dog. Said leash in no event shall be of a length greater than eight (8) feet.
- (b) The prohibitions contained in subsection (a) of this section will not apply to special use facilities, such as dog parks, as designated and posted by the Parks, Recreation & Neighborhoods Department.
- (c) Notwithstanding anything in this section to the contrary, no person shall be compelled to keep any dog in his possession on a leash while in or upon any public street, alley, park, parkway, or other public place in the City, if at the time, said dog is securely confined in an automobile.

5-4.204. VICIOUS DOG ABATEMENT HEARING PROCEDURE.

Purpose and Intent. Within the City of Modesto there are vicious dogs which constitute a public nuisance which should be abated. The provisions of this section provide an administrative procedure by which dogs found to be a nuisance may be abated following a hearing at which oral and documentary evidence is considered. This section is intended to supplement rather than supplant any other remedy available either under state law or the Modesto Municipal Code.

- (a) **Vicious Dog Defined.** Any dog, except one assisting a peace officer engaged in law enforcement duties, which demonstrates any of the following behavior, is presumed vicious:

- (1) An attack which requires a defensive action by any person to prevent bodily injury or property damage when such person is conducting himself or herself peacefully and lawfully.
- (2) An attack which results in property damage or in an injury to a person when such a person is conducting himself or herself peacefully and lawfully.
- (3) An attack on another animal, livestock, or poultry which occurs on property other than that of the owner of the attacking dog.
- (4) Any behavior which constitutes a threat of bodily harm to a person when such person is conducting himself or herself peacefully and lawfully.

For the purposes of this section, a person is conducting himself or herself peacefully and lawfully upon the private property of an owner or possessor of the dog when he or she is on such property in the performance of any duty imposed on such person by state or local law or by the laws of [or] postal regulations of the United States, or when he or she is on such property upon invitation, either expressed or implied.

- (b) **Investigation.** Any incident reported to the Modesto Police Department concerning a vicious dog may be investigated by the Police Chief, or his designee. The investigation may consist of reports of officers made at the time of the incident, or follow-up reports. If, based on the investigation, the Police Chief concludes that there is probable cause to believe that the dog is vicious, he shall so certify in writing within ten (10) working days following completion of the investigation to the person owning or controlling the dog. Thereafter a hearing shall be held pursuant to subsections (d), (e) and (f) below.
- (c) **Confinement of Dog.** If the Police Chief certifies that there is probable cause to believe that a dog is vicious and a risk to public safety, he may direct any animal control officer, police officer or other authorized employee of the City to enter the yard of any private residence or business in order to seize any such dog, whether running at large or not, and confine said dog at an appropriate animal shelter pending the decision of the City Manager following the hearing provided for in subsections (d), (e) and (f) below. The cost of said confinement shall be paid by the person owning or controlling such dog. The dog shall not be released until such costs have been paid in full.

- (d) **Hearing-Schedule.** A hearing date shall be set not later than ten (10) working days from the date of certification. The City Manager shall mail or otherwise deliver to the owner or person controlling the dog and other interested persons, including, but not necessarily limited to, all properties within three hundred (300) feet of the address of the owner or person controlling the dog, at least five (5) working days prior to the date set for hearing, a notice in substantially the following form:

NOTICE OF HEARING REGARDING VICIOUS DOG

To: (name) ; (address) :

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 5-4.204 of the Modesto Municipal Code, the Police Chief has certified that there is probable cause to believe a dog owned or controlled by you, a (breed), is vicious.

FURTHER NOTICE IS HEREBY GIVEN that on _____ the day of _____, 19____, at the hour of _____ o'clock, in the offices of the City Manager, City Hall, 801 11th Street, Modesto, California, the report of the Police Chief will be considered by the City Manager or an appointed hearing officer with such other oral and documentary evidence bearing upon the question of whether your dog is vicious. You may appear and may present evidence at the hearing. You may also be represented by an attorney. If you fail to appear without giving notice to the City Manager, the matter may proceed in your absence and such absence may be further considered a waiver of your right to present evidence and object to any decision made.

In the event your dog is found to be vicious, it will be ordered to be controlled, confined, destroyed, restricted, or otherwise abated as a public nuisance and any impoundment cost incurred shall be assessed against you.

A copy of this notice has been sent to property owners within three hundred (300) feet of your address.

Dated: _____

City Manager

- (e) **Hearing-Procedure.** At the hearing, which may be continued from time to time, both oral and documentary evidence may be taken from any interested person and considered in determining whether the dog is vicious. Any owner who fails to appear after notice as provided herein was given, without obtaining a continuance from the City Manager or an appointed hearing officer, may be deemed to have waived any right to introduce evidence or object to an order made by the City Manager. If the hearing is conducted by a hearing officer other than the City Manager, the hearing officer shall submit a report to the City Manager summarizing the evidence and making a recommendation as to disposition.
- (f) **Hearing-Findings: Public Nuisance.** If, based upon the hearing, and the report of the hearing officer, if any, the City Manager upholds the findings of the Police Chief that the dog is vicious, the City Manager shall so specify in writing together with the reasons therefor. Any dog found to be vicious is hereby deemed a public nuisance and shall be, pursuant to the order of the City Manager, humanely destroyed, be removed from the City, or the nuisance otherwise abated by appropriate order of the City Manager including, but not limited to, confinement, fencing, muzzling or leashing. The decision of the City Manager shall be made within ten (10) working days after the conclusion of the hearing and shall be final. A copy of the decision shall be sent by certified mail or personally served upon the person owning or controlling the dog.
- (g) **Appeal From the Decision of the City Manager.** The decision of the City Manager shall inform the person owning or controlling the dog that any appeal of the City Manager's decision must be filed with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.
- (h) **Cost of Impoundment.** If the City Manager finds the dog is vicious, the costs of impoundment incurred by the City, including any abatement period, shall be paid by the owner or the person controlling the dog and shall become a lien against the real property upon which the dog was kept and maintained until said lien is paid. If the order includes the release of a dog found to be vicious to the owner or person controlling it, the dog shall not be released until such costs have been paid in full. If such costs have not been paid within thirty (30) calendar days after the date of mailing or delivery of the order, the City Manager may dispose of the dog in any

manner provided by law, or return the dog and pursue alternative collection procedures. The total amount of the impoundment charges may be entered on the next fiscal year tax roll as a lien against the property upon which the dog was maintained and shall be subject to the same penalties as are provided for other delinquent taxes, liens or assessments of the City, or an action may be brought in the name of the City to recover the costs of impoundment.

- (i) Criminal Sanctions. The first violation of any order issued pursuant to subsection (f) above shall constitute an infraction. The second and any further violations within twenty-four (24) months of the order shall be misdemeanors.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of March, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and ordered printed and published by the following vote:

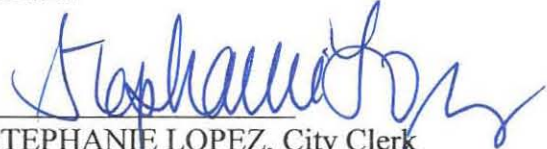
AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3586-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of April, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: May 9, 2013

ORDINANCE NO. 3587-C.S.

AN ORDINANCE ADOPTING THE 2013-2014 ANNUAL AND MULTI-YEAR OPERATING BUDGETS AND THE 2013-2014 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO AND THE RELATED INTER-FUND TRANSFERS

WHEREAS, pursuant to the Charter of the City of Modesto, the Mayor presented the Proposed Operating Budget and Capital Improvement Program for the 2013-2014 Fiscal Year to the Finance Committee at workshops held on May 20 and May 21, 2013, and

WHEREAS, the Finance Committee reviewed the Proposed Annual and Multi-year Operating Budgets and the Capital Improvement Program in a series of televised public workshops on May 20 and May 21, 2012 and

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

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

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

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was scheduled on June 11, 2013 during which the City Council considered the recommendations of the Finance Committee relating to the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

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

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

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

SECTION 1. ADOPTION OF BUDGET. That the Proposed Operating and Multi-year Budgets, a copy of which is on file in the City Clerk's Office and as shown in Exhibit 4, 5, 6, 7, and 9 (Exhibit 4-Mayor's Recommended Enhancements/Reductions, Exhibit 5-Proposed Operating Budget Addendum, Exhibit 6-Fund Summary, Exhibit 7-Transfer In/Out List, Exhibit 9-Multi-Year Operating Budget List) are hereby adopted as the Fiscal Year 2013-2014 Operating and Multi-year Budgets for the City of Modesto.

SECTION 2. ADOPTION OF BUDGET CONTROLS/FINANCIAL POLICIES. That the Financial Policies for budgetary control and authority as shown in Exhibit 8 and incorporated herein by reference is hereby adopted for the Fiscal Year 2013-2014.

SECTION 3. ADOPTION OF CAPITAL IMPROVEMENT PROGRAM. That the Capital Improvement Program, a copy of which is on file in the City Clerk's office and shown in the proposed CIP budget document and in Exhibit 1 and 2 (Exhibit 1-CIP List, Exhibit 2-CIP Addendum List) and other amounts previously approved for spending on Capital Improvement Projects are hereby adopted as the 2013-2014 Capital Improvement Program for the City of Modesto.

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

SECTION 6. COUNCIL POLICIES. That the Policy Issues outlined in the 2013-2014 Proposed Operating and Multi-year Budgets have been reviewed and are adopted hereby (Exhibit 3-Proposed Policies).

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

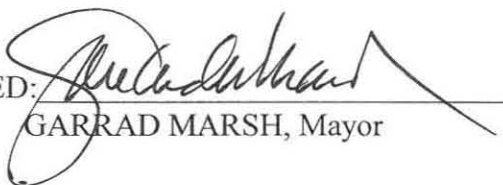
SECTION 8. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of June, 2013, by Councilmember Geer, who moved its adoption, and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: Burnside, Cogdill


ABSENT: Councilmembers: None

APPROVED: 
GARRAD MARSH, Mayor

ATTEST: 
STEPHANIE LOPEZ, City Clerk

(seal)

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 25th day of June, 2013, Councilmember Muratore, who moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: Burnside

ABSENT: Councilmembers: None

APPROVED:



MAYOR GARRAD MARSH

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: June 25, 2013

ORDINANCE NO. 3588-C.S.

AN ORDINANCE AMENDING SECTION 6-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO PREZONE TO PREZONE SPECIFIC PLAN (P-SP) ZONE, PROPERTY LOCATED NORTH OF PELANDALE AVENUE, EAST OF CARVER ROAD, SOUTH OF BANGS AVENUE AND WEST OF TULLY ROAD (FITZPATRICK HOMES)

WHEREAS, a verified application for an amendment to Sections 6-3-9 of the Zoning Map was filed by Fitzpatrick Homes to prezone to Prezone Specific Plan Zone, (P-SP), property located north of Pelandale Avenue, east of Carver Road, South of Bangs Avenue and west of Tully Road, and

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

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

WHEREAS, after a public hearing held on June 17, 2013, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning to Prezone Specific Plan Zone, (P-SP), property located north of Pelandale Avenue, east of Carver Road, south of Bangs Avenue and west of Tully Road, as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The proposed prezone is consistent with Modesto Municipal Code Title 10, Chapter 7, Article 3 – Specific Plan Zone, the purpose and intent of which is to enable land to be planned and developed in a coordinated and comprehensive manner consistent with all applicable City policies, regulations and guidelines;
2. The proposed prezone is consistent with the Modesto Urban Area General Plan because:
 - a. The proposed development of the Property is consistent with the Village Residential general plan land use designation.
 - b. The location of the Property immediately adjacent to the existing City limits and within the Sphere of Influence is consistent with Urban Growth Policy II.C.1.b., which states “Urban development should be kept as contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience, and provide for economy in City services;”
3. The proposed prezone is consistent with the proposed Woodglen Specific Plan; and,
4. The proposed prezone is consistent with the Final EIR (SCH No. 2007402087) prepared for the proposed Project and has been adequately analyzed by the EIR.

WHEREAS, by Resolution No. 2013-11, adopted on June 17, 2013, the Planning Commission recommended to the City Council an amendment to Section 6-3-9 of the Zoning Map to prezone the hereafter described property to Prezone Specific Plan Zone, (P-SP), and

WHEREAS, said matter was set for a public hearing of the City Council to be held on July 9, 2013, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered.

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on July 9, 2013, this Council finds and determines that the requested rezoning is in accordance with the General Plan, and will serve the public health, safety and general welfare and provide for an orderly, planned use of land resource for the reasons set forth above.

SECTION 2. ZONING CHANGE. Section 6-3-9 of the Zoning Map is hereby amended to prezone the following described property to Prezone Specific Plan Zone, (P-SP):

Being a portion of Section 6, Township 3 South, Range 9 East, Mount Diablo Baseline and Meridian, also being a portion of Lots 1 and 2 as shown on the Map entitled "Nash Tract" recorded in Book 4 of Maps, at Page 10, Stanislaus County Records, located in the County of Stanislaus, State of California, more particularly described as follows:

BEGINNING at a point which is the southeast corner of the Ordinance entitled "Carver-Bangs Reorganization to the City of Modesto" filed as Modesto City Ordinance No. 97-390, Instrument No. 97-0059858-00, said corner also being located along the City Limits line of the City of Modesto;

- 1) THENCE along said City Limits line and the northerly prolongation, North $00^{\circ} 36' 34''$ West, a distance of 1351.18 feet to the intersection of the westerly prolongation of the northerly right-of-way line of Bangs Avenue, as shown on the map recorded in Book 12 of Parcel Maps, at Page 89, Stanislaus County Records;
- 2) THENCE along said westerly prolongation and northerly right-of-way line of Bangs Avenue, South $88^{\circ} 20' 09''$ East, a distance of 844.08 feet;
- 3) THENCE along the northerly line of Bangs Avenue, South $00^{\circ} 38' 09''$ East, a distance of 10.01 feet;
- 4) THENCE along the northerly line of Bangs Avenue and the easterly prolongation of said north line of Bangs Avenue, South $88^{\circ} 20' 09''$ East, a distance of 2000.68 feet to a point of intersection with the northerly prolongation of the east right-of-way line of Tully Road;

5) THENCE along the east right-of-way line of Tully Road and its southerly prolongation, South $01^{\circ} 06' 48''$ East, a distance of 1208.77 feet to a point of intersection with the easterly prolongation of the City Limits line of the City of Modesto, said line also being the northerly line of the Ordinance entitled Pelandale-Snyder Reorganization to the City of Modesto" filed as Modesto City Ordinance No. 96-294, Instrument No. 96-0055231-00;

6) THENCE along said City Limits line and the easterly prolongation of said City Limits line, North $88^{\circ} 45' 57''$ West, a distance of 837.78 feet;

7) THENCE continuing along said City Limits line, along a non-tangent curve concave to the south having a radius of 5000.00 feet, chord length of 819.46 feet, and to which a radial line bears South $01^{\circ} 13' 33''$ West, westerly 820.38 feet, along said curve through a central angle of $09^{\circ} 24' 03''$ to a point of reverse curvature;

8) THENCE continuing along said City Limits line, along a curve concave to the north having a radius of 5000.00 feet, chord length of 393.93 feet, westerly 394.03 feet, along said curve through a central angle of $04^{\circ} 30' 55''$;

9) THENCE continuing along said City Limits line, North $88^{\circ} 24' 54''$ West, a distance of 805.72 feet to the POINT OF BEGINNING;

Containing 83.27 acres, more or less.

Basis of Bearings for this description is between City of Modesto Monument 2722 and City of Modesto Monument 2723, recorded in Book 22 of Surveys, at Page 51. Said line is taken to bear South $87^{\circ} 34' 42''$ East.

SECTION 3. ZONING MAP. Section 6-3-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on the map attached hereto and which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of July, 2013, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Burnside was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

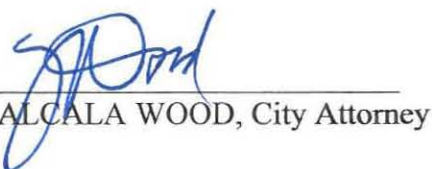
APPROVED: 
Garrad Marsh, Mayor

ATTEST:

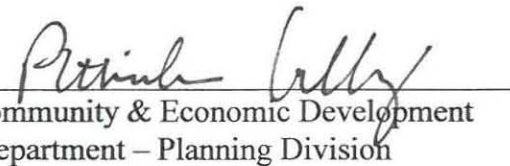
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department – Planning Division

Ord. No. 3588-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of August, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

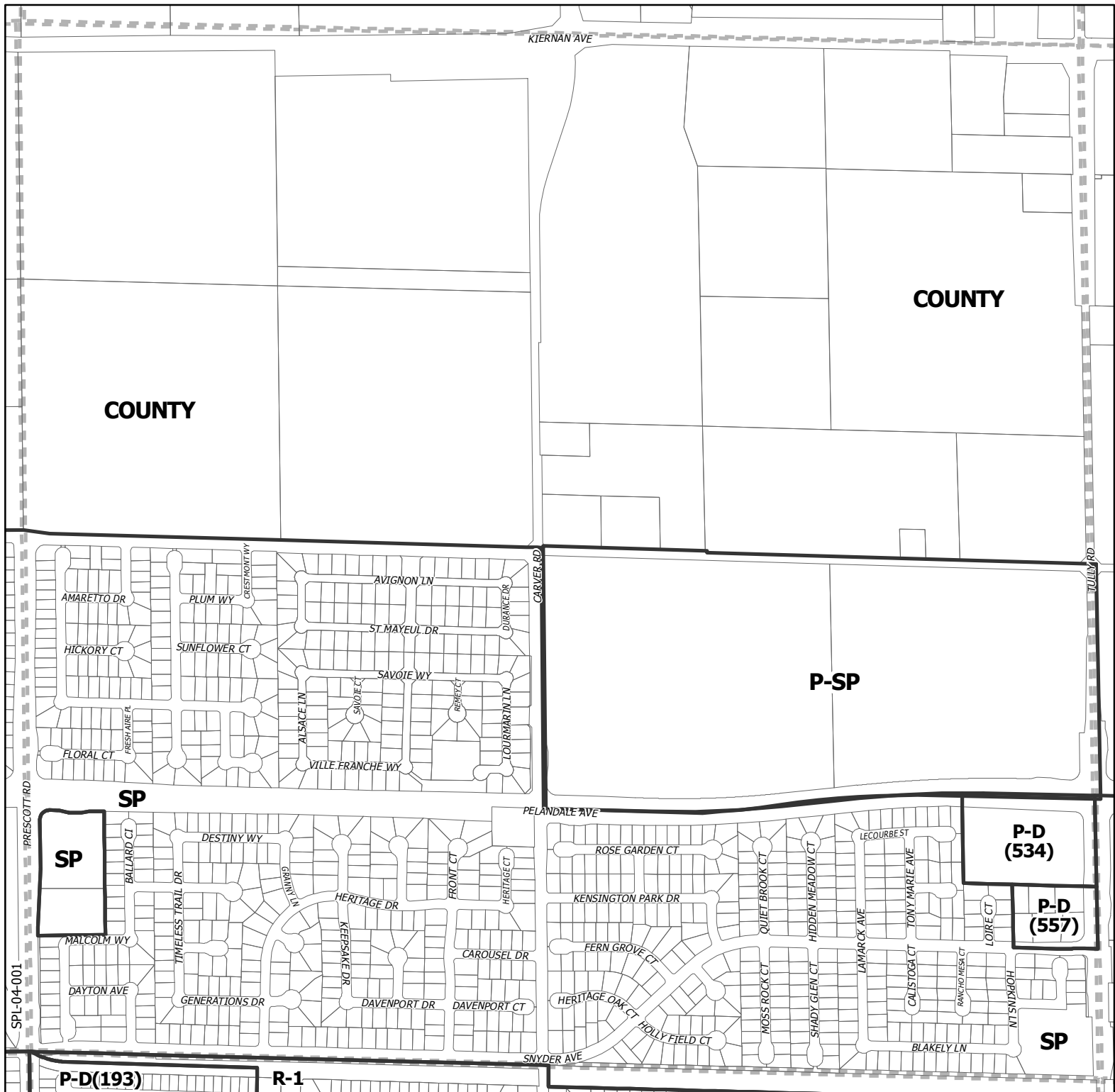
APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: September 7, 2013



1 inch = 700 feet
Ord. 3588-C.S.

ZONING MAP OF THE CITY OF MODESTO

6-3-9

ORDINANCE NO. 3589-C.S.

AN ORDINANCE ADDING ARTICLE 5 TO CHAPTER 3 OF
TITLE 8 OF THE MODESTO MUNICIPAL CODE RELATING
TO SALE OF SURPLUS PROPERTY

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

SECTION 1. AMENDMENT OF CODE. Article 5 is hereby added to Chapter 3
of Title 8 of the Municipal Code to read as follows:

ARTICLE 5. SALE OF SURPLUS PROPERTY.

8-3.500. AUTHORITY.

Pursuant to the provisions of Sections 801(o) and 801(r) of the City Charter, the following policies and procedures governing the disposition of surplus personal property by the City are hereby established.

8-3.501. SALE OR OTHER DISPOSITION OF SURPLUS PERSONAL PROPERTY.

- (a) The Purchasing Manager, when designated by the City Manager, is responsible for the sale, donation, recycling, or other disposition of surplus personal property. The City Manager and/or the Purchasing Manager may declare as surplus any item of personal property seized by, in the lawful possession of, or owned by the City free of liens and encumbrances, whenever he or she finds it is not needed by any department of the City.
- (b) The Purchasing Manager, when designated by the City Manager, may sell any property declared surplus pursuant to subsection (a), at public or private sale, with or without notice of sale, for the highest price the Purchasing Manager can obtain.
- (c) The Purchasing Manager, when designated by the City Manager, may also transfer any surplus personal property to another governmental agency or to a quasi-public agency by negotiated sale, exchange, loan, or gift; provided that gifts hereunder to any agency shall not exceed an aggregate value of \$5,000 annually. "Quasi-public agency," as used in this subsection, means a tax exempt nonprofit corporation which is currently engaged in a public project financed in whole or in part by public funds pursuant to contract or grant agreement with a governmental agency,

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Effective: September 7, 2013

whose assets, upon dissolution, will not be distributable to or for any private person or purpose.

- (d) The proceeds of sales or surplus personal property pursuant to this section shall be deposited in the general fund of the city, except where established accounting procedures require the deposit of proceeds in some special fund of the City. The Purchasing Manager shall compile a detailed list of all personal property sold, donated, or disposed of during each fiscal year and present the listing, along with a breakdown of all revenues received from the sale of surplus personal property, to the City Council at least once during each fiscal year.
- (e) The Purchasing Manager, when designated by the City Manager, may direct the destruction of any property declared surplus pursuant to subsection (a) whenever he or she finds that the item has no value, is not usable by any other governmental agency or quasi-public agency, or is not appropriate for public or private sale.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of July, 2013, by Councilmember Muratore, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED: 
GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3589-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of August, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: September 7, 2013

3589-C.S.
Effective: September 7, 2013

ORDINANCE NO. 3590-C.S.

AN ORDINANCE ADDING CHAPTER 13 TO TITLE 3 OF THE
MODESTO MUNICIPAL CODE RELATING TO ANTI-THEFT
DEVICE INSTALLATION REQUIRED PRIOR TO THE
TRANSFER OF OWNERSHIP OF CERTAIN VEHICLES

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

SECTION 1. AMENDMENT OF CODE. Chapter 13 is hereby added to Title 3 of
the Modesto Municipal Code to read as follows:

**CHAPTER 13. ANTI-THEFT DEVICE INSTALLATION REQUIRED PRIOR
TO THE TRANSFER OF OWNERSHIP OF CERTAIN VEHICLES.**

3-13.01 PURPOSE.

The purpose of this chapter is to reduce the incidence of vehicle theft by establishing a requirement that, prior to transferring ownership, Auto Dealers install an Anti-theft Device on certain vehicles which have been identified by the National Insurance Crime Bureau (NICB) as vehicles which have been the most commonly stolen vehicles in California.

3-13.02 Definitions.

As used in this Chapter, the following terms shall have the meanings which are set forth below:

- (a) "Anti-theft Device" means a hidden device or switch which is accessible to the driver that disables the vehicle's fuel delivery or ignition system, preventing the vehicle from being started.
- (b) "Auto Dealer" means any person who is the owner or the manager of any business in the City of Modesto which sells motor vehicles, including, but not limited to: auto dealerships, vehicle dismantlers, tow yards, private party impounds, auction yards, and any person acting as the agent or employee of any Auto Dealer.
- (c) "The National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California" means the annual list published by NICB which identifies the ten vehicles with the highest incidence of having been reported stolen during the preceding year. The NICB Top Ten Stolen Vehicles List by state can be viewed at the NICB website, Theft and Fraud Awareness, Top Vehicles Stolen (by

state) at https://www.nicb.org/theft_and_fraud_awareness/top-vehicles-stolen-by-state.

3-13.03 Auto Dealer Responsibility.

- (a) Every Auto Dealer conducting business within the City of Modesto shall be responsible for obtaining and maintaining a copy of the current National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California for reference in order to assist with compliance with this chapter.
- (b) Every Auto Dealer conducting business in the City of Modesto shall maintain a supply of copies of the current National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California and of current Modesto Police Department pamphlets on auto theft prevention on hand for distribution to transferees to whom the Auto Dealer transfers ownership of any vehicle listed on the Top Ten List.

3-13.04 Anti-theft Device Installation Requirements.

- (a) Any vehicle which is listed on the then-current National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California which is transferred by an Auto Dealer to a private person, business or other entity by means of auction, sale, trade, barter, gift or other any means, shall be equipped with an operable Anti-theft Device prior to the transfer of ownership and/or the execution of any title transfer or release of liability regarding any such vehicle.
- (b) Upon the transfer of ownership of any vehicle which is listed on the then-current National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California, the Auto Dealer shall provide educational material, consisting of the then-current National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California and the current Modesto Police Department pamphlets on auto theft prevention, to the transferee of such vehicle, and shall obtain a signed receipt for such educational materials from the transferee.
- (c) A copy of the transferee's signed receipt of the above-listed materials must be retained by the Auto Dealer for a period of one year from the date of the transfer of ownership of each vehicle listed on the National Insurance Crime Bureau (NICB) Top Ten Stolen Vehicle List in California, and shall be made available for the inspection of any peace officer upon request.

3-13.05 Penalties.

At the discretion of the City Attorney, violations of the provisions of this Chapter may be prosecuted as criminal violations pursuant to Title 1, Chapter 2 of this Code, or processed administratively pursuant to Title 1, Chapter 6 of this Code.

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

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

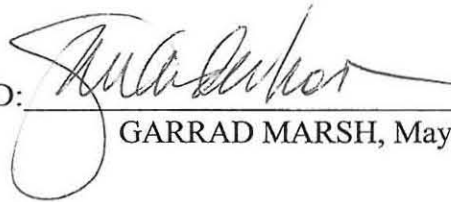
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of October, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Geer, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



GARRAD MARSH, Mayor

ATTEST:

By



STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By



ADAM LINDGREN, Interim City Attorney

Ord. No. 3590-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of November, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: December 6, 2013

ORDINANCE NO. 3591-C.S.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE AND ADOPTING BY REFERENCE THE CALIFORNIA FIRE CODE, 2013 EDITION, REGULATING AND GOVERNING THE SAFEGUARDING OF LIFE AND PROPERTY FROM FIRE AND EXPLOSIVE HAZARDS ARISING FROM THE STORAGE, HANDLING, AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES, AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE OCCUPANCY OF BUILDINGS AND PREMISES IN THE CITY OF MODESTO; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

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

SECTION 1. AMENDMENT OF CODE. Chapter 1 of Title 3 of the Modesto

Municipal Code is hereby amended to read as follows:

**CHAPTER 1. ADOPTION OF THE CALIFORNIA FIRE CODE,
2013 EDITION**

ARTICLE 1. FIRE CODE

**3-1.101. FINDINGS FOR ADOPTION OF THE CALIFORNIA FIRE
CODE, 2013 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, 2013 Edition, published by said organization, is a nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said California Fire Code, 2013 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, 2013 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, 2013 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, 2013 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, 2013 Edition, is necessary so as to provide more stringent standards for fire extinguishing systems; fire hazard and hazardous materials controls is necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following local conditions:

- (a) Summer weather conditions are very dry, hot and windy causing ordinary combustibles to be easily ignited and fires to be fast spreading;
- (b) Very dense fog conditions occur in winter. Reduced visibility causes delays in fire response;
- (c) Fire response is delayed by railroad tracks which:
 - (1) Divide the City from northeast between Tully Road and McHenry Avenue to the west side of Ninth Street;
 - (2) Run parallel to Highway 99 through the City, restricting response at locations where overpasses are not provided;
 - (3) Run parallel to Yosemite Boulevard restricting access to the airport, Tuolumne Regional Park, and adjacent areas; and
 - (4) Restrict access at intersections and streets in the areas of Ninth, Tenth, D, and E Streets.
- (d) Modesto Irrigation Canal #3 restricts access to the neighborhoods and

developments to the north and east of Briggsmore Avenue from Oakdale Road to Claus Road;

- (e) Fire response is delayed by rivers and creeks which:
 - (1) Divide the southwest area of the City and City contract areas and restrict access to these areas; and
 - (2) Divide the City from east to southwest along Scenic Drive.

THEREFORE, for the above reasons taken individually and cumulatively and in accordance with the authority granted in Sections 17958.5 and 17958.7 of the California Health and Safety Code, the Council of the City of Modesto expressly finds there are local climatic and topographical conditions that make the increased fire protection requirements set forth in this chapter reasonably necessary.

3-1.102. ADOPTION BY REFERENCE OF THE CALIFORNIA FIRE CODE, 2013 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, 2013 Edition, California Code of Regulations Title 24, Part 9, including Appendix Chapter 4, and Appendix B, BB, C, CC, E, F, G, I, K and Division II Administration as published by the International Code Council, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said California Fire Code, 2013 Edition, on file in the office of the City Clerk of the City of Modesto is hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in this chapter be and is hereby adopted as the Fire Code of the City of Modesto.
- (b) These regulations shall be known as the Fire Code of the City of Modesto and may be cited as such or may be cited as the "California Fire Code, 2013 Edition," the "2013 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 2013 California Fire Code as adopted and amended are hereby repealed.

ARTICLE 2. AMENDMENTS, ADDITIONS AND DELETIONS TO THE 2013 CALIFORNIA FIRE CODE

3-1.201. COMBUSTIBLE WASTE MATERIAL.

Section 304.1.2 of the 2013 California Fire Code is hereby amended by adding the following:

304.1.2. Vegetation. When the Fire Code Official determines that total removal of growth is impractical due to the size or environmental factors, approved fuel breaks shall be established. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks.

Abatement of a public nuisance shall be in accordance with Article 6 of Chapter 6 of Title 1 of the Modesto Municipal Code. The Fire Department may impose a nuisance abatement lien pursuant to Section 1-6.702 of the Modesto Municipal Code.

The Fire Department may recover, from a property owner, those costs associated with the suppression costs incurred in fighting a fire and for providing rescue or emergency medical services should a fire occur on said property after the owner has been notified to abate such public nuisance and has failed to do so.

3-1.202. VEHICLE IMPACT PROTECTION.

Section 312.2 of the 2013 California Fire Code is hereby amended to read as follows:

312.2. Posts. Guard posts or other approved means shall be provided to protect storage tanks and connected piping, valves and fittings; dispensing

areas; and use areas subject to vehicular damage. When guard posts are installed, the posts shall be:

1. Constructed of steel not less than six (6) inches in diameter and concrete filled,
2. Spaced not more than four (4) feet between posts on center,
3. Set not less than three (3) feet deep in a concrete footing of not less than a fifteen (15) inch diameter,
4. Set with the top of the posts not less than three (3) feet above ground, and
5. Located not less than five (5) feet from the tank.

3-1.203. FIRE PROTECTION AND WATER SUPPLIES.

Section 507.1 of the 2013 California Fire Code is hereby amended to read as follows:

507.1. Required Water Supply.

- (a) An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, building or portions of buildings are hereafter constructed or moved into or within the jurisdiction. See Appendix-B of the 2013 California Fire Code.
- (b) Fire hydrants shall be located on the supply side of the fire suppression system check valve.
- (c) Fire hydrants shall be accessible to the Fire Department apparatus by roads meeting the requirements of Section 503.1 of the 2013 California Fire Code.

3-1.204. FUEL FIRED APPLIANCES.

Section 603.4 of the 2013 California Fire Code is hereby amended to read as follows:

603.4. Portable Unvented Heaters. The use of listed portable unvented fuel-fired heating equipment is limited to supplemental heating in Group S-2, and U occupancies.

3-1.205. INCINERATORS.

Section 603.8 of the 2013 California Fire Code is hereby amended to read as follows:

603.8. Incinerators. The use of incinerators is prohibited inside the City limits of Modesto.

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

Subsections 603.8.1, 603.8.2, 603.8.3, 603.8.4 and 603.8.5 are deleted.

3-1.206. AUTOMATIC SPRINKLER SYSTEMS.

Section 903.2 of the 2013 California Fire Code is hereby amended by adding the following:

New Construction.

- (a) An approved automatic fire sprinkler system is required in all new buildings and structures constructed on or after the effective date of this ordinance, notwithstanding the use and occupancy thereof, when the total floor area under one roof exceeds five thousand (5,000) square feet. Fire area separation walls shall not be used for the purpose of eliminating automatic fire sprinkler systems required by this section.
- (b) When automatic sprinkler systems are required by the Modesto Municipal Code or the 2013 California Fire Code for certain uses and/or occupancies, the requirements of Section 903.2 of the 2013 California Fire Code shall also apply.
- (c) An approved automatic residential fire sprinkler system shall be installed in all one and two-family dwellings and townhouses in

accordance with NFPA 13D or Section R313.3 of the 2013 California Residential Code.

EXCEPTION: Carports, sheds, tanks, towers and agricultural buildings.

Existing Buildings and Structures. An approved automatic fire sprinkler system shall be installed in all existing buildings and structures when the value of additions, alterations or repairs are made within any twelve-month period that exceed fifty (50) percent of the current county assessed valuation for improvements only in the existing building or structure that exceeds five thousand (5,000) square feet or additions result in said building or structure exceeding five thousand (5,000) square feet.

EXCEPTION:

1. Carports, sheds, tanks, towers and agricultural buildings.
2. Each portion of an existing building or structure separated by one or more fire walls, constructed in accordance with the current adopted edition of the Building Code, when each portion does not exceed five thousand (5,000) square feet.

3-1.207. MONITORING.

Section 903.4.1 of the 2013 California Fire Code is hereby amended by adding the following:

Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to a UL LISTED supervising station as defined in NFPA 72 or, when approved by the Fire Code Official, shall sound an audible signal at a constantly attended location.

3-1.208. PORTABLE FIRE EXTINGUISHERS.

Section 906.9.1 of the 2013 California Fire Code is hereby amended to read as follows:

906.9.1 Extinguishers Weighing 40 Pounds or Less. Portable fire extinguishers having a gross weight not exceeding forty (40) lbs. (18 kg) shall be installed so that their tops are not more than four (4) feet above

the floor.

Existing Installations. Portable fire extinguishers shall only be required to be lowered during tenant improvements.

3-1.209. FIRE ALARM AND DETECTION SYSTEMS.

Section 907.1 of the 2013 California Fire Code is hereby amended by adding the following section:

907.1.6. Certification. A certificate from Underwriters Laboratories (UL) shall be required on all monitored commercial fire alarm systems installed after the effective date of this ordinance. UL certification shall be provided for all previously existing commercial fire alarm systems. UL certification is required to be maintained for commercial fire alarm systems throughout the life of the alarmed building.

3-1.210. FALSE FIRE ALARMS.

Section 908 of the 2013 California Fire Code is hereby amended by adding the following section:

908.7. False Fire Alarms. False fire alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted. The City Council may adopt by resolution reasonable fees to recover the costs associated with responses to building or structures that have excessive false fire alarms.

3-1.211. HOT WORKS.

Section 3504.2.6 of the 2013 California Fire Code is hereby amended to read as follows:

2604.2.6. Fire Extinguisher. A minimum of one portable fire extinguisher complying with Section 906 and with a minimum 2-A:20 B:C rating shall be readily accessible within thirty (30) feet (9144 mm) of the location where hot works is performed and shall be accessible without climbing stairs. When required by the Fire Code Official, a minimum 2-A:20-B:C rated fire extinguisher shall be mounted to each portable welding cart.

3-1.212. HAZARDOUS MATERIALS INVENTORY STATEMENT.

Section 5001.5.2 of the 2013 California Fire Code is hereby amended by adding the following:

10. Key Box. When required by the Fire Code Official, an approved key box, sized to contain emergency information, (HMMP, HMIS and Material Safety Data Sheets) shall be provided.

3-1.213 DEPOSITS OF HAZARDOUS MATERIALS; CLEANUP, ABATEMENT, OR MITIGATION REQUIRED; LIABILITY FOR COSTS.

Section 5003.3.1.4 of the 2013 California Fire Code is hereby amended to read as follows:

Responsibility for Cleanup. The person, firm or corporation responsible for an unauthorized discharge shall institute and complete all actions necessary to remedy the effects of such unauthorized discharge, whether sudden or gradual, at no cost to the jurisdiction. When deemed necessary by the Fire Code Official, cleanup may be initiated by the Fire Department or by an authorized individual or firm. Costs associated with such cleanup shall be borne by the owner, operator or other person responsible for the unauthorized discharge. The remedy provided by this section shall be in addition to any other remedies provided by law.

For purposes of this section, costs incurred by the City shall include, but shall not necessarily be limited to, the following: actual labor costs of City personnel, including worker's compensation benefits, fringe benefits, administrative overhead; cost of equipment operation; cost of materials obtained directly by the City; and cost of any contract labor and materials. The authority to recover costs under this section shall not include actual fire suppression services that are normally or usually provided by the Fire Department.

3-1.214. STATIONARY CONTAINERS.

Section 5504.3.1.1.3 of the 2013 California Fire Code is amended by adding the

following:

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

3-1.215. PERMITS REQUIRED FOR EXPLOSIVES.

Section 5602 of the 2013 California Fire Code is hereby amended by adding the following:

5602.1 Permits Required. When permits are required to be issued by the Fire Code Official, the Fire Code Official may grant the authority to the agency having enforcement jurisdiction. Permit shall be obtained:

1. To possess, store, sell, display or otherwise dispose of explosive materials at any location.
2. To transport explosive materials.
3. To use explosive materials.
4. To operate a terminal for handling explosive materials.

3-1.216 NOTICE OF NEW STORAGE SITES.

Section 5603 of the 2013 California Fire Code is hereby amended by adding the following:

5603.1 Notice of New Storage Sites. When a new explosive material storage location, including a temporary job-site, is established, the local law enforcement agency and fire department shall be notified immediately of the type, quantity and location of explosive materials at the site.

3-1.217. EXPLOSIVE MATERIALS PROHIBITED AND LIMITED ACTS.

Section 5604 of the 2013 California Fire Code is hereby amended by adding the following:

5604.1 Manufacturing. Explosive materials shall not be manufactured within the city limits of Modesto.

5604.1.2 Limits Established by Law. The storage of explosives and blasting agents is restricted to those areas of the City zoned as Heavy Industrial Zone (M-2).

EXCEPTION:

1. Temporary storage for use in connection with approved blasting operations conducted in accordance with all applicable provisions of this article.
2. Wholesale and retail storage and display of ammunition and gunpowder shall be in accordance with Title 19 California Code of Regulations, Chapter 10.

3-1.218 MANUFACTURING OF FIREWORKS.

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

5605.1 Manufacturing. The manufacturing of fireworks is prohibited within the city limits of Modesto.

3-1.219. PERMITS: DISPLAYS OF FIREWORKS AND APPEAL PROCESS.

Section 5605.2 of the 2013 California Fire Code is hereby amended by adding the following:

5605.2 Permits. The Fire Code Official may grant a permit for the display of fireworks, including proximate audience displays and pyrotechnic special effects in theatrical and group entertainment as applied for, or with conditions thereto, unless s/he finds that to do so would be contrary to the public health, safety, or welfare. The decision of the Fire Code Official shall be in writing and shall be mailed, postage prepaid, to the applicant.

5605.2.1 Appeal. The decision of the Fire Code Official, in acting on an application for permission to conduct a public display in accordance with the provisions of this section may be appealed to the City Manager. Notice of an appeal of the Fire Code Official's decision shall be filed by the applicant with the City Clerk within ten (10) days after the date of the decision. Upon failure to file such notice within the ten (10) day period, the action of the Fire Code Official shall be final and conclusive. The applicant may appeal the decision of the City Manager to the City Council by filing a notice of appeal to the City Clerk within ten (10) days after the date of the City Manager's decision. Upon failure to file such notice within the ten (10) day period, the action of the City Manager, or his/her designee, shall be final and conclusive.

5605.3 Fee. A nonrefundable fee as established by resolution of the City Council, from time to time, shall accompany every application for permission to conduct a public display of fireworks. This fee shall be in addition to any other fee or tax imposed by Title 6 of the Modesto Municipal Code.

3-1.220. SALES OF FIREWORKS.

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

5605.4 Sales. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.

- (1) Effective 2005, the total number of sales permits issued in any given year shall be limited to seventy (70).
- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
 - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes, as defined by Section 501(c) of the Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Modesto. Each new organization shall provide the City

with a copy of their “Letters of Incorporation” as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State’s Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of California and IRS if nonprofit status comes into question.

- (B) Public school organizations shall provide current written verification of affiliation from the school each year.
- (C) A "local nonprofit organization" must have its principal and permanent meeting place in the City of Modesto or within the City of Modesto sphere of influence. The organization must have obtained nonprofit status and have been organized and established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least ten (10) members who reside in the City of Modesto, which will be verified each year. Applications shall be signed by two (2) bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by State laws, administrative regulations, and all stipulations of this Code and the permit if permission to operate a fireworks stand is granted to the organization.
- (D) An “existing local for-profit organization” must have a permitted fixed business location in the City of Modesto, have been issued a fireworks sales permit the previous year, have remained under the same management and/or ownership continuously since 1999, and have paid all business license and mill tax fees due the City of Modesto by the close of the application period. In the event mill taxes and business license fees are not current the organization’s application will be denied.
- (E) If any of the above items fail to be met at the time of application, the organization’s application shall be denied.

- (3) Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.
- (4) All applications for sales permits shall be in writing to the Fire Code Official on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.

Each organization may file an application for one (1) sales permit for which there is only one tax ID number.

- (5) Applications shall set forth the proposed location of the fireworks stand including the nine (9) digit parcel number (APN) of the Stanislaus County Assessor, a site map, and other information as may be required by the Fire Code Official.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Code Official of approval or disapproval of such application. Sales permits will be issued after final inspection of the stand reveals compliance with all state and local regulations. Organizations shall not open for sales prior to the final inspection of their stand. If an organization's stand fails to pass inspection there will be a re-inspection fee charged for the third (3rd) inspection, and each inspection thereafter until final inspection is approved, as established by Resolution No. 03-446.
- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.226. Other items required at the time of application will be the organization's verification of eligibility as stated in 2(A) above, list of bona fide members, and current written permission signed by the property owner of record (with respect to lessee permission, approval shall be in the sole discretion of the Fire Code Official to sell fireworks at that location. Organizations representing public schools, as stated in 2(B) above, require written verification from the school of their affiliation.
- (8) Every application shall be accompanied by a nonrefundable

application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of the Modesto Municipal Code.

- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously permitted since 1999) organizations will have first option for a permit.
 - (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such permits, a lottery will be held to fill any vacancies.
 - (B) This lottery will be held fourteen (14) days after the last day of the filing period specified in paragraph 4 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period. If the fourteenth (14th) day falls on a weekend the lottery will be held on the next business day.
 - (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.
 - (D) Any organization having an approved application that fails to open their stand for that sales year will automatically forfeit their permit and a new organization will be chosen the following year provided a permit is available.
- (10) A nonprofit organization may apply for a sales permit with regard to a stand located in an area annexed by the City of Modesto under the following conditions:
 - (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
 - (B) The applicant has received a valid City of Modesto business license; and

- (C) The organization must either
 - (1) Meet the criteria of set forth in Section 33-1.223(2)(A) or
 - (2) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.
- (D) Annexed property that was previously used for a temporary booth by an organization whose current primary meeting place is outside the city limits of Modesto is not eligible to make application for a sales permit.

Permits issued to these organizations will be issued without the necessity of being selected by lottery, even though such issuance may increase the number of permits to more than allowed herein. The addition of these organizations does not change the original intent to issue a total of seventy (70) sales permits per year.

3-1.221. SALES, STORAGE, USE, AND HANDLING OF FIREWORKS.

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

5605.5 General. Sales, storage, use, and handling of fireworks shall be in accordance with this chapter.

1. **Sales.** Retail sale or display with the intent to sell fireworks is limited to State of California Fire Marshal approved and labeled "Safe and Sane" fireworks within the City of Modesto, by State of California licensed retailers, provided a permit to sell those fireworks has been approved and obtained from the Fire Code Official. Fireworks may be sold or offered for sale from 12:00 noon to 10:00 p.m. on June 28, 9:00 a.m. to 10:00 p.m. on June 29 through July 5, and 9:00 a.m. to 12:00 noon on July 6.

The storage of fireworks within the City of Modesto is limited to State of California Fire Marshal-approved and labeled "Safe and Sane" fireworks by State of California licensed wholesalers and

retailers.

- (A) **Wholesale Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H3 occupancy classification requirements as defined by the 2010 California Building Code.

- (B) **Retailers Storage.** Retailers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:
 - (1) Within the permitted fireworks stand with a responsible adult on the premises at all times.
 - (2) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
 - (3) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.
 - (4) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
 - (5) In an approved and permitted fireworks warehouse.

2. **Operator Safety.** Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall

attend a stand operator safety seminar conducted by the City of Modesto Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sell fireworks for that calendar year.

3. **Temporary Fireworks Stands.**

- (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
- (2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.
- (3) Temporary fireworks stand shall not be set up before application for permit has been approved nor earlier than June 14.
- (4) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330 of the Modesto Municipal Code.
- (6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.
- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not

removed by 12:00 noon on the 12th day of July.

4. Safety Precautions.

- (1) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
- (2) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
- (3) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.
- (4) Dry grass, weeds, trash, and other combustible material shall be removed for a distance of twenty (20) feet around any fireworks stand.
- (5) Fireworks shall not be discharged within fifty (50) feet of a fireworks stand.

5. Stand Construction.

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
 - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (B) The stand shall be provided with a roof.
 - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.
 - (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height, shall

be provided in each stand. Exits shall be maintained clear and unobstructed at all times.

- (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
- (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
- (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
- (H) An approved fire extinguisher having a minimum U.L. classification of 2A shall be located in the stand, near the exit and readily accessible.
- (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Fire Code Official.
- (J) Stands will be limited to twenty-four (24) feet by eight (8) feet or one hundred ninety-two (192) square feet in size. Pre-existing stands as identified by the fireworks suppliers shall retain the right to operate their oversized stands, without change, until said stand or organization forfeits or loses their operating permit. A copy of said list shall remain on file with the Fire Code Official.

6. Operation of Fireworks Stand Only by Permittee.

- (1) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operation of such fireworks stand. Violations will result in the immediate loss of the organization's permit.

- (2) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.
- (3) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

3-1.222. REVOCATION OF PERMIT AND SEIZURE OF FIREWORKS.

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

5605.6 Revocation of Fireworks Sales Permit. The Fire Code Official, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks sales permit of any location or organization when any of the provisions of Sections 3-1.223, 3-1.224, or 3-1.226 are violated. The Fire Code Official shall inform the permittee that permittee may seek review of the Fire Code Official's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Code Official shall provide the City Manager with written notice that a fireworks sales permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Fire Code Official, or his/her designee, that day to review the Fire Code Official's decision. The decision of the City Manager shall be final.

5605.6.1 Revocation of any sales permit will be effective for that calendar year.

3-1.223 FIREWORKS DISPLAYS INSURANCE REQUIRED.

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

5605.7 Insurance.

1. The permittee shall furnish a certificate of insurance for each policy required, executed by the company issuing such policy, and approved as to form by the Risk Manager. Such policies shall contain a provision which holds the City as an additional insured and declaring said insurance to be primary and that no other insurance carried by an insured party shall be called upon for contribution. Notwithstanding any other provision of this section, the failure of the permittee to carry such insurance during the time covered by such permit shall automatically revoke the permit as of the date of expiration of such insurance policy or policies. A payment of one hundred and two dollars (\$102.00) shall be made to the City before any such revoked permit may be reinstated.

2. The permittee/licensee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.
 - (a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of five hundred thousand dollars (\$500,000).

 - (b) General Liability insurance with a minimum limit of liability per occurrence of five million dollars (\$5,000,000) for bodily injury and five hundred thousand (\$500,000) for property damage. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent permittee/licensee's and subcontractors; products and completed operations; and professional liability.

 - (c) Automobile Liability insurance with a minimum limit of liability per occurrence of one million dollars (\$1,000,000)

for bodily injury and one hundred thousand (\$100,000) for property damage or one million (\$1,000,000) combined single limit. This insurance shall cover any automobile for bodily injury and property damage. If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the permittee/licensee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the permittee/licensee to furnish, deliver or maintain such insurance and certificates as above provided, the permit/license is automatically revoked. Failure of the permittee/licensee to obtain and/or maintain any required insurance shall not relieve the permittee/licensee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the permittee/licensee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers. The permittee/licensee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The permittee/licensee must deliver certificates evidencing existence of the insurance listed above to the Finance Director at the time the permit is granted.

Permittee/licensee shall provide City with separate endorsements evidencing proof of the City's additional insured status as to both the general liability and automobile liability insurance policies. In addition, permittee/licensee shall provide City with a Worker's Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to a permit, the permittee/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.

3. The permittee/licensee shall agree to hold the City of Modesto, its agents, officers, employees, and volunteers harmless from and save, defend, and indemnify them against any and all claims, losses, liabilities, and from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney fees and all costs and expenses arising directly or indirectly out of any act or omission of permittee arising out of any activity authorized by the permit.
4. The permittee/licensee shall provide at its own expense and maintain at all times the specified insurance policies with insurance companies approved by the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Finance Director of the City by registered mail, return receipt requested.

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

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

5605.8 Dangerous Fireworks

- (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.
- (b) It shall be unlawful for any person to possess, sell, use or discharge

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

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

3-1.225 STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS IN TANKS.

Section 5704 of the 2013 California Fire Code is hereby amended to read as follows:

5704.2.9.6.1 Location Where Above Ground Tanks are Prohibited.

Storage of Class I and II Liquids in aboveground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Chapter 57 of the 2013 California Fire Code. In addition, all above ground tanks shall be UL 2085 listed. The provisions of this section shall not apply to facilities for the production, generation, or transmission of electric energy that provide power to entities furnishing retail electrical services to the general public within the city of Modesto.

3-1.226 OPERATING HEATING, LIGHTING AND COOKING APPLIANCES PROHIBITED.

Section 5705 of the 2013 California Fire Code is hereby amended to read as follows:

5705.3.3. Heating, Lighting and Cooking Appliances. Heating, lighting, and cooking appliances which utilize flammable or combustible liquids shall not be operated within a building or structure.

EXCEPTION:

1. Operation in single-family dwellings.
2. Groups S-2 and U occupancies.

3-1.227 STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.

Section 5706 of the 2013 California Fire Code is hereby amended to read as follows:

5706.1. General. The capacity of temporary aboveground tanks containing Class I and Class II Liquids shall not exceed one thousand one hundred (1,100) gallons (4163.9 L). The capacity of permanent aboveground tanks containing Class I and II Liquids shall not exceed ten thousand (10,000) gallons (37,854 L). Temporary tanks of single-compartment design shall be constructed in accordance with Section 5706; permanent tanks shall be constructed in accordance with Chapter 57 of the 2013 California Fire Code.

3-1.228. STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 5706 of the 2013 California Fire Code is hereby amended to read as follows:

5706.2.4.4. Locations Where Above-Ground Tanks are Prohibited. The storage of Class I and II liquids in above-ground tanks is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. All R-1, R-2 and R-3 zoning designations as identified in Title 10 of the Modesto Municipal Code.

3-1.229 BULK PLANTS STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 3406.4 of the 2010 California Fire Code is hereby amended to read as follows:

3406.4. Bulk Plants. Portions of properties where flammable and combustible liquids are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, pipelines, tank cars, tank vehicles or containers shall be in accordance with Section 3406.4.1 through 3406.4.10.4 of the 2010 California Fire Code.

The construction of new bulk plants for storage of flammable or combustible liquids is restricted to areas of the city of Modesto zoned Heavy Industrial Zones (M-2). All existing nonconforming bulk plants for storage of flammable or combustible liquids which substantially comply with the requirements of this Code may be continued in use if a permit therefore shall be granted by the Fire Code Official.

3-1.230. BULK TRANSFER AND PROCESS TRANSFER OPERATIONS.

Section 3406.5 of the 2010 California Fire Code is hereby amended to read as follows:

3406.5. Bulk Transfer and Process Transfer Operations. Bulk transfer and process transfer operations shall be in approved locations. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring flammable or combustible liquids. Tank vehicle and tank car transfer facilities shall be separated from buildings, aboveground tanks, combustible materials, property lines, streets, alleys or public ways by a distance of twenty (25) feet (7620 mm) for Class I liquids and fifteen (15) feet (4572 mm) for Class II and III liquids measured from the nearest position of any loading or unloading valve.

Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Unless otherwise approved, a tank car shall not be allowed to remain on a siding at the point of delivery for more than twenty-four (24) hours while connected for transfer operations.

3-1.231. PERMITS FOR LIQUIFIED PETROLEUM GASES.

Section 3801.2 of the 2010 California Fire Code is hereby amended to read as follows:

3801.2. Permits. Permit(s) shall be required as set forth in Sections 105.6 and 105.7.

EXCEPTION:

1. Residential occupancies. Containers shall not exceed ten (10) gallons water capacity with an aggregate total of twenty (20) gallons.

2. Approved containers not exceeding sixteen and four-tenths (16.4) ounces when displayed for sale in mercantile occupancies.
3. Factory installed containers for recreational vehicles not exceeding ten (10) gallon water capacity.
4. Factory installed tanks that are permanently attached to recreational vehicles.

Distributors shall not fill an LP-gas container for which a permit is required unless a permit for installation has been issued for that location by the Fire Code Official.

3-1.232. USE OF LIQUIFIED PETROLEUM GAS CONTAINERS IN BUILDINGS.

Section 3803.2.1 of the 2010 California Fire Code is hereby amended to read as follows:

3803.2.1. Portable Containers. Portable LP-gas containers, as defined in NFPA 58 shall not be used in buildings except as specified in this section.

1. Areas undergoing construction.
 - A. Portable containers, not exceeding five (5) gallon water capacity, may be allowed in buildings or areas undergoing construction, when permitted by the Fire Code Official.
 - B. LP-gas containers shall not be used in a basement, pit, or similar location where heavier-than-air gas might collect. LP-gas containers not exceeding sixteen and four tenths (16.4) ounces may be used in an above-grade under floor space or basement only when such space is provided with an approved means of ventilation.
2. In educational, business, and institutional occupancies when used for research and experimentation provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and the aggregate capacity of all containers does not exceed two and one-half (2-1/2) gallons water capacity. When more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.

3. At demonstrations and public exhibitions for temporary use provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and when more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.
4. With self-contained torch assemblies and similar appliances provided that the individual capacity does not exceed sixteen and four-tenths (16.4) ounces.

Such containers shall not be used for commercial or residential food preparation.

3-1.233. MAXIMUM CAPACITY OF LPG CONTAINERS.

Section 3804.2 of the 2010 California Fire Code is hereby amended to read as follows:

The outside storage of liquefied petroleum gas (LP-gas) shall conform to the provisions of City of Modesto zoning ordinances. The outside storage and use of liquefied petroleum gases is restricted as specified in this section.

The aggregate capacity of any one installation shall not exceed two thousand (2,000) gallons, except that in particular installations this capacity limit may be altered by the Fire Code Official, after consideration of special features such as topographical conditions, nature of occupancy, proximity of buildings, capacity of proposed tanks, degree of private fire protection to be provided, and facilities of the local Fire Department.

1. Storage and dispensing of LP-gas for resale purposes, into approved containers and vehicles, is restricted to those areas of the City zoned as Light Industrial (M-1), Heavy Industrial (M-2), and, in addition thereto, to other commercially zoned properties used as automotive service stations. Dispensing shall be performed only by qualified persons.
2. Dispensing of LP-gas for private use is restricted to those zones identified in subsection 1, and when approved by the Fire Code Official, may be permitted in those areas of the City zoned General Commercial (C-2). Dispensing shall be performed only by

qualified persons.

3. For cooking, lighting, or heating in a building, only on a property that does not have natural gas service existing on a boundary line of said property or when prohibition of such storage would cause undue hardship.
4. For temporary use on construction sites, when authorized by the Fire Code Official.
5. For use as an alternative fuel supply for an emergency standby generator, when authorized by the Fire Code Official.
6. For use with certain mobile vending and certain commercial barbecue equipment and other specific uses when authorized by the Fire Code Official.
7. For use by artisans in pursuit of their trade, when authorized by the Fire Code Official.
8. Storage of portable containers awaiting exchange may be permitted in commercial zoned areas of the City, including those zoned Neighborhood Commercial (C-1), when approved by the Fire Code Official and stored in accordance with Section 3809. Such storage shall be located a minimum of twenty (20) feet from any fuel dispenser.

EXCEPTION:

1. Storage of LP-gas in accordance with Subsections 3, 4 and 5 shall be limited to one container not to exceed two hundred fifty (250) gallons water capacity.
2. The aggregate capacity of containers in storage and use in accordance with subsections 6 and 7 shall not exceed fifteen (15) gallons. Individual containers shall not exceed five (5) gallons water capacity, unless authorized by the Fire Code Official, and shall not be manifolded.

3-1.234. STORAGE OF PORTABLE LP-GAS CONTAINERS AWAITING USE, RESALE, OR EXCHANGE.

Section 3809.12 of the 2010 California Fire Code is hereby amended to read as

follows:

3809.12. Separation from exits. Containers stored inside or outside buildings accessible to the public shall be located not less than ten (10) feet from any exit door or building opening, when only one (1) exit is provided from the building or area, and not less than five (5) feet from any exit door or building opening, when two (2) or more exits are provided from the building or area.

Table 3809.12 of the 2010 California Fire Code is hereby amended to read as follows:

Quantity of LP-Gas Stored (Pounds)	Distances to a Building or Group of Buildings, Public Way, or Line of Property that can be Built Upon (feet)
720 or less	0
721 to 2,500	10
2,501 to 6,000	15
6,001 to 10,000	20
Over 10,000	25

3-1.235. ADMINISTRATIVE PROVISIONS

Sections 103.2, 103.4, 103.4.1 and 108 of the 2013 California Fire Code are hereby deleted.

3-1.236. PERMIT AMOUNTS FOR COMPRESSED GASES.

Chapter 1, Table 105.6.8 of the 2010 California Fire Code is amended to read as follows:

105.6.8. Compressed Gases. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed in Chapter 1, table 105.6.8.

EXCEPTION: Vehicles equipped for and using compressed gas as a fuel

for propelling the vehicle.

Table 105.6.8-Permit Amounts for Compressed Gases¹

Type of Gas	Amount x 0.0283 for m ³
Corrosive	Any Amount
Flammable (except cryogenic fluids and liquefied petroleum gases)	200 cubic feet
Highly toxic	Any Amount
Inert and simple asphyxiant	200 cubic feet
Irritant	200 cubic feet
Other Health Hazards	200 cubic feet
Oxidizing (including oxygen)	200 cubic feet
Pyrophoric	Any Amount
Radioactive	Any Amount
Sensitizer	200 cubic feet
Toxic	Any Amount
Unstable (reactive)	Any Amount
Acutely hazardous (as listed in 40-CFR-355)	Threshold Planning Quantity or more.

¹See Chapter 30 of the 2010 California Fire Code for additional requirements and exceptions.

3-1.237. PERMIT AMOUNTS FOR CRYOGENS.

Chapter 1, Table 105.6.10 of the 2010 California Fire Code is amended to read as follows:

105.6.10. Cryogenic Fluids. An operational permit is required to produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed in Chapter 1, Table 105.6.10.

EXCEPTION: Permits are not required for vehicles equipped for and using cryogenic fluids as a fuel for propelling the vehicle or for refrigerating the lading.

Table 105.6.10--Permit Amounts for Cryogen¹

Type of Cryogenic Fluid	Inside Building	Outside Building
Corrosive	Over 1 gallon	Over 1 gallon
Flammable	Over 1 gallon	55 gallons
Highly Toxic	Over 1 gallon	Over 1 gallon
Nonflammable	55 gallons	55 gallons
Oxidizer (including oxygen)	50 gallons	50 gallons

See Appendix Chapter 1 of the 2010 California Fire Code.

ARTICLE 3. ADMINISTRATION

3-1.301. FEES.

- (a) **Permit Fee.** The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for any permit issued pursuant to the Fire Code.
- (b) **Plan Check Fee.** When the valuation of proposed construction exceeds one thousand dollars (\$1,000.00), or a plan is required to be submitted, a plan checking fee shall be paid at the time of submitting plans and specifications for checking.

Where plans are incomplete or changed so as to require an additional plan check, an additional plan check fee shall be charged. The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for plan checking.

3-1.302. APPEALS.

Applicant may appeal the decision of the Fire Code Official to the City Council within thirty (30) days from the date of the decision being appealed whenever the Fire Code Official:

1. Disapproves an application for use of alternate materials, methods and/or types of construction,
2. Disapproves an application for permit or refuses to grant a permit applied for,
3. When it is claimed that the provisions of the code do not apply, or
4. When it is claimed that the true intent and meaning of the code have been misconstrued or wrongly interpreted.

3-1.303. VIOLATIONS COMPLIANCE WITH ORDERS, NOTICES AND TAGS.

Section 109.3 of the 2010 California Fire Code, Chapter 1 - Administration is hereby amended to read as follows:

109.3. Criminal Violations. It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this code, any such violation constituting a misdemeanor under this code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and

every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

3-1.304. ADMINISTRATIVE REMEDIES.

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

- (a) For violations of Section 3-1.224, possession, sale, use or discharge of dangerous fireworks, the administrative penalty shall be one thousand dollars (\$1,000.00) for each specific act found to be in violation of that section.
- (b) For all violations of this chapter, other than Section 3-1.224, possession, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.

SECTION 2. FINDING AND DECLARATION. As required by the 2013

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 2013 California Fire Code are reasonably necessary because of local climate and geographic conditions. This ordinance also prescribes local procedures to be used in the administration and enforcement of this Code; provides for local interpretations of this Code, and makes other changes in this Code consistent with local custom and practice as reflected in the prior local Fire Code.

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

SECTION 4. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

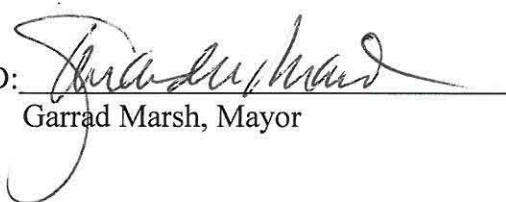
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

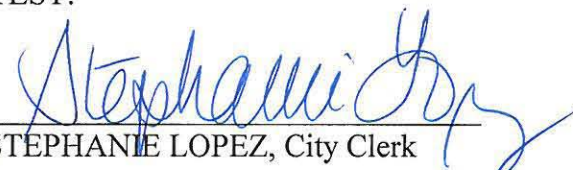
AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Muratore

APPROVED: 
Garrad Marsh, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM LINDGREN, Interim City Attorney

Ord. No. 3591-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 3, 2014

ORDINANCE NO. 3592-C.S.

AN ORDINANCE AMENDING ARTICLE 1, 2, 5, 8, 16, AND 17 OF CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AMENDING SECTIONS 9-1.101, 9-1.101.1, 9-1.201, 9-1.204, 9-1.502, 9-1.1602.1, 9-1.1602.2, 9-1.1602.3, 9-1.1602.4, 9-1.1701 and 9-1702; AND ADDING SECTION 9-1.807.1 THERETO; RELATING TO THE BUILDING CODE.

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

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

ARTICLE 1. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA BUILDING CODE

9-1.101. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA BUILDING CODE.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2013 California Building Code, California Code of Regulations, Title 24, Part 2, Volumes 1 and 2, as published by the International Code Council, as now existing, or hereafter amended, regulating and governing the conditions of all properties, buildings, and structures; by providing the standards for facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupancy and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demotion of such structures; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2013 California Building Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Building Code of the City of Modesto.

9.1.101.1. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA RESIDENTIAL CODE.

That certain document, one (1) copy of which is on file in the office of the City Clerk at the City of Modesto, being marked and designated as the California Residential Code, 2013 edition, California Code of Regulations Title 24, Part 2.5 as published by the International Code Council, regulating and governing the conditions of residential detached one and two family dwellings by providing the standards for facilities and other physical things and conditions essential to ensure

that these structures are safe, sanitary and fit for occupation and use; and the demolition of such structures as herein provided, providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof, and each and all of the regulations; provisions, penalties, conditions and terms of said building code on file in the office of the City Clerk of the City of Modesto are hereby referred to, adopted and made part hereof, as if fully set out in this ordinance with the additions, deletions and changes, if any prescribed in this chapter, be and hereby are adopted by reference as the Building Code of the City of Modesto

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

9-1.201. TITLE.

These regulations shall be known as the “Building Code of the City of Modesto,” and may be cited and referred to herein as such or may be cited and referred to herein as the “Building Code,” the “2013 California Building and 2013 California Residential Code,” the “California Building and Residential Code,” or “this Code.”

9-1.202. PURPOSE.

The purpose of this Code is to establish the minimum requirements to safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, access for persons with disabilities, sanitation, adequate light and ventilation, and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to firefighters and emergency responders during emergency operations.

9-1.203 SCOPE.

The provisions of this Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures throughout the City of Modesto.

9-1.204. APPENDICES.

Provisions contained in the appendices of the 2013 California Building Code and the 2013 California Residential Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

9-1.205. MOST RESTRICTIVE – SPECIFIC REQUIREMENT.

Where, in any specific case, different sections of this Code specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

9-1.206. OTHER LAWS.

The provisions of this Code shall not be deemed to nullify any provision(s) of local, state, or federal law.

9-1.207. APPLICATION OF REFERENCES.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this Code.

9-1.208. REFERENCED CODES AND STANDARDS.

The codes and standards referenced in this Code shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and referenced codes and standards, the provisions of this Code shall apply, unless stated otherwise.

9-1.209. PARTIAL INVALIDITY.

In the event that any part or provision of this Code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions of this Code.

9-1.210. MAINTENANCE.

All plumbing, mechanical, electrical system, materials, and appurtenances, both existing and new, and all parts thereof, shall be maintained in proper operating condition. All devices or safeguards required by this Code shall be maintained in conformance with the code edition under which installed.

9-1.211. EXISTING STRUCTURES.

The legal occupancy of any structure existing on the date of adoption of this Code shall be permitted to continue without change, except as is specifically covered in this Code, the California Mechanical Code, or the

California Fire Code, or as is deemed necessary by the Building Official for the general safety and welfare of the occupants and the public.

9-1.212. EXISTING INSTALLATIONS.

Plumbing, mechanical, and electrical systems or equipment lawfully in existence at the time of the adoption of this Code may have their use, maintenance, or repair continued if the use, maintenance, or repair is in accordance with the original design and location and no hazard to life, health, or property has been created by such system or equipment.

SECTION 3. AMENDMENT OF CODE. Article 5 of Chapter 1 of Title 9 of the Modesto Municipal Code is hereby amended to read as follows:

9-1.501. REQUIRED.

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any installation which is regulated by this Code, or to cause any such work to be done, shall first make application to the Building Official and obtain the required permit.

9-1.502. WORK EXEMPT FROM PERMIT.

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

A permit shall not be required for the following:

- (a) One-story, detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed one hundred twenty (120) square feet (11.15 m²).
- (b) Fences not over seven (7) feet (2134 mm) high.
- (c) Oil derricks.
- (d) Retaining walls that are not over four (4) feet (1,219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.

- (e) Water tanks supported directly on grade if the capacity does not exceed five thousand (5,000) gallons (18,925 L) and the ratio of height to diameter or width does not exceed 2:1.
- (f) Sidewalks and driveways not more than thirty (30) inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
- (g) Prefabricated swimming pools that are less than twenty-four (24) inches (610 mm) deep.
- (h) Painting, papering, tiling, carpeting, cabinets, counter tops, and similar finish work.
- (i) Temporary motion picture, television and theater stage sets, and scenery.
- (j) Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
- (k) Swings and other playground equipment accessory to detached one- and two-family dwellings.
- (l) Window awnings supported by an exterior wall that do not project more than fifty-four (54) inches (1,372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
- (m) Nonfixed and movable fixtures, cases, racks, counters, and partitions not over five (5) feet nine (9) inches (1,753 mm) in height.
- (n) One (1) and two (2) family residential decks not exceeding two hundred (200) square feet (18.58 m²) in area, that are not more than thirty (30) inches (762 mm) above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4 of the California Residential Code.

9-1.503. EMERGENCY REPAIRS.

Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted and the permit obtained within the next business day.

9-1.504. REPAIRS.

Repairs to structures or other work affecting public health or general safety shall require application to the Building Official and permit obtained.

9-1.505. PUBLIC SERVICE AGENCIES.

A permit shall not be required for the installation, alteration, or repair of generation, transmission, distribution, or metering or other related equipment that is under the ownership and control of public service agencies by established right.

9-1.506. APPLICATION TO PERMIT.

To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the Building Safety Division for that purpose. Such application shall:

- (a) Identify and describe the work to be covered by the permit for which application is made.
- (b) Describe the land on which the proposed work is to be done by legal description, street address, or similar description that will readily identify and definitely locate the proposed building or work.
- (c) Indicate the use and occupancy for which the proposed work is intended.
- (c) Be accompanied by construction documents and other information as required in Article 6 of this Code.
- (f) State the valuation of the proposed work.
- (d) Be signed by the applicant or the applicant's authorized agent.
- (g) Give such other data and information as required by the Building Official.

9-1.507. ACTION ON APPLICATION.

The Building Official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the Building Official shall reject such

application in writing, stating the reasons therefor. If the Building Official is satisfied that the proposed work conforms to the requirements of this Code and laws and ordinances applicable thereto, the Building Official shall issue a permit therefor as soon as practicable.

9-1.508. TIME LIMITATION OF APPLICATION.

calendar days following the date of application submission shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken on the application. This request must be in writing to the Building Official prior to expiration of the application. No application shall be extended more than once. No extension shall exceed one hundred eighty (180) calendar days. In order to renew action on the application after expiration, the applicant shall resubmit plans and pay a new plan checking fee.

9-1.509. VALIDITY OF PERMIT.

The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code or of any other local, state, or federal law. Permits presuming to give authority to violate or cancel the provisions of this Code or other local, state, or federal law shall not be valid.

The issuance of a permit based on construction documents and other data shall not documents and other data. The Building Official is also authorized to prevent occupancy or use of a structure where in violation of this Code or of any other local, state, or federal law.

9-1.510. EXPIRATION.

Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) calendar days from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) calendar days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) calendar days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half ($\frac{1}{2}$) the amount required to obtain a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such

work; and provided further that such suspension or abandonment has not exceeded one (1) year.

Any permittee holding an unexpired permit may apply for an extension of time within which he may commence the work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) calendar days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once. In order to renew action on a permit after expiration, the permittee shall pay a new permit fee.

9-1.511. SUSPENSION OR REVOCATION.

The Building Official is authorized to suspend or revoke a permit issued under the provisions of this Code whenever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this Code, or other local, state, or federal law.

SECTION 4. AMENDMENT OF CODE. Article 8 of Chapter 1 of Title 9 of the Modesto Municipal Code is hereby amended and Section 9-1.807.1 is hereby added to read as follows:

9-1.801. GENERAL.

Construction or work for which a permit is required shall be subject to inspection by the Building Official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this Code or of any local, state, or federal law. Inspections presuming to give authority to violate or cancel the provisions of this Code or of other local, state, or federal law shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the Building Official nor the City of Modesto shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

9-1.802. PRELIMINARY INSPECTION.

Before issuing a permit, the Building Official is authorized to examine or cause to be examined buildings, structures, and sites for which an application has been filed.

9-1.803. REQUIRED INSPECTIONS.

The Building Official, upon notification, shall make the inspections set forth in Sections 9-1.804 through 9-1.813.

9-1.804. TYPES OF INSPECTIONS.

For onsite construction, from time to time the Building Official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this Code. The Building Safety Division, upon notification of the permit holder or their agent, shall within a reasonable time make the inspections set forth in Sections 9-1.805 through 9-1.813.

Note: Reinforced steel or structural framework: of any part of any building or structure shall not be covered or concealed without first obtaining the approval of the Building Official.

9-1.805. FOOTING AND FOUNDATION INSPECTION.

Inspection of the foundation and footings shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation or footing inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations. Materials for the foundation shall be on the job site except where concrete is ready-mixed in accordance with ASTM C94. Under this circumstance concrete is not required to be at the job site.

9-1.805.1. CONCRETE SLAB AND UNDERFLOOR INSPECTION.

Concrete slab and underfloor inspections shall be made after in-slab or underfloor reinforcing steel and building service equipment, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

9-1.806. FLOOD PLAIN INSPECTIONS/LOWEST FLOOR ELEVATION.

For construction in areas prone to flooding as established by Table R301.2(1) of the California Residential Code upon placement of the lowest floor, including basement, and prior to further vertical construction, the Building Official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, required in Section R322. In flood hazard areas, upon placement of the lowest floor,

including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 of the California Building Code shall be submitted to the Building Official.

9-1.807. FRAME AND MASONRY INSPECTION.

Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after chimneys and vents to be concealed are completed and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

9-1.807.1. MOISTURE CONTENT VERIFICATION.

Moisture content of framing members shall be verified in accordance with the California Green Building Standards Code (CALGreen), Chapter 4, Division 4.5.

9-1.808. LATH AND GYPSUM BOARD INSPECTION.

Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception. Gypsum board that is not part of a fire-resistance-rated assembly or a shear assembly.

9-1.80. FIRE-RESISTANT PENETRATIONS.

Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

9-1.810. ENERGY EFFICIENCY INSPECTIONS.

Inspections shall be made to determine compliance with the California Energy Code and shall include, but not be limited to, inspections for: envelope insulation R and U values, fenestration U value, duct system R value, and HVAC and water-heating equipment efficiency.

9-1.811. OTHER INSPECTIONS.

In addition to the inspections specified above, the Building Official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this Code and other laws that are enforced by the Building Safety Division.

9-1.811.1. FIRE-RESISTANCE-RATED CONSTRUCTION INSPECTION.

Where fire-resistance-rated construction is required between dwelling units or due to location on property, the Building Official shall require an inspection of such construction after all lathing and/or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished. Protection of joints and penetrations in fire resistance rated assemblies shall not be concealed from view until inspected and approved.

9-1.812. SPECIAL INSTRUCTIONS.

For special inspections, see Section 1704 of the California Building Code.

9-1.813. FINAL INSPECTION.

The final inspection shall be made after all work required by the building permit is completed.

9-1.814. REINSPECTIONS.

A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when required corrections have not been made.

This provision is not to be interpreted as requiring reinspection fees the first time an inspection is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspection before the project is ready for inspection or reinspection. Reinspection fees may be assessed:

- (a) When the approved plans are not readily available to the inspector.
- (b) For failure to provide access on the date for which the inspection is requested.
- (c) For any deviation from plans requiring the approval of the Building Official.

To obtain reinspection, the applicant shall file an application therefor in writing upon a form for that purpose and pay the reinspection fee as adopted from time to time by resolution of the City Council of the City of Modesto.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

9-1.815. INSPECTION AGENCIES.

The Building Official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

9-1.816. INSPECTION REQUESTS.

It shall be the duty of the holder of the building permit or their duly authorized agent to notify the Building Official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this Code.

9-1.817. APPROVAL REQUIRED.

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Building Official. The Building Official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this Code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the Building Official.

SECTION 5. AMENDMENT OF CODE. Article 16 of Chapter 1 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

9-1.1601. DELETED SECTIONS.

(Reserved).

9-1.1602. AMENDED SECTIONS.

9-1.1602.1. DEFINITIONS.

Section 202 of the 2013 California Building Code is hereby amended to read as follows:

BUILDING OFFICIAL. The officer or other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.

9-1.1602.2. STRUCTURAL DESIGN.

Section 1612.3 of the 2013 California Building Code is hereby amended to read as follows:

1612.3. ESTABLISHMENT OF FLOOD HAZARD AREAS.

To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for the City of Modesto", dated September 26, 2008, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

9-1.1602.3. STRUCTURAL TESTS AND SPECIAL INSPECTIONS.

Section 1702 of the 2013 California Building Code is hereby amended to read as follows:

STRUCTURAL OBSERVATION. The visual observation of the structural system by a registered design professional for general conformance to the approved construction documents at significant construction stages and at completion of the structural system. Structural observation does not include or waive the responsibility for the inspection required by Title 9, Chapter 1, Article 8 and Section 1704 of the California Building Code or other sections of this Code.

9-1.1602.4. SPECIAL INSPECTIONS.

Section 1704.1 of the 2013 California Building Code is hereby amended to read as follows:

1704.1. GENERAL.

Where application is made for construction as described in this Section, the owner or registered design professional in responsible charge acting as the owner's agent shall employ one (1) or more special inspectors to provide inspection during construction on the types of work listed under Section 1704 of the California Building Code. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the Building Official, for inspection of the particular type of construction or operation requiring special inspection. These inspections are in addition to the inspections specified in Article 8 of Chapter 1 of Title 9.

SECTION 6. AMENDMENT OF CODE: Article 17 is hereby added to

Chapter 1 of Title 9 of the Modesto Municipal Code to read as follows:

ARTICLE 17. TECHNICAL AMENDMENTS TO THE 2010 CALIFORNIA RESIDENTIAL CODE.

9-1.1701. DEFINITION.

Section 202 of the 2013 California Residential Code is hereby amended to read as follows:

Building Official. The officer or other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.

9-1.1702. TABLE R301.2(1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA.

Table R301.2(1) of the 2010 California Residential Code is hereby amended to read as follows:

**Table R301.2(1)
Climatic and Geographic Design Criteria**

Ground Snow Load	Wind Design		Seismic Design Category	Subject to Damage From:			Winter Design Temp	Ice Barrier Underlayment Required	Flood Hazards	Air Freeze Index	Mean Annual Temp
	Speed MPH	Topographic Effects		Weathering	Frost Line Depth	Termite					
0	85	No	D	Negligible	12 inches	Very Heavy	n/a	n/a	MMC 9-4.302	50	60

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

SECTION 8. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto*

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

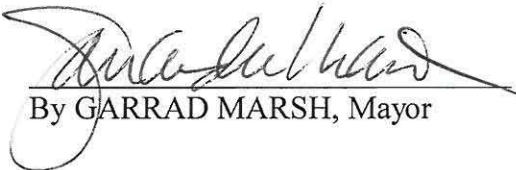
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2013, by Councilmember Lopez who moved its introduction and passage to print, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Burnside

APPROVED:


By GARRAD MARSH, Mayor

ATTEST:


By STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
ADAM LINDGREN, Interim City Attorney

Ord. No. 3592-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki
And Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR GARRAD MARSH

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: January 3, 2014

ORDINANCE NO. 3593-C.S.

AN ORDINANCE AMENDING ARTICLE 1 AND ARTICLE 2 OF CHAPTER 3 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AMENDING SECTIONS 9-3.101, 9-3.201, AND 9-3.204 RELATING TO THE ELECTRICAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Article 1 of Chapter 3 of Title 9 of the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 1. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA ELECTRICAL CODE

9-3.101. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA ELECTRICAL CODE.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2013 California Electrical Code, California Code of Regulations Title 24, Part 3, as published by the Building News, inc. (BNi), as now existing, or hereafter amended, regulating, governing and providing standards for the erection, installation, repair, relocation, replacement, addition to, use, or maintenance of electrical systems and parts thereof for the protection of public health and safety, providing for the issuance of permits and collection of fees, providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2013 California Electrical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes if any, prescribed in this Chapter, be and hereby is adopted as the Electrical Code of the City of Modesto.

SECTION 2. AMENDMENT OF CODE. Article 2 of Chapter 3 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

9-3.201. TITLE.

These regulations shall be known as the "Electrical Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to

herein as the “Electrical Code,” the “2013 California Electrical Code,” the “California Electrical Code,” or “this Code.”

9-3.204. APPENDICES.

Provisions contained in the appendices of the 2013 California Building Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

9-3.203. SCOPE.

The provisions of this Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures throughout the City of Modesto.

9-3.204. APPENDICES.

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

9-3.205. MAINTENANCE.

All electrical systems, materials, and appurtenances, both existing and new, and all parts thereof, shall be maintained in proper operating condition. All devices or safeguards required by this Code shall be maintained in conformance with the code edition under which installed.

9-3.206. ADDITIONS, ALTERATIONS, OR REPAIRS.

Additions, alterations, or repairs may be made to any electrical system, or parts thereof, or equipment without requiring the existing to comply with all the requirements of this Code, provided the addition, alteration, or repair conforms to that required for new installation. Additions, alterations, or repairs shall not cause an existing system to become unsafe, unsanitary, or overloaded.

9-3.207. MOVED BUILDINGS.

Electrical systems and all parts thereof, that are part of buildings or structures moved into the City of Modesto shall comply with the provisions of this Code for new installations.

Exception. All parts of the electrical system of any building, or parts thereof, that is moved from one (1) foundation to another, or from one (1) location to another, shall be completely tested as prescribed elsewhere in this Code for new work, except that walls or floors need not be removed during such test when other equivalent means of inspection acceptable to the Building Official are provided.

9-3.208. MOST RESTRICTIVE – SPECIFIC REQUIREMENT.

Where, in any specific case, different sections of this Code specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

9-3.209. OTHER LAWS.

The provisions of this Code shall not be deemed to nullify any provision(s) of local, state, or federal law.

9-3.210. APPLICATION OF REFERENCES.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this Code.

9-3.21. REFERENCED CODES AND STANDARDS.

The codes and standards referenced in this Code shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and referenced codes and standards, the provisions of this Code shall apply, unless stated otherwise.

9-3.212. PARTIAL INVALIDITY.

In the event that any part or provision of this Code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions of this Code.

9-3.213 EXISTING INSTALLATIONS.

Electrical systems or equipment lawfully in existence at the time of the adoption of this Code may have their use, maintenance, or repair continued if the use, maintenance, or repair is in accordance with the original design and location and

no hazard to life, health, or property has been created by such system or equipment.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Burnside

APPROVED: 
GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
ADAM LINDGREN, Interim City Attorney

Ord. No. 3593-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 3, 2014

ORDINANCE NO. 3594-C.S.

AN ORDINANCE AMENDING ARTICLE 1 AND ARTICLE 2 OF CHAPTER 7 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AMENDING SECTIONS 9-7.101, 9-7.201 AND 9-7.204 RELATING TO THE MECHANICAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Article 1 of Chapter 7 of Title 9 of the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 1. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA MECHANICAL CODE

9-7.101. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA MECHANICAL CODE.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2013 California Mechanical Code, California Code of Regulations, Title 24, Part 4, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, which said Code governs and provides proper regulations of mechanical systems and parts thereof, including, but not limited to, addition to or erection, installation, alteration, repair, relocation, replacement, use, or maintenance of any heating, ventilation, cooling, refrigeration systems or equipment thereof; incinerators or parts or equipment thereof; or other miscellaneous heat producing appliances, parts or equipment thereof; providing for the issuance of permits and collection of fees therefor; providing for the inspection thereof; providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2013 California Mechanical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Mechanical Code of the City of Modesto.

SECTION 2. AMENDMENT OF CODE. Article 2 of Chapter 7 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

9-7.201. TITLE.

These regulations shall be known as the "Mechanical Code of the City of Modesto", and may be cited and referred to herein as such or may be cited and referred to herein as the "Mechanical Code", the "2013 California Mechanical Code", the "California Mechanical Code", or "this Code".

9-7.202. PURPOSE.

The purpose of this Code is to establish the minimum requirements to safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, access for persons with disabilities, sanitation, adequate light and ventilation, and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to firefighters and emergency responders during emergency operations.

9-7.203. SCOPE.

The provisions of this Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures throughout the City of Modesto. Including, but not limited to, addition to or erection, installation, alteration, repair, relocation, replacement, use, or maintenance of any heating, ventilation, cooling, refrigeration system or equipment or part thereof; incinerators or parts or equipment thereof; or other miscellaneous heat producing appliances, parts or equipment thereof.

9-7.204. APPENDICES.

Provisions contained in the appendices of the 2013 California Mechanical Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

9-7.205. MAINTENANCE.

All mechanical systems, materials, and appurtenances, both existing and new, and all parts thereof, shall be maintained in proper operating condition. All devices or safeguards required by this Code shall be maintained in conformance with the code edition under which installed.

9-7.206. ADDITIONS, ALTERATIONS, OR REPAIRS.

Additions, alterations, or repairs may be made to any mechanical system, or parts thereof, or equipment without requiring the existing to comply with all the requirements of this Code, provided the addition, alteration, or repair conforms to that required for new installation. Additions, alterations, or repairs shall not cause an existing system to become unsafe, unsanitary, or overloaded.

9-7.207. MOVED BUILDINGS.

Mechanical systems and all parts thereof that are part of buildings or structures moved into the City of Modesto shall comply with the provisions of this Code for new installations.

Exception. All parts of the mechanical systems of any building, or parts thereof, that is moved from one (1) foundation to another, or from one (1) location to another, shall be completely tested as prescribed elsewhere in this Code for new work, except that walls or floors need not be removed during such test when other equivalent means of inspection acceptable to the Building Official are provided.

9-7.208. MOST RESTRICTIVE – SPECIFIC REQUIREMENT.

Where, in any specific case, different sections of this Code specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

9-7.209. OTHER LAWS.

The provisions of this Code shall not be deemed to nullify any provision(s) of local, state, or federal law.

9-7.210. APPLICATION OF REFERENCES.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this Code.

9-7.211. REFERENCED CODES AND STANDARDS.

The codes and standards referenced in this Code shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and referenced codes and standards, the provisions of this Code shall apply, unless stated otherwise.

9-7.212. PARTIAL INVALIDITY.

In the event that any part or provision of this Code is held to be illegal or void, this shall Code.

9-7.213. EXISTING INSTALLATION.

Mechanical systems or equipment lawfully in existence at the time of the adoption of this Code may have their use, maintenance, or repair continued if the use, maintenance, or repair is in accordance with the original design and location and no hazard to life, health, or property has been created by such system or equipment.

9-7.214. CONFLICTS BETWEEN PLUMBING AND MECHANICAL CODES.

When the requirements within the jurisdiction of the Plumbing Code referenced in Section 9-2.101 conflict with the Mechanical Code referenced in Section 9-7.101, the Plumbing Code shall prevail.

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

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

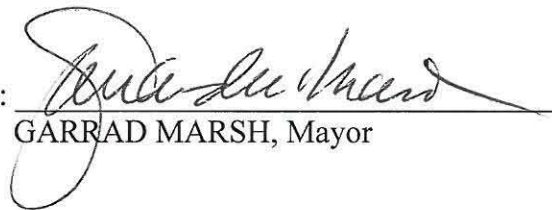
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Burnside

APPROVED:


GARRAD MARSH, Mayor

ATTEST:

By


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By


ADAM LINDGREN, Interim City Attorney

Ord. No. 3594-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR GARRAD MARSH

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 3, 2014

ORDINANCE NO. 3595-C.S.

AN ORDINANCE AMENDING ARTICLE 1 AND ARTICLE 2 OF CHAPTER 2 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AND AMENDING SECTIONS 9-2.101 AND 9-2.201 RELATING TO THE PLUMBING CODE.

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

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

ARTICLE 1. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA PLUMBING CODE

9-2.101. ADOPTION BY REFERENCE OF THE 2013 CALIFORNIA PLUMBING CODE.

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2013 California Plumbing Code, California Code of Regulations, Title 24, Part 5, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, regulating and governing the erection, alteration, installation, repair, relocation, replacement, addition to, use or maintenance of plumbing and drainage systems and parts thereof for the protection of public health and safety, providing for the issuance of permits and collection of fees, providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2013 California Plumbing Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Plumbing Code of the City of Modesto.

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

9-2.201. TITLE.

These regulations shall be known as the "Plumbing Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to

herein as the “Plumbing Code,” the “2013 California Plumbing Code,” the “California Plumbing Code,” or “this Code.”

9-2.202. PURPOSE.

The purpose of this Code is to establish the minimum requirements to safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, access for persons with disabilities, sanitation, adequate light and ventilation, and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to firefighters and emergency responders during emergency operations.

9-2.203. SCOPE.

The provisions of this Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures throughout the City of Modesto.

9-2.204. APPENDICES.

Provisions contained in the appendices of the 2007 California Plumbing Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

9-2.205. MAINTENANCE.

All plumbing or drainage systems, materials, and appurtenances, both existing and new, and all parts thereof, shall be maintained in proper operating condition. All devices or safeguards required by this Code shall be maintained in conformance with the code edition under which installed.

9-2.20 6. ADDITIONS, ALTERATIONS, OR REPAIRS.

Additions, alterations, or repairs may be made to any plumbing or drainage system, or parts thereof, or equipment without requiring the existing to comply with all the requirements of this Code, provided the addition, alteration, or repair conforms to that required for new installation. Additions, alterations, or repairs shall not cause an existing system to become unsafe, unsanitary, or overloaded.

9-2.207. MOVED BUILDINGS.

Plumbing or drainage systems and all parts thereof, that are part of buildings or structures moved into the City of Modesto shall comply with the provisions of this Code for new installations.

Exception. All parts of the plumbing or drainage system of any building, or parts thereof, that is moved from one (1) foundation to another, or from one (1) location to another, shall be completely tested as prescribed elsewhere in this Code for new work, except that walls or floors need not be removed during such test when other equivalent means of inspection acceptable to the Building Official are provided.

9-2.208. MOST RESTRICTIVE – SPECIFIC REQUIREMENT.

Where, in any specific case, different sections of this Code specify different materials, methods of construction, or other requirements, the most restrictive shall e there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

9-2.209. OTHER LAWS.

The provisions of this Code shall not be deemed to nullify any provision(s) of local, state, or federal law.

9-2.210. APPLICATION OF REFERENCES.

References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this Code.

9-2.211. REFERENCED CODES AND STANDARDS.

The codes and standards referenced in this Code shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and referenced codes and standards, the provisions of this Code shall apply, unless stated otherwise.

9-2.212. PARTIAL INVALIDITY.

In the event that any part or provision of this Code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions of this Code.

9-2.213. EXISTING INSTALLATIONS.

Plumbing systems or equipment lawfully in existence at the time of the adoption of this Code may have their use, maintenance, or repair continued if the use, maintenance, or repair is in accordance with the original design and location and no hazard to life, health, or property has been created by such system or equipment.

9-2.214. EXISTING BUILDING SEWERS AND DRAINS.

Existing building sewers and drains may be used in connection with new buildings or new plumbing and drainage work only when they are found on examination and test to conform in all respects to the requirements governing new work, and the Building Official shall notify the owner to make any changes necessary to conform to this Code. No building or part thereof shall be erected or placed over any part of a drainage system which is constructed of materials other than those approved elsewhere in this Code for use under or within a building.

9-2.215. DRAINAGE OPENINGS.

All openings into a drainage or vent system, excepting those openings to which plumbing fixtures are properly connected or which constitute vent terminals, shall be permanently plugged or capped in an approved manner, using the appropriate materials required by this Code.

9-2.216. CONFLICTS BETWEEN PLUMBING AND MECHANICAL CODE

When the requirements within the jurisdiction of the Plumbing Code referenced in Section 9-2.101 conflict with the Mechanical Code referenced in Section 9-7.101, the Plumbing Code shall prevail.

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

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

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


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Geer, Gunderson, Lopez, Muratore and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: Burnside

APPROVED:


GARRAD MARSH, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
ADAM LINDGREN, Interim City Attorney

Ord. No. 3595-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki and Mayor Marsh

NOES: Councilmembers: None


ABSENT: Councilmembers: None

APPROVED:



MAYOR GARRAD MARSH

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: January 3, 2014

ORDINANCE NO. 3596-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE FIVE-YEAR BUS BENCH FRANCHISE TO UNITED CEREBRAL PALSY ASSOCIATION FOR THE RIGHT, PRIVILEGE AND PERMISSION TO OPERATE BENCHES BEARING PRINTED MATTER OR SIGNS THEREON AT DESIGNATED LOCATIONS ALONG THE STREETS IN THE CITY OF MODESTO AND TO LEASE BENCHES FOR THIS PURPOSE FROM THE CITY OF MODESTO

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

SECTION 1. DEFINITIONS.

- (a) "Grantee" means United Cerebral Palsy Association, Inc. of Stanislaus County, hereinafter called Grantee.
- (b) "The City" means and refers to the City of Modesto.
- (c) "Bench" means and refers to benches presently located and in the future placed by or on behalf of the City upon public property along the public way for the accommodation of persons awaiting public transportation.
- (d) "Street" means and refers to any public thoroughfare or way including the sidewalk, the parkway and other public property fronting upon a public way in the City.
- (e) "Franchise" means and refers to this Ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.

SECTION 2. BENCHES PROHIBITED. No person shall install or maintain any bench bearing printed matter or a sign along any street in the City except in accordance with the provisions of this franchise.

SECTION 3. SCOPE AND TERM OF FRANCHISE.

(a) **Scope.** Grantee shall have the exclusive franchise for the right, privilege and permission to lease benches from the City and to place and maintain printed matter or signs on benches at designated locations along the streets in the City of Modesto in accordance with the provisions of this Franchise.

(b) **Term/Termination for Convenience.** The term of the Franchise shall commence on January 1, 2014, and shall end no later than December 31, 2018. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee with written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by regular United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to Mario Supnet, Acting Executive Director, 4265 Spyres Way, #2, Modesto, CA 95356. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give the City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period.

SECTION 4. BENCHES AND BENCH PARTS. Grantee shall be responsible for the safe storage of benches and spare bench parts, if any, furnished to Grantee by the City. A list of benches and bench parts provided to Grantee by the City on the effective date of the franchise period is included in Attachment A. Grantee shall be responsible for the safe transportation of benches and bench parts from the current storage location to Grantee's storage location. Grantee shall establish, in a manner satisfactory to the City, an inventory system to track the number of bench legs in Grantee's inventory and to note for each bench leg that is removed from the inventory the reason for its removal. The City, at its sole discretion, may supply additional bench legs or other items to replace those that are damaged beyond repair, lost or stolen, but is under no obligation to do so. Grantee may provide additional bench legs with the approval of the City Manager or his designee. Bench legs provided by Grantee shall become the property of the City upon placement of the bench legs at a City of Modesto bus stop unless specifically marked as Grantee's property. Except for concrete bench legs, Grantee shall supply all other replacement parts necessary for repair of benches, including, but not limited to, slats for bench seats and bench backs, and hardware necessary to secure bench seats and backs. All parts supplied by Grantee shall be subject to approval by the City and shall be removed from the benches and/or from Grantee's

inventory if required by the City. Plywood or other material upon which advertising signs will be painted or affixed shall be provided by Grantee. Grantee shall dispose of any metal sign frames that might have been supplied by City if said frames, in the opinion of the City Manager or his designee, do not fit safely against the bench backrest. Wood slats and other bench parts shall be connected to bench legs as specified by the City.

SECTION 5. LEASE OF BENCHES/PAYMENT. For the exclusive rights and privileges set forth herein, Grantee shall lease benches from the City for a period no greater than five (5) years.

For the right and privilege of leasing the benches, Grantee, prior to January 1, 2014, shall pay to the City \$ One Thousand Two Hundred no/100 (\$1,200.00), which sum shall thereafter be paid to the City monthly prior to the first day of each month.

SECTION 6. PLACEMENT OF BUS PASSENGER SHELTERS BEARING PRINTED MATTER OR SIGNS THEREON. The City shall have the authority to place printed matter or signs providing information about local public transportation systems on all bus shelters located along the City's public transportation system routes. The City shall also have the authority to place bus passenger shelters bearing paid advertising messages and other printed matter or signs thereon at up to five locations within the City of Modesto selected by the City Manager or his designee. Where such shelters are placed, Grantee shall remove benches unless otherwise directed by the City Manager or his Designee.

SECTION 7. BENCH RESTRICTIONS. Grantee shall utilize only the front surface of the bench backrest for the placement of printed matter or signs. The rearward facing portion of each backrest shall be a blank surface finished to match the seat. No other material whatsoever shall be permitted on any portion of the bench except as specified by the City.

- (a) Printed matter or signs shall be placed in accordance with the following stipulations:

(1) No printed matter shall be placed on any benches erected and maintained adjacent to property zoned by the City as R-1, R-2 or as P-D where land use resembles an R-1 or R-2 Zone except for Pelandale Avenue between Dale Road and McHenry Avenue, where printed matter is allowed regardless of the adjacent land use. The City Manager or his designee's determination of which P-D zoned properties resemble R-1 or R-2 zones shall be conclusive.

(2) Grantee shall submit to the City Manager or designee copies of all ads proposed to be placed on benches for preplacement approval if required by the City Manager or his designee.

(3) Should the City, in its sole discretion, determine any advertising placed on any bench to be improper, offensive or a display that is likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, Grantee shall remove all such material within twenty-four (24) hours after the City serves a written removal notice upon Grantee. Should the Grantee fail to remedy the situation within the twenty-four (24) hour period, the City may elect to paint over said material.

(4) Examples of words included in the prohibition stated in the next preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.

(5) No advertising or signs or devices shall be permitted in conjunction with bus bench advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.

(6) Reasonable proof or clarification of statements contained in any advertisement, exhibit material or announcement placed on a bus bench may be required by the City as a condition of use or continued use of bus bench advertising space.

(7) Advertisements displayed with dated content shall be removed by Grantee within ten (10) working days of the expiration or obsolescence of the ad content unless otherwise mutually agreed upon in advance with the City.

(b) No printed matter or sign is permitted to be displayed that:

- (1) Advertises tobacco, beverages containing alcohol, or businesses regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406.
- (2) Contains any depiction of an act of an immoral, violent, or debasing nature, or is otherwise not in keeping with the standards of the community or surroundings of the bus bench locale.
- (3) Competes with any primary products or services offered by any businesses occupying the abutting property where the bench or benches are placed.
- (4) Is false, misleading, deceptive or clearly defamatory.
- (5) Promotes unlawful or illegal goods, services, or activities or implies that illegal behavior of any kind is acceptable.
- (6) Implies or declares an endorsement by MAX or the City of any service, product, or point of view without prior written authorization from Transit Manager.
- (7) Contains an image of any person in a sexually suggestive dress, pose, or context or shows any portion of any person's unclothed breasts, buttocks, navel or genitals, or in any way calls attention to a person's breasts, buttocks or genitals, clothed or not.
- (8) Is directly adverse to the commercial or administrative interests of MAX or the City, or is harmful to the morale of the City or MAX employees or MAX's operations contractor.
- (9) Demeans an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability, or sexual orientation.
- (10) Contains images or information that would be deemed by a significant segment of the public to be offensive, improper, or in bad taste.
- (11) Promotes the legalization or medical use of a controlled substance, including, but not limited to marijuana.
- (12) May create an impression that would appear to support an activity or organization that may be illegal.

(13) Contains political information concerning local or national subjects or promotes or endorses any position, individual, group, or political party for political purposes.

(14) Includes any material that demeans public transportation, suggests that another mode of transportation is superior to riding public transit, or portrays public transportation in a negative light.

(15) Promotes or advertises equipment or supplies that are commonly associated with the growing, manufacturing or use of illegal substances as defined by local, state or federal laws.

SECTION 8. APPROVAL OF LOCATION. Benches shall be placed, maintained, relocated, and removed as required by the City Manager or his designee. Grantee shall maintain an up to date listing of locations where benches are in place. Said listing shall include the street that the bench faces, the nearest cross street, and the name of the business or, for non-business locations, the type of land use in front of which the bench is located. The benches contemplated are designed for the convenience of those using public transit buses in the City and shall be placed only at locations designated as bus stops by the City Manager or his designee. One bench shall be maintained at each bus stop location where a bench is in place as of December 31, 2013, so long as a sufficient number of benches are available to do so. No bench shall be installed or maintained:

(a) Without the express written approval of the proposed location of the bench by the City Manager or his designee;

(b) In any alley;

(c) At any location where the distance from the face of the curb to the property line is less than six feet (6'); provided that whenever, in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager or his designee; or

(d) At any location when the owner or the person in lawful possession or control of the property abutting upon the public street at the place where the bench is located, requests in writing to

the City Manager or his designee that the bench not be placed or maintained at such location; provided that whenever in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager.

(e) At any location where a bus passenger shelter with advertising thereon is located, unless otherwise directed by the City.

SECTION 9. RATIO OF BENCHES BETWEEN COMMERCIAL AND RESIDENTIAL AREAS. For each seven (7) benches installed in areas where benches bearing printed matter or signs are allowed, at least one bench shall be installed in areas where benches bearing printed matter or signs are not allowed. The specific locations of these latter benches shall be specified by the City Manager or his designee.

SECTION 10. MAINTENANCE OF BENCHES.

(a) All benches owned by the City, regardless of location inside or outside of the City limits of the City of Modesto or whether they have advertising on them, shall be maintained in good repair in a safe and sightly condition. Benches shall be inspected and cleaned, as more particularly described in the following section, a minimum of at least once each week including removal of graffiti. Benches shall be cleaned more frequently as needed. The City Manager or his designee's determination as to the state of repair and condition shall be conclusive. Grantee shall inspect each bench periodically to assure full compliance with the provisions of this section. With the exception of concrete bench legs, Grantee shall repair or replace all other bench parts necessary to provide a fully complete, safe and sightly bench. For this purpose Grantee may utilize bench parts provided by the City, if any, at the beginning of the franchise. After the bench parts supplied by the City at the initiation of this franchise are completely utilized, Grantee shall, with the exception of concrete bench legs, be responsible for supplying any additional bench parts needed at Grantee's expense. The City will replace concrete bench legs at its discretion. Bench parts shall become the property of the City upon their placement within the street right-of-way at a bus stop. Grantee shall be responsible for transporting and installing new or replacement

benches and disposing of destroyed or unrepairable benches. Wooden bench parts shall be painted no less than once each year and more frequently if needed. Said wooden parts shall not be painted while the bench is in place at a bus stop. Concrete bench legs shall not be painted unless approved by the City. Grantee shall clean or repair benches identified by the City within twenty-four (24) hours' notification by the City of the need for the repair or cleaning.

(b) Grantee shall designate a maintenance supervisor with whom City staff can communicate on a regular basis to resolve maintenance issues. To enable City staff to communicate with this individual electronically, Grantee shall ensure that this individual has access to and routinely and frequently monitors an e-mail account. Grantee shall also furnish this individual with a cellular telephone to further enhance communication with City staff.

SECTION 11. CLEANING AROUND BENCHES. Grantee shall, at least once each week and more often if needed, remove trash and other debris from within five (5) feet of each bench and accompanying street furniture such as trash receptacles and recycling bins. The City Manager or his designee may specify up to twenty (20) bench locations to be cleaned on a daily basis. Said twenty (20) specific locations may be changed weekly by the City Manager or his designee. The City Manager or his designee's decision as to the need for trash and debris removal shall be conclusive. Grantee shall inspect each bench location periodically to ensure full compliance with the provisions of this section.

SECTION 12. PENALTY FOR IMPROPER MAINTENANCE AND CLEANING. Each bench which has not been maintained, cleaned, or had graffiti removed as required in Section 10, or which has not had the area around it cleaned as required in Section 11 will subject Grantee to a penalty of Twenty and no/100ths Dollars (\$20.00) for each occurrence. Violation of this section shall be determined by the City Manager or his designee after Grantee has had opportunity to respond. A maximum of Two Hundred and no/100ths Dollars (\$200.00) in penalties under this section may be assessed by the City during any one calendar month. Penalties are due and payable to the City within fifteen (15) days of

mailing of an invoice by the City in the U.S. Mail. The invoice will specify the bench locations which do not meet the cleaning and/or maintenance requirements.

SECTION 13. TRASH RECEPTACLE. Grantee shall maintain all City-owned trash receptacles placed at City bus stops on McHenry Avenue between Needham Avenue and Briggsmore Avenue in a safe and sanitary condition and empty said receptacles as necessary but not less than once each week. Plastic bags for said receptacles shall be furnished by the Grantee. Grantee shall dispose of the litter collected from said receptacles in compliance with all local, State and Federal requirements.

SECTION 14. REMOVAL OF BENCHES. No bench, after being installed on the streets or sidewalks of the City, shall be removed by the Grantee during the term of this franchise except with the consent of the City Manager or his designee. Benches shall be moved or removed only as directed by the City Manager or his designee. The City Manager or his designee may, for a cause considered by him reasonable, order the Grantee to move or remove any bench. When the City Manager or his designee orders a bench moved or removed, the Grantee shall move or remove it within three (3) days at its own expense. If the Grantee shall fail to do so, the City Manager or his designee may order the removal of the bench and, in addition, bill the Grantee for the removal in a sum not in excess of One-Hundred and no/100ths Dollars (\$100.00) per bench.

SECTION 15. LOCATION OF BENCHES AND BENCH SPECIFICATIONS. All benches shall be placed on sidewalks parallel to the curb line and at a distance from the curb to be determined by the City Manager or his designee. No bench shall be placed so as to injuriously obstruct passage on the sidewalk or street. No bench shall be placed within fifteen feet (15') of any fire hydrant. The clearance between the bench and the nearest obstruction on the sidewalk shall be no less than forty-two inches (42"). No more than two benches may be placed at any one bus stop unless approved by the City Manager or his designee. Bench locations shall comply with any additional location criteria established by the City Manager or his designee

SECTION 16. EMERGENCY SITUATIONS. Grantee shall be present at the site of an emergency situation within one hour of verbal notification that such an emergency exists. An emergency is defined as damage to or unauthorized movement to a new location of a bench which presents a serious hazard to the public. If the City Manager or his designee determines that an emergency situation exists, their determination shall be conclusive. Failure of Grantee to respond within the prescribed time limit shall result in a penalty of up to Fifty and no/100ths Dollars (\$50.00) for each failure to respond. Penalties are due and payable to the City within fifteen (15) days of mailing an invoice by the City in the U.S. Mail. The City may, at its discretion, move the bench to a safe location pending arrival of Grantee.

SECTION 17. INDEMNITY, INSURANCE, AND HOLD HARMLESS

a. The Grantee 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 City's City Clerk. 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 registered 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 \$1,000,000.

2. General Liability – insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general

aggregate shall be twice the required occurrence limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit apply to: premises and operations, broad form contractual; independent contractors and subcontractors; products and completed operations as applicable.

3. Automobile Liability - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

4. Advertiser's Liability – insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

b. 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 Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove approved. Upon failure of the Grantee to furnish, deliver, or maintain such insurance and certificates as above provided, this Agreement, at the election of the City, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Worker's Compensation. The Worker's

Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by the Grantee for the City. the Grantee'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 Grantee shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, defend, and indemnify them against any and all claims, losses, liabilities, and damages from every cause, including but not limited to, injury to person, property, or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of the Grantee, whether or not the act or omission arises from the sole negligence or other liability of the City, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

c. The Grantee shall provide the 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, the Grantee shall provide the City with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

d. For any claims related to this program, the Grantee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Grantee's insurance and shall not contribute with it.

SECTION 18. PERFORMANCE BOND/SECURITY. The Grantee shall post a performance bond or other surety approved by the City's City Attorney in the sum of Three Thousand and no/100ths to the City guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the City as liquidated damages in the event that Grantee shall fail to perform

the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a bond.)

SECTION 19. DEFAULT. In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all benches in the positions approved per Section 8 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

SECTION 20. INSPECTION OF BOOKS. The City shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise.

SECTION 21. DEFACING BENCHES PROHIBITED. No person shall tamper with or deface any bench placed under the franchise granted by this ordinance.

SECTION 22. PENALTY FOR VIOLATION OF SECTION 21. It shall be unlawful for any person to violate the provisions of SECTION 21 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

SECTION 23. TRANSFER OR ASSIGNMENT. This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

SECTION 24. REPEALS. Ordinance No. 3497-C.S. is hereby repealed effective January 1, 2014.

SECTION 25. EFFECTIVE DATE. This ordinance shall become effective January 1, 2014, or thirty (30) days from and after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the bond and insurance policies required to be furnished pursuant to the provisions of Section 17 and 18 thereof.

SECTION 26. 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 27. TAX PROVISION. Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from the City shall constitute grounds for revocation of this franchise.

SECTION 28. CITY USE OF BENCHES. Grantee shall make available to the City, at no cost to the City, a maximum of twenty (20) benches that are without paid advertising or which carry only the Grantee's advertisement for the sale of advertising space on the benches. Said twenty (20) benches will be used for the purpose of displaying printed messages selected by the City to promote City programs or messages determined by the City to be of importance to the public. The City shall have the

sole ability to select said twenty (20) locations. The City shall be responsible for the cost of painting or otherwise applying its printed message to the benches it utilizes and shall have the ability to utilize the bench advertisement painter of its choice. Grantee shall supply the bench back material to which the City sign is applied. Grantee shall install said City signs on the benches at no cost to the City. Grantee shall have the ability to remove the City signs from locations that may subsequently be purchased by advertisers but shall relocate displaced City signs to other locations selected by the City.

SECTION 29. DRUG FREE WORKPLACE. Grantee certifies that he/she is in compliance with Sections 8350-8355 of Chapter 5.5 of the Government Code, Drug Free Workplace Act.

SECTION 30. GRANTEE'S RESPONSIBILITY FOR DAMAGES. Grantee shall reimburse the City for the cost of repairing any damage it causes to the City's property. The City shall make the final determination as to the Grantee's responsibility for any damage that may have occurred to the City's property. The City will invoice the Grantee for the cost of repairing damage determined by the City to have been the responsibility of the Grantee. Grantee shall pay the invoice in full to the City within thirty (30) days of the mailing date of the invoice.


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2013, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None


ABSENT: Councilmembers: None

APPROVED:


GARRAD MARSH, Mayor

ATTEST:

By:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


ADAM LINDGREN, Interim City Attorney

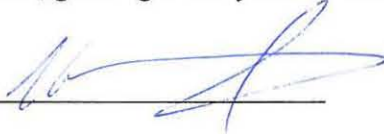
By:


MARY AKIN, Risk Manager

ACCEPTANCE OF FRANCHISE

United Cerebral Palsy Association, Inc., of Stanislaus/Tuolumne Counties does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3596-C.S., introduced by the Council of the City of Modesto on December 3, 2013, granting a five-year bus bench franchise.

Dated: 12/16/13.

GRANTEE 

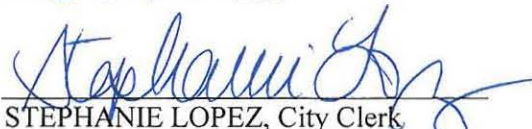
(SEAL)

APPROVED AS TO FORM:

By 
ADAM LINDGREN, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of 4:00 o'clock p.m. on the 17th day of December, 2013


STEPHANIE LOPEZ, City Clerk

Ord. No. 3596-C.S.

FINAL ADOPTION CLAUSE

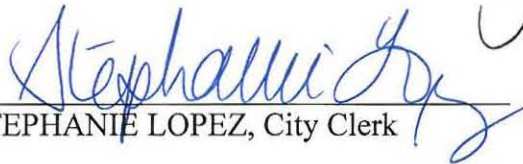
The foregoing ordinance, having been published as required by the charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 10th day of December, 2013, Councilmember Lopez, who moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki and Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR GARRAD MARSH

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: January 3, 2014