

ORDINANCE NO. 3691-C.S.

ORDINANCE AMENDING CHAPTER 9-10 OF THE MODESTO MUNICIPAL CODE, ENTITLED "MODESTO LANDMARK PRESERVATION"

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

SECTION 1. AMENDMENT OF CODE. Chapter 10 of the Modesto Municipal

Code is hereby amended in its entirety to read as follows:

9-10.01 - Public Policy and Purpose.

It is hereby declared as a matter of public policy that the recognition, preservation, enhancement, perpetuation and use of structures, natural features, sites and areas within the City of Modesto having historic, architectural, archeological, cultural, engineering or aesthetic significance is required in the interest of the health, economic prosperity, cultural enrichment and general welfare of the people. The purpose of this chapter is to:

- (a) Safeguard the heritage of the City by providing for the protection of landmarks representing significant elements of its history;
- (b) Enhance the visual character of the City by encouraging and regulating the compatibility of architectural styles on or adjacent to landmark preservation sites reflecting unique and established architectural traditions;
- (c) Foster public appreciation of and civic pride in the beauty of the City and the accomplishments of its past;
- (d) Strengthen the economy of the City by protecting and enhancing the City's attractions to residents, tourists and visitors;
- (e) Stabilize and improve property values within the City; and,
- (f) Promote the private and public use of landmarks and landmark sites for the education, prosperity and general welfare of the people.

9-10.02 - Definitions.

For purposes of this chapter the following words or phrases shall have the meanings respectively ascribed to them by this section.

- (a) **Significance:** The quality of the information, example, interest or meaning represented by the site for understanding and appreciating the past, development or culture.
- (b) **Historic Significance:** Associated with activities, processes, events, trends

ORDINANCE 3691-C.S.
Effective Date: March 7, 2019

or persons of importance to the community, state or nation.

- (c) Architectural Significance: Possessing distinctive characteristics of a style, place, period, method or materials of construction, builder or architect.
- (d) Cultural Significance: A significant setting of manmade or natural features (including significant trees or other plant life located thereon), or a combination, possessing meaning primarily by long association or identification with the community and/or its citizens.
- (e) Archaeological Significance: A setting possessing the potential to reveal information important to historic or prehistoric studies.
- (f) Engineering Significance: A work demonstrating a technology, design or method characteristic of a historic period or activity.
- (g) Modesto Landmark Preservation Site: An area, district, building, structure or object, which has been designated for preservation for reasons of its significance by the City Council.
- (h) Resource, Historic Resource: An area, district, building, site, structure, or object that is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, or cultural history of Modesto or the region. Resources might not be designated as a landmark, but are eligible for Landmark status.

9-10.03 - Modesto Landmark Preservation Commission Established.

- (a) This chapter establishes the Modesto Landmark Preservation Commission with the following responsibilities:
 - (1) To promote public recognition and appreciation for Modesto's history, Landmark Preservation Sites, and resources;
 - (2) To conduct continuing surveys and research in order to identify and classify, as to their relative importance, properties that have historic, architectural, archaeological, engineering or cultural significance to the community;
 - (3) To recommend historic resources which meet the criteria of significance stated herein for designation as Modesto Landmark Preservation Sites;
 - (4) To protect Modesto Landmark Preservation Sites by public review of all proposed alterations, relocations, demolitions or new construction affecting those resources ; and,
 - (5) To advise property owners and educate the public in appropriate maintenance, rehabilitation or restoration methods. To encourage continued uses, compatible with their character, of Modesto Landmark Preservation Sites and historic resources.

- (b) The Modesto Landmark Preservation Commission, hereinafter the "Commission," shall consist of five (5) or seven (7) voting members appointed by the Modesto City Council in conformance with Section 1102 of the Charter of the City of Modesto. All said members shall be registered voters residing in the City of Modesto. The said voting members should be selected from the following if possible:
- (1) At least one (1) member should be an architect, or if an architect should not be available, an experienced person of the building trades;
 - (2) At least one (1) member should be a professional or experienced person in the areas of history, architectural history, archaeology, planning, real estate, design, building trades, landscape architecture or law;
 - (3) At least one (1) member should be a person with a background in finance, accounting, appraising or related fields;
 - (4) At least one (1) member should be a member of the McHenry Museum and Historical Society;
 - (5) The other members shall be drawn from persons with a demonstrated interest and/or expertise in historic preservation; and,
 - (6) One (1) member should also be a member of the Modesto Culture Commission and would serve on both commissions. Alternatively, a person recommended by the Culture Commission may be appointed by the City Council to serve only on the Landmark Preservation Commission.
- (c) The Commission, when formed, shall be organized and operated pursuant to the rules and regulations set forth in the Modesto Municipal Code for the purpose of carrying out the intent of this chapter, which rules and regulations are not inconsistent with the laws of the City of Modesto and the State of California.
- (d) The Commission shall make an annual report by September 1, containing a statement of its activities and plans to the Mayor, the City Council and the City Manager.
- (e) The Commission shall meet monthly to initiate surveys and nominations of properties, to review potential Modesto Landmark Preservation Sites, to make recommendations of properties to City Council for designation, and to prepare the Commission's annual report.

In addition, the Commission will meet at its earliest convenience, when called by the Chairman, to review such building permits or applications as are referred to it by the City Chief Building Official or Community Development Director. The City Chief Building Official or Community Development Director shall refer to the Commission such building permits or applications on projects which they determine should be considered for

preservation in accordance with the intent of this chapter.

- (f) To accomplish the intent and purpose of this chapter, the City of Modesto shall provide the Commission with adequate staff support and supplies, including the assistance designated by the City Manager to perform the duties prescribed under this chapter.

9-10.04 - Applications.

Requests for approval regarding any matters pertaining to this chapter shall be filed with the Community & Economic Development Department on a City application form, together with any required fees, plans, maps, reports, special studies, exhibits and any other information deemed necessary by the Department. An application may be initiated by the City, or owner(s), or lessee(s) of property or their agent(s), or person(s) who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this Chapter or their agent(s). Property owner authorization is required in all cases.

9-10.05 - Designation of Modesto Landmark Preservation Sites.

- (a) The Commission shall conduct a continuing survey of properties and shall provide procedures for citizens to nominate properties for consideration as Modesto Landmark Preservation Sites. The Commission shall conduct research and documentation of properties which it has reason to believe are significant to the community.
- (b) The Commission shall recommend sites to the City Council for designation as Modesto Landmark Preservation Sites. In order to be recommended for designation, the Commission must determine that the site being considered possesses historic, architectural, cultural, archaeological or engineering significance as defined above. Furthermore, in making its recommendation, the Commission shall consider the following conditions:
 - (1) That the location and setting is compatible with future preservation and use;
 - (2) That the physical condition is such that preservation, maintenance or adaptive use is economically feasible;
 - (3) That the distinguishing characteristics of significance are for the most part original and intact or capable of restoration; and
 - (4) That the existing or proposed use is compatible with the preservation and maintenance of the site.
- (c) The eligibility of a site for designation as a Modesto Landmark Preservation Site shall be determined by the Modesto Landmark Preservation Commission in a public hearing. The Modesto Landmark Preservation Commission shall adopt a resolution of recommendation for each site or for a district. Notice of the public hearing shall be made in the same manner as

specified in Title 10, Chapter 9, Section 201, and the public hearing shall be conducted in the same manner as specified in Title 10, Chapter 9, Section 202.

- (d) The Commission shall forward its recommendations, together with its findings of significance and eligibility, to the City Council.

The City Council, upon recommendation of the Commission, may, by resolution, designate a Modesto Landmark Preservation Site, and an appropriate presentation and/or identifying plaque may be provided for. Prior to such designation, the City Council shall hold a public hearing pursuant to the same notice provisions as required for the Landmark Preservation Commission meeting in accordance with the Modesto Municipal Code.

- (e) The Modesto Landmark Preservation Sites shall be recorded as follows:

- (1) The office of the City Clerk shall record with the Stanislaus County Recorder the legal description of all buildings, lands, sites or areas designated as Modesto Landmark Preservation Sites by the Council, and shall send a copy to the Chief Building Official. In addition, the same may be made available to the public in form and fashion as the Commission or City Council deems appropriate.

- (2) Modesto Landmark Preservation Records.

- (i) The Commission shall keep current and public a list of all properties designated as Modesto Landmark Preservation Sites, or included in the State or National Register of Historic Places, or included in a historic resource survey and make the same available to the public in form and fashion as the Commission or City Council deems appropriate.

- (ii) The Commission will provide the Chief Building Official and the Community & Economic Development Director with current lists and maps showing Modesto Landmark Preservation Sites, Districts, and historic resources for their use in referring applications to the Commission.

9-10.06 - Additional Powers and Duties of the Commission.

The Commission shall have the following powers and duties in addition to those otherwise specified in this chapter:

- (a) The Commission shall request, as needed, the Planning Commission, the Board of Zoning Adjustment, various City departments or the City Council to adopt measures required or appropriate for the preservation, protection or maintenance of Modesto Landmark Preservation Sites and other historic resources, including but not limited to variances or amendments to the Zoning Code, rules governing construction, demolition, alteration or use, or

the removal or repair of blighting influence incompatible with the physical well-being of designated properties:

- (b) The Commission shall have the authority to provide general preservation plans and guidelines to owners of Modesto Landmark Preservation Sites and other historic resources, regarding maintenance, restoration, and rehabilitation;
- (c) The Commission shall have the authority to promote public recognition and appreciation for Modesto's history, Modesto Landmark Preservation Sites and other historic resources. It shall periodically publish a register of designated and potential Modesto Landmark Preservation Sites and Districts, along with guidelines and preservation programs available at that time; and
- (d) The Commission shall have the authority to initiate solicitation of gifts and contributions to be made to the City to support the activities and purposes of the Commission. The Commission shall assist the City staff in the preparation of applications for grant funds made by the City for the purpose of City Landmark Preservation.

9-10.07 - Review of Permits.

- (a) The Chief Building Official shall immediately refer building permit applications which propose to alter, renovate, or demolish landmarks or landmark-eligible resources to the Community & Economic Development Director. The Director will then determine whether an application must be made to the Landmark Preservation Commission for its written approval prior to issuance of a building permit. No building permit shall be issued until the Landmark Preservation Commission issues written approval or the Director indicates that the resource is not subject to review by the Landmark Preservation Commission. "Alteration" includes but is not limited to remodeling, repair, signs or fences that will change the exterior appearance. "Demolition" may include the whole or any part of a building.
- (b) Every request for approval in relation to a property or resource designated as a Modesto Landmark Preservation Site shall be accompanied by a City application form, as specified in this chapter, which shall be provided to the Modesto Landmark Preservation Commission.
- (c) Building permits for these applications shall not be issued until receiving written approval from the Modesto Landmark Preservation Commission, subject, however, to subsections (g), (h), and (j) of this section.
- (d) At its next regular meeting the Modesto Landmark Preservation Commission may consider the application to determine if the work adversely affects the preservation, historic and architectural character of the Modesto Landmark Preservation Site or landmark eligible resource.
 - (1) The Modesto Landmark Preservation Commission shall conduct a public hearing for the purpose of receiving the recommendations from

ORDINANCE 3691-C.S.
Effective Date: March 7, 2019

concerned citizens and the applicant. Notice of the public hearing shall be as follows:

- (i) A public notice of the hearing shall be prepared which at a minimum identifies the hearing body and describes the location of the resource, nature of the historical designation, and the date, the time and place of the hearing. The notice shall be distributed as follows:
 - (A) Mailing of a notice to the owner or authorized agent of the property owner and the project applicant. Mailing of a notice to every property owner as shown on the updated equalized assessment roll of the County of Stanislaus, who owns property, any part of which is within three hundred (300) feet of the resource involved. Mailing of a notice to the elementary and high school districts serving the area. The notice shall be deposited in the United States mail not less than ten (10) days prior to the hearing.
 - (B) Additional means of distribution may be used at the discretion of the secretary or City Clerk. Additional means of distribution may include mailing of notices not otherwise required or posting notices in the immediate area of the resource.
- (2) If it is determined that the work to be performed does not adversely affect the site, the application shall be approved and the Chief Building Official or Community Development Director shall be informed in writing within ten (10) working days of the Commission's action.
- (3) If it is determined that the work to be performed does adversely affect the site or district, the application shall be disapproved and the Chief Building Official or Community Development Director shall be informed in writing within ten (10) working days of the Commission's action. The Commission shall furnish the permit applicant with a copy of the decision together with recommendations for changes necessary before the Commission will reconsider the permit application.
- (e) When reviewing an application as described under subsection (d) of this section, the Commission shall consider the following criteria to decide whether the work affects the Modesto Landmark Preservation Site in the following cases:
 - (1) Proposed Alteration or Addition to an Existing Building, Structure or Site. The Commission will consider whether or not the work will adversely impair the significance or character of the historic resource. The Commission's written findings shall refer to the following criteria:
 - (i) The distinguishing original qualities, character or appearance shall not be destroyed. The removal or alteration of historic or original material, or distinctive architectural features shall be avoided. In the

event that removal or alteration of historic or original material is determined to be necessary, the work shall be done in such a way as to minimize the adverse effect.

- (ii) Deteriorated architectural features shall be repaired rather than replaced. In the event that replacement is determined to be necessary, the replacement shall be an accurate duplication of the design, color, texture and other visual qualities of the original, substantiated by historic, physical or pictorial evidence rather than on conjecture.
 - (iii) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting, other cleaning methods, sealants, coating and paints shall not damage or appreciably change the material, color and texture of original surfaces.
 - (iv) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy original, historic, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the resource, neighborhood or environment.
 - (v) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.
- (2) Proposed Demolition or Removal of a Building or Structure. The Commission will consider whether or not the demolition or removal is necessary, and its effect on the surrounding buildings and neighborhood. The Commission's written finding shall refer to the following criteria:
- (i) Consideration shall be given to the significance or architectural merit of the building itself, and the contribution the building makes to the historic or architectural character of the neighborhood or district.
 - (ii) Consideration will be given to the economic value, usefulness and replacement cost of the building as it now stands and as remodeled or rehabilitated, in comparison to the value or usefulness of any proposed structures designated to replace the present building or buildings.
 - (iii) Consideration will be given to the present structural integrity of the building to determine whether or not it constitutes a clear and present danger to the life and safety of the public. The Commission may contract for a professional estimate of the structural integrity and an estimate of the cost of correcting dangerous deficiencies, with Council approval.
 - (iv) Consideration will be given to the effect of demolition and of proposed new construction on the adjacent buildings and on the

architectural and historic character of the neighborhood or district.

- (3) Proposed New Construction or Relocation. The Commission will consider the effect of the work on the historic and architectural character of the surrounding buildings and neighborhood. The Commission's written findings shall refer to the following criteria:
- (i) Contemporary design for new construction shall not be discouraged, but should be compatible with scale, color, texture, materials and other visual qualities of the surrounding buildings and neighborhood.
 - (ii) The new building should be compatible with the height, width, depth, massing and setback of the surrounding buildings.
 - (iii) The amount of solid wall to window and door openings, and the placement of window and door openings, should be proportional to that of the surrounding buildings and neighborhood.
- (f) The recommendations of the Commission will be consistent with the California State Historical Building Code; and to the extent that a recommendation is inconsistent, the standards of the California State Historical Building Code shall prevail.
- (g) If within forty-five (45) days from the filing of the completed application, the Commission has neither approved or denied the building permit application, the plans and permit application shall be deemed to have been approved by the Commission, and if all other requirements of the City have been met, the appropriate department head shall authorize a permit for the proposed work. By vote of the Commission and notification of the department head, the forty-five (45) day period may be extended by fifteen (15) days in cases where professional study or recommendation is required and the forty-five (45) day period is not sufficient to do the work. No permit shall be issued or work commenced in the event the Commission disapproves the application in accordance with this chapter.
- (h) In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the Chief Building Official may approve temporary or limited repair without prior Modesto Landmark Preservation Commission action. In the case of a permit issued pursuant to this paragraph, the Chief Building Official shall immediately notify the Modesto Landmark Preservation Commission of its action and specify the facts or conditions constituting the emergency situation.
- (i) If the approval of any board or commission other than the City Council alters, amends or modifies any condition of approval established by the Landmark Preservation Commission, that board or commission shall notify the Landmark Preservation Commission of the change and the reasons for the change within five (5) days of that approval.
- (j) The permit applicant or any party aggrieved by the decision of the Modesto

Landmark Preservation Commission shall, within fifteen (15) days of the date of the Modesto Landmark Preservation Commission's order and decision, have a right to appeal such order and decision to the City Council. The appeal shall be made by delivering to the City Clerk two (2) copies of a Notice of Appeal and statement of reasons setting forth the grounds for the appeal. The City Clerk shall transmit one (1) copy of the Notice of Appeal and statement to the City Council and one copy to the Modesto Landmark Preservation Commission. The Modesto Landmark Preservation Commission, in any written order denying a permit application, shall advise the applicant of this right to appeal to the City Council and include this paragraph in all such orders.

9-10.08 - Penalty for Violation.

In addition to any and all remedies which the City may be entitled to by way of obtaining temporary restraining orders, preliminary injunctions and permanent injunctions in connection with the enforcement of this chapter, an owner or occupant of any area, place, building, structure or other object within a duly designated Modesto Landmark Preservation Site who violates the provision of this chapter shall be guilty of an infraction. Any architect, builder, contractor, agent, person or corporation who assists in the commission of a violation of this chapter shall be guilty of an infraction. For each day an owner or occupant of any area, place, building, structure or other object within a duly designated Modesto Landmark Preservation Site allows any work to be performed on any area, place, building, structure or other object in violation of this chapter, it shall constitute a separate violation and separate infraction, and shall be punishable as such. A Modesto Landmark Preservation Site on which there exists any remodeling, repairing, construction, demolition, or a building moved in violation of this chapter is hereby declared a nuisance; and the imposition of the penalties herein prescribed shall not prevent the City of Modesto from instituting an appropriate action or proceeding to prevent an unlawful remodeling, repair, construction, building, building moving or demolition, or to restrain, correct or abate a violation.

9-10.09 - Repository for Documents.

A separate file shall be kept by the Secretary to the Commission which shall be the repository for at least one (1) copy of all Commission minutes, fonns, studies, reports, recommendations and correspondence. All minutes and records will be available for public inspection during normal business hours.

9-10.10 - Landmark Preservation Contracts.

Any owner of a resource which has been designated as a Modesto Landmark Preservation Site shall be eligible to apply for the property tax incentive program through the use of an Historical Property Contract pursuant to Sections 50280 through 50290 of the California Government Code. All applications filed for Landmark Preservation Contracts shall be considered by the Landmark

ORDINANCE 3691-C.S.
Effective Date: March 7, 2019

Preservation Commission at a public hearing. The recommendation of the Landmark Preservation Commission shall be forwarded to the City Council for consideration at a public hearing.

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. ENVIRONMENTAL REVIEW. The City Council hereby finds that the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

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


SECTION 4. 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 January, 2019, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and ordered printed and published by the following vote:

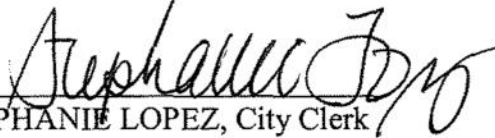
AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:


By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City*Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3691-C.S.

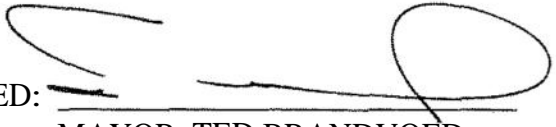
FINAL ADOPTION CLAUSE

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 5th day of February, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR, TED BRANDVOED

ATTEST: 
STEPHANJE LOPEZ, City Clerk

Effective Date: March 7, 2019

ORDINANCE 3691-C.S.
Effective Date: March 7, 2019

ORDINANCE NO. 3692-C.S.

AN ORDINANCE AMENDING SECTION 11-3-8 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, AND MEDIUM HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(606), PROPERTY LOCATED WEST OF DALE ROAD AND NORTH OF VINTAGE FAIRE MALL (NRB INVESTMENTS LLC)

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

SECTION 1. ZONING CHANGE. Section 11-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, and Medium High Density Residential Zone, R-3, to Planned Development Zone, P-D(606):

R-1 to P-D1606)

All that certain real property situate in the City of Modesto, County of Stanislaus, State of California, lying within the Northeast Quarter of Section 11, Township 3 South, Range 8 East, Mount Diablo Meridian, described as follows:

All that portion of Parcel 2 as shown on that map filed in the Office of the Recorder of the County of Stanislaus on May 10, 2018 in Book 57 of Parcel Maps at Page 76, being more particularly described as follows:

Beginning at the South corner common to Parcels 2 and 3 as shown on said Parcel Map; thence South 89°25'29" West along the South line of said Parcel 2, a distance of 136.00 feet; thence North 00°19'12" West, a distance of 602.45 feet to a point on the North line of said Parcel 2; thence North 89°17'47" East along last said North line, a distance of 161.00 feet to the Northeast corner of said Parcel 2, also being a point on the West line of said Parcel 3; thence South along the dividing line between said Parcels 2 and 3, the following six (6) courses:

1. South 00°19'12" East, a distance of 451.28 feet to a point of curvature of a tangent curve, concave northeasterly and having a radius of 40.00 feet; thence
2. Southerly along the arc of said curve. Through a central angle of 35°39'33", an arc distance of 24.89 feet to a point of reverse curvature, concave southwesterly and having a radius of 40.00 feet of which the radius point bears South 54°01'5" West; thence
3. Southerly along the arc of said curve, through a central angle of

ORDINANCE 3692-C.S.
Effective: March 14, 2019

4. 35°39'33", an arc distance of 24.89 feet; thence South 00°19'12" East, a distance of 40.00 feet to a point of curvature of a tangent curve, concave northwesterly and having a radius of 40.00 feet; thence
5. Southwesterly along the arc of said curve, through a central angle of 90°00'00", an arc distance of 62.83 feet; thence
6. South 00°19'12" East, a distance of 25.00 feet to the point of beginning.

Containing 2.24 acres gross, more or less.

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

R-3 to P-D(606)

All that certain real property situate in the City of Modesto, County of Stanislaus, State of California, lying within the Northeast Quarter of Section 11, Township 3 South, Range 8 East, Mount Diablo Meridian, described as follows:

Parcel 3 as shown on that map filed in the Office of the Recorder of the County of Stanislaus on May 10, 2018 in Book 57 of Parcel Maps at Page 76.

Containing 7.18 acres gross more or less.

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

SECTION 2. USES. The following uses shall be permitted in said P-D(606)

Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-7.108(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-7.108(a) or (b) of the Modesto Municipal Code:

1. Small-Lot Single Family Residential Subdivision with uses as allowed in the Medium Density Residential (R-2) Zone.

SECTION 3. ZONING MAP. Section Map 11-3-8 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, 2018, by Councilmember Ah You, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

By: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 

Community & Economic Development
Department, Planning Division

ORDINANCE 3692-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, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Zoslocki

APPROVED: 

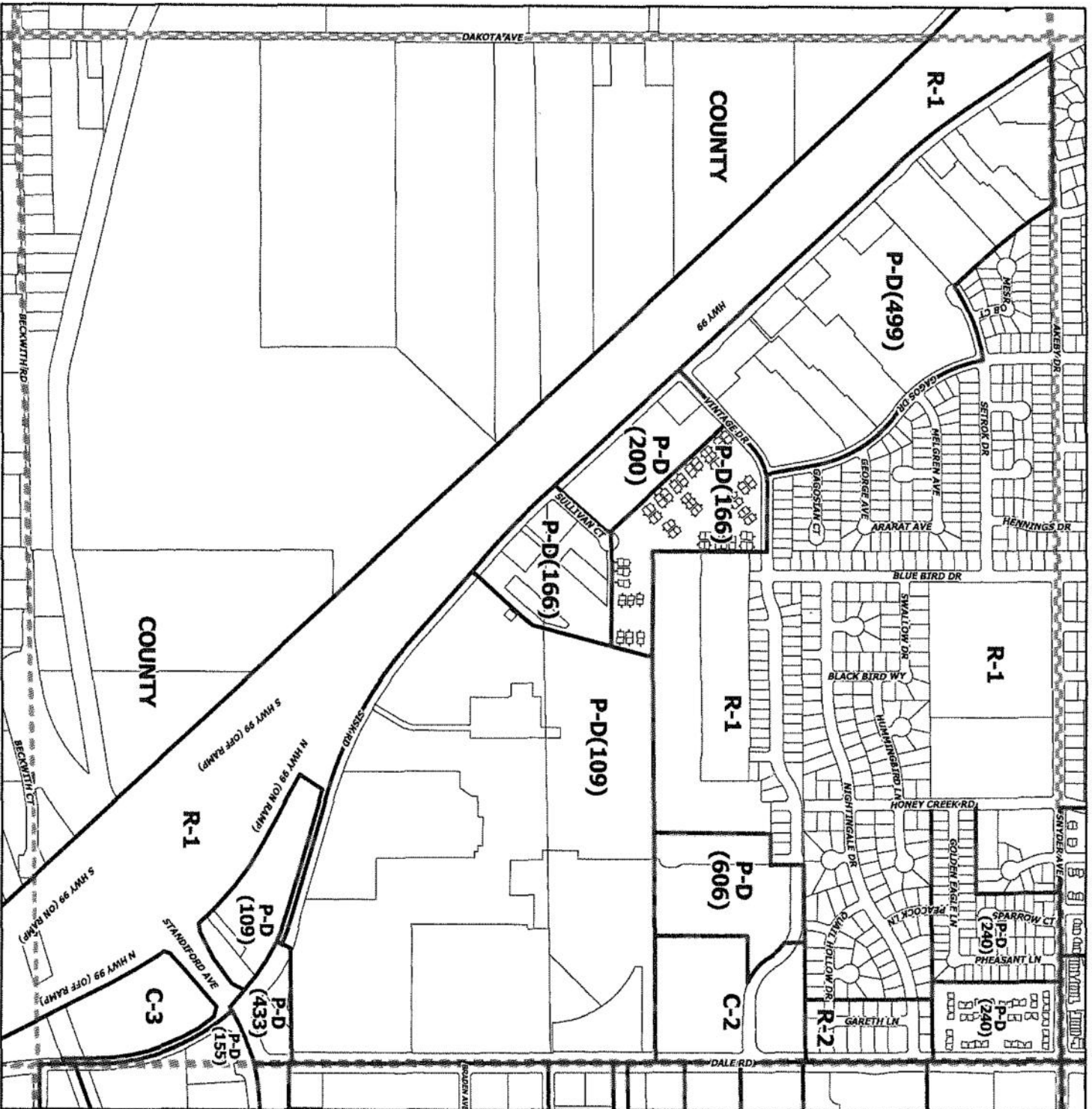
MAYOR, TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: March 14, 2019

ORDINANCE 3692-C.S.
Effective: March 14, 2019



1 inch = 700 Feet

Ord. 3692-C.S.

ZONING MAP OF THE CITY OF MODESTO

11-3-8

ORDINANCE NO. 3693-C.S.

AN ORDINANCE AMENDING SECTION 12-3-8 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(605), PROPERTY LOCATED AT THE NORTHWEST CORNER OF RUMBLE ROAD AND CONANT AVENUE

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

SECTION 1. ZONING CHANGE. Section 12-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(605):

R-1 to P-Df6051

All that portion of Lot 1 of McKinney Colony, according to the Official Map or Plat thereof on file and of record in the Recorder's Office of Stanislaus County, California, and particularly described as follows, to wit:

Beginning at the southeast corner of Lot 10 of McKinney Colony; thence North along the easterly line of said Lot 240 feet to a point in said line; thence running West parallel with the southerly line of said Lot 10, 372.31 feet to a point; thence South parallel with the easterly line of said Lot 10, 240 feet to a point in the south line of said Lot 10; thence easterly along the southerly line of said Lot 10, 372.31 feet to the point of commencement.

Also including the west one-half of Conant Avenue and the north one-half of Rumble Road, being immediately adjacent to this description.

Totaling 2.25 acres, more or less.

APN: 076-042-007

SECTION 2. USES. The following uses shall be permitted in said P-D(605) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-7.108(c) of the

ORDINANCE NO. 3693-C.S.
Effective Date: May 23, 2019

Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-7.108(a) or (b) of the Modesto Municipal Code:

1. Residential uses as allowed in the Medium-High Density Residential (R-3) Zone.

SECTION 3. ZONING MAP. Section Map 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 9th day of April, 2019, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Mayor Brandvoid

NOES: Councilmembers: None

ABSENT: Councilmembers: Zoslocki


APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3693-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 23rd day of April, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

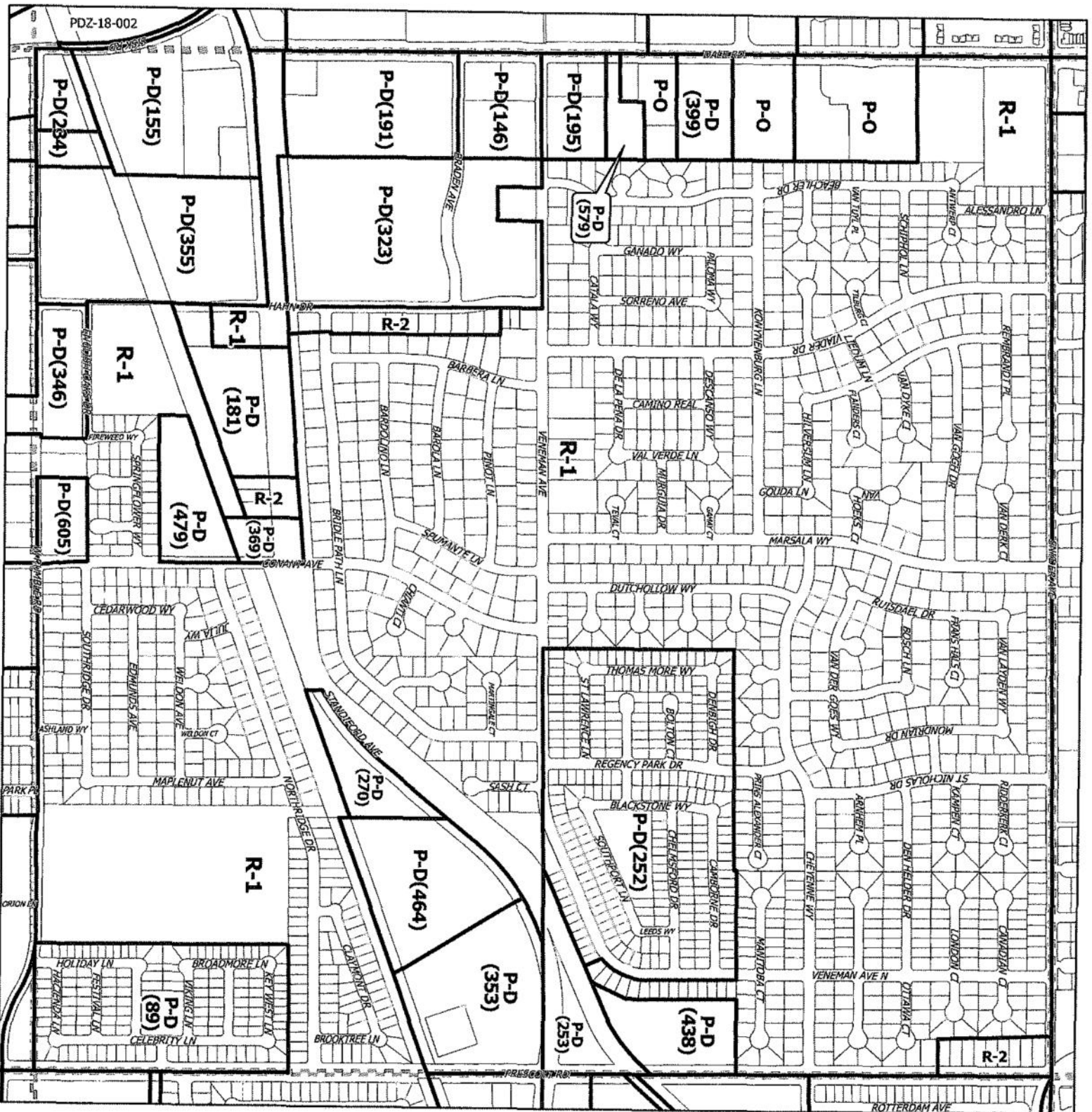
ABSENT: Councilmembers: Zoslocki

APPROVED: 
MAYOR, TED BRANDVOLD

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: May 23, 2019, 2019

ORDINANCE NO. 3693-C.S.
Effective Date: May 23, 2019



1 inch = 700 feet
 rd. 3693-C

ZONING MAP OF THE CITY OF MOOREHEAD

*N-W-00

ORDINANCE NO. 3694-C.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN D STREET PARTNERS, LP AND STANISLAUS FOOD PRODUCTS AND CITY OF MODESTO FOR THE LAND EXCHANGE OF 10TH AND 11TH STREETS BETWEEN D STREET AND MORTON BOULEVARD (STANISLAUS FOOD PRODUCTS AND CITY OF MODESTO)

WHEREAS, Government Code Section 65S64, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

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

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

WHEREAS, by City Council Resolution No. 2017-404, adopted on October 10, 2017, the City Council approved a Land Exchange Agreement between Stanislaus Food Products (SFP) and City of Modesto (City). Under the agreement, SFP would acquire 11th Street between D Street and Morton Boulevard, 12th Street between B Street and Morton Boulevard, and B Street between 10th and 12th Streets. The City would acquire land from SFP through dedication to allow construction of 10th Street and portions of B and 9th Streets for minor widening from D Street to Morton Boulevard, and

WHEREAS, a condition of the Land Exchange Agreement is the approval of a Development Agreement, and

WHEREAS, SFP and City, have negotiated a Development Agreement to address post land exchange topics to include that the continuation of City services and vesting the right to further develop under existing City laws during the 15 years term of the agreement, and SFP's agreement to reimburse or make certain payments to the City for processing the Development Agreement, land costs, police services, area traffic study, and improvements. SFP also agrees to provide street dedication to allow 10th Street to extend to Morton Boulevard, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on March 4, 2019, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2010-22, adopted on March 4, 2019, recommended to the City Council approval of the proposed Development Agreement between SFP and City of Modesto, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on April 9, 2019, in the City Council Chambers, City Hall, 1010 - 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between SFP and City for the land exchange of 10th and 11th Street between D Street and Morton Boulevard, and

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

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

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

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

1. The Development Agreement would encourage expansion of the SFP plant and job creation and therefore would be consistent with General Plan's economic development goals and policies.
2. The Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 2011-075, which establishes procedures and requirements for the consideration of development agreements. For reasons detailed in the Development Agreement, it will promote the public health, safety and general welfare of the City.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Development Agreement between D Street Partners, L.P., Stanislaus Food Products Company and City, is hereby approved. A copy of which is on file in the Office of the City Clerk.

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

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

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

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

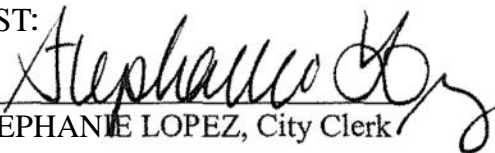
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of April, 2019, by Councilmember Grewal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

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


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
BY: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

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

ORDINANCE NO. 3694-C.S.

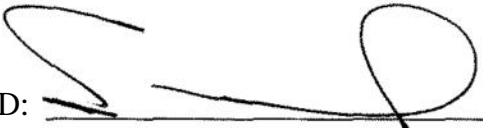
FINAL ADOPTION CLAUSE

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 23rd day of April, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR, TED BRANDVOLD

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: May 23, 2019

ORDINANCE NO. 3693-C.S.
Effective Date: May 23, 2019

ORDINANCE NO. 3695-C.S.

AN ORDINANCE AMENDING SECTIONS 5-3-9 AND 8-3-9 OF THE ZONING MAP TO PREZONE 35.19 ACRES, TO PLANNED DEVELOPMENT ZONE, P-D(607), PROPERTY LOCATED WEST OF MCHENRY AVENUE AND SOUTH OF PELANDALE AVENUE

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

SECTION 1. ZONING CHANGE. Sections 5-3-9 and 8-3-9 of the Zoning Map are hereby amended to classify the following described property in the unincorporated area west of McHenry Avenue and south of Pelandale Avenue P-D(607):

Prezone to P-P-D (607)

All that portion of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 5, Township 3 South, Range 9 East, and a portion of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 5, Township 3 South, Range 9 East, Mount Diablo Meridian, being more particularly described as follows:

BEGINNING at the southwest corner of Lot "A" as shown on that map filed in Volume 52 of Parcel Maps at Page 18, Stanislaus County Records, thence commencing the following ten courses:

1. South 88° 44' 29" East, a distance of 182.2 feet, thence;
2. A Tangent Curve with a radius of 5067.5 feet, arc length of 588.27 feet, and chord bearing South 85° 24' 57" East, said curve being along the northerly Right-of-Way line of Pelandale Avenue and the southern lot line of the Remainder parcel as shown on that map filed in Volume 49 of Parcel Maps at Page 88, Stanislaus County Records, thence;
3. South 0° 38' 19" West, a distance of 118.99 feet to a point at the north corner of Lot "A" as shown on that map filed in Volume 33 of Maps at Page 17, Stanislaus County Records, thence;
4. South 1° 11' 49" East, a distance of 184.23 feet to a point at the southeast corner of aforementioned Lot "A" thence;
5. South 88° 48' 11" East, a distance of 215.08 feet, thence;
6. South 1° 31' 0" East a distance of 1186.82 feet, thence;
7. North 88° 48' 26" West, a distance of 524.89 feet, thence;

ORDINANCE 3695-C.S.
Effective: June 27, 2019

8. South 70° IX' 8" West, a distance of 535.66 feet, thence;
9. North 1° 5' 32" West, a distance of 1725.34 feet, thence;
10. South 83° 31' 18" East, a distance of 60.54 feet to the Point of Beginning.

Containing 35.19 Acres, more or less.

APNs: 046-004-011, 046-004-021, 046-009-001, 046-005-008, 046-005-018, 046-005-019, and 055-036-016

SECTION 2. USES. The following uses shall be permitted in said P-D(607)

Zone:

1. A gated single family residential subdivision of no more than 111 dwellings and supporting infrastructure such as a stormwater drainage basin and open space for recreation.
2. Publicly-owned stormwater drainage basins.

SECTION 3. ZONING MAP. Section Maps 5-3-9 and 8-3-9 of the Zoning Map of the City of Modesto are amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

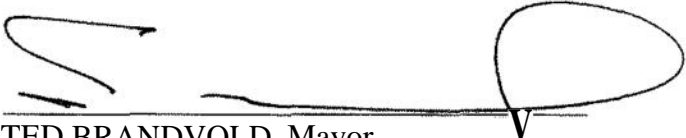
ORDINANCE 3695-C.S.
Effective: June 27, 2019

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of May, 2019, by Councilmember Ridenour, who moved its introduction and passage to pxint, which motion being duly seconded by Councilmember Madrigal, was upon roll call earned and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You


APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:


By: 
STEPHANIE LOPEZ, City Clafk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3695-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



MAYOR, TED BRANDVOLD

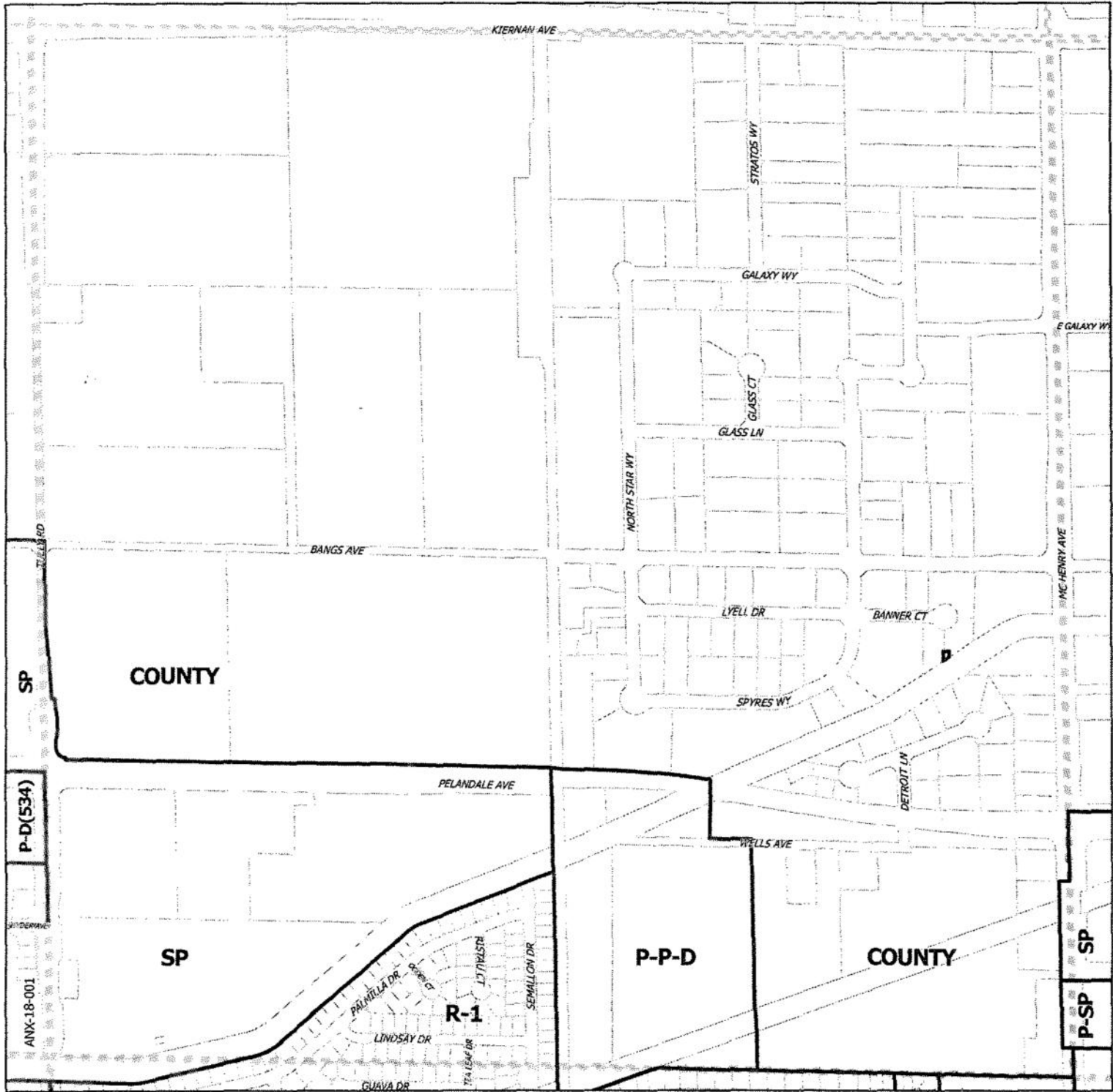
ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: June 27, 2019

ORDINANCE 3695-C.S.
Effective: June 27, 2019

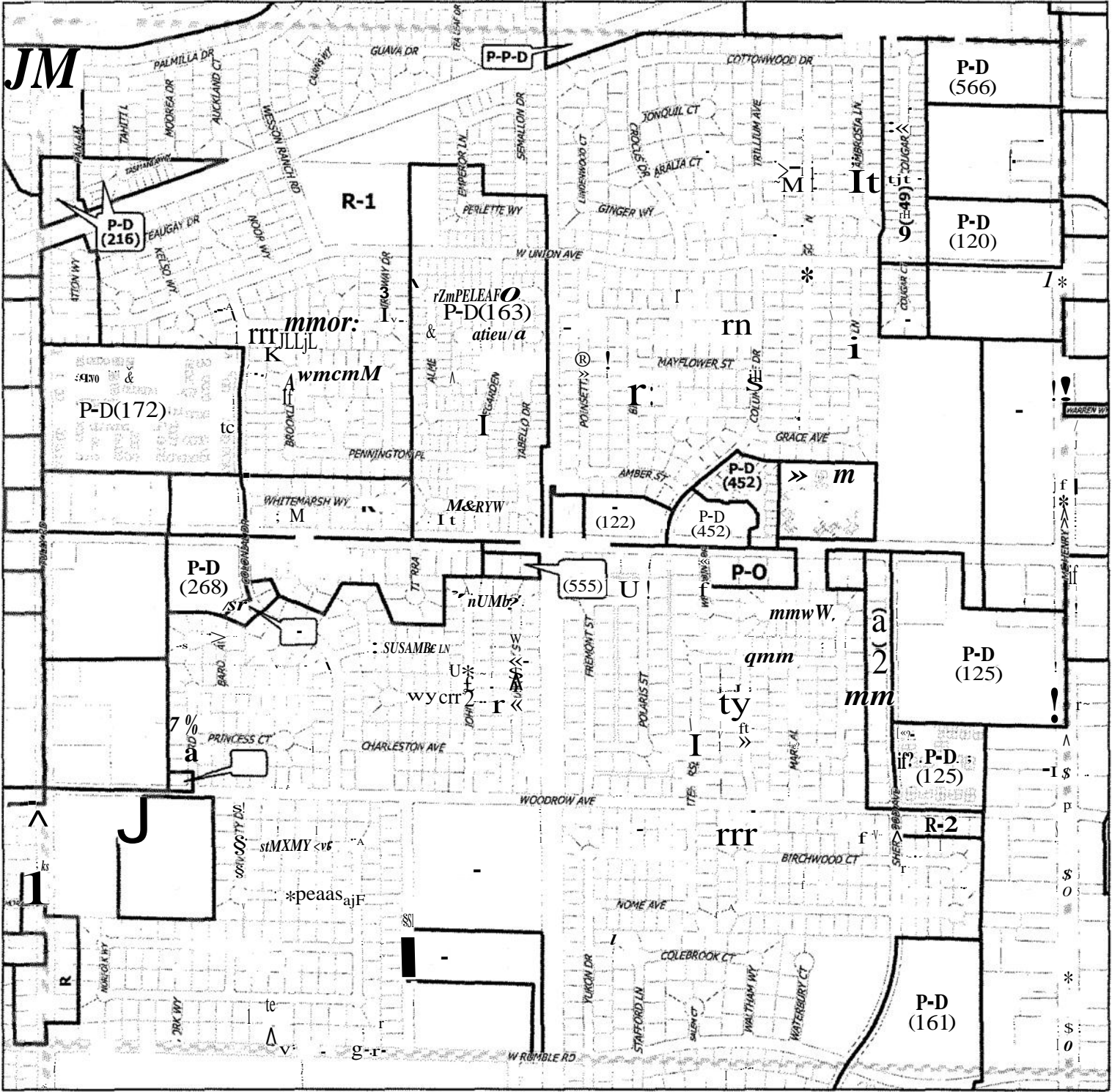


ZONING MAP OF THE CITY OF MODESTO

5-3-9



1 inch = 700 feet
Ord No. 3695-C.S.



1 inch = 700 feet

Ord

ZONING MAP OF THE CITY OF MODESTO

8-3-9

ORDINANCE NO. 3696-C.S.

AN ORDINANCE AMENDING SECTION 10-03-09 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM PROFESSIONAL OFFICE, (P-O), TO NEIGHBORHOOD COMMERCIAL, (C-1), PROPERTY LOCATED AT THE NORTHWEST CORNER OF SYLVAN AVENUE AND FOREST GLENN DRIVE

WHEREAS, a verified application for an amendment to Section 10-03-09 of the Zoning Map was filed by Leslie Minson on April 23, 2019 to rezone from Professional Office Zone, (P-O), to Neighborhood Commercial zone, (C-1), property located at the northwest corner of Sylvan Avenue and Forest Glenn Drive, and

WHEREAS, after a public hearing held on June 3, 2019, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because the proposed C-1 Zone provide for new commercial uses at small scale without causing substantial impact to nearby residential uses, the requested zone change will result in an orderly planned use of land because the proposed C-1 Zone will allow new commercial uses that are compatible with nearby commercial uses located west of the project site, 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 C-1 Zone allow both commercial and office uses which are consistent with the MU designation that allows a mixture of uses include residential, commercial, office, and institutional, and

WHEREAS, by Resolution No. 2019-19, adopted on June 3, 2019, the Planning Commission recommended to the Council that the application of Leslie Minson to amend

ORDINANCE NO. 3696-C.S.
Effective August 8, 2019

Section 10-03-09 of the Zoning Map to rezone the hereinafter described property from Professional Office Zone, (P-O), to Neighborhood Commercial, (C-1), be approved,

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

SECTION 1. After a public hearing held on July 2, 2019, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines as follows:

- 1. The requested change will not be detrimental to the public health, safety or welfare because the proposed C-1 Zone provide for new commercial uses at small scale without causing substantial impact to nearby residential uses.
- 2. The requested change will result in an orderly planned use of land because the proposed C-1 Zone will allow new commercial uses that are compatible with nearby commercial uses located west of the project site.
- 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 C-1 Zone allow both commercial and office uses which are consistent with the MU designation that allows a mixture of uses include residential, commercial, office, and institutional.

SECTION 2. ZONING CHANGE. Section 10-03-09 of the Zoning Map is hereby amended to rezone the following described property from Professional Office Zone, (P-O), to Neighborhood Commercial, (C-1):

P-O to C-1

Parcel 2

Parcel 4 as shown on map filed on February 19, 1999, in Book 49 of Parcel Maps, Page 33, Stanislaus County Records, located in a portion of Lot 1, Block 12571, of “Sylvan Meadows East No. 5” filed in Volume 26 of Maps, Page 40, Stanislaus County Records, located in Section 10, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California.

Together with Parcel 3 as shown on said map filed in Book 49 of Parcel Maps, Page 33.

Excepting Therefrom the west 119.18 feet of said Parcel 3.

APN: 052-050-021

SECTION 3. ZONING MAP. Section 10-03-09 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 2nd day of July, 2019, by Councilmember Grewal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:


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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ridenour, Mayor Brandvold

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:


By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3696-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 July, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Brandvold

APPROVED: 

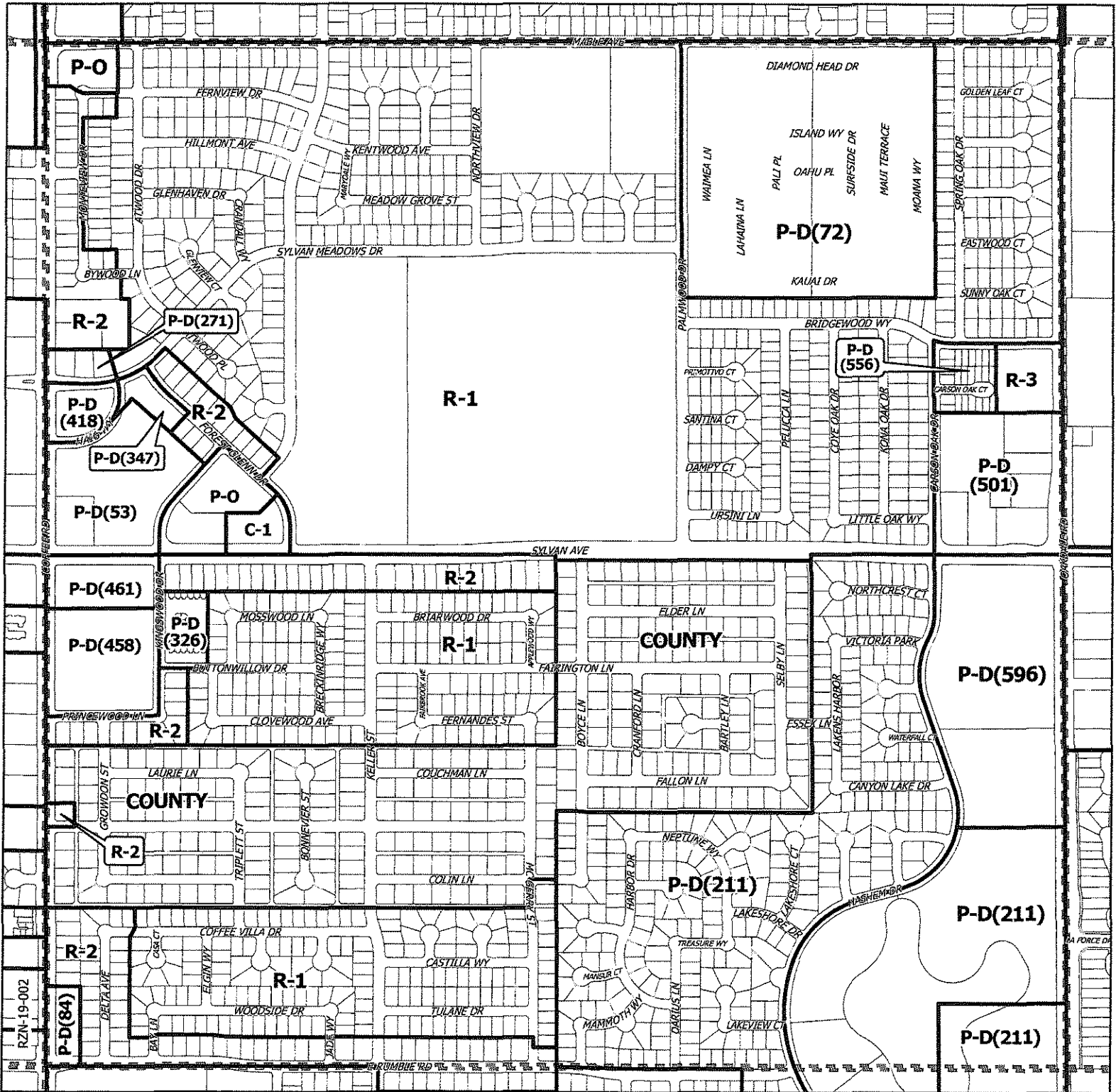
MAYOR, TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: August 8, 2019

ORDINANCE NO. 3696-C.S.
Effective August 8, 2019



ZONING MAP OF THE CITY OF MODESTO

10-3-9



1 inch = 700 feet

Ord No. 3696-C.S.

ORDINANCE NO. 3697-C.S.

AN ORDINANCE AMENDING SECTION 20-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO MEDIUM DENSITY RESIDENTIAL ZONE, R-2, PROPERTIES LOCATED AT 1215 AND 1225 W. ROSEBURG

WHEREAS, a verified application for an amendment to Section 20-3-9 of the Zoning Map was filed by Ly Nguyen on March 5, 2019, to rezone from Low Density Residential Zone, R-1, to Medium Density Residential Zone, R-2, properties located at 1215 and 1225 W. Roseburg Avenue, and

WHEREAS, after a public hearing held on May 6, 2019, the Planning Commission found the following: 1) that the requested zone change will not be detrimental to the public health, safety or welfare because it will provide for new medium density residential uses that are compatible with nearby medium density residential uses; 2) the requested zone change will result in an orderly planned use of land because the project will provide for new development within infill land that is adjacent to existing medium density residential uses; and 3) The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the allowable uses in the Medium Density Residential Zone (R-2) are consistent with the site's General Plan Land Use Designation of Residential Use (R), which provides for residential uses of varying densities, including densities consistent with the proposed rezoning, and

WHEREAS, by Resolution No. 2019-17, adopted on May 6, 2019, the Planning Commission recommended to the Council that the application of Ly Nguyen to amend Section

ORDINANCE 3697-C.S.
EFFECTIVE: SEPTEMBER 6, 2019

20-3-9 of the Zoning Map to rezone the hereinafter described property from Low Density Residential Zone, R-1, to Medium Density Residential Zone, R-2, be approved.

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

SECTION 1. After a public hearing held on July 9, 2019, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because it will provide for new residential uses that are compatible with nearby medium density multi-family residential uses.
2. The requested change will result in an orderly planned use of land because the project will provide for new development within infill land that is adjacent to existing medium density residential uses.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the allowable uses in the Medium Density Residential Zone (R-2) are consistent with the site's General Plan Land Use Designation of Residential Use (R), which provides for residential uses of varying densities, including densities consistent with the proposed rezoning.

SECTION 2. ZONING AMENDMENT. Section 20-3-9 of the Zoning Map is hereby amended to rezone the following described property from Low Density Residential Zone, R-1, to Medium Residential Zone, R-2:

R-1 to R-2

All that portion of the Northwest Quarter of Section 20, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Commencing from a point on the North line of a 60-foot road known as W. Roseburg Avenue, said point being the Southwest corner of Parcel "A" of the Parcel Map filed in the Office of the Recorder of Stanislaus County, State of California, on August 30, 1988, in Volume 41 of Parcel Maps at Page 28; thence continue South 88° 13' 22" East a distance of 95 feet along the North line of W. Roseburg Avenue to the True Point of Beginning, said point being the Southeastern-

ORDINANCE 3697-C.S.
EFFECTIVE: SEPTEMBER 6, 2019

most corner of Parcel "B" of the aforementioned Parcel Map; thence North 0° 13' 37" West a distance of 140 feet; thence South 88° 13' 23" East a distance of 75 feet; thence North 0° 13' 37" West a distance of 160 feet; thence South 88° 13' 23" East a distance of 176.5 feet; thence South 0° 13' 38" East a distance of 300 feet; thence North 88° 13' 23" West a distance of 251.5 feet to the True Point of Beginning.

Including also the northern half of W. Roseburg Avenue, all being immediately adjacent to the above description.

Containing 1.45 acres, more or less.

APNs 118-018-024 and -025.

SECTION 3. ZONING MAP. Section 20-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of July, 2019, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

BY: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

BY: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3697-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, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

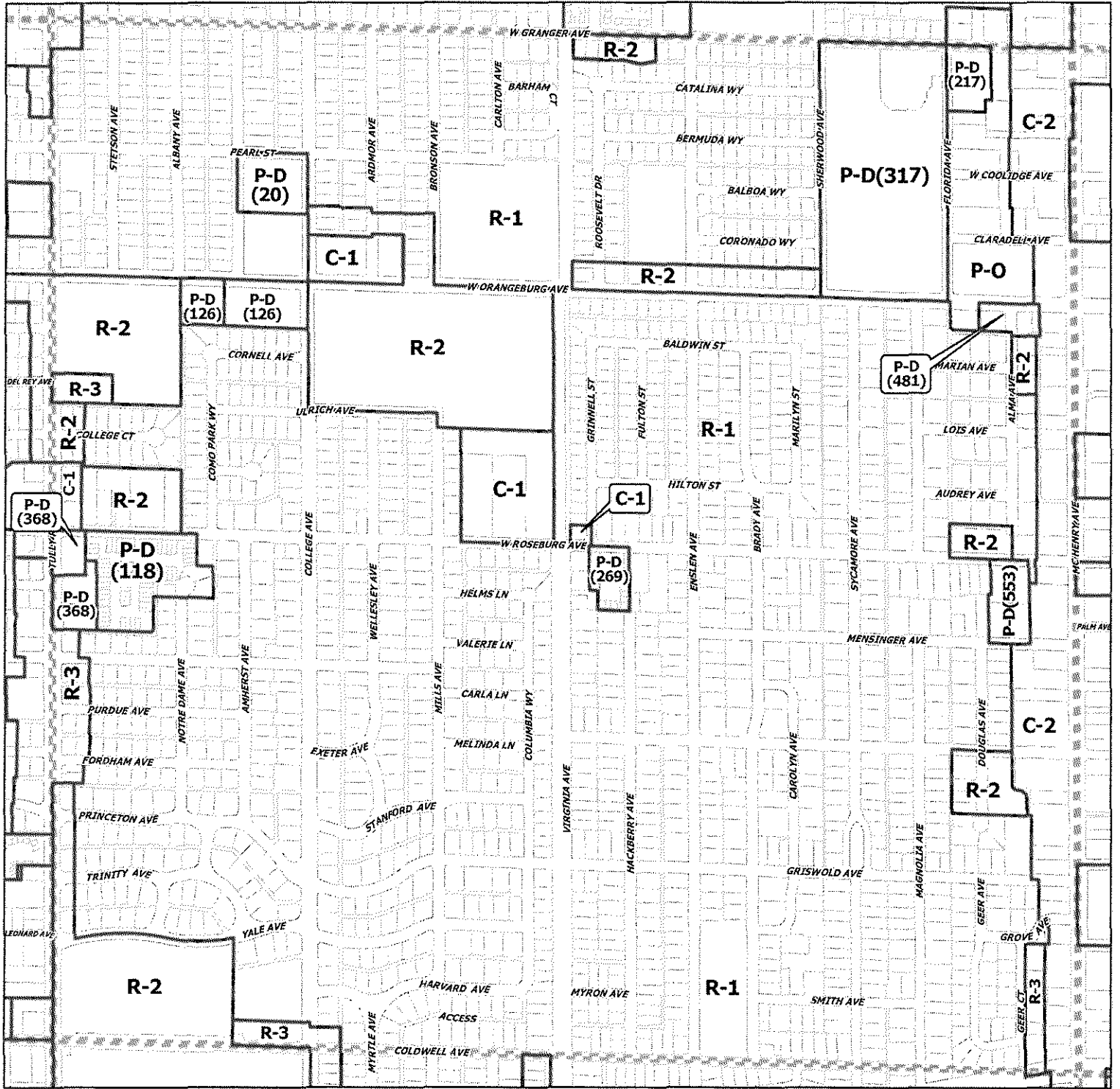
ABSENT: Councilmembers: None

APPROVED: 
MAYOR, TED BRANDVOLD

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: September 6, 2019

ORDINANCE 3697-C.S.
EFFECTIVE: SEPTEMBER 6, 2019



1 inch = 700 feet

Ord. 3697-C.S.

ZONING MAP OF THE CITY OF MODESTO

20-3-9

ORDINANCE NO. 3698-C.S.

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AMENDING
ORDINANCE NO. 3644-C.S. AUTHORIZING THE LEVY OF SPECIAL TAXES
WITHIN THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2016-
2 (THE VINTAGE) TO INCLUDE REVISED RATE AND METHOD OF
APPORTIONMENT OF SPECIAL TAX**

WHEREAS, on March 22, 2016, the City Council of the City of Modesto adopted Ordinance No. 3644-C.S. authorizing the levy of special taxes within the City of Modesto Community Facilities District No. 2016 (The Vintage);

WHEREAS, on August 7, 2019 the City Council adopted Resolution No. 2019-364 declaring the results of a landowner-voter special election and ordering the modification of the rate and method of apportionment of the special tax for CFD No. 2016-2 to read as set forth in the Amended and Restated Rate and Method of Apportionment of the Special Tax for CFD No. 2016-2, a copy of which is attached hereto as Exhibit A and by this reference incorporated herein; and

WHEREAS, the City Council desires to amend Ordinance No. 3644-C.S. to include the Amended and Restated Rate and Method of Apportionment of the Special Tax for CFD No. 2016-2.

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

SECTION 1.

The above recitals are all true and correct.

SECTION 2.

Section 2 of Ordinance No. 3644-C.S is amended in its entirety to read as follows:

“By the passage of this Ordinance, the City Council authorizes and levies special taxes within the Community Facilities District at the amended rates and in accordance with the amended methods of apportionment set forth in the Exhibit A to the Resolution Declaring Results of Landowner-Voter Election and Ordering Change to Rate and Method of Apportionment of Special Tax for City of Modesto Community Facilities District No. 2016-2 (The Vintage) and which, for reference purposes, is attached hereto as Exhibit A and incorporated herein by this reference (the ‘Rate and Method’).”

SECTION 3. EFFECT OF ORDINANCE.

Except for the amendment of the rate and method of apportionment of the special tax as set forth in Section 2 above, all other provisions of Ordinance No. 3644-C.S. shall remain in full force and effect.

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 special meeting of the Council of the City of Modesto held on the 7th day of August, 2019, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and ordered printed and published by the following vote:

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

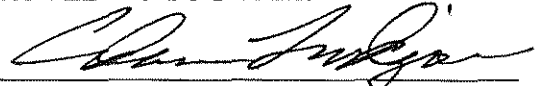
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

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

ORDINANCE NO. 3698-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 13th day of August, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR TED BRANDVOLD

(SEAL)

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: September 12, 2019

EXHIBIT A
AMENDED RATE AND METHOD OF APPORTIONMENT OF
SPECIAL TAX FOR CITY OF MODESTO COMMUNITY FACILITIES
DISTRICT NO. 2016-2 (THE VINTAGE)

ATTACHMENT B

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

AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

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

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

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

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

"Assessor's Parcel Number" or "APN" means a unique number assigned to an Assessor's Parcel by the County Assessor for purposes of identifying a property.

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

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

“CFD Change” means the date on which the Resolution of Change for CFD No. 2016-2 was adopted by the City Council, thereby making this RMA the operative tax formula for the CFD.

“City” means the City of Modesto.

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

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

“County” means the County of Stanislaus.

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

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

“Escalation Factor” means, in any Fiscal Year, the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%).

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

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

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

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

Undeveloped Property, “Proportionately” means that the ratio of the actual Special Tax to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Property that is Undeveloped Property. For Taxable Public Property, “Proportionately” means that the ratio of the actual Special Tax to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Public Property.

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

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

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

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

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

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

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

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

“**Tax Area**” means one of the three mutually exclusive geographic areas defined below and identified in Attachment 1.

“**Tax Area A**” means the geographic area that: (i) at the CFD Change, was anticipated to be developed with low-density single family detached residential units, and (ii) is specifically identified as Tax Area A in Attachment 1 of this RMA.

“**Tax Area B**” means the geographic area that: (i) at the CFD Change, was anticipated to be developed with medium-density single family detached residential units, and (ii) is specifically identified as Tax Area B in Attachment 1 of this RMA.

“**Tax Area C**” means the geographic area that: (i) at the CFD Change, was anticipated to be developed with commercial land uses, and (ii) is specifically identified as Tax Area C in Attachment 1 of this RMA.

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

B. DATA FOR SPECIAL TAX LEVY

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

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

C. MAXIMUM SPECIAL TAXES

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

TABLE 1
MAXIMUM SPECIAL TAXES
FISCAL YEAR 2019-20

<i>Tax Area</i>		<i>Fiscal Year 2019-20 Maximum Special Tax*</i>
A	Developed Property Undeveloped Property	\$665.28 per SFR Lot \$5,281.13 per Acre
B	Developed Property Undeveloped Property	\$350.87 per SFR Lot \$3,880.83 per Acre
C	Developed Property Undeveloped Property	\$340.56 per Acre \$0 per Acre
All Tax Areas	Taxable Public Property	The Maximum Special Tax that would have applied to the Parcel prior to the Parcel becoming Public Property (as determined by the City)

** On January 1, 2020 and each January thereafter, the Maximum Special Tax rates shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.*

D. METHOD OF LEVY OF THE SPECIAL TAX

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

- Step 1:* The Special Tax shall be levied Proportionately on each Parcel of Developed Property within all Tax Areas in the CFD up to 100% of the Maximum Special Tax for each Parcel of Taxable Property for such Fiscal Year;
- Step 2:* If additional revenue is needed after Step 1, the Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property in Tax Areas A and B, up to 100% of the Maximum Special Tax for each Parcel of Taxable Property for such Fiscal Year;
- Step 3:* If additional revenue is needed after applying the first two steps, the Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Special Tax assigned to each Parcel of Taxable Public Property.

E. COLLECTION OF SPECIAL TAXES

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

other available methods. The Special Tax shall be levied and collected in perpetuity unless and until the City determines that the Special Tax no longer needs to be levied to pay Authorized Services and Administrative Expenses.

F. EXEMPTIONS

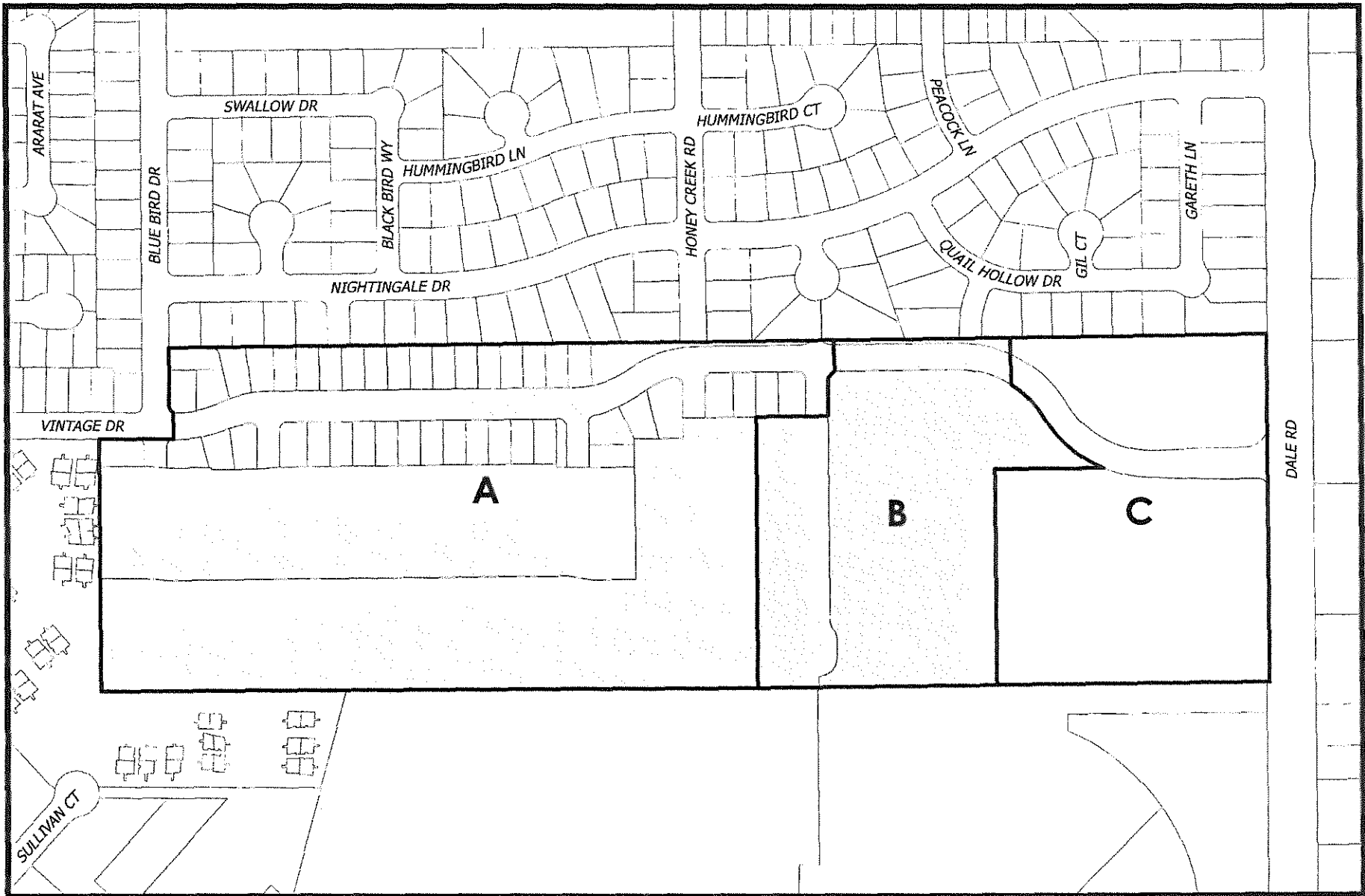
Notwithstanding any other provision of this RMA, no Special Tax shall be levied on: (i) Parcels of Undeveloped Property within Tax Area C, and (ii) Parcels of Public Property, except Taxable Public Property, as defined herein.

G. INTERPRETATION OF SPECIAL TAX FORMULA

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

H. ENFORCEMENT

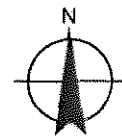
All delinquent Special Taxes billed off the County tax roll shall be subject to an immediate 10% penalty plus interest charges of 1.5 % as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion,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



CFD Tax Area Boundary Map

The Vintage

- Tax Area A
- Tax Area C
- Tax Area B
- Parcels



1 inch = 300 feet

ORDINANCE NO. 3699-C.S.

ORDINANCE AMENDING SECTIONS 5-5.103, 5-5.105, 5-5.106, 5-5.107, 5-5.109, 5-5.110, 5-5.111, 5-5.118, 5-5.138, REMOVING SECTION 5-5.141 “UNATTENDED NEWSPAPER RECYCLING RECEPTACLES PROHIBITED WITHOUT THE ISSUANCE OF A TEMPORARY PERMIT” OF TITLE 5, CHAPTER 5 OF THE MODESTO MUNICIPAL CODE RELATING TO SOLID WASTE COLLECTION, ADDING AND REASSIGNING SECTION 5-5.142 TO REFLECT THE NEW MANDATORY COMMERCIAL ORGANIC RECYCLING LAW IMPLEMENTED BY THE STATE ASSEMBLY BILL 1826, AND ADDING SECTION 5-5.143 BULKY ITEM COLLECTION PROGRAM TO REFLECT THE RESIDENTIAL PROGRAM CURRENTLY UTILIZED BY CITY OF MODESTO RESIDENTIAL CUSTOMERS

WHEREAS, the accumulation, collection, removal and disposal of solid waste must be controlled by the City for the protection of the public health, safety, and welfare, and

WHEREAS, the Modesto Municipal Code currently regulates solid waste in the City of Modesto, and

WHEREAS, it is the intent of the City Council to continue protecting the public health, safety, and welfare of the public by efficiently and safely regulating the disposal of solid waste, and by implementing reasonable measures to prevent illegal dumping within the City; and

WHEREAS, pursuant to the City’s police powers authorized in Article XI, Section 7 of the California Constitution, the City has the power to enact regulations for the preservation of public health, safety and welfare of its residents and community. And, pursuant to Government Code section 38771, the City has the power, through its City Council to declare actions and activities that constitute a public nuisance.

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

SECTION 1. AMENDMENTS:

Title 5, "Sanitation and Health," Chapter 5, "Solid Waste," of the City's

Municipal Code is hereby amended to read as follows:

5-5.103 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(a) "Annexation" means the legal process of including new territory within the incorporated boundaries of the City.

(b) "Automated collection container" means a standard container designed for automated collection.

(c) "Cannery or food processing waste" means the solid residues resulting from canning/food processing operations, which is segregated by the generator and which is collected for reuse.

(d) "Collection" means the collection and transport of solid waste.

(e) "Collection routes" means streets or areas designated for collection on a particular day/schedule.

(f) "Collection vehicle" means any vehicle used by the collector for the collection of solid waste.

(g) "Collector" means a person or firm authorized by a valid service agreement with the City of Modesto to collect solid waste within the City limits.

(h) "Commercial" means occurring in a business zone.

(i) "Commercial Waste Generator" means a business subject to subdivision (a) of Section 42649.2. of the Public Resources Code.

(j) "Construction and demolition sites" means sites where construction or demolition activities are taking place.

(k) "Containerized small green waste" means small green waste set out for collection in a standard container.

(l) "Customer" shall mean any person, firm or corporation receiving service under the provisions of this chapter.

(m) "Designated recycling collection location" means the location where an authorized recycling collector has agreed with a customer to pick up segregated recyclable materials as approved by the Public Works Director.

(n) "Detachable container" means a container, watertight and with a cover, designed for direct dumping into a collection vehicle, and constructed in standard sizes with a minimum of one (1) cubic yard in capacity, as approved by the Public Works Director, and furnished by a collector.

(o) "Disposal" means the final disposition of solid waste at a solid waste facility.

(p) "Drop box container" means a metal box designed for loading upon a vehicle for transportation to a solid waste facility, with a minimum of ten (10) cubic yards' capacity, of a design approved by the Public Works Director, and furnished by a collector.

(q) "Finance Director" means the Finance Director of the City of Modesto or his/her designee.

(r) "Garbage" means any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.

(s) "Garbage/recyclables" means garbage and recyclables commingled in the same container. Garbage/recyclables shall also include rubbish when said rubbish is included in the same container.

(t) "Hazardous substance or hazardous wastes" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in the Health and Safety Codes or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act and all future amendments thereto.

(u) "Household hazardous waste" means hazardous waste generated at a residential location within the City.

(v) "Industrial areas" means areas which are zoned industrial by the City's Zoning Code.

(w) "Industrial garbage" means garbage produced by any person, firm or corporation engaged in the business of processing or manufacturing agricultural products, animals, poultry, goods, wares or other products or materials, who processes or manufactures the same for the purpose of wholesale in processed or manufactured form, and shall include cannery/food processing waste. Industrial garbage also means garbage produced by any person, firm or corporation engaged in the business of building construction and/or building demolition.

(x) "Industrial garbage collector" means an agent or employee of the City, or any person, or the employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of industrial garbage.

(y) "Initial term and any extensions" means the term of a service agreement and any extensions beyond that time period as established by the City Council.

(z) "Large green waste" means shrubbery, brush, tree limbs, tree branches, tree trimmings and similar material, excluding tree limbs larger than six (6) feet in length or six (6) inches in diameter, and any single piece of large green waste weighing more than fifty (50) pounds.

(aa) "Organic Waste" means food waste, cardboard, , and paper waste.

(ab) "Organic recycling container" means an organic recycling container to be used for the separate collection and recycling of small green waste and organic waste. Organic recycling container shall also mean a detachable or other container as approved by the Public Works Director, used for the collection and recycling of small green waste from commercial or other customer classes.

(ac) "Place" or "Premises" means every dwelling house, dwelling unit, apartment house or multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, hospital, office building, department store; manufacturing, processing or assembling shop or plant; warehouse; and every other property or building where any person resides or any business or activity is carried on or conducted within the City of Modesto.

(ad) "Property value" means a worth to the extent that a person will collect the materials involved with compensation to the owner or producer, or at no cost to the owner or producer.

(ae) "Public Works Director" means the Public Works Director of the City of Modesto and/or his/her duly authorized agent.

(af) "Recyclable materials" means domestic, commercial or industrial by-products which may have an economic value if recycled, which may be source separated, set aside, handled, packaged or offered for collection by the residence/business. Recyclables include, but are not limited to, glass, newspaper, plastics, metal, bi-metal, aluminum, and other materials.

(ag) "Recyclables" means recyclable materials.

(ah) "Recycling" means the process of collecting, sorting, cleansing, treating, reconstituting, and/or marketing recyclable materials which would otherwise be disposed of in a landfill. The collection, transport or disposal of solid waste which is not intended for, or capable of being, reused, shall not be construed to be recycling.

(ai) "Recycling collector" means a person, firm, organization or company which the City has authorized to provide recycling service in the City.

(aj) "Recycling container" means any container provided by an authorized recycling collector to a customer for the purpose of segregating recyclable materials for collection by collector. Recycling containers shall be clearly marked to indicate purpose and to warn that theft of the container, theft of its contents, or diversion for uses other than by the collector are punishable under this Code.

(ak) "Removal" means transportation and disposal of solid waste by noncustomers in accordance with the provisions of this chapter.

(al) "Residential premises" means any dwelling unit; the occupant of which places his/her solid waste in a standard container.

(am) "Rubbish" means nonputrescible, useless, unused, unwanted or discarded material or debris, either compostable or noncompostable, which by their presence may injuriously affect the health, safety and comfort of persons and property in the vicinity thereof.

(an) "Salvageable waste" means matter and material which will be reused and which has a property value.

(ao) "Service area" means the area of the City to be served by a collector as described in the service agreement between City and collector.

(ap) "Small green waste" means leaves, weeds, grass clippings, vines, twigs and other similar soft vegetative materials, and woody prunings from trees no longer than two (2) foot length or six (6) inches in diameter, except that small green waste shall not include large green waste or leaves separated and set out for collection between November 1 and December 31 of each year pursuant to Article 11 of Chapter 7 of Title 4 of this Code.

(aq) "Solid waste" means all putrescible and nonputrescible solid, semisolid and liquid waste accumulated or delivered for collection and disposal within the City and includes, but is not limited to, construction debris, demolition debris, bulky waste, organic waste, large green waste and small green waste. Solid waste does not include hazardous waste or household hazardous waste, designated waste, infectious waste, recyclable materials when recycled, sewage, or abandoned automobiles.

(ar) "Solid Waste Enforcement Officer" means the Solid Waste Enforcement Officer of the City of Modesto.

(as) "Solid Waste Enforcement Supervisor" means the Solid Waste Enforcement Supervisor of the City of Modesto.

(at) "Standard container" means a plastic container, watertight and with a close-fitting cover, of not less than sixty (60) nor more than ninety (90) gallons' net capacity of a design satisfactory to the Public Works Director, or such other disposal unit approved by the Public Works Director, and supplied by the solid waste collector to its residential customers. The Public Works Director shall make the determination of what size container a residential customer receives.

(au) "Swill" means all classes of putrescible, animal, fish, fowl, fruit or vegetable matter, and shall include matter or substances used in the preparation, cooking, dealing in or storage of meats, fowl, fish, fruits and vegetables that are subject to immediate decay and the attraction of flies or rodents, and having a property value.

(av) "Swill collector" means an agent or employee of the City, or any person, or the agents, assignees, or employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of swill.

(aw) "Term" means the length of an agreement entered under the terms of this chapter.

5-5.105 - Illegal Dumping, Depositing or Burying Solid Waste.

(a) It is unlawful and shall constitute an abatable nuisance for any person to place solid waste hazardous waste, large green waste and/or small green waste as defined in Sections 5-5.103(s) 5-5.103 (z), 5-5.103 (ap) and 5-5.103(an), upon any public property or private property without the consent of the property owner, unless approved by the Public Works Director. This section does not apply to residential customers participating in the Bulky Item Collection Program as defined in 5-5.143, and/or to solid waste, green waste or hazardous waste placed at a permitted solid waste or composting facility approved for such use. Intent to remove the solid waste, green waste or hazardous waste shall not constitute a defense to this offense.

(b) It is unlawful for any person to place hazardous waste as defined in Section 5-5.103(t), into any garbage container, street, alley or public right-of-way.

(c) It is unlawful for any person to place large green waste, organic waste, or solid waste as defined in Sections 5-5.103 (z, aa, and aq), into any garbage or organic recycling container without the permission or consent of the person owning, renting or having legal control of that container.

(d) Persons operating leaf blowers are to ensure that leaves, dirt and other debris are not blown onto public properties or public-right-of-way. All leaves, dirt and other debris generated by the leaf blower shall be removed and deposited into the appropriate containers

(e) The penalty for failure to comply with section 5-5.105 is as follows:

a. One Thousand (\$1000.00) for the first violation

b. Fifteen hundred (\$1500.00) for a second violation within a 12-month period of the first violation; and

c. Two Thousand (\$2000.00) for a third violation within a 12-month period of the second violation, and for each successive violation within the same 12-month period.

5-5.106 - Accumulation of Garbage, Garbage/Recyclables, Small Green Waste, or Rubbish.

Every person occupying premises, every owner of any property, and every owner of multiple-dwelling buildings shall keep the same in a clean and sanitary condition, and shall not cause, suffer, or permit any garbage, garbage/recyclables, or small green waste to accumulate on such premises or property for a period in excess of one (1) calendar week; or cause, suffer, or permit any rubbish to accumulate on their premises for a period in excess of one (1) calendar month; provided, however, that this provision shall not be construed to prohibit any person from keeping building materials on any premises or property during the period of active construction, reconstruction, or repair of a building or structure thereon under a current valid building permit; nor the neat storage of clean recyclables intended to be taken by the occupant to a recycling center, nor the keeping of wood, neatly piled, upon such premises for household use; nor the composting of grass or trimmings in a manner allowed pursuant to the Composting Regulations of the State of California.

5-5.107 - Garbage, Garbage/Recyclables, Small Green Waste, and/or Swill Collection.

Collection or removal of garbage, garbage/recyclables, and small green waste shall be made at least once a week, and collection of swill shall be made daily. Collectors shall transfer the contents of all containers into the collection vehicle provided therefore without spilling any contents.

5-5.109 - Number of Containers Required.

All places or premises within the City shall have sufficient containers of the approved type to hold all garbage, garbage/recyclables, and small green waste/organic waste generated, produced or accumulated on the place or premises during a one (1) week period, unless a more frequent collection schedule has been approved or directed pursuant to this chapter. In determining the sufficiency of the number of containers required, the following minimum standards shall apply.

(a) One (1) family and two (2) family dwellings: one (1) black standard container for garbage and recyclables per dwelling unit, and one (1) organic recycling container for small green waste and organic waste per dwelling unit.

(b) Three (3) or four (4) family dwellings: one (1) standard container per dwelling unit for garbage and recyclables, unless a lesser number is authorized by the Public Works Director, and sufficient small green waste/organic waste compostables collection containers per dwelling unit of a type approved by the Public Works Director.

(c) Apartment Houses and multiple dwelling buildings: One (1) detachable container per building equivalent to one (1) standard container per dwelling unit for garbage and recyclables, unless a lesser number is authorized by the Public Works Director and one (1) standard container for small green waste/organic waste collection per dwelling unit of a type approved by the Public Works Director.

(d) Motel, hotel, trailer park, or mobile home park: One (1) standard container for garbage and garbage/recyclables per unit or space, unless a lesser number is authorized by the Public Works Director, and sufficient small green waste/organic waste collection containers per unit or space of a type approved by the Public Works Director.

(e) Commercial place or premises: not less than one (1) standard container for garbage and recyclables, and/or one (1) detachable container(s) for garbage and recyclables as determined by the Public Works Director, and sufficient small green waste/organic waste collection containers per building of a type approved by the Public Works Director.

(f) Enclosures Required: For multifamily apartment houses, multiple dwelling buildings, commercial and industrial premises, one (1) enclosure per building in compliance with the Garbage Enclosure & Container standards set forth by the Council on August 9, 2005 (Resolution #2005-404), unless a lesser number is authorized by the Public Works Director.

Customers responsible for solid waste removal or collection services for apartment houses, multiple-dwelling buildings, commercial and industrial places or premises may arrange for the use of detachable containers and/or drop box containers instead of standard containers. These arrangements shall be made with the collector on the basis of charges established for this purpose.

Nothing herein shall be construed to prohibit the joint use of a standard container, detachable container or drop box container by two (2) or more customers upon approval of the Public Works Director.

5-5.110 - Prohibited Storage Location of Containers.

(a) Solid waste, and organic recycling standard containers shall not be placed or allowed to remain in or on any street or alley public right-of-way, except within twenty-four (24) hours prior to and following service day or as otherwise authorized by the Public Works Director.

(b) Garbage, Solid waste, organic recycling, rubbish, swill, and industrial garbage detachable containers shall not be placed or allowed to remain in or on any street right-of-way, except on service day between the hours of service as defined in 5-5.115. Unless otherwise authorized by the Public Works Director.

5-5.111 – Container Collection Locations.

(a) On single-family and two (2) family premises, standard solid waste containers and organic recycling containers shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:

(1) Where alleys exist, immediately adjacent to the property and accessible from the alley without the necessity of entering the premises.

(2) Where alleys do not exist, containers shall be placed in front of or on the side of the property from where the contents were generated, on the abutting asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other location as approved by the Public Works Director.

(3) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as

well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an acceptable residential container location shall be as determined by the Public Works Director.

(4) All containers should be screened from public view, except within twenty-four (24) hours prior to and following service day, in a manner approved by the Public Works Director.

(b) Standard and detachable containers for solid waste service to multiple-dwelling buildings, apartments, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case of dispute, the location shall be as determined by the Public Works Director.

(c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Public Works Director.

5-5.118 - Removal of Solid Waste by Producers.

Notwithstanding the provisions of Section 5-5.117:

(a) Any person may remove or may cause to be removed from premises occupied by that person or under their control, all solid waste created or produced on such premises if all of the following conditions have been met or will be complied with:

(1) Removal shall be made only by the owner or occupant personally, or by employees of such owner or occupant.

(2) All vehicles used in carrying out removal shall be owned by or under the exclusive control of the owner or occupant, and such vehicles and activities shall meet all the requirements of this chapter and all other laws and ordinances of the State of California and the City relating to solid waste disposal.

(3) Persons removing solid waste in excess of normal annual residential volume (defined herein as three thousand (3,000) pounds per year) shall comply with the following additional requirements:

(i) No waste shall be permitted to leak, blow, litter or fall from any vehicle engaged in such removal.

(ii) All removal shall be done safely and quietly with due regard to the property of others.

(iii) No person shall remove solid waste from any location within two hundred (200) feet of a public or private elementary, junior high, or high school, where such school is shown on an official map of the City, as designated by the Public Works Director, during the forty-five (45) minutes before the commencement of the regular school day and forty-five (45) minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school.

(iv) Persons engaged in solid waste removal pursuant to these requirements shall be responsible for any damage in excess of normal wear and tear to the City's driving surfaces, whether or not paved, resulting from the illegal weight of, or any leakage or spillage of oils, fluids or solids by vehicles used in such solid waste removal.

(v) Vehicles used shall comply with CHP and D.O.T. regulations, and shall be thoroughly washed and disinfected inside the collection body following each use.

(vi) No driver shall operate a vehicle as in subsection (b)(3)(v) of this section, without a valid and appropriate driver's license.

(vii) All vehicles as in subsection (b)(3)(v) of this section shall be clearly identified with the name and local telephone number of its operator affixed thereto.

(viii) Garbage shall be disposed of at a permitted transfer facility or at the Fink Road Sanitary Landfill. If disposed of outside of Stanislaus County, the county where disposal occurs shall have an export agreement with the City of Modesto.

(ix) Organic waste, large green waste and small green waste shall be separated from garbage and taken to a permitted composting facility or such other locations as directed by the Public Works Director.

(x) Insurance requirements as specified from time to time by the City's Risk Manager shall be complied with.

(4) A cash security deposit shall be deposited with the City in an amount set from time to time by Council resolution, to ensure prompt removal of solid waste in the event it is not removed from the premises on a regular weekly basis by a noncustomer owner or person in control of the premises. A security deposit shall be made for each separate residential property or business location owned or controlled by a noncustomer, based on the frequency and volume of past collection. Events requiring City to use a noncustomer's deposit for solid waste removal shall be treated as a public nuisance subject to immediate abatement and charged to such noncustomer. Conduct requiring City to expend noncustomer deposit moneys shall constitute a misdemeanor.

(5) Persons engaged in solid waste removal shall procure and retain a receipt from a permitted solid waste facility for each week they remain a noncustomer of a collector and display all such receipts for the preceding one-quarter ($\frac{1}{4}$) calendar year upon reasonable request by appropriate City authority. Failure to show proof of solid waste disposal for each week that a person is a noncustomer shall constitute a public health and safety risk sufficient to permit City to administratively require such person to become a customer.

(b) Any producer of industrial garbage or swill, or their employees, may transport the same upon or through any street or public place of the City for disposal at a permitted disposal facility or site.

(c) It shall be unlawful for any person acting as an employee of a producer of industrial garbage or swill to collect or transport such industrial garbage or swill from more than one (1) industrial producer thereof.

(d) Any person engaged in the business of gardening or tree trimming, or building demolition, or construction cleanup work, including both yards and building interiors, is authorized to remove small green waste, rubbish or salvageable waste produced as an incident to such business. It shall be unlawful to dispose of small green waste, organic waste and recyclable waste. These materials shall be taken to an approved recycling or compost facility unless otherwise approved by the Public Works Director.

5-5.138 - Inspection and Enforcement.

The Solid Waste Enforcement Officer, the Solid Waste Enforcement Supervisor and/or the Public Works Director may, from time to time, inspect all premises within the City to determine compliance with and to enforce the provisions of this chapter.

5-5.141 - Mandatory Commercial Recycling.

(a) Per Public Resources Code Section 42649.2, the owner or operator of a business that contracts for solid waste services and generates more than four (4) cubic yards of total solid waste per week or is a multifamily residential dwelling of five (5) units or more shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.

(b) A commercial waste generator shall take either of the following actions:

(1) Separate specified recyclable materials from solid waste and subscribe to a basic level of recycling service that includes the collection of those recyclable materials or specific provisions for authorized self-hauling.

(2) Subscribe to an alternative type of recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

5-5.142 – Mandatory Commercial Organic Recycling

Per California Public Resources Code §§ 42649.8 et seq., the owner or operator of a business shall comply with all state statutes and regulations, as those may be amended from time to time, specifically for commercial organic recycling in the manner specified below:

(a) A commercial waste generator shall take either of the following actions:

(1) Separate specified organic and green waste materials from solid waste and subscribe to a basic level of recycling service that includes the collection of organic and green waste materials.

(2) Recycle its organic waste onsite

(3) Partake in specific provisions for authorized self-hauling its own organic waste for recycling to a permitted composting facility or donation of edible food

(4) Subscribe to an alternative type of organic service that may include mixed waste processing that specifically recycles organic waste that yields diversion results comparable to source separation.

(5) When arranging for gardening or landscaping services, the contract or work agreement between a business subject to this section and a gardening or landscaping service shall require that the organic waste generated by those services be managed in compliance with this chapter.

5-5.143 - Bulky Item Collection Program:

The City, through the Public Works Director, may establish a Bulky Item Collection Program, to receive requests for and provide for the collection of certain bulky items from residential customers of the City who shall request such service.

(a) Bulky items consist of items which are too large or heavy to be prepared for regular solid waste collection, and may include the following: furniture and large

appliances such as washers, dryers, stoves, refrigerators, freezers, and air conditioners; carpet and padding; water heaters or tanks; doors; automotive fenders, bumpers, hoods and seats; toilets and toilet tanks, tubs and sinks; and bicycles, tricycles, swing sets, portable pools, pool covers, and pool heaters.

(b) Items unacceptable for bulky item collection include, but are not limited to, glass, liquids, tires, engine parts, large and small green waste, hazardous waste, items over eight feet (8') in length; items weighing in excess of five hundred (500) pounds; building materials from private contractors; lumber/wood, tree trimmings, and Christmas trees.

(c) No bulky item will be collected on private property. All bulky items shall be placed in the street no more than twelve (12) hours before the scheduled bulky item collection appointment. Bulky items shall be placed adjacent to the property which requested the bulky item collection, and must be a minimum of five feet (5') away from any fixed object or parked vehicle. There shall be only one bulky item collection location for each residence.

(d) Only bulky items present at the residential customer's service address at the time the bulky item collection is scheduled, may be placed on the street for collection.

(e) Any person found to be in violation of this section, shall be subject to the penalty provisions of Sections 5-5.105(e) and 1-2.01 of this Code.

SECTION 2. SEVERABILITY

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

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

The City Council hereby finds that the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect

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

SECTION 4. EFFECTIVE DATE

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

SECTION 5. PUBLICATION

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

The foregoing Ordinance was introduced at a special meeting of the Council of the City of Modesto held on the 7th day of August, 2019, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

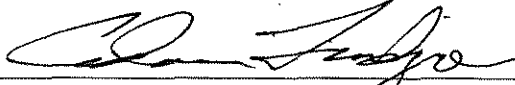
ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
BY: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3699-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 13th day of August, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: September 12, 2019

ORDINANCE NO. 3700-C.S.

AN ORDINANCE AMENDING SECTION 8-3.102 OF ARTICLE 1 OF CHAPTER 3 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE TO AUTHORIZE THE USE OF DESIGN-BUILD PROCUREMENT FOR THE SCADA SYSTEM REPLACEMENT PROJECT

WHEREAS, the City uses a Supervisory Control and Data Acquisition (SCADA) System to operate over 200 water, wastewater, and storm drain facilities (including groundwater wells, tanks, wastewater treatment plant equipment, and lift stations), and

WHEREAS, the SCADA System is comprised of computer hardware, software and a telemetry system that is critical in controlling and delivering a safe drinking water supply to customers and helps in controlling the conveyance and treatment of the City's wastewater, and

WHEREAS, since SCADA improvements can be costly, prior to making any management decisions to upgrade or replace portions of the SCADA System, an independent review of its current capabilities, and a thorough assessment of current and anticipated SCADA needs was required. This study concluded that it is necessary for the City to migrate to another system to achieve the performance requirements of a functional, modern, and reliable SCADA system, and

WHEREAS, considering the desperate need to upgrade the City's SCADA system, the project delivery (design and construction) will need to be expedited, Staff recommends pursuing a design-build approach, and

WHEREAS, Chapter 3, "City Contracts," of Title 8 of the Modesto Municipal Code (MMC) establishes policies and procedures governing the purchase of goods and services in accordance with the City's Charter. As a charter city, Modesto has exempted itself from the

ORDINANCE 3700-C.S.
Effective: October 3, 2019

California Public Contract Code and its requirements, such as the requirement that all public works projects in excess of \$50,000, be competitively or publically bid. However, Section 1307 of the City's Charter requires that public works projects involving an expenditure of City funds in excess of an amount established by an ordinance of the Council be competitively bid. Currently, under the Municipal Code, all public works projects in excess of \$50,000 are competitively bid, unless the Council approves an exception for a particular project by ordinance.

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

SECTION 1. Amendment to Article 1 of Chapter 3 of Title 8. Section 8-3.102 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.102 - Contracting Authority.

- (aa) Contracts for the construction, improvement, installation, or repair of hardware, software and system integration associated with the Utilities Department SCADA System (water, wastewater and storm drain), involving an expenditure of City funds in excess of one million dollars (\$1,000,000). Such projects may be procured under the design-build methodology authorized under Public Contract Code section 22160, et seq., as may be amended from time to time.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) (z) and (aa) above of this section and authorized by the City Manager, District Administrator, or other authorized person, is not subject to the public bidding requirements of articles 2 and 4 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(k) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other

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

SECTION 4. Effective Date. This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days following its final passage and adoption.

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

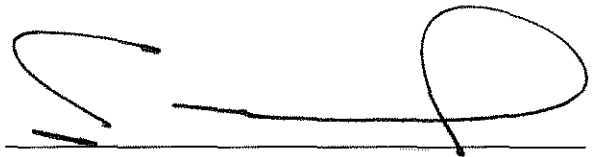
The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of August, 2019, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3700-C.S.

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 September, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



MAYOR TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk

(SEAL)

Effective Date: October 3, 2019

ORDINANCE 3700-C.S.
Effective: October 3, 2019

ORDINANCE NO. 3701- C.S.

AN URGENCY ORDINANCE AMENDING TITLE 4, “PUBLIC WELFARE, SAFETY AND HEALTH” OF THE MODESTO MUNICIPAL CODE BY ADDING CHAPTER 23 TO IMPOSE CERTAIN TIME, PLACE AND MANNER REGULATIONS AS TO PUBLIC ASSEMBLIES

SECTION 1. FINDINGS

A. The City Council of the City of Modesto hereby finds as follows: revisions to the City’s Municipal Code implemented by this Urgency Ordinance are immediately necessary as an emergency measure in order to respond to preserve the public health, safety and welfare. Specifically, the revisions and amendments to Municipal Code Title 4, Chapter 23 included in this Urgency Ordinance are essential and immediately necessary to improve the City’s regulation of public assemblies, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

B. The City Council desires to amend Title 4 entitled “Public Welfare, Safety and Health” of its Municipal Code by adding Chapter 23 in its entirety, entitled “Restrictions on Use of Specified Items During Public Assembly ” to provide critically needed rules regulating the use of certain objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property so as to safeguard against violence and promote peaceful assembly for Modesto citizens, police and visitors alike. These regulations serve to deter violence, property damage and any bodily harm to individuals that wish to engage in peaceful protests and demonstrations.

C. In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as sidewalks, streets and public parks. The City Council does not intend to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place and manner regulations that address the need to prevent violent, dangerous and hazardous situations from arising and to promote the safety of both the public and the police.

D. The revisions to the City’s Municipal Code implemented by this Urgency Ordinance are immediately necessary as an emergency measure in order to respond to recent developments regarding a proposed public assembly that is proposed to take place in the City on August 24, 2019, and which raise serious and alarming safety concerns regarding protecting citizens and police alike from violent disputes, and in order to reduce the threat of serious bodily injury or property damage during this proposed event and for future public events in Modesto. Specifically, the amendments to the City’s Municipal Code Title 4 adding Chapter 23 included in this Urgency Ordinance are essential and immediately necessary to ensure the orderly implementation of restrictions on specified items used at public assemblies to reduce the likelihood of violence and property damage and to ensure the safety of the general public, event attendees, counter-protestors and the police, and

thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

E. The City supports peaceful protests, demonstrations and events. Unfortunately, some individuals have used protests and other public assembly events as “cover” to commit acts of violence, arson and vandalism. It is the intent of the City in enacting this Urgency Ordinance to ensure that public assembly events are peaceful and safe.

F. There is an increasing concern about violence at public events and about violent clashes between those with opposing views. Numerous public protests, demonstrations and rallies conducted throughout the nation in cities such as Charlottesville and St. Louis, as well as cities throughout California, in Berkeley, Oakland and Laguna Beach have erupted in violence between demonstrators and counter-demonstrators, and violence against law enforcement personnel.

G. On August 12, 2017, a car was deliberately driven into a crowd of people who had been peacefully protesting a Unite the Right rally in Charlottesville, Virginia. The driver of the car espoused neo-Nazi and white supremacist beliefs. In 2017, violence also erupted during a series of protests that place in Berkeley, California near the University of California campus. The violent interactions predominately occurred between groups with opposing viewpoints, including white nationalist groups and Antifa groups.

H. At these events, devices such as poles, sticks, signs, wood and metal pipes, bats, chains, projectiles (such as rocks, concrete, pellets and ball bearings), as well as certain types of containers including but not limited to glass bottles, balloons, super soakers and toy or replica guns, filled with flammable or noxious substances (such as urine) and aerosol sprays deployed to cause flames or attack olfactory systems, and other items have been used as improvised weapons resulting in injuries and property damage. Demonstrators have also carried shields, thrown objects at police, used fire accelerant to light fires, used large poles and sticks as weapons to threaten bodily harm and to attack businesses. Rigid-support materials used on signs have frequently been used as weapons and turned upon police officers, marchers, or other demonstrators.

I. The City of Modesto could see similar occurrences in its jurisdiction. The City Council does not want to take a “wait-and-see” approach. The City Council has a reasonable basis to believe that failing to enact regulations limiting the use of objects that can be weaponized at public assemblies increases the risk that violence will occur at a public event in the City.

J. Event organizers sought a permit for use of City facilities for a straight pride event to be held on August 24, 2019. The flyer associated with the event invites the public to join in a celebration of: heterosexuality, masculinity, femininity, babies born and unborn, western civilization, our wonderful country and Christianity. The website associated with the flyer, NationalStraightPrideCoalition.org, among other things, makes reference to whiteness/Caucasian as being the “mass majority biological racial component of the developers of the western civilization,” that “West is Best” and that its fundamental principles and values are under attack.

K. Event organizers have invited the Proud Boys to attend the event. The proposed event applicant has stated he is a member of the local Proud Boys organization. The Proud Boys have

been designated as a hate group by Southern Poverty Law Center and its members are known to participate in white supremacist rallies, events and organizations. Members of the Proud Boys are reported to have been violent during prior protests.

L. The straight pride event is advertised as being open to the public. PRISM which stands for Pride-Solidarity-Multiculturalism is organizing to protest the straight pride event. The City estimates that the crowds drawn to the event as both supporters and protestors may reach as high as 1,000-2,000 people. MoPRIDE a Modesto organization providing support to the LGBTQ+ community has offered safe places for people during the event as personal safety and potential violence against members of the LGBTQ+ community is a serious concern.

M. Anti-fascist (“Antifa”) groups are aware of the event and there is credible evidence to believe they will attend the event/counter-protest in large numbers. Antifa groups are known to wear masks to obscure their identities and are reported to have been violent during prior protests. There is an increased risk that if individuals wear masks or use other apparel to cover their faces and conceal their identities they will utilize their anonymity to commit acts of violence or vandalism without concern of identification and apprehension, disturbing the ability of others to safely assemble and demonstrate peacefully.

N. During the City Council’s August 7, 2019 meeting tensions ran high as both opponents and supporters of the straight pride event spoke. There were large numbers of people in the audience and many speakers. The organizer of the straight pride event spoke and identified his organization as a “peaceful racist” group. Applicant Grundmann and other Council attendees were highly animated. The City has a reasonable basis to believe that these tensions are likely to accelerate and to increase the likelihood of clashes at the proposed straight pride event.

O. The City has credible evidence that there is a heightened risk of violent conflict that may take place at the proposed public event in the City on August 24, 2019. The City’s Police Department is already planning significant security measures to address the heightened safety concerns for the proposed August 24, 2019 event, including possibly requesting reinforcements from other law enforcement agencies. However, these measures alone will not prevent the threat to public safety from the weaponization of objects used by demonstrators.

P. Given the heightened risk of violent conflict associated with the proposed event (and in addition to other reasons as well), on August 9, 2019, the City denied the event organizers’ application to rent the Mancini Bowl in Graceada Park. There were serious challenges to ensuring adequate security for the proposed straight pride event at the Mancini Bowl location in Graceada Park given the residential nature of the neighborhood, that the street parking around Graceada Park allows for the use of vehicles as weapons, the open space and lack of natural barriers make it difficult to separate potential protestors and event participants, there are children’s playgrounds and a splash pad and pool in close proximity and picnic areas that would also need to be secured, along with a risk of property damage to the private residences in the neighborhood.

Q. Mr. Grundermann has informed various news outlets that the proposed straight pride event scheduled for August 24, 2019 will happen at some other location in the City on August 24,

2019. On August 12, 2019, Mr. Grundermann started the process with City staff to possibly rent the Centre Plaza location in the City for August 24, 2019.

R. The adoption of this Urgency Ordinance is a necessary and critical tool for the City to limit the use of specified items at public assembly events or at any of the various public venues in the City for both the proposed August 24, 2019 event and for other future public assembly events to ensure the safety of the general public and police.

S. In addition to the above factual findings, the City Council in enacting this Ordinance does hereby also take legislative notice of the various principles and decisions regarding the regulation of public assemblies, including but not limited to, the following:

1. Public streets, sidewalks and parks are the archetypes of a traditional public forum where the government cannot favor one speaker over another based on the viewpoint of the speaker. *See Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988); *see also Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828 (1995). The government may regulate First Amendment activities in traditional public fora, such as streets, sidewalks and parks when such restrictions are reasonable time, place and manner restrictions that are: content neutral; narrowly tailored to serve a significant government interest; and leave open ample alternative channels of communication. *See Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 799-800 (1985); *see also; Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990).

2. The First Amendment does not protect violence. *See N.A.A.C.P v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982).

3. In response to potential angry or inflammatory speech, the City of Modesto may increase its police presence; enact security measures to ensure the safety of the public; arrest those who actually engage in violent conduct; and may enact time, place and manner regulations to maintain safety during public events. *See Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996); *see also Walker v. City of Birmingham*, 388 U.S. 307 (1967); *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1024 (9th Cir. 2009).

4. The City of Modesto has a substantial interest in safeguarding its citizens against violence and in protecting police and demonstrators alike. *See Hill v. Colorado*, 530 U.S. 703, 724-25 (2000); *see also Vlasak v. Superior Court*, 329 F.3d 683, 689 (9th Cir. 2003). Specifically, case law has confirmed that Modesto may enact regulations to make sure that materials used for signs and sign poles, as well as other objects, are not used as weapons. The City takes legislative notice of the City of Los Angeles regulations restricting certain objects at demonstrations and has modeled this regulations in keeping with the Los Angeles provisions validated by the Ninth Circuit in the *Vlasak* decision. *See Vlasak*, 329 F.3d at 689; *see also Edwards v. City of Coeur D'Alene*, 262 F.3d 856, 863 & 866 (9th Cir. 2001).

T. It is imperative that individuals engaging in peaceful expressive public activity do so without fear of violence and that law enforcement personnel dedicated to protecting such activity be allowed to do so without suffering injury. This Urgency Ordinance provides a narrowly tailored

content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies in the City of Modesto. Among other things, the restrictions limit the objects that can be used for signs, but still allow for signs to be utilized. Likewise, the restrictions limit the use of facial covering that obscure one's identity at these specific public events (with exceptions for religious and medical reasons) without banning costumes or other expressive clothing. The restrictions are also directed at limiting other items (such as baseball bats, aerosol spray, weapons, glass bottles, shields, bricks, and rocks) that can, and have been weaponized, while still allowing for peaceful expressive activity.

U. On August 13, 2019, the City Council held a public meeting during which it considered the adoption of this Urgency Ordinance pursuant to California Government Code § 36937 and the Modesto Charter § 716. Both California Government Code § 36937 and Modesto Charter § 716 allow the adoption of such urgency ordinances to take effect immediately to ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

V. The restrictions on use of specified items during public assembly adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to limit and prevent violence and promote peaceful assembly. These are content-neutral time, place and manner restrictions that allow for peaceful public expressive activity. The restrictions are narrowly tailored to address the City's interest in safety and preventing violence and to the extent they burden expressive activity they leave ample alternatives for communication. The regulations make public assembly safer by banning objects that can readily be weaponized without depriving people of the opportunity to demonstrate, rally, protest, counter-protest, picket, march, assemble or otherwise engage in peaceful free speech activities.

W. These regulations adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to address the potential violence and companion property damage and personal injuries that have accompanied public protests, rallies and demonstrations in cities such as Berkeley, Oakland, St. Louis, and Charlottesville.

SECTION 2. AMENDMENT OF MUNICIPAL CODE.

The City of Modesto Municipal Code Title 4 (Public Welfare, Safety and Health) is hereby amended by adding Chapter 23 in its entirety as follows:

CHAPTER 23 RESTRICTIONS ON USE OF SPECIFIED ITEMS DURING PUBLIC ASSEMBLY

Section 4-23.01 Purpose

- (a) To ensure the peaceful expression of free speech, the City of Modesto has adopted the following provisions to limit the use of certain objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property in order to safeguard against violence for the citizenry of Modesto.

- (b) The City of Modesto adopts these content-neutral, time, place and manner regulations to ensure for the safety and welfare of all individuals. These regulations allow for the peaceful expression of differing ideas and views while reducing the risk of violent conflict by prohibiting the use or possession of weapons, or objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies.

Section 4-23.02 Restrictions

- (a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:
1. Any length of lumber, wood, or wood lath unless that object is 1/4 inch or less in thickness and 2 inches or less in width, or if not generally rectangular in shape, such object shall not exceed 3/4 inch in its thickest dimension. Both ends of the lumber, wood or wood lath shall be blunt;
 2. Any length of metal or plastic pipe, whether hollow or solid; provided, however, that hollow plastic piping not exceeding 3/4 inch in its thickest dimension and not exceeding 1/8 inch in wall thickness, and not filled with any material, liquid, gas or solid may be used solely to support a sign, banner, placard, puppet or other similar expressive display. Both ends of any plastic pipe permissible under this subsection shall be blunt;
 3. Signs, posters, banners, plaques or notices, unless such sign, poster, banner, plaque or notice is constructed solely of soft material, such as cloth, paper, soft plastic capable of being rolled or folded, or cardboard material no greater than 1/4 inch in thickness;
 4. Baseball or softball bats, regardless of composition or size;
 5. Any aerosol spray, tear gas, mace, pepper spray, smoke canisters, or bear repellent;
 6. Any projectile launcher or other device, such as a catapult or wrist rocket, which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, whether through force of air pressure, spring action or any other mechanism;
 7. Weapons such as knives, daggers, swords, sabers or other bladed devices, axes, axe handles, hatchets, billy clubs, ice picks, razor blades, nunchucks or martial arts weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs), including, but not limited to, Tasers or stun guns, metal/composite/wooden knuckles, or any chains greater than 20 inches in length or greater than 1/4 inch in diameter;
 8. Balloons, bottles or any other container such as water cannons, super-soakers, or toy or replica firearms filled with any flammable, biohazard or other noxious matter which is

injurious, or nauseous, sickening or irritating to any of the senses, with intent to throw, drop, pour, disperse, deposit, release, discharge or expose the same in, upon or about any demonstration, rally, protest, picket line or public assembly;

9. Glass bottles, whether empty or filled;
 10. Open flame torches, lanterns or other devices that utilize combustible materials such as gasoline, kerosene, propane or other fuel sources;
 11. Shields made of metal, wood, hard plastic or any combination thereof;
 12. Bricks, rocks, pieces of asphalt, concrete, pellets or ball bearings; and
 13. The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer's face from view and conceals the wearer's identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.
- (b) It shall be unlawful and a misdemeanor to violate any provisions of this Chapter.
- (c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this Chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.
- (d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this Chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.
- (e) Nothing in this Chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 *et seq.* (Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 *et seq.* upon a finding by the Chief of Police that such modification will not impair or threaten public safety.
- (f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.

SECTION 3. SEVERABILITY.

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

of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.


SECTION 4. EFFECTIVE DATE/URGENCY.

This Urgency Ordinance shall be passed and adopted at one and the same meeting and shall become effective immediately. The reasons for this urgency are set forth in Paragraphs A-U inclusive.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of August, 2019, by Councilmember Ah You, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following votes:

AYES:	Councilmembers:	Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:


By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of August, 2019, by Councilmember Ah You, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

Effective Date: August 13, 2019

ORDINANCE NO. 3702- C.S.

AN ORDINANCE AMENDING TITLE 4, “PUBLIC WELFARE, SAFETY AND HEALTH” OF THE MODESTO MUNICIPAL CODE BY ADDING CHAPTER 23 TO IMPOSE CERTAIN TIME, PLACE AND MANNER REGULATIONS AS TO PUBLIC ASSEMBLIES

SECTION 1. FINDINGS

A. The City Council of the City of Modesto hereby finds as follows: revisions to the City’s Municipal Code implemented by this Ordinance are necessary in order to respond to preserve the public health, safety and welfare. Specifically, the revisions and amendments to Municipal Code Title 4, Chapter 23 included in this Ordinance are essential and necessary to improve the City’s regulation of public assemblies, and thereby ensure the preservation of the public peace, health, safety and general welfare in the City of Modesto.

B. The City Council desires to amend Title 4 entitled “Public Welfare, Safety and Health” of its Municipal Code by adding Chapter 23 in its entirety, entitled “Restrictions on Use of Specified Items During Public Assembly” to provide critically needed rules regulating the use of certain objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property so as to safeguard against violence and promote peaceful assembly for Modesto citizens, police and visitors alike. These regulations serve to deter violence, property damage and any bodily harm to individuals that wish to engage in peaceful protests and demonstrations.

C. In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as sidewalks, streets and public parks. The City Council does not intend to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place and manner regulations that address the need to prevent violent, dangerous and hazardous situations from arising and to promote the safety of both the public and the police.

D. The revisions to the City’s Municipal Code implemented by this Ordinance are necessary in order to respond to recent developments regarding a proposed public assembly that is proposed to take place in the City on August 24, 2019, and which raise serious and alarming safety concerns regarding protecting citizens and police alike from violent disputes, and in order to reduce the threat of serious bodily injury or property damage during this proposed event and for future public events in Modesto. Specifically, the amendments to the City’s Municipal Code Title 4 adding Chapter 23 included in this Ordinance are essential and immediately necessary to ensure the orderly implementation of restrictions on specified items used at public assemblies to reduce the likelihood of violence and property damage and to ensure the safety of the general public, event attendees, counter-protestors and the police, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

E. The City supports peaceful protests, demonstrations and events. Unfortunately, some individuals have used protests and other public assembly events as “cover” to commit acts of violence, arson and vandalism. It is the intent of the City in enacting this Ordinance to ensure that public assembly events are peaceful and safe.

F. There is an increasing concern about violence at public events and about violent clashes between those with opposing views. Numerous public protests, demonstrations and rallies conducted throughout the nation in cities such as Charlottesville and St. Louis, as well as cities throughout California, in Berkeley, Oakland and Laguna Beach have erupted in violence between demonstrators and counter-demonstrators, and violence against law enforcement personnel.

G. On August 12, 2017, a car was deliberately driven into a crowd of people who had been peacefully protesting a Unite the Right rally in Charlottesville, Virginia. The driver of the car espoused neo-Nazi and white supremacist beliefs. In 2017, violence also erupted during a series of protests that place in Berkeley, California near the University of California campus. The violent interactions predominately occurred between groups with opposing viewpoints, including white nationalist groups and Antifa groups.

H. At these events, devices such as poles, sticks, signs, wood and metal pipes, bats, chains, projectiles (such as rocks, concrete, pellets and ball bearings), as well as certain types of containers including but not limited to glass bottles, balloons, super soakers and toy or replica guns filled with flammable or noxious substances (such as urine) and aerosol sprays deployed to cause flames or attack olfactory systems, and other items have been used as improvised weapons resulting in injuries and property damage. Demonstrators have also carried shields, thrown objects at police, used fire accelerant to light fires, used large poles and sticks as weapons to threaten bodily harm and to attack businesses. Rigid-support materials used on signs have frequently been used as weapons and turned upon police officers, marchers, or other demonstrators.

I. The City of Modesto could see similar occurrences in its jurisdiction. The City Council does not want to take a “wait-and-see” approach. The City Council has a reasonable basis to believe that failing to enact regulations limiting the use of objects that can be weaponized at public assemblies increases the risk that violence will occur at a public event in the City.

J. Event organizers sought a permit for use of City facilities for a straight pride event to be held on August 24, 2019. The flyer associated with the event invites the public to join in a celebration of: heterosexuality, masculinity, femininity, babies born and unborn, western civilization, our wonderful country and Christianity. The website associated with the flyer, NationalStraightPrideCoalition.org, among other things, makes reference to whiteness/Caucasian as being the “mass majority biological racial component of the developers of the western civilization,” that “West is Best” and that its fundamental principles and values are under attack.

K. Event organizers have invited the Proud Boys to attend the event. The proposed event applicant has stated he is a member of the local Proud Boys organization. The Proud Boys have been designated as a hate group by Southern Poverty Law Center and its members are known to participate in white supremacist rallies, events and organizations. Members of the Proud Boys are reported to have been violent during prior protests.

L. The straight pride event is advertised as being open to the public. PRISM which stands for Pride-Solidarity-Multiculturalism is organizing to protest the straight pride event. The City estimates that the crowds drawn to the event as both supporters and protestors may reach as high as 1,000-2,000 people. MoPRIDE a Modesto organization providing support to the LGBTQ+ community has offered safe places for people during the event as personal safety and potential violence against members of the LGBTQ+ community is a serious concern.

M. Anti-fascist (“Antifa”) groups are aware of the event and there is credible evidence to believe they will attend the event/counter-protest in large numbers. Antifa groups are known to wear masks to obscure their identities and are reported to have been violent during prior protests. There is an increased risk that if individuals wear masks or use other apparel to cover their faces and conceal their identities they will utilize their anonymity to commit acts of violence or vandalism without concern of identification and apprehension, disturbing the ability of others to safely assemble and demonstrate peacefully.

N. During the City Council’s August 7, 2019 meeting tensions ran high as both opponents and supporters of the straight pride event spoke. There were large numbers of people in the audience and many speakers. Applicant Grundmann and other Council attendees were highly animated. The City has a reasonable basis to believe that these tensions are likely to accelerate and to increase the likelihood of clashes at the proposed straight pride event and possibly at other events in Modesto in the future.

O. The City has credible evidence that there is a heightened risk of violent conflict that may take place at the proposed public event in the City on August 24, 2019 and possibly at other events in Modesto in the future. The City’s Police Department is already planning significant security measures to address the heightened safety concerns for the proposed August 24, 2019 event and will do so for other events with heightened security concerns in the future as well. However, these measures alone will not prevent the threat to public safety from the weaponization of objects used by demonstrators.

P. The adoption of this Ordinance is a necessary and critical tool for the City to limit the use of specified items at public assembly events or at any of the various public venues in the City to ensure the safety of the general public and police.

Q. In addition to the above factual findings, the City Council in enacting this Ordinance does hereby also take legislative notice of the various principles and decisions regarding the regulation of public assemblies, including but not limited to, the following:

1. Public streets, sidewalks and parks are the archetypes of a traditional public forum where the government cannot favor one speaker over another based on the viewpoint of the speaker. *See Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988); *see also Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828 (1995). The government may regulate First Amendment activities in traditional public fora, such as streets, sidewalks and parks when such restrictions are reasonable time, place and manner restrictions that are: content neutral; narrowly tailored to serve a significant government interest; and leave open ample alternative channels of communication. *See Cornelius v. NAACP Legal Defense and*

Educational Fund, 473 U.S. 788, 799-800 (1985); *see also*; *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990).

2. The First Amendment does not protect violence. *See N.A.A.C.P v. Claiborne Hardware Co*, 458 U.S. 886, 916 (1982).

3. In response to potential angry or inflammatory speech, the City of Modesto may increase its police presence; enact security measures to ensure the safety of the public; arrest those who actually engage in violent conduct; and may enact time, place and manner regulations to maintain safety during public events. *See Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996); *see also Walker v. City of Birmingham*, 388 U.S. 307 (1967); *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1024 (9th Cir. 2009).

4. The City of Modesto has a substantial interest in safeguarding its citizens against violence and in protecting police and demonstrators alike. *See Hill v. Colorado*, 530 U.S. 703, 724-25 (2000); *see also Vlasak v. Superior Court*, 329 F.3d 683, 689 (9th Cir. 2003). Specifically, case law has confirmed that Modesto may enact regulations to make sure that materials used for signs and sign poles, as well as other objects, are not used as weapons. The City takes legislative notice of the City of Los Angeles regulations restricting certain objects at demonstrations and has modeled this regulations in keeping with the Los Angeles provisions validated by the Ninth Circuit in the *Vlasak* decision. *See Vlasak*, 329 F.3d at 689; *see also Edwards v. City of Coeur D'Alene*, 262 F.3d 856, 863 & 866 (9th Cir. 2001).

R. It is imperative that individuals engaging in peaceful expressive public activity do so without fear of violence and that law enforcement personnel dedicated to protecting such activity be allowed to do so without suffering injury. This Ordinance provides a narrowly tailored content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies in the City of Modesto. Among other things, the restrictions limit the objects that can be used for signs, but still allow for signs to be utilized. Likewise, the restrictions limit the use of facial covering that obscure one's identity at these specific public events (with exceptions for religious and medical reasons) without banning costumes or other expressive clothing. The restrictions are also directed at limiting other items (such as baseball bats, aerosol spray, weapons, glass bottles, shields, bricks, and rocks) that can, and have been weaponized, while still allowing for peaceful expressive activity.

S. On August 13, 2019, the City Council held a public meeting during which it considered the adoption of this Ordinance pursuant to section 716 of the Charter of the City of Modesto.

T. The restrictions on use of specified items during public assembly adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to limit and prevent violence and promote peaceful assembly. These are content-neutral time, place and manner restrictions that allow for peaceful public expressive activity. The restrictions are narrowly tailored to address the City's interest in safety and preventing violence and to the extent they burden expressive activity they leave ample alternatives for communication. The regulations make public assembly safer by banning objects that can readily be weaponized without depriving people of the

opportunity to demonstrate, rally, protest, counter-protest, picket, march, assemble or otherwise engage in peaceful free speech activities.

U. These regulations adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to address the potential violence and companion property damage and personal injuries that have accompanied public protests, rallies and demonstrations in cities such as Berkeley, Oakland, St. Louis, and Charlottesville.

SECTION 2. AMENDMENT OF MUNICIPAL CODE.

The City of Modesto Municipal Code Title 4 (Public Welfare, Safety and Health) is hereby amended by adding Chapter 23 in its entirety as follows:

CHAPTER 23 RESTRICTIONS ON USE OF SPECIFIED ITEMS DURING PUBLIC ASSEMBLY

Section 4-23.01 Purpose

- (a) To ensure the peaceful expression of free speech, the City of Modesto has adopted the following provisions to limit the use of certain objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property in order to safeguard against violence for the citizenry of Modesto.
- (b) The City of Modesto adopts these content-neutral, time, place and manner regulations to ensure for the safety and welfare of all individuals. These regulations allow for the peaceful expression of differing ideas and views while reducing the risk of violent conflict by prohibiting the use or possession of weapons, or objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies.

Section 4-23.02 Restrictions

- (a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:
 - 1. Any length of lumber, wood, or wood lath unless that object is 1/4 inch or less in thickness and 2 inches or less in width, or if not generally rectangular in shape, such object shall not exceed 3/4 inch in its thickest dimension. Both ends of the lumber, wood or wood lath shall be blunt;
 - 2. Any length of metal or plastic pipe, whether hollow or solid; provided, however, that hollow plastic piping not exceeding 3/4 inch in its thickest dimension and not exceeding 1/8 inch in wall thickness, and not filled with any material, liquid, gas or solid may be used solely to support a sign, banner, placard, puppet or other similar expressive display. Both ends of any plastic pipe permissible under this subsection shall be blunt;

3. Signs, posters, banners, plaques or notices, unless such sign, poster, banner, plaque or notice is constructed solely of soft material, such as cloth, paper, soft plastic capable of being rolled or folded, or cardboard material no greater than 1/4 inch in thickness;
 4. Baseball or softball bats, regardless of composition or size;
 5. Any aerosol spray, tear gas, mace, pepper spray, smoke canisters, or bear repellent;
 6. Any projectile launcher or other device, such as a catapult or wrist rocket, which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, whether through force of air pressure, spring action or any other mechanism;
 7. Weapons such as knives, daggers, swords, sabers or other bladed devices, axes, axe handles, hatchets, billy clubs, ice picks, razor blades, nunchucks or martial arts weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs), including, but not limited to, Tasers or stun guns, metal/composite/wooden knuckles, or any chain greater than 20 inches in length or greater than 1/4 inch in diameter;
 8. Balloons, bottles or any other container such as water cannons, super-soakers, or toy or replica firearms filled with any flammable, biohazard or other noxious matter which is injurious, or nauseous, sickening or irritating to any of the senses, with intent to throw, drop, pour, disperse, deposit, release, discharge or expose the same in, upon or about any demonstration, rally, protest, picket line or public assembly;
 9. Glass bottles, whether empty or filled;
 10. Open flame torches, lanterns or other devices that utilize combustible materials such as gasoline, kerosene, propane or other fuel sources;
 11. Shields made of metal, wood, hard plastic or any combination thereof;
 12. Bricks, rocks, pieces of asphalt, concrete, pellets or ball bearings; and
 13. The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer's face from view and conceals the wearer's identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.
- (b) It shall be unlawful and a misdemeanor to violate any provisions of this Chapter.
- (c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this Chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.

- (d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this Chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.
- (e) Nothing in this Chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 *et seq.* (Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 *et seq.* upon a finding by the Chief of Police that such modification will not impair or threaten public safety.
- (f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.

SECTION 3. SEVERABILITY.

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

SECTION 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 13th day of August, 2019, by Councilmember Ah You, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following votes:

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

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2019, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

Effective Date: October 3, 2019

ORDINANCE NO. 3703-C.S.

AN ORDINANCE AMENDING THE MODESTO MUNICIPAL CODE TO ADD CHAPTER 13, "RENTAL HOUSING SAFETY PROGRAM" TO TITLE 9, "BUILDING REGULATIONS"

WHEREAS, the City currently does not have a rental housing safety program; and

WHEREAS, inspection of rental income properties are report-driven and/or based upon tenant complaints to the City; and

WHEREAS, to address housing safety issues, including rental property safety, the City uses Title 9, Chapter 8 of the Modesto Municipal Code (MMC), also known as, "The Building Maintenance Code"; and

WHEREAS, without a Rental Housing Safety Program, this section limits City staff's ability to address or enforce all issues when complaints are made or the City is made aware of an issue; and

WHEREAS, the City Council of the City of Modesto desires to create a Rental Housing Safety Act to supply safe affordable housing within the City of Modesto.

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

SECTION 1. Amendment of Code. Chapter 13, "RENTAL HOUSING SAFETY PROGRAM," of Title 9, "Building Regulations" of the Modesto Municipal Code is added to read as follows:

Chapter 13

RENTAL HOUSING SAFETY PROGRAM

Article 1-Purpose and Scope

9-13.101 Purpose

9-13.102 Scope

Article 2- Definitions

9-13.201 Terms

ORDINANCE NO. 3703-C.S.
Effective: October 24, 2019

Article 3- Inspections, Compliance with Applicable Codes and Standards

9-13.301 Inspections

9-13.302 Compliance with Applicable Codes and Standards

Article 4- Registration and Payment of Fees

9-13.401 Registration

9-13.402 Payment of Fees

Article 5- Exemptions

9-13.501 Exemptions

Article 6- Self-Certification Program

9-13.601 Self-Certification Program

Article 7- Notices and Compliance

9-13.701 Notices and Compliance

Article 8- Enforcement, Penalties and Appeals

9-13.801 Enforcement

9-13.802 Appeals

9-13.803 Delinquent Fees and Late Fee Penalties

Article 9- Miscellaneous

9-13.901 Rules and Regulations

9-13.902 Annual Review

9-13.903 Language Access

CHAPTER 13 - RENTAL HOUSING SAFETY PROGRAM

Article 1- Purpose and Scope

9-13.101 - Purpose.

The purpose of this article is to maintain the supply of safe, decent, and sound affordable housing in the City of Modesto through the conservation and rehabilitation of the City's existing housing stock. This Act does not limit in any way a tenant's or an owner's rights or obligations under State law. For the purposes of clarification, California Civil Code 1942.5(h) is repeated here: Any lessor or agent of a lessor who violates this section (1942.5) shall be liable to the lessee in a civil action for all of the following:

- (1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

9-13.102 - Scope.

- (a) The provisions of this article shall apply to all Residential Rental Units located within the city.
- (b) Provisions of this article shall be supplementary and complementary to all of the provisions of this Code, and any local, state or federal law including California Health and Safety Code sections 17910 *et seq.* Nothing herein shall be construed or interpreted to limit any existing right or power of the city to abate and prosecute any and all nuisances or to enforce any other conditions in violation of state or local laws, including but not limited to any building, housing, property maintenance and public nuisance laws.

Article 2 - Definitions

9-13.201 -Terms.

For purposes of this article, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning and application of words and phrases used in this article:

- (a) "Director" shall mean the Director of the Community and Economic Development Department, or his or her designee.
- (b) "City" shall mean the City of Modesto and/or any agent hired to implement this article.
- (c) "City Manager" means the City Manager of the City of Modesto, the Deputy City Manager, or any person or persons designated by the City Manager to act as his or her designee.
- (d) "Health and Safety Standards" shall mean the standards set forth in California Civil Code section 1941.1, and Modesto Municipal Code Title 9-8 and Title 9-9.
- (e) "Hearing officer" means any person appointed by the City Manager to preside over administrative hearings.
- (f) "Inspector" means a person authorized by the Director to inspect a property or residential rental unit.
- (g) "Local Contact Representative" Means the person or entity with full authority to act on behalf of the Owner for all purposes under this article, including the acceptance of service of all notices from the City. The local contact representative shall be physically located within 50 miles of the residential rental property.
- (h) "Owner" means the person or entity identified and listed as having title to a Residential Rental Unit, as listed on the latest property tax assessment roll, maintained by the Stanislaus County Assessor.

- (i) "Property" or "Residential Rental Property" means any lot or parcel of land containing Residential Rental Units, and all improvements thereon, including common areas.
- (j) "Residential Rental Unit" means any structure or part of a structure that is used or may be used by one or more persons as a home, residence, dwelling, or sleeping place for longer than thirty days, including single family dwellings, duplexes, triplexes, or multi-family (four units or more) residential buildings, which is not an owner occupied unit, including rooming houses, boarding houses, apartment units, condominium units, and single room occupancies, but excluding: (1) hotels, motels, and bed and breakfasts used for transient lodging; (2) legal accessory dwelling units where the owner lives on the same property; (3) rooms in owner occupied residences;
- (k) "Responsible party" means any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.
- (l) "Tenant's Affirmative Obligations" shall mean the standards set forth in California Civil Code section 1941.2. An Inspector's determination that a tenant is or is not in substantial violation of Tenant's Affirmative Obligations, or the cause of the existence of a dilapidation or violation, or interferes substantially with the Owner's obligation to effect necessary maintenance or repairs shall not be evidentiary proof of the condition of the unit, and shall be used only for purposes of implementing and enforcing this article.

Article 3 - Inspections; Compliance with Applicable Codes and Standards

9-13.301-**Inspections.** The Director, or his or her designee, hereinafter referred to as the Inspector, is authorized to inspect all Residential Rental Units to determine whether such Residential Rental Units meet minimum Health and Safety Standards. A reasonable fee may be charged to the owner for inspections, as set forth in the Development Fee Schedule.

9-13.302-**Compliance with Codes and Standards.** Residential Rental Units shall be required to be in conformance with the code standard that was in effect at the time the Residential Rental Unit was constructed, substantially altered, or remodeled, erected, or converted, except for any additional requirements mandated by this Code or state law.

Article 4 - Registration and Payment of Fees

9-13.401- Registration.

- (a) All Residential Rental Properties are required to be registered and updated whenever there is a change of ownership, contact information, or property management company.
- (b) A Residential Rental Property is registered with the city when the Owner submits the following to the city:
 - (1) A completed registration form, made available by the city that contains the following information:

- (i) Description of the Residential Rental Property, including but not limited to, the street address and APN;
 - (ii) Number and description, including identifying number, of all Residential Rental Units on the Property;
 - (iii) Name and current contact information of the Owner;
 - (iv) Name and current contact information for a local contact representative with full authority to act on behalf of the Owner for all purposes under this article, including the acceptance of service of all notices from the City.
 - (v) Date of first occupancy.
 - (vi) The registry will only include the information specified in subparagraphs (i) through (v) of this section.
 - (vii) To the extent legally permissible, the contact information shall remain confidential and for internal city and current tenant use only, and not available to any member of the public.
- (c) It is unlawful for any person to knowingly make a false statement or knowingly omit any information that is required to register a Residential Rental Unit pursuant to this section.
- (d) Registration shall remain valid unless or until one of the following circumstances occurs:
- (1) The Owner fails to notify the Director of any change in the information submitted pursuant to this section within thirty days of such change; or
 - (2) The Owner fails to pay any fees established by this article when payment is due.

Article 5 - Exemptions

9-13.501- Exemptions.

- (a) The following shall be subject to registration under this article, but shall be exempt from routine inspections, subject to section (c) below:
 - (1) **Newly Constructed Buildings.** Newly constructed buildings shall be exempt from this article for a period of ten (10) years. The ten (10) year period begins to run the date listed on the certificate of occupancy issued by the city for the newly constructed building.
 - (2) **Government Regulated or Subsidized Residential Rental Units.** Properties that are subject to routine inspections by another government agency (i.e., Stanislaus County Housing Authority).
- (b) An Owner is required to provide an affidavit signed under penalty of perjury certifying the Property is exempt pursuant to this section.
- (c) A Residential Rental Unit that is determined to be exempt shall become subject to the requirements of this article if a notice of violation or notice and order relating to the Property is issued pursuant to the provisions of this code. A Property that loses its exemption pursuant to this subsection may reinstate its exemption if:
 - (1) After the last inspection conducted pursuant to this article, the Inspector determines that no violations exist; and
 - (2) The Owner is not delinquent on any payment to the city of fees, penalties, business taxes or other monies related to the Property.

Article 6- Self-Certification Program

9-13.601- Self-Certification Program.

- (a) The city shall develop a self-certification program. A Property may be placed in the self-certification program if: (i) the Property is inspected at least once every twelve (12) months (with a thirty (30) day grace period), and re-inspected upon change of tenancy, by a professional property management company licensed by the State of California; or (ii) the Owner provides documentation that the Property is inspected at least annually. Documentation of annual Property inspections shall be on forms provided by the city, or forms that the Director determines to be substantially equivalent to those forms.
- (b) All forms required by this Section shall be signed under penalty of perjury. It shall be unlawful to knowingly falsify any material information on a form, and any such falsification may be prosecuted as a misdemeanor.
- (c) City shall conduct an annual audit of the Self-Certification Program. As part of this audit, up to 10% of Residential Rental Properties in the self-certification program, and a sampling of individual units thereon, may be inspected by the city each year. A Property that is selected for an inspection under this subsection, and passes the inspection, shall be exempt from further audit inspections for two (2) years from the date of the initial inspection. After the two (2) year period has expired, the Property shall be eligible to be inspected pursuant to this subsection.

- (d) The City may select properties identified as being owned by frequent Health and Safety Code Violators.
- (e) The City may randomly select properties within a specified census tract using statistical data or case information.
- (f) A Property in which any unit is subject to a Notice of Violation or a Notice and Order from the city shall immediately be removed from the self-certification program.

Article 7- Notices and Compliance

9-13.701- Correction Notices.

- (a) **Content.** Whenever it is determined by the Inspector that a violation of Health and Safety Standards exists, the Inspector shall issue a written correction notice to the property owner. The notice shall contain a description of the violation, the specific action required to correct the violation, and a demand the violations be corrected within the specified time period listed in the notice. The notice shall contain the scheduled re-inspection date and time, and shall otherwise comply with any pertinent Regulations promulgated pursuant to Section 10-1609 of this article.
- (b) **Time for Correction.** The correction notice shall provide a reasonable time for correction. The time stipulated shall take into account the following factors: (i) the time it would take a reasonably diligent person to complete the required action; (ii) the potential harm to the public welfare, health and safety; (iii) the harm to the tenant or nearby properties; and (iv) the extent of the corrections required. Imminently dangerous violations shall require immediate correction.
- (c) **Compliance Re-inspections.** Compliance re-inspections shall be conducted to verify the violations identified on the correction notice have been abated. Violations that were not noted on the initial correction notice, but are discovered during any re-inspection due to subsequent activities, damage or deterioration, shall be subject to correction.

Article 8- Enforcement, Penalties and Appeals

9-13.801 - Enforcement.

If, after a correction notice has been issued, the Owner fails to abate the violations, the City may proceed with all remedies available under law to compel compliance, including but not limited to issuing administrative citations, abatement proceedings, civil injunction, and/or criminal prosecution, or any combination of remedies, so long as violations are not caused by tenant's breach of Tenant's Affirmative Obligations. In any action or proceeding brought by the City to enforce this article, the City shall be entitled to recover its attorney's fees when it is the prevailing party. The City Attorney may, at his or her discretion, charge any violation of this ordinance as either an infraction or a misdemeanor.

9-13.802 - Appeal.

The Owner of a Residential Rental Unit or a party with a legal property interest in the Residential Rental Unit may appeal to the City's Administrative Hearing Officer in the manner provided in Title 1, Chapter 6, Section 502 of this code. The enforcement of any administrative

Notice and Order, or other action of the Neighborhood Preservation Unit or Chief Building Official issued under the Modesto Municipal Code, shall be stayed during the pendency of any timely and properly filed appeal taken therefrom.

9-13.803. - Delinquent Fees and Late Fee Penalties.

(a) **Penalty for failure to register, or late registration.**

(1) The City shall mail notice to Owners with an application for registration. Owners shall have thirty (30) days from date of the notice to submit registration information either by mail or online. Any incomplete registration shall be mailed or emailed back to the Owner for correction and the Owner shall have thirty days to make necessary corrections without penalty. Failure to submit registry information within thirty days from the date of the notice from the City shall result in the following penalties:

- (i) A fine of \$100 dollars per Property for up to 30 days late.
- (ii) A fine of \$200 per Property for 31 to 60 days late.
- (iii) A fine of \$500 per Property for 61 to 120 days late; and
- (iv) A fine of \$1,000 per Property for over 120 days late, plus interest charges at 10% per annum.

(b) **Penalties for making false statements regarding affidavit of exempt status.** Knowingly making a false statement regarding the affidavit of exempt property status will be a \$100 per unit fine for the first offense, and \$250 per unit for any subsequent offenses by the same Owner for the same Property.

(c) **Penalties for making false statements on self-inspection report.** Knowingly making a false statement on a self-inspection of any individual unit or number of residential units shall be fined at \$100 per unit for the first offense and \$250 per unit for any subsequent offenses by the same Owner for the same Property.

Article 9- Miscellaneous

9-13.901. - Rules and Regulations.

The City Manager, with the assistance of the Director, may make rules and regulations enforceable hereunder, which are not inconsistent with the provisions of this article and which may be necessary or desirable to aid in the administration or enforcement of the provisions of this article.

9-13.902. - Quarterly Review.

This article shall require a quarterly review for the first three (3) years following implementation. The city shall review all elements of this article to analyze the effectiveness provisions have been to maintain the supply of safe, decent, and sound affordable housing in the city and make adjustments to improve the Program's efficiency.

9-13.903 – Language Access.

In accordance with state and federal law, activities covered by this section will be conducted in such a way as to ensure access by limited-English-proficient persons. Including, but not limited to, providing notices, self-certification forms, informational materials, and correspondence in the appropriate languages.

SECTION 2. CEQA. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”).

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 4. Effective Date. The City Clerk shall certify the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law. If this Ordinance is approved by a majority of the voters as set forth in Section 1 of this Ordinance, it shall take effect immediately upon certification of the election results by the City Council.

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 10th day of September, 2019, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ridenour, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You, Grewal, Zoslocki

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

BY: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 

ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3703-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 24th day of September, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:


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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal, Zoslocki

APPROVED: 

MAYOR TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: October 24, 2019

ORDINANCE NO. 3703-C.S.
Effective: October 24, 2019

ORDINANCE NO. 3704-C.S.

AN ORDINANCE AMENDING TITLE 10 OF MODESTO MUNICIPAL CODE TO AMEND SECTIONS 10-2.102, 10-2.109, 10-2.191, 10-3.101, 10-3.201, 10-3.217, 10-4.102, 10-4.107, 10-4.108, AND 10-4.110 AND TO ADD SECTIONS 10-4.114 AND 10-4.115 REGARDING ACCESSORY DWELLING UNITS, ACCESSORY BUILDINGS, AND SECOND STORY UNITS

WHEREAS, the State of California determined that in the last decade housing production did not keep pace with demand resulting in the lack of housing and in particular lack of affordable housing; and

WHEREAS, in 2017 changes to state law made it easier to provide and develop accessory dwelling units that will contribute to the affordable housing supply; and

WHEREAS, this code amendment will bring the City of Modesto's Zoning Regulations consistent with state law regarding accessory dwelling units; and

WHEREAS, the proposed code amendment also proposes some change to regulations on accessory buildings and second story dwelling units; and

WHEREAS, On April 3, 2019, this code amendment was presented to the City Council Economic and Development Committee and was forwarded to the Planning Commission for recommendation to the City Council; and

WHEREAS, a public hearing was held by the Planning Commission on June 3, 2019, in the Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed code amendment that addresses regulations for accessory dwelling units, accessory buildings and second story units is exempt from CEQA pursuant to

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

CEQA Guidelines Section 15303 of the State CEQA Guidelines that exempts construction of small structures.

WHEREAS, after a public hearing held on June 3, 2019, it was found and determined by the Planning Commission that the requested code amendment will not be detrimental to the public health, safety or welfare because providing more housing and especially affordable housing will benefit the community, the requested code amendment will result in an orderly planned use of land because the provision on the size of accessory dwelling unit and limit of one accessory dwelling unit in the single family zone will maintain the single family character, and the requested code amendment 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 proposed code amendment will reduce standards for the development of accessory dwelling units and will help provide more affordable housing consistent with the goals of the Housing Element, and

WHEREAS, by Resolution No. 2, adopted on June 3, 2019, the Planning Commission recommended to the Council that the proposed amendment to Sections 10-2.102, 10-2.109, 10-2.191, 10-3.101, 10-3.201, 10-3.217, 10-4.102, 10-4.107, 10-4.108, and 10-4.110 and addition of Sections 10-4.114 and 10-4.115 of the Modesto Municipal Code, be approved, and

WHEREAS, this Code amendment was set for a public hearing on August 7, 2019, before the City Council, at which date and time said duly noticed public hearing of the Council was held for the purpose of receiving public comment on the proposed amendment to Sections 10-2.102, 10-2.109, 10-2.191, 10-3.101, 10-3.201, 10-3.217, 10-4.102, 10-4.107, 10-4.108, and 10-4.110 and addition of Sections 10-4.114 and 10-4.115 of the Modesto Municipal Code, and

WHEREAS, evidence, both written and oral, was duly presented and considered by the

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

City Council at the aforesaid public hearing; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

WHEREAS, after a public hearing held on August 7, 2019, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because providing more housing and especially affordable housing will benefit the community
2. The requested change will result in an orderly planned use of land because the provision on the size of accessory dwelling unit and limit of one accessory dwelling unit in the single family zone will maintain the single family character
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 proposed code amendment will reduce standards for the development of accessory dwelling units and will help provide more affordable housing consistent with the goals of the Housing Element

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

SECTION 1. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 2, "Definitions," Article 2, "Definitions," Sections 10-2.102, 10-2.109, and 10-2.191 are hereby amended to be read as follows:

10-2.102 Accessory Building, Structure, and Use

A building, structure, or use that is subordinate to, and the use of which is incidental to, that of the main building, structure or use on the same lot. An accessory building or structure is detached from the main building on the lot. Examples of an accessory building or structure include but are not limited to: work shop, storage shed, garage, carport, shade structure, gazebo, freestanding sign, and antenna. The description of an accessory use is provided in Section 10-3.201.

10-2.109 Building

A structure having a roof usually supported by walls and attached to a foundation is used or intended to be used for supporting or sheltering any use or occupancy. Storage shed, garage, carport, shade structure, and gazebo are included in this definition.

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

10-2.191 Structure

That which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner attached to the ground in a permanent nature. For the purposes of this Title, the term structure includes building, freestanding sign, antenna, a deck 30 inches or higher but does not include walls or fences seven (7) feet or less in height shall not be considered a structure for the purposes of this Title.

SECTION 2. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 3, "Land Use Regulations," Article 1, "Permitted and Conditional Land Uses," Section 10-3.101, Table 3.1-1 "Permitted and Conditional Land Uses," Residential Section, is hereby amended to be read as follows:

Table 3.1-1 Permitted and Conditional Land Uses											
Land Use	Zoning Districts										
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2	Notes
RESIDENTIAL											
Accessory Uses											
Animals and Fowl	P	P	P	-	-	-	-	-	-	-	See Section 10-3.202
Garage Sales	P	P	P	-	-	-	-	-	-	-	See Section 10-3.206
Home Business	P	P	P	-	-	-	-	-	-	-	See Section 10-3.207
Personal Cannabis Cultivation	P	P	P	P	P	P	P	P	P	P	See Section 10.3.601 et. Seq.
Dwellings											
Accessory Buildings	P	P	P	P	P	P	P	P	P	P	See Section 10-4.114
Accessory Dwelling Unit	P	P	P	-	-	-	-	-	-	-	See Section 10-4.115
Single Family Dwelling	P	P	P	-	-	-	-	-	-	-	In R-1, 1 unit per lot
Second Dwelling in the R-1 Zone	P	-	-	-	-	-	-	-	-	-	See Section 10-3.217
Manufactured Homes	P	P	P	-	-	-	-	-	-	-	See Section 10-3.209
Multiple Family	-	P	P	C	C	C	C	-	-	-	See Section 10-9.1002 b 3 & 10-9.1002 b 5
Mobile Home Parks	-	-	-	-	-	-	-	-	-	-	See Section 10-7.103 b 2
Other Residential Uses within Dwellings											
Lodging and Boarding (3 or fewer persons, 1 dwelling)	P	P	P	-	-	-	-	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 1 dwelling)	C	C	P	-	-	-	-	-	-	-	See Section 10-3.208
Lodging and Boarding (3 or fewer persons, 2 dwellings on a lot)	-	P	P	C	C	C	C	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 2 dwellings on a lot)	-	C	P	C	C	C	C	-	-	-	See Section 10-3.208

SECTION 3. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code,

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

Chapter 3, "Land Use Regulations," Article 1, "Permitted and Conditional Land Uses," Sections 10-3.201 and 10-3.217 are hereby amended to be read as follows:

10- 3.201 Accessory Uses and Buildings.

- (a) Accessory uses and buildings customarily incidental to permitted and conditional uses are permitted.
- (1) Examples of accessory uses in non-residential uses include: pharmacies, gift shops, and cafes within hospitals and clinics; convenience stores and food service establishments within hotel and office complexes; bank tellers and automated teller machines within grocery stores; a caretaker residence within mini-storage facility; barber and beauty shops within residential care facilities; and, accessory commercial uses for a residential development approved in a commercial zone.
 - (2) Examples of accessory uses in residential uses include: accessory dwelling unit, home business and day care within a residence.
 - (3) Accessory buildings are detached from the main building. Examples of residential accessory buildings include accessory dwelling units, storage sheds, carports, and garages.
 - (i) In the R-1 zone or a residential zone where the lot contains only a single family dwelling, an accessory dwelling unit is allowed in accordance to Section 10-4.115.
 - (ii) In the R-1 zone or a residential zone where the lot contains only a single family dwelling, an accessory building is allowed in accordance to Section 10-4.114.
 - (4) The use of shipping containers as defined is not permitted in the R-1, R-2, and R-3 zones.
- (b) For the C-1, C-2, C-3, and C-M Zones, incidental manufacturing, processing, packaging or storing of materials at wholesale is permitted subject to these conditions:
- (1) Not more than twenty-five (25) percent of the gross building area and twenty-five (25) percent of the remaining lot area may be used for these purposes.
 - (2) All manufacturing, processing, packaging or storing of materials shall be in the same line of merchandise as the retail business on the premises and shall only be for the purpose of retail sale on the premises or other commercial premises operated by the same retail business.
- (c) Legal nonconforming uses are allowed permitted accessory uses. For example, a legal nonconforming grocery store in a residential zone may include a bank teller, and a dwelling unit in a commercial zone may operate a home business or day care home.

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

10-3.217 Second Dwelling in the R-1 Zone.

- (a) Two (2) single-family dwellings or a duplex on any corner lot are allowed, provided that the driveway serving the off-street parking for one (1) dwelling unit shall have access to one (1) street and the driveway serving the off-street parking for the other dwelling unit shall have access to another street. If the lot has access to an alley, one (1) or both driveways may access to the alley.
- (b) An accessory dwelling unit is allowed on any interior lot in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling in accordance to Section 10-4.115.

SECTION 4. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, "Development Standards," Article 1, "Residential Zones (R-1, R-1, R-3)," Section 10-4.102, Table 4.1-1 "Residential Development Standards," Setback Requirements, are hereby amended to be read as follows:

Table 4.1-1 Residential Development Standards					
Development Standards		Zoning Districts			
		R-1	R-2	R-3	Notes
SETBACK REQUIREMENTS					
Front and Street-Side (corner lot) (minimum in feet)					See Section 10-4.106
Buildings (except garage, carport, parking space)		15	15	15	
Garage, Carport, Parking Space (Side facing/front facing)		15/20	15/20	15/20	
Side, (interior) (minimum in feet)					See Section 10-4.107
Buildings, Main - One Story Portion		5	5	5	
- Two Story Portion	Adjacent to R-1 ⁽¹⁾	10	15	15	See Sections 10-4.107 (a) and 10-4.110 for 2 nd story dwellings
	Not Adjacent to R-1 ⁽¹⁾	10	10	10	
- Three Story Portion	Adjacent to R-1 ⁽¹⁾	-	-	20	
	Not Adjacent to R-1 ⁽¹⁾	-	-	10	
Accessory Building, Garage, Carport, Parking Space - One Story		5	5	5	See Section 10-4.114
- Two Stories		-	5	5	
Accessory Dwelling Unit					See Section 10-4.115
Rear (minimum in feet)					
Buildings, Main - One Story Portion		10	10	10	See Section 10-4.108 (a)
- Two Story Portion		15	15	15	
- Three Story Portion	Adjacent to R-1 ⁽¹⁾	-	-	20	
	Not Adjacent to R-1	-	-	15	
Accessory Building, Garage, Carport, Parking Space - One Story		5	5	5	See Section 10-4.108 (b) and 10-4.114
- Two Stories		-	5	5	

⁽¹⁾ Adjacent to R-1 zone includes property zoned R-1 in the City including P-D zones (with R-1 density) and property zoned A-2, R-A, and R-1 in the County.

SECTION 5. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, "Development Standards," Article 1, "Residential Zones (R-1, R-1, R-3)," Sections 10-4.107, 10-4.108, and 10-4.110, are hereby amended to be read as follows:

10-4.107 Side Setback.

- (a) In the R-1 zone, a minimum ten (10) foot setback shall be required for two-story portions of a new dwelling or second-story additions to an existing dwelling where located adjacent to an existing single-story dwelling, and subject to development plan review pursuant to Section 10- 4.110. The ten (10) foot setback does not apply where the subject lot and adjacent lot were created by a final map within the past ten years. The required ten (10) foot setback may be reduced to a minimum of five (5) feet if it can be demonstrated that the additional setback is infeasible due to physical constraints and that the reduced setback is consistent with the Neighborhood Compatibility Guidelines as determined by the Director.
- (b) Use of a side yard by an adjacent property owner is not permissible without consent of the affected property owner, except as specified for that particular subdivision named Walnut Tree Estates, located at Walnut Tree Drive and Merle Avenue, the final map for which was filed on May 20, 1981, in Volume 29 of Maps, Page 90, Stanislaus County Records, the special provisions for permanent use of the side yard which were specified in Ordinance No.2286-C.S. approved on September 4, 1984.

10-4.108 Rear Setback.

- (a) The minimum rear setback shall be fifteen (15) foot for any building that backs up to a Major Collector, Arterial Street or Expressway.
- (b) The minimum rear setback shall be five (5) feet for any garage, carport, or parking space with access off an alley. The garage or carport may be detached or attached.
- (c) The minimum rear setback for patios covers opened on three sides shall be five (5) feet, except where the lot backs up to a Major Collector, Arterial Street or Expressway, where the setback shall be ten (10) feet.

10-4.110 New Two-Story Dwellings and Accessory Buildings, and Second-Story Additions.

The following regulations apply to lots located in the R-1 zone and to lots in R-2 and R-3 zones adjacent to the R-1 zone:

- (a) All new two-story dwellings and accessory buildings, and all second-story additions to an existing dwelling, balcony, or accessory building, including exterior alterations

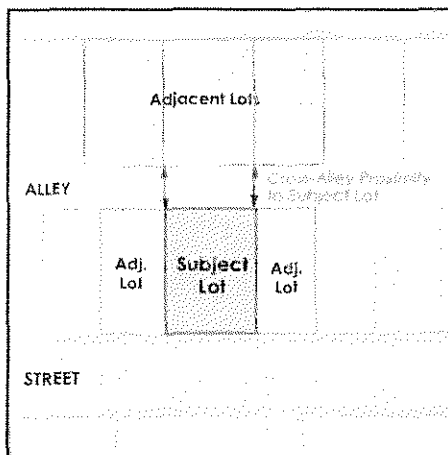
ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

(such as a new window) to second-story portions of an existing dwelling or accessory building, shall be subject to development plan review by the Director pursuant to Chapter 9, Article 10, for compliance with the Neighborhood Compatibility Guidelines as adopted and amended from time to time by City Council. A proposed project shall be subject to second-story development plan review if the proposed project has any of the following characteristics, as determined by the Director:

- (1) The height above grade to top plate line is at any point equivalent to two-stories or sixteen (16) feet or more.
 - (2) Windows or balconies are provided at a height from which views of a neighboring rear yard and actively used side yard areas are readily visible.
- (b) Notwithstanding Section 10-4.110(a), above, projects that meet the following criteria are exempt from second-story development plan review.
- (1) The subject lot and adjacent residential lots were created by (a) final subdivision map(s) recorded within the past ten years. The term “adjacent residential lot” in this subsection means each lot zoned or used residentially that share a common property line or is separated by an alley including those which touch only at a corner. See Figure 4.1-3. This may include additional lots if deemed appropriate by the Director.
 - (2) The proposed second story addition, two-story dwelling, or accessory building will have minimal impact on the privacy and use of neighboring rear yard areas and building massing is consistent with the neighboring dwellings, as determined by the Director.
 - (3) At least 50 percent of the adjacent lots (see Figure 4.1-4) are occupied by two-story houses.
- (c) In the R-2 and R-3 zones, any development of multiple family dwellings adjacent to property zoned R-1 that exceeds one (1) story shall be subject to development plan review by the Director in accordance with Section 10-4.110 (a), except as specifically excepted therein.

Figure 4.1-3

Adjacent Residential Lots



SECTION 6. ADDITION OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, "Development Standards," Article 1, "Residential Zones (R-1, R-1, R-3)," Sections 10-4.114 and 10-4.115, are hereby added to be read as follows:

10-4.114 Accessory Buildings.

The following regulations provided in Table 4.1-2 apply to accessory buildings in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling (SFD):

Table 4.1-2 Accessory Buildings Development Standards				
Development Standards		Zoning Districts		Notes
		R-1 or Residential Zone with SFD		
FLOOR AREA REQUIREMENTS				
Accessory Building	Lot Size (in sq ft)		Maximum Floor Area (in sq ft)	
	Less than 5,000		400	or 50% of main building, whichever is less
	5,000 to less than 10,000		600	
	10,000 to less than 20,000		800	
20,000 or greater		1,000		
Combined total if multiple buildings. Must comply with lot coverage. Lots 40,000 square feet or more may ask for an exception per Section 10-9.502.				
SETBACK REQUIREMENTS				
		120 sq ft or less	Greater than 120 sq ft	
Front (minimum in feet)		25	25	
Street Side (minimum in feet)		15	15	
Side and Rear (minimum in feet)	Existing	0	0	Existing setbacks allowed
	New	0	5	
HEIGHT REQUIREMENTS				
Accessory Building (maximum height in stories/feet)		1/16		Higher for garages and carports if deemed appropriate by Director

10-4.115 Accessory Dwelling Units.

The following regulations provided below and in Table 4.1-3 apply to accessory dwelling units in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling (SFD). These regulations may be applicable to corner lots as an alternative to the regulations for an allowed duplex provided in Section 10-3.217.

- (1) The property owner shall live in one (1) of the units. Prior to final inspection of any such unit, owner shall record a notice of conditions specifying that owner shall occupy one (1) of the units at all times.
- (2) If there is an existing unit prior to plan approval, the unit must be brought into conformance with the Housing Code prior to occupancy of the accessory dwelling unit.
- (3) Maintaining a single-family dwelling appearance is encouraged through means such as:
 - (i) Attaching the second unit to the first on small or typical sized lots. On large or deep lots, detached units are acceptable.
 - (ii) Putting the second unit entrance to the side or rear of the building so it is not readily visible from the same street as the first unit's entrance.
 - (iii) Locating parking so that all three (3) spaces are not readily visible from the same street. Alley access for both units is acceptable.
 - (iv) Employing construction materials and architectural styles which blend the units so they appear as a single residence if attached or a single residence and accessory building if detached.
- (4) The City Council may designate, from time to time, by resolution, areas within which accessory dwelling units will not be permitted due to infrastructure constraints relating to water and sanitary sewer.

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

Table 4.1-3 Accessory Dwelling Unit (ADU) Development Standards			
Development Standards		Zoning Districts	Notes
		R-1 or Residential Zone with SFD	
FLOOR AREA REQUIREMENTS			
ADU (maximum in sq ft)		750	Must comply with lot coverage.
SETBACK REQUIREMENTS			
Front (minimum in feet)		25	
Street Side (minimum in feet)		15	
Side and Rear (minimum in feet)			
Main Dwelling	Conversion within dwelling		Existing setbacks
	Expansion	Above garage	See Section 10-4.110, second-story review
		Other	See Table 4.1-1 for setbacks
Detached Building (Garage, Accessory Building)	Existing	Conversion	Existing setbacks allowed
		Expansion 1 st Story	No increase of nonconformity
		Expansion 2 nd Story	See Section 10-4.110, second-story review
	New	5	
HEIGHT REQUIREMENTS			
ADU (maximum height in stories/feet)		2/25	
PARKING REQUIREMENTS			
ADU (minimum number parking space)		1 (unless within 0.5 mile of passenger rail station or bus stop)	May be tandem or in existing driveway May be within required setback if uncovered Replace lost parking of main unit may be tandem or in existing driveway

SECTION 8. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15303 of the State CEQA Guidelines that exempts construction of small structures.

SECTION 9. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 10. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of October, 2019, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ridenour

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

By: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 

Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

ORDINANCE NO. 3704-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 8th day of October, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR, TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: November 7, 2019

ORDINANCE NO. 3704-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

ORDINANCE NO. 3705-C.S.

AN ORDINANCE AMENDING SECTION 27-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(601), PROPERTIES LOCATED AT 1432 AND 1442 SCENIC DRIVE

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

SECTION 1. ZONING CHANGE. Section 27-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(601):

R-1 to P-D(601)

BEGINNING at the Southeast corner of the Northwest Quarter of the Northwest Quarter of said Section 27, said point of commencement also being the Southeast corner of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on July 27, 1984 as Instrument No. 4717; thence North 89° 41' 36" West along the South line of the Northwest Quarter of the Northwest Quarter of Section 27 and the South line of said Rifenburg Parcel a distance of 64.69 feet to the Southwest corner of said Rifenburg Parcel; thence continuing North 89° 41' 36" West along said South line of the Northwest Quarter of the Northwest Quarter of Section 27 a distance of 261.81 feet to the Southeast corner of that parcel of land conveyed to Timothy McClary by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on March 6, 1988 as Document No 20820; thence North 15° 56' 36" West along the Easterly line of said McClary Parcel a distance of 130.64 feet to the Southwest corner of that parcel of land conveyed to Kevin McMiller, et ux, by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on May 11, 2006 as Document No. 70621; thence North 69° 14' 21" East along the South line of said McMiller Parcel a distance of 64.91 feet to the Southeast corner thereof; thence North 15° 56' 36" West along the East line of said McMiller Parcel, a distance of 164.5 feet to a point at the South Right-of-Way Line of Scenic Drive; thence North 69° 14' 21" East along the South Right-of-Way line of Scenic Drive a distance of 215.54 feet to the Northwest corner of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Correction Deed filed in the Office of the Recorder of the County of Stanislaus on January 29, 2008 as Instrument No. 8833; thence South 15° 56' 36" East a distance of 129.58 feet to the Southwest corner of said Rifenburg Parcel; thence North 76° 51' 22" East a distance of 60.21 feet to the Southeast corner of said Rifenburg Parcel; thence South

ORDINANCE NO. 3705-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

10° 28' 17" East along the East line of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on August 21, 2007 as Instrument No. 107249, a distance of 37.98 feet to the northeast corner of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on July 27, 1984 as Instrument No. 4717, thence continuing South 10° 28' 17" East along the east line of said Rifenburg Parcel a distance of 236.21 feet to the Southeast corner of said Rifenburg Parcel and the Point of Beginning.

Also including the Southern half of the Right-of-Way of Scenic Drive, being immediately adjacent to the above description.

Containing 2.25 acres, more or less.

APNs 034-015-013, -014, -015 and -017.

SECTION 2. USES. The following uses shall be permitted in said P-D(601)

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

1. Uses allowed in the R-3 Zone

SECTION 3. ZONING MAP. Section Map 27-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map **attached** hereto, which is hereby made a part of this ordinance by reference.

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

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

ORDINANCE NO. 3705-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of October, 2019, by Councilmember Ah You, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ridenour

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

By: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 

Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3705-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019

ORDINANCE NO. 3705-C.S.

FINAL ADOPTION CLAUSE

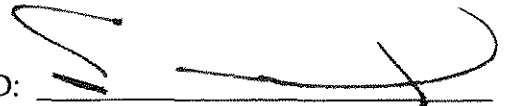
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8th day of October, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None


ABSENT: Councilmembers: None

APPROVED:



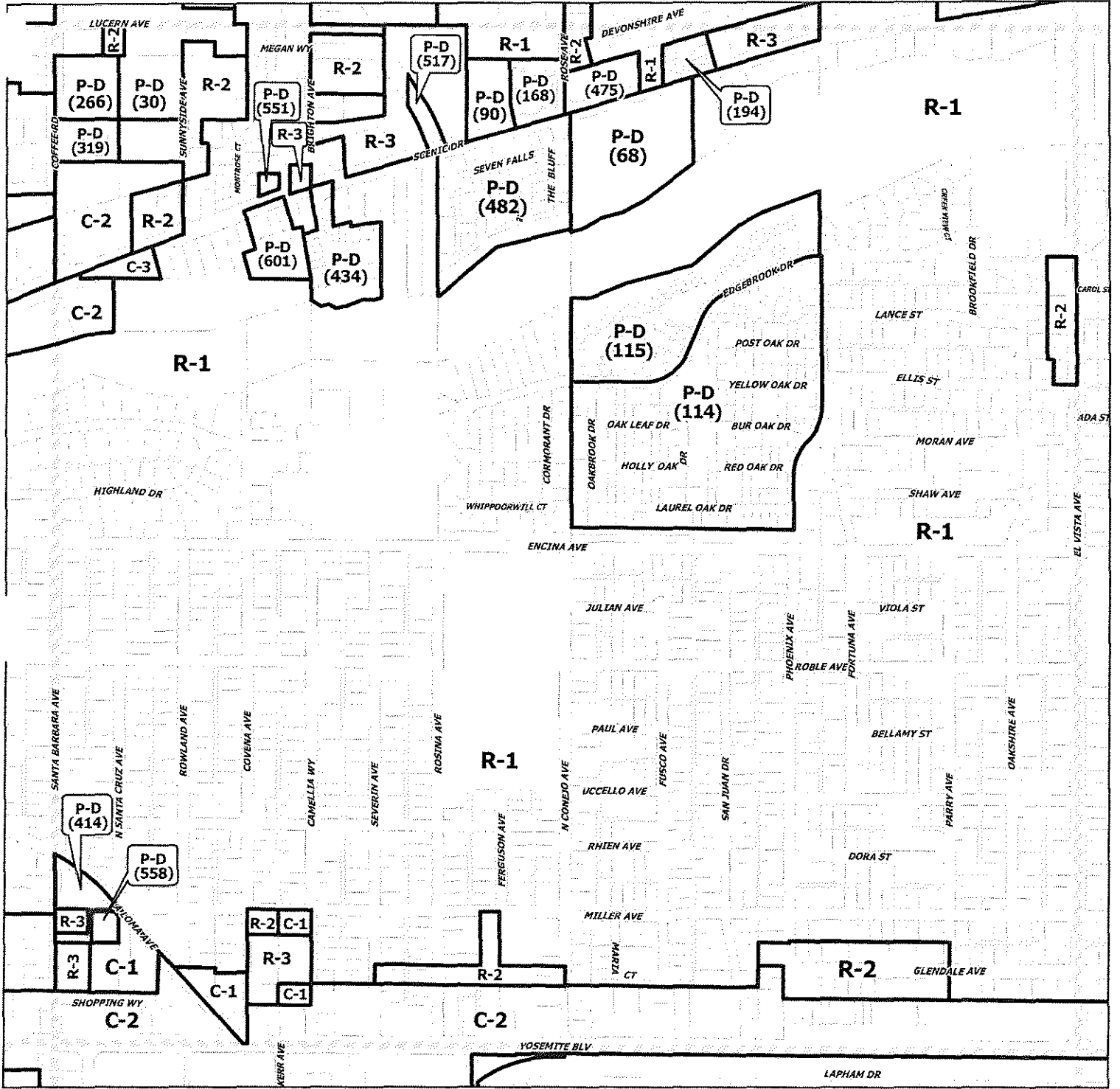
MAYOR, TED BRANDVOLD

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: November 7, 2019

ORDINANCE NO. 3705-C.S.
EFFECTIVE DATE: NOVEMBER 7, 2019



ZONING MAP OF THE CITY OF MODESTO

27-3-9



1 inch = 700 feet

Ord. 3705-C.S.

ORDINANCE NO. 3706-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE FIVE-YEAR
BUS STOP BENCH FRANCHISE TO CREATIVE OUTDOOR
ADVERTISING OF AMERICA FOR THE RIGHT, PRIVILEGE
AND PERMISSION TO PLACE AND OPERATE BENCHES
BEARING PRINTED MATTER OR SIGNS THEREON AT
DESIGNATED LOCATIONS ALONG THE STREETS IN THE
CITY OF MODESTO

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

SECTION 1. DEFINITIONS.

- (a) "Grantee" means Creative Outdoor Advertising of America
- (b) "The City" means and refers to the City of Modesto.
- (c) "Bench" means and refers to benches 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.
- (f) "City Manager" means and refers to the City Manager of the City of Modesto or the City Manager's designee.

SECTION 2. BENCHES PROHIBITED. No person shall install or maintain any bench bearing either 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 install Grantee's benches, maintain benches, and 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, 2020 and shall end no later than December 31, 2024. The City shall have the right to extend the term for two additional 2 year periods, for a potential total of 9 years. 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. Should the City terminate the Franchise for convenience, the City shall reimburse the Grantee for all concrete pads installed by the Grantee, at a rate of \$8.80 per square foot. Notice of termination of Franchise shall be in writing and may be served by regular United States Postal Services. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to 8875 Hidden River Parkway, Tampa, FL 33637. 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.

Grantee may terminate this franchise for convenience at any time and for any reason. Grantee shall give the City a minimum of ninety (90) days' notice in advance of the date of termination for convenience. This franchise shall terminate, and the parties shall have no further liability to each other except for obligations outstanding at the time of the effective date of the termination. The terms of this franchise shall remain in effect until the date of termination.

SECTION 4. BENCHES. A list of current benches shall be provided to Grantee by the City on the effective date of the franchise period. Grantee shall supply all benches for the franchise. The benches shall be the Avenue Bench. Upon completion of an in-person site audit by the Grantee, Grantee will replace all existing benches with the Avenue Bench provided that the Grantee can make the site ADA compliant. If Grantee cannot make the existing site ADA compliant, Grantee shall remove the existing bench.

Upon removal of existing benches, the Grantee will properly dispose of the benches. The Grantee will assume all costs associated with disposing of the existing benches that are removed.

Grantee shall install concrete pads for all benches as needed. Grantee shall be entirely responsible for obtaining the permits and work associated with permitting. Costs associated with permits shall be the Grantee's responsibility. All locations needing concrete work shall be approved by the City prior to start of work, and be in compliance with Americans with Disabilities Act requirements.

SECTION 5. LEASE OF SPACE FOR BENCHES/PAYMENT. For the exclusive rights and privileges set forth herein, Grantee shall lease bench space from the City

and/or advertise on the Avenue benches placed for a period no greater than five (5) years, plus two additional two year options if exercised.

For the right and privilege of leasing space for the benches from the City and installing the Avenue benches, Grantee shall pay to the City the greater of:

- (i) \$5 per bench that was sold to an advertising client for the month in question; or
- (ii) 12% of net advertising revenue for each installed advertising bench

Grantee's payments pursuant to this Section shall be to paid to City each month commencing on the first month of this franchise for the term of this franchise. These monthly payments will be due within sixty (60) days following the completion of the month the payment relates to.

SECTION 6. PLACEMENT OF BUS STOP 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 stop shelters located along the City's public transportation system routes. The City shall also have the authority to place bus stop passenger shelters bearing paid advertising messages and other printed matter or signs thereon within the City of Modesto selected by the City Manager. Where such shelters are placed, Grantee shall remove benches unless otherwise directed by the City Manager.

SECTION 7. BENCH RESTRICTIONS. Grantee shall utilize only the front surface of the bench backrest for the placement of printed matter or signs unless otherwise

directed by City Manager. The rearward facing portion of each backrest shall be a blank surface with a solid color. No other material whatsoever shall be permitted on any portion of the bench except as specified by the City or approved by City Manager.

(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 Low Density Residential ("R-1"), Medium Density Residential ("R-2") or as Planned-Development ("P-D"), as those terms are defined by the Modesto Municipal Code. 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 Managers determination of which P-D zoned properties resemble R-1 or R-2 zones shall be conclusive.

(2) 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 remove said material in a manner deemed appropriate by City.

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

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

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

(6) Advertisements displayed with dated content shall be removed by Grantee within ten (10) business 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.

(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 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 Modesto Area Express or the City of any service, product, or point of view without prior written authorization from the City 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 Modesto Area Express or the City, or is harmful to the morale of the City or City employees or City's operations Grantee.

(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 use of a controlled substance, as defined by Title 21, Chapter 13, of the U.S. Controlled Substances Act..

(12) May create an impression that would appear to support an illegal activity or organization.

(13) Contains political information concerning local, state 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 at sites mutually agreed upon by Grantee and the City Manager. The City Manager may decide, at its sole discretion, to add or remove bus routes and bus stops as needed.

Benches shall be added, maintained, relocated, and removed as required by the City Manager. 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. The benches contemplated are designed for the convenience of those using public transportation buses in the City and shall be placed only at locations designated as bus stops by the City Manager. No bench shall be installed or maintained:

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

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

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

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.

SECTION 10. MAINTENANCE OF BENCHES.

(a) All benches, 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 visible condition. Grantee shall provide normal maintenance to the benches once a month or as often as reasonably required. The City Manager'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. Grantee shall replace bench if deemed broken or damaged to provide a fully complete, safe and visible bench. Grantee shall be responsible for supplying all benches at the Grantee's expense. Grantee shall be responsible for transporting and installing new benches. 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 have a local project manager that shall be reasonably available to the franchise. City shall direct all communications regarding maintenance, servicing, cleaning, or other related issues to Grantee's central office. The local project manager shall have access to and frequently monitor communication from the Grantee's central office. Grantee shall have an electronic tracking system to enable the City to track maintenance, servicing, cleaning and other related issues from a website.

SECTION 11. PENALTY FOR IMPROPER MAINTENANCE AND

CLEANING. If the City Manager notices that benches are not cleaned, the Grantee will be notified to clean them within 48 hours or be penalized. This section also applies to each bench which has not been maintained, cleaned, or had graffiti removed as required in Section 10. Violation of this section shall be determined by the City Manager, 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 12. REMOVAL OF BENCHES. Upon completion of an in-person site audit by the Grantee within 30 days of the beginning of the franchise, Grantee shall replace existing benches with the Avenue upon written approval from the City within 180 days from the date of the written approval. The old benches that are removed will be properly discarded and Grantee will install the (Proposed Bench) bench at the location at Grantee's sole expense. During the initial 180 days, printed matter may be placed on the old benches with fees assessed as directed in this franchise.

After the Avenue bench is installed at locations approved by the City, it shall not be removed by the Grantee during the term of this franchise except with the consent of the City Manager. Benches shall be moved or removed only as directed by the City Manager except if the Bench is a danger to the public. If the Bench is a danger to the public, the Grantee may remove it without approval with notification to the City, within 24 hours. The City Manager, for

a cause considered by him reasonable, order the Grantee to move or remove any bench. When the City Manager 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 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. Provided that this agreement reaches the full 9 year term (original 5 year term plus 2 additional 2 year options) , at the end of the Franchise period, the City will retain the Avenue benches at the locations installed at the time. The City will retain ownership of any concrete installed by the Grantee. Should this Franchise expire or terminate for convenience prior to the expiration of the full 9-year term, the Grantee will retain the Avenue benches at the locations installed at the time.

SECTION 13. LOCATION OF BENCHES AND BENCH

SPECIFICATIONS. All benches placed shall be the Avenue, and will be installed on a concrete slab installed by the Grantee. The bench must have the following characteristics:

1. Seat 3-4 users
2. Accessible, with armrests on both end of the bench
3. Anti-vagrant bar in the middle of the bench
4. A functional design for public transportation use, and esthetically pleasing
5. Vandal resistant, with a finish that can easily be cleaned (especially with graffiti)
6. A plastic coating that will not overheat on Modesto's hottest days.
7. Rounded corners for comfort and safety
8. 10 year useful life
9. The color will be black with a matte finish

10. The minimum dimensions are: Height 42" x Depth 18" x Length 72"

11. The benches will be anchored to concrete or concrete fiber pads

All benches shall be placed on sidewalks at no more than a thirty (30) degree angle to the curb line and at a distance from the curb to be determined by the City Manager. 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. Bench locations shall comply with any additional location criteria established by the City Manager. The Grantee shall have the right to refuse to install at any location.

SECTION 14. 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 situation 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 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 15. INDEMNITY, INSURANCE, AND HOLD HARMLESS

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

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. Commercial General Liability – Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability – If the Grantee or the Grantee's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this franchise. Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Grantee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation - Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if consultant provides written verification it has no employees)

4. 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 franchise, 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 franchise, 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 franchise.

5. 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.
6. 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 16. 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, 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 in accordance with 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 17. 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. Associated audit costs with copying and or reproduction of documents, and staff as required to complete the audit, shall be borne by the City.

SECTION 18. DEFACING BENCHES PROHIBITED. No person shall tamper with or deface any bench covered by this franchise.

SECTION 19. PENALTY FOR VIOLATION OF SECTION 18. It shall be unlawful for any person to violate the provisions of Section 18 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 20. 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 City Council may grant or deny any such request and may impose such conditions as it may deem to be in the public's interest. Any attempted disposition made without such consent shall be void.

SECTION 21. REPEALS. This ordinance shall be repealed effective December 31, 2029.

SECTION 22. EFFECTIVE DATE. This ordinance shall become effective January 1, 2020, 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.

SECTION 23. 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 24. TAX PROVISION.

Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise. Grantee's continued failure to pay such tax after written notice from the City shall constitute grounds for revocation of this franchise. The parties agree and expressly confirm that the City has conferred upon the Grantee certain exclusive license rights to use municipal lands in connection, and solely in accordance, with the terms of this Agreement and the Grantee has no leasehold and/or tenancy and/or other interests or rights of any nature or kind whatsoever in any real property of the City in connection

with the execution, delivery and/or performance of this Agreement by the parties.

SECTION 25. 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 production of its printed message in a format, including both style and material definitions identical to the format used by the Grantee in fulfilling the advertising contracts signed under this franchise, to the benches it utilizes. 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 26. 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 27. 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

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

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.

SECTION 28. FLY AMERICA REQUIREMENTS. Grantee shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and sub-recipients of Federal funds and their Grantees are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Grantee shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Grantee shall include the requirements of this section in all subcontracts that may involve international air transportation.

SECTION 29. BUY AMERICA CERTIFICATION. Grantee shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a

general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

SECTION 30. CARGO PREFERENCE. Grantee shall:

a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels;

b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through Grantee in the case of a subcontractors bill-of-lading.);

c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

SECTION 31. ENERGY CONSERVATION. Grantee shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

SECTION 32. CLEAN AIR.

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

1. Grantee shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Grantee shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Grantee shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

SECTION 32. CLEAN WATER. Grantee shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Grantee shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Grantee shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

SECTION 32. LOBBYING. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 10465 [to be codified at 2 U.S.C. § 1601, et seq.] - Grantees who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying

Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

SECTION 33. ACCESS TO RECORDS AND REPORTS. The following access to records requirements apply to this Franchise:

1. Grantee shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and Grantee records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Grantee shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO Grantee, access to Grantee's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Grantee shall provide the purchaser, authorized FTA representatives, including any PMO Grantee, access to Grantee's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Grantee shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the Grantee which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

4. If the City which is an FTA recipient enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, Grantee shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Grantee shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Grantee shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Grantee agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

SECTION 34. FEDERAL CHANGES. Grantee shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Grantee's failure to comply shall constitute a material breach of the contract.

SECTION 35. RECYCLED PRODUCTS. The Grantee agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

SECTION 36. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

(1) The recipient and Grantee acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the Grantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) Grantee agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 37. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. (1) Grantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, Grantee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is

being performed. In addition to other penalties that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Grantee to the extent the US Government deems appropriate. (2) If Grantee makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on Grantee, to the extent the US Government deems appropriate. (3) Grantee shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

SECTION 38. CONTRACTS INVOLVING FEDERAL PRIVACY ACT

REQUIREMENTS. (1) The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Grantee also agrees to include these requirements

in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION 39. CIVIL RIGHTS REQUIREMENTS. The following requirements apply to the underlying franchise: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with

FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

- b. Nondiscrimination - Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply

with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements

of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT

regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 - 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but

2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology

Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd - 290dd-2,
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

SECTION 40. ADA ACCESS REQUIREMENTS. The Grantee shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Grantee shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

SECTION 41. DISADVANTAGED BUSINESS ENTERPRISE.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- b. The Grantee shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The Grantee shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Grantee to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal

corporation deems appropriate. Each subcontract the Grantee signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. The Grantee is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Grantee's receipt of payment for that work from the recipient. In addition, the Grantee may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractors work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractors work by the recipient and Grantee's receipt of the partial retainage payment related to the subcontractors work.
- d. The Grantee must promptly notify the recipient whenever a DBE subcontractors performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractors to perform at least the same amount of work. The Grantee may not terminate any DBE subcontractors and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

SECTION 42. PROMPT PAYMENT. The Grantee agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime Grantee agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment

from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

SECTION 43. INCORPORATION OF FEDERAL TRANSIT

ADMINISTRATION (FTA) TERMS. The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Grantee shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

SECTION 44. FULL AND OPEN COMPETITION. In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition. Prohibition Against Exclusionary or Discriminatory Specifications Apart from inconsistent requirements imposed by Federal statute or regulations, the Grantee shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

SECTION 45. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES. Grantee shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass

transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Grantee shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

SECTION 46. NOTIFICATION OF FEDERAL PARTICIPATION. To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, Grantee shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

SECTION 47. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS. No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

SECTION 49. COMPLIANCE WITH FEDERAL REGULATIONS. Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in

the event of a conflict with other provisions contained in this Agreement. Grantee shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Grantee shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Grantee's failure to so comply shall constitute a material breach of this contract.

SECTION 50. VETERANS PREFERENCE. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

SECTION 51. GOVERNMENT WIDE DEBARMENT AND SUSPENSION.
The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension

and Debarment,” 2 C.F.R. part 1200, 2 U.S. OMB, “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA “System for Award Management,” <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the “System for Award Management” at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

SECTION 52. BREACHES AND DISPUTE RESOLUTION. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

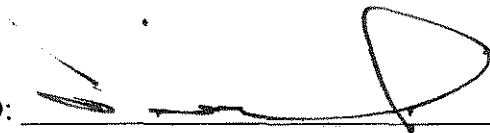
shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729. Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of November, 2019, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3706-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
STEPHANIE LOPEZ, City Clerk

APPROVED:


MAYOR TED BRANDVOLD

Effective Date: December 26, 2019

(SEAL)

APPROVED AS TO FORM:

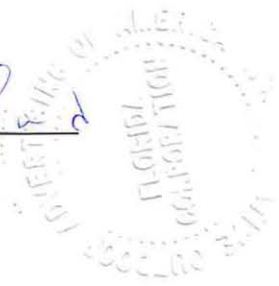
By: 
ADAM U. LINDGREN, City Attorney

ACCEPTANCE OF FRANCHISE

Creative Outdoor Advertising of America, Tampa, Florida does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3706-C.S., introduced by the Council of the City of Modesto on November 5th, 2019, granting a nine-year bus stop bench franchise.

Date: January 8 / 2020

GRANTEE: [Signature]



APPROVED AS TO FORM:

By [Signature]
for: ADAM U. LINDGREN, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of 1:00 o'clock p.m. on the 23rd day of January, 20 20.

[Signature]
STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3707-C.S.

AN ORDINANCE ADOPTING BY REFERENCE THE BUILDING CODE AND THE RESIDENTIAL BUILDING CODE CONTAINED WITHIN THE 2019 CALIFORNIA BUILDING STANDARDS CODE AND AMENDING ARTICLES 1, 2, 5, 6, 8, AND 16 OF CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE.

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

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

SECTION 1. Articles 1, 2, 5, 6, 8, and 16 of Chapter 1 “Building Code,” of Title 9 “Building Regulations” of the Modesto Municipal Code is hereby amended to read as follows:

Article 1. - Adoption by Reference of the 2019 California Building Code

9-1.101 - Adoption by Reference of the 2019 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 2019 California Building Code, California Code of Regulations, Title 24, Part 2, Volumes 1 and 2, as published by the International Code Council, as now existing, or hereafter amended, regulating and governing the conditions of all properties, buildings, and structures; by providing the standards for facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupancy and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2019 California Building Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Building Code of the City of Modesto.

9-1.101.2 - Adoption by Reference of the 2019 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, 2019 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.

Ordinance No. 3707-C.S.
Effective: December 26, 2019

Article 2. - General Code Provisions

9-1.201 - Title.

These regulations shall be known as the "Building Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to herein as the "Building Code," the "2019 California Building and 2019 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 provide a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire, explosion and other hazards, and to provide a reasonable level of safety to fire fighters 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 2019 California Building Code and the 2019 California Residential Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

Article 5. –Permits

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 twelve (12) months from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) calendar days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) calendar days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half (½) the amount required to obtain a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one (1) year.

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

Article 6. –Construction Documents

9-1.602 – Information on Construction Documents.

Construction documents shall be dimensioned and drawn on suitable material. Electronic media documents are permitted to be submitted where approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

9-1.606 – Exterior balconies and elevated walking surfaces.

Where balconies or other elevated walking surfaces are exposed to water from direct or blowing rain, snow, or irrigation, and the structural framing is protected by an impervious moisture barrier, the construction documents shall include details for all elements of the impervious moisture barrier system. The construction documents shall include manufacturer's installation instructions.

9-1.607 - Site Plan.

The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The Building Official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

9-1.608 - Examination of Documents.

The Building Official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the

construction indicated and described is in accordance with the requirements of this Code and other pertinent laws or ordinances.

9-1.609 - Approval of Construction Documents.

When the Building Official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One (1) set of construction documents so reviewed shall be retained by the Building Official. The other set shall be returned to the applicant, shall be kept at the site of work, and shall be open to inspection by the Building Official.

9-1.610 - Previous Approvals.

This Code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within one hundred eighty (180) calendar days after the effective date of this Code and has not been abandoned.

9-1.611 - Phased Approval.

The Building Official is authorized to issue a permit for the construction of any part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this Code. The holder of such permit for the part(s) of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

9-1.612 - Design Professional in Responsible Charge.

When it is required that documents be prepared by a registered design professional, the Building Official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The Building Official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties. The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased submittal items, if permitted, for compatibility with the design of the building. Where structural observation is required by Section 1709 of the California Building Code, the statement of special inspections shall name the individual or firms who are to perform structural observation and describe the stages of construction at

which structural observation is to occur (see also duties specified in Section 1704 of the California Building Code).

9-1.613 - Amended Construction Documents.

Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

Article 8. –Inspections

9-1.801 - General.

Construction or work for which a permit is required shall be subject to inspection by the Building Official and such construction or work shall remain visible and able to be accessed 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 owner or the owner's authorized agent to cause the work to remain visible and able to be accessed 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.

9-1.808 - Lath and Gypsum Board Inspection.

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

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

9-1.809 – Weather-exposed balcony and walking surface waterproofing.

Where balconies or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier, all elements of the impervious moisture barrier system shall not be concealed until inspected and approved.

Exception: Where special inspections are provided in accordance with CBC Section 1705.1.1, Item 3.

9-1.810 - Fire- and Smoke-Resistant Penetrations.

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

9-1.811 - 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.

9-1.812 - 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.

9-1.813 - Special Inspections

For special inspections, see the California Building Code.

9-1.814 - Final Inspection.

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

9-1.815 - 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.

9-1.816 - 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.

9-1.817- Inspection Request.

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

9-1.818 - Approval Required.

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

Article 16. - Technical Amendments to the 2019 California Building Code

9-1.1601 - Deleted Sections.

9-1.1602 - Amended Sections.

9-1.1602.1 - Definitions.

Section 202 of the 2019 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 2019 California Building Code is hereby amended to read as follows:

1612.3. ESTABLISHMENT OF FLOOD HAZARD AREAS.

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

9-1.1602.3 – Structural Tests and Special Inspections

Section 1704.2 of The 2019 California Building Code Is Hereby Amended to Read As Follows:

1704.2. Special inspections and Tests.

Where application is made to the building official for the construction as specified in *Title 9 Chapter 1 Article 5 Permits* or 1.8.4, applicable, the owner or the owner's agent, other than the contractor, shall employ one or more approved agencies to provide special inspections and tests during construction on the types of work specified in Section 1705 and identify the approved agencies to the building official. These special inspections and tests are in addition to the inspection by the building official that are identified in *Title 9 Chapter 1 Article 8*

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

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

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 6. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not

affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

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

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(Seal)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

Ordinance No. 3707-C.S.
Effective: December 26, 2019

ORDINANCE NO. 3707-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3708-C.S.

AN ORDINANCE ADOPTING BY REFERENCE THE ELECTRICAL CODE CONTAINED WITHIN THE 2019 CALIFORNIA BUILDING STANDARDS CODE AND AMENDING ARTICLES 1 AND 2 OF CHAPTER 3 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE.

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

SECTION 1. AMENDMENT OF CODE, Chapter 3 entitled "Electrical Code" of

Title 9 "Building Regulations" shall be amended as follows:

9-3.101 - Adoption by Reference of the 2019 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 2019 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 2019 California Electrical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes if any, prescribed in this Chapter, be and hereby is adopted as the Electrical Code of the City of Modesto.

Article 2. - General Code Provisions

9-3.201 - Title.

These regulations shall be known as the "Electrical Code of the City of Modesto," and may be cited and referred to herein as such or may be cited and referred to herein as the "Electrical Code," the "2019 California Electrical Code," the "California Electrical Code," or "this Code."

9-3.204 - Appendices.

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

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

Ordinance No. 3708-C.S.
Effective: December 26, 2019

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

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2019, by Councilmember Ah You who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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


NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(Seal)

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

ORDINANCE NO. 3708-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll carried and the ordinance adopted by the following vote:

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

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By:


STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3709-C.S.

AN ORDINANCE ADOPTING BY REFERENCE THE MECHANICAL CODE CONTAINED WITHIN THE 2019 CALIFORNIA BUILDING STANDARDS CODE AND AMENDING ARTICLES 1 AND 2 OF CHAPTER 7 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

SECTION 1. AMENDMENT OF CODE. Chapter 7 entitled "Mechanical Code" of Title 9 "Building Regulations" shall be amended as follows:

Article 1. - Adoption by Reference of the 2019 California Mechanical Code

9-7.101 - Adoption by Reference of the 2019 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 2019 California Mechanical Code, California Code of Regulations, Title 24, Part 4, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, which said Code governs and provides proper regulations of mechanical systems and parts thereof, including, but not limited to, addition to or erection, installation, alteration, repair, relocation, replacement, use, or maintenance of any heating, ventilation, cooling, refrigeration systems or equipment thereof; incinerators or parts or equipment thereof; or other miscellaneous heat producing appliances, parts or equipment thereof; providing for the issuance of permits and collection of fees therefor; providing for the inspection thereof; providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2016 California Mechanical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Mechanical Code of the City of Modesto.

Article 2. - General Code Provisions

9-7.201 - Title.

These regulations shall be known as the "Mechanical Code of the City of Modesto", and may be cited and referred to herein as such or may be cited and referred to herein as the "Mechanical Code", the "2019 California Mechanical Code", the "California Mechanical Code", or "this Code."

ORDINANCE NO. 3709-C.S.
Effective: December 26, 2019

9-7.204 - Appendices.

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

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

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

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2019, by Councilmember Ah You who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(Seal)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3709-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

By: 

STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3709-C.S.
Effective: December 26, 2019

ORDINANCE NO. 3710-C.S.

AN ORDINANCE ADOPTING BY REFERENCE THE PLUMBING CODE CONTAINED WITHIN THE 2019 CALIFORNIA BUILDING STANDARDS CODE AND AMENDING ARTICLES 1 AND 2 OF CHAPTER 2 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE.

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

ORDINANCE NO. 3710-C.S.
Effective: December 26, 2019

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof; and

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

SECTION 1. REPEALING AND REPLACING. Section 9-2.101 of Article 1 of Chapter 2, "Plumbing Code," of Title 9, "Building Regulations" and Sections 9-2.201 and 9-2.204 of Article 2 of Chapter 2, "Plumbing Code," of Title 9, "Building Regulations" shall be repealed in their entirety and replaced as follows:

Article 1. - Adoption by Reference of the 2019 California Plumbing Code

9-2.101 - Adoption by Reference of the 2019 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 2019 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 2019 California Plumbing Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Plumbing Code of the City of Modesto.

Article 2. - General Code Provisions

ORDINANCE NO. 3710-C.S.
Effective: December 26, 2019

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 "2019 California Plumbing Code," the "California Plumbing Code," or "this Code."

9-2.204 - Appendices.

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

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

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

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2019, by Councilmember Ah You who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(Seal)
By: 
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3710-C.S.
Effective: December 26, 2019

ORDINANCE NO. 3710-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3711-C.S.

AN ORDINANCE ADOPTING BY REFERENCE THE EXISTING BUILDING CODE CONTAINED WITHIN THE 2019 CALIFORNIA BUILDING STANDARDS CODE AND AMENDING ARTICLES 1 AND 2 OF CHAPTER 11 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE.

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

ORDINANCE NO. 3711-C.S.
Effective: December 26, 2019

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof; and

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

SECTION 1. AMENDMENT OF CODE. Chapter 11 entitled “Existing Building Code” shall be amended as follows:

Chapter 11 – EXISTING BUILDING CODE

Article 1. - Adoption by Reference of the 2019 California Existing Building Code

11-1.101 - Adoption by Reference of the 2019 California Existing Building Code. That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2019 California Existing Building Code, California Code of Regulations, Title 24, Part 10, as published by the International Code Council, as now existing, or hereafter amended, regulating and governing the conditions of existing building and structures; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2019 California Existing Building Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Building Code of the City of Modesto.

Article 2. - General Code Provisions

11-1.201 - Title.

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

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

ORDINANCE NO. 3711-C.S.
Effective: December 26, 2019

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

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 2019, by Councilmember Ah You who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

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


NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

(Seal)

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

ORDINANCE NO. 3711-C.S.

FINAL ADOPTION CLAUSE

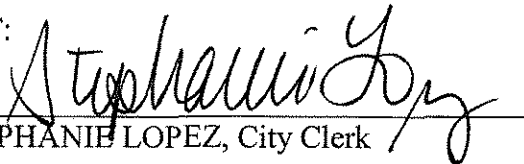
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:
By: 
STEPHANIE LOPEZ, City Clerk

ORDINANCE NO. 3712-C.S.

AN ORDINANCE REPEALING AND REPLACING CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE AND ADOPTING BY REFERENCE AND AMENDING THE CALIFORNIA FIRE CODE, 2019 EDITION BASED ON THE 2018 INTERNATIONAL FIRE CODE, REGULATING AND GOVERNING THE SAFEGUARDING OF LIFE AND PROPERTY FROM FIRE AND EXPLOSIVE HAZARDS ARISING FROM THE STORAGE, HANDLING, AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES, AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE OCCUPANCY OF BUILDINGS AND PREMISES IN THE CITY OF MODESTO; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH

WHEREAS, Health and Safety Code Section 18938 makes provisions published in the California Building Standards Code pursuant to Health and Safety Code Section 17922 applicable to all occupancies throughout the State and effective one hundred and eighty days after publication by the California Building Standards Commission (the Commission), or at a later date established by the Commission; and

WHEREAS, Health and Safety Code Section 17958.5 permits cities in adopting provisions of the California Building Standards Code to make such changes in such provisions as the city determines, pursuant to Health and Safety Code Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, Health and Safety Code Section 17958.7 requires that a city, before making changes pursuant to Health and Safety Code Section 17958.5, must make an express finding that such changes are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, under Health and Safety Code Section 17958.7, changes pursuant to Health and Safety Code Section 17958.5 may not become effective until the required findings, and the changes, have been filed with the California Building Standards Commission; and

WHEREAS, Government Code Section 50022.2 permits enactment of City Ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of this Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

SECTION 1. REPEAL OF CODE. Chapter 1 of Title 3 (Ordinance No. 3591) of the Modesto Municipal Code is hereby repealed in its entirety. The remaining Chapters of Title 3 (Chapters 2, 3, and 4) shall not be amended or repealed by this Ordinance.

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

CHAPTER 1. ADOPTION OF THE CALIFORNIA FIRE CODE, 2019 EDITION

ARTICLE 1. FIRE CODE

3-1.101. FINDINGS FOR ADOPTION OF THE CALIFORNIA FIRE CODE, 2019 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, 2019 Edition, published by said organization, is a nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said California Fire Code, 2019 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, 2019 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, 2019 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, 2019 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, 2019 Edition, is necessary so as to provide more stringent standards for fire extinguishing systems; fire hazard and hazardous materials controls is necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following climatic and topographical local conditions:

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

- (1) Divide the southwest area of the City and City contract areas and restrict access to these areas; and
- (2) Divide the City from east to southwest along Scenic Drive.

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

3-1.102. ADOPTION BY REFERENCE OF THE CALIFORNIA FIRE CODE, 2019 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, 2019 Edition, California Code of Regulations Title 24, Part 9, including Appendix Chapter 4, and Appendix B, BB, , , E, F, G, I, K, , N, O and Division 1 California Administration 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, 2019 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, 2019 Edition,” the “2019 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 2019 California Fire Code as adopted and amended are hereby repealed.

ARTICLE 2. AMENDMENTS, ADDITIONS AND DELETIONS TO

THE 2019 CALIFORNIA FIRE CODE

3-1.201. COMBUSTIBLE WASTE MATERIAL.

Section 304.1.2 of the 2019 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 2019 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 2019 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 2019 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 2019 California Fire Code.

3-1.204. WHERE REQUIRED.

Section 507 of the 2019 California Fire Code is hereby amended to read as follows:

Section 507.5.1 Where required. Where a portion of a facility or building hereafter constructed or moved into or within the jurisdiction is more than 200 feet from a hydrant on a fire apparatus access road , as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

3-1.205. FUEL FIRED APPLIANCES.

Section 603.4 of the 2019 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.

3-1.206. INCINERATORS.

Section 603.8 of the 2019 California Fire Code is hereby amended to read as follows:

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

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

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

3-1.207. AUTOMATIC SPRINKLER SYSTEMS.

Section 903.2 of the 2019 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 2019 California Fire Code for certain uses and/or occupancies, the requirements of Section 903.2 of the 2019 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 2019 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.

3-1.208. MONITORING.

Section 903.4.1 of the 2019 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.

3-1.209. PORTABLE FIRE EXTINGUISHERS.

Section 906.9.1 of the 2019 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.

3-1.210. FIRE ALARM AND DETECTION SYSTEMS.

Section 907. 2of the 2019 California Fire Code is hereby amended by adding the following section:

Where required – New Buildings and Structures. An approved fire alarm system installed in accordance with the provisions of this code and NPPF 72 shall be

provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 of the California Fire (2019 Edition) and provide occupant notification in accordance with Section 907.5, unless other requirements are provided by another section of this code.

- a. All fire alarm and detection systems shall require Central Station Services monitoring as defined by and in accordance with the 2016 Edition of NFPA 72, Chapter 26. A (UL) Underwriters Laboratories Certificate of (FM) Factory Mutual Placard, in accordance with the 2016 Edition of NFPA 72, Chapter 26, shall be issued by the UL listed or FM approved prime contractor for all newly installed fire alarm systems that are newly installed in commercial occupancies for which permits are required by the Modesto Fire Department, Division of Fire Prevention, on or after 1/1/2020.
- b. Any existing fire alarm system in a commercial occupancy wherein the fire alarm control panel and alarm system components require replacement, shall be considered newly installed for the purposes of this section and shall require Central Station Service in accordance with the 2016 Edition of NFPA 72 Chapter 26.
- c. Central Station Service in full compliance with the 2016 Edition of NFPA Chapter 26, shall be maintained at the protected property, so long as the requirement for the fire alarm system exist.

Exception. Supervisory service is not required for:

- i) Single and multiple-station smoke alarms required by Section 907.2.10
- ii) Smoke detectors in Group I-3 occupancies.
- iii) Automatic sprinkler systems in one and two-family dwellings.

3-1.211. FALSE FIRE ALARMS.

Section 907 of the 2019 California Fire Code is hereby amended by adding the following section:

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

3-1.212. HAZARDOUS MATERIALS INVENTORY STATEMENT.

Section 5001.5.2 of the 2019 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 2019 California Fire Code is hereby amended to read as follows:

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

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

3-1.214. STATIONARY CONTAINERS.

Section 5504.3.1.1.3 of the 2019 California Fire Code is amended by adding the following:

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

3-1.215. PERMITS REQUIRED FOR EXPLOSIVES.

Section 5601 of the 2019 California Fire Code is hereby amended by adding the following:

5601.2 Permits Required. When permits are required to be issued by the Fire Code Official, the Fire Code Official may grant the authority to the agency having enforcement jurisdiction. A Permit shall be obtained:

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

3-1.216. POSSESSION, MANUFACTURE, SALE, USE OR DISCHARGE OF DANGEROUS FIREWORKS.

Section 5604 of the 2019 California Fire Code is hereby amended by adding the following:

5604.1.2 Dangerous Fireworks

- (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.
- (b) It shall be unlawful for any person to possess, manufacture, sell, use or discharge dangerous fireworks, or a dangerous firework kit, unless a permit authorizing such possession, sale, manufacture, use or discharge has been issued by the Fire Code Official to the person or responsible party, as is defined in Section 3-1.304 of the Modesto Municipal Code, using, selling, manufacturing, discharging or found in possession of said fireworks or kits, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal. The Fire Code Official may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.
- (c) The Fire Code Official, or designee, shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of dangerous fireworks

offered or exposed for sale, stored, or held in violation of this chapter.

3-1.217. EXPLOSIVE MATERIALS PROHIBITED AND LIMITED ACTS.

Section 5605.1 of the 2019 California Fire Code is hereby amended as follows:

5605.1 General. The manufacture, assembly and testing of explosives, ammunition, blasting agents and fireworks shall comply with the requirements of this section and NFPA 495 or NFPA 1124.

5605.1.1 Manufacturing. Explosive materials shall not be manufactured within the city limits of Modesto.

5605.1.2 Limits Established by Law. The storage of explosives and blasting agents is restricted to those areas of the City zoned as Heavy Industrial Zone (M-2).

EXCEPTION:

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

3-1.218 MANUFACTURING OF FIREWORKS.

Section 5605 of the 2019 California Fire Code is hereby amended by adding the following:

5605.1.3 Manufacturing. The manufacturing of fireworks is prohibited within the city limits of Modesto.

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

Section 5608 of the 2019 California Fire Code is hereby amended by adding the following:

5608.2 Permits. The Fire Code Official may grant a permit for the display of fireworks, including proximate audience displays and pyrotechnic special effects in theatrical and group entertainment as applied

for, or with conditions thereto, unless s/he finds that to do so would be contrary to the public health, safety, or welfare. The decision of the Fire Code Official shall be in writing and shall be mailed, postage prepaid, to the applicant.

5608.3 Appeal. The decision of the Fire Code Official, in acting on an application for permission to conduct a public display in accordance with the provisions of this section may be appealed to the City Manager. Notice of an appeal of the Fire Code Official's decision shall be filed by the applicant with the City Clerk within ten (10) days after the date of the decision. Upon failure to file such notice within the ten (10) day period, the action of the Fire Code Official shall be final and conclusive. The applicant may appeal the decision of the City Manager to the City Council by filing a notice of appeal to the City Clerk within ten (10) days after the date of the City Manager's decision. Upon failure to file such notice within the ten (10) day period, the action of the City Manager, or his/her designee, shall be final and conclusive.

5608.4 Fee. A nonrefundable fee as established by resolution of the City Council, from time to time, shall accompany every application for permission to conduct a public display of fireworks. This fee shall be in addition to any other fee or tax imposed by Title 6 of the Modesto Municipal Code.

3-1.220. SALES OF FIREWORKS.

Section 5608 of the 2019 California Fire Code is hereby amended by adding the following:

5608.5 Sales. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.

- (1) Effective 2005, the total number of sales permits issued in any given year shall be limited to seventy (70).
- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
 - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes, as defined by Section 501(c) of the

Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Modesto. Each new organization shall provide the City with a copy of their "Letters of Incorporation" as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State's Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of California and IRS if nonprofit status comes into question.

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

City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.

- (4) All applications for sales permits shall be in writing to the Fire Code Official on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.

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

- (5) Applications shall set forth the proposed location of the fireworks stand including the nine (9) digit parcel number (APN) of the Stanislaus County Assessor, a site map, and other information as may be required by the Fire Code Official.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Code Official of approval or disapproval of such application. Sales permits will be issued after final inspection of the stand reveals compliance with all state and local regulations. Organizations shall not open for sales prior to the final inspection of their stand. If an organization's stand fails to pass inspection there will be a re-inspection fee charged for the third (3rd) inspection, and each inspection thereafter until final inspection is approved, as established by Resolution No. 03-446.
- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.22 3. Other items required at the time of application will be the organization's verification of eligibility as stated in 2(A) above, list of bona fide members, and current written permission signed by the property owner of record (with respect to lessee permission, approval shall be in the sole discretion of the Fire Code Official to sell fireworks at that location. Organizations representing public schools, as stated in 2(B) above, require written verification from the school of their affiliation.
- (8) Every application shall be accompanied by a nonrefundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of the Modesto Municipal Code.
- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously

permitted since 1999) organizations will have first option for a permit.

- (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such permits, a lottery will be held to fill any vacancies.
 - (B) This lottery will be held fourteen (14) days after the last day of the filing period specified in paragraph 4 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period. If the fourteenth (14th) day falls on a weekend the lottery will be held on the next business day.
 - (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.
 - (D) Any organization having an approved application that fails to open their stand for that sales year will automatically forfeit their permit and a new organization will be chosen the following year provided a permit is available.
- (10) A nonprofit organization may apply for a sales permit with regard to a stand located in an area annexed by the City of Modesto under the following conditions:
- (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
 - (B) The applicant has received a valid City of Modesto business license; and
 - (C) The organization must either
 - (1) Meet the criteria of set forth in Section 33-1.223(2) (A) or
 - (2) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.

- (D) Annexed property that was previously used for a temporary booth by an organization whose current primary meeting place is outside the city limits of Modesto is not eligible to make application for a sales permit.

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

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

Section 5608 of the 2019 California Fire Code is hereby amended by adding the following:

5608.6 General. Sales, storage, use, and handling of fireworks shall be in accordance with this chapter.

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

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

- (A) **Wholesale Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H3 occupancy classification requirements as defined by the 2019 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 sale fireworks for that calendar year.
3. **Temporary Fireworks Stands.**
- (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
 - (2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.
 - (3) Temporary fireworks stand shall not be set up before

application for permit has been approved no earlier than June 14.

- (4) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330 of the Modesto Municipal Code.
- (6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.
- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not removed by 12:00 noon on the 12th day of July.

4. **Safety Precautions.**

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

5. **Stand Construction.**

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
 - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (B) The stand shall be provided with a roof.
 - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.
 - (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.
 - (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
 - (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
 - (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
 - (H) An approved fire extinguisher having a minimum classification of 2A10BC shall be located in the stand, near the exit and readily accessible.
 - (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Fire Code Official.
 - (J) Stands will be limited to twenty-four (24) feet by eight (8) feet or one hundred ninety-two (192)

square feet in size. Pre-existing stands as identified by the fireworks suppliers shall retain the right to operate their oversized stands, without change, until said stand or organization forfeits or loses their operating permit. A copy of said list shall remain on file with the Fire Code Official.

6. Operation of Fireworks Stand Only by Permittee.

- (1) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operation of such fireworks stand. Violations will result in the immediate loss of the organization's permit.
- (2) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.
- (3) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

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

Section 5608 of the 2019 California Fire Code is hereby amended by adding the following:

5608.7 Revocation of Fireworks Sales Permit. The Fire Code Official, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks sales permit of any location or organization when any of the provisions of Sections 3-1.220, 3-1.221, or 3-1.223 are violated. The Fire Code Official shall inform the permittee that permittee may seek review of the Fire Code Official's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Code Official shall provide the City Manager with written notice that a fireworks sales permit has been revoked, including the name of the permittee and a brief statement of the

grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Fire Code Official, or his/her designee, that day to review the Fire Code Official's decision. The decision of the City Manager shall be final.

5608.7.1 Revocation of any sales permit will be effective for that calendar year.

3-1.223 FIREWORKS DISPLAYS INSURANCE REQUIRED.

Section 5608 of the 2019 California Fire Code is hereby amended by adding the following:

5608.8 Insurance.

1. The permittee shall furnish a certificate of insurance for each policy required, executed by the company issuing such policy, and approved as to form by the Risk Manager. Such policies shall contain a provision which holds the City as an additional insured and declaring said insurance to be primary and that no other insurance carried by an insured party shall be called upon for contribution. Notwithstanding any other provision of this section, the failure of the permittee to carry such insurance during the time covered by such permit shall automatically revoke the permit as of the date of expiration of such insurance policy or policies. A payment of one hundred and two dollars (\$102.00) shall be made to the City before any such revoked permit may be reinstated.
2. The permittee/licensee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.
 - (a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of five hundred thousand dollars (\$500,000).
 - (b) General Liability insurance with a minimum limit of liability per occurrence of five million dollars (\$5,000,000)

for bodily injury and five hundred thousand (\$500,000) for property damage. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent permittee/licensees and subcontractors; products and completed operations; and professional liability.

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

Permittee/licensee shall provide City with separate endorsements evidencing proof of the City's additional

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

For any claims related to a permit, the permittee/licenses insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the permittee/licensee's insurance and shall not contribute with it.

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

3-1.224 STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS IN TANKS.

Section 5704 of the 2019 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 2019 California Fire Code. In addition, all above ground tanks shall be UL 2085 listed. The provisions of this section shall not apply to facilities for

the production, generation, or transmission of electric energy that provide power to entities furnishing retail electrical services to the general public within the city of Modesto.

3-1.225 OPERATING HEATING, LIGHTING AND COOKING APPLIANCES PROHIBITED.

Section 5705 of the 2019 California Fire Code is hereby amended to read as follows:

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

EXCEPTION:

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

3-1.226 STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.

Section 5706 of the 2019 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 2019 California Fire Code.

3-1.227 STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 5706 of the 2019 California Fire Code is hereby amended to read as follows:

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

identified in Title 10 of the Modesto Municipal Code.

3-1.228 BULK PLANTS STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 5706.4 of the 2019 California Fire Code is hereby amended to read as follows:

5706.4. Bulk Plants. Portions of properties where flammable and combustible liquids are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, pipelines, tank cars, tank vehicles or containers shall be in accordance with Section 5706.4.1 through 5706.4.10.4 of the 2019 California Fire Code.

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

3-1.229. BULK TRANSFER AND PROCESS TRANSFER OPERATIONS.

Section 5706.5 of the 2019 California Fire Code is hereby amended to read as follows:

5706.5. Bulk Transfer and Process Transfer Operations. Bulk transfer and process transfer operations shall be in approved locations. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring flammable or combustible liquids. Tank vehicle and tank car transfer facilities shall be separated from buildings, aboveground tanks, combustible materials, property lines, streets, alleys or public ways by a distance of twenty (25) feet (7620 mm) for Class I liquids and fifteen (15) feet (4572 mm) for Class II and III liquids measured from the nearest position of any loading or unloading valve.

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

3-1.230. PERMITS FOR LIQUIFIED PETROLEUM GASES.

Section 6101.2 of the 2019 California Fire Code is hereby amended to read as follows:

6101.2. Permits. Permit(s) shall be required as set forth in Sections 105.6 and 105.7.

EXCEPTION:

1. Residential occupancies. Containers shall not exceed ten (10) gallons water capacity with an aggregate total of twenty (20) gallons.
2. Approved containers not exceeding sixteen and four-tenths (16.4) ounces when displayed for sale in mercantile occupancies.
3. Factory installed containers for recreational vehicles not exceeding ten (10) gallon water capacity.
4. Factory installed tanks that are permanently attached to recreational vehicles.

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

3-1.231 USE OF LIQUIFIED PETROLEUM GAS CONTAINERS IN BUILDINGS.

Section 6103.2.1 of the 2019 California Fire Code is hereby amended to read as follows:

6103.2.1 Portable Containers. Portable LP-gas containers, as defined in NFPA 58 shall not be used in buildings except as specified in this section.

1. Areas undergoing construction.
 - A. Portable containers, not exceeding five (5) gallon water capacity, may be allowed in buildings or areas undergoing construction, when permitted by the Fire Code Official.
 - B. LP-gas containers shall not be used in a basement, pit, or similar location where heavier-than-air gas might collect. LP-gas containers not exceeding sixteen and four tenths (16.4) ounces may be used in an above-grade under floor space or basement only when such space is provided with

an approved means of ventilation.

2. In educational, business, and institutional occupancies when used for research and experimentation provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and the aggregate capacity of all containers does not exceed two and one-half (2-1/2) gallons water capacity. When more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.
3. At demonstrations and public exhibitions for temporary use provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and when more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.
4. With self-contained torch assemblies and similar appliances provided that the individual capacity does not exceed sixteen and four-tenths (16.4) ounces.

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

3-1.232 MAXIMUM CAPACITY OF LPG CONTAINERS.

Section 6104.2 of the 2019 California Fire Code is hereby amended to read as follows:

6104.2 Maximum capacity within established limits

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

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

1. Storage and dispensing of LP-gas for resale purposes, into approved containers and vehicles, is restricted to those areas of the City zoned as Light Industrial (M-1), Heavy Industrial (M-2), and, in addition thereto, to other commercially zoned properties used as automotive service stations. Dispensing shall be performed only

by qualified persons.

2. Dispensing of LP-gas for private use is restricted to those zones identified in subsection 1, and when approved by the Fire Code Official, may be permitted in those areas of the City zoned General Commercial (C-2). Dispensing shall be performed only by qualified persons.
3. For cooking, lighting, or heating in a building, only on a property that does not have natural gas service existing on a boundary line of said property or when prohibition of such storage would cause undue hardship.
4. For temporary use on construction sites, when authorized by the Fire Code Official.
5. For use as an alternative fuel supply for an emergency standby generator, when authorized by the Fire Code Official.
6. For use with certain mobile vending and certain commercial barbecue equipment and other specific uses when authorized by the Fire Code Official.
7. For use by artisans in pursuit of their trade, when authorized by the Fire Code Official.
8. Storage of portable containers awaiting exchange may be permitted in commercial zoned areas of the City, including those zoned Neighborhood Commercial (C-1), when approved by the Fire Code Official and stored in accordance with Section 6109. Such storage shall be located a minimum of twenty (20) feet from any fuel dispenser.

EXCEPTION:

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

3-1.232. STORAGE OF PORTABLE LP-GAS CONTAINERS AWAITING USE, RESALE, OR EXCHANGE.

Section 6109.12 of the 2019 California Fire Code is hereby amended to read as follows:

6109.12 Separation from exits. Containers stored inside or outside buildings accessible to the public shall be located not less than ten (10) feet from any exit door or building opening, when only one (1) exit is provided from the building or area, and not less than five (5) feet from any exit door or building opening, when two (2) or more exits are provided from the building or area.

Table 6109.12 of the 2019 California Fire Code is hereby amended to read as follows:

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

3-1.234 ADMINISTRATIVE PROVISIONS

Sections 103.2, 103.4, 103.4.1 and 108 of the 2016 California Fire Code are hereby deleted.

3-1.235 PERMIT AMOUNTS FOR COMPRESSED GASES.

Chapter 1, Table 105.6.9 of the 2019 California Fire Code is amended to read as follows:

105.6.9 Compressed Gases. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed in Chapter 1, table 105.6.9

EXCEPTION: Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.

Table 105.6.9-Permit Amounts for Compressed Gases¹

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

¹See Chapter 53 of the 2019 California Fire Code for additional requirements and exceptions.

3-1.236. PERMIT AMOUNTS FOR CRYOGENS.

Chapter 1, Table 105.6.11 of the 2019 California Fire Code is amended to read as follows:

105.6.11 Cryogenic Fluids. An operational permit is required to produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed in Chapter 1, Table 105.6.11.

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

refrigerating the lading.

Table 105.6.11--Permit Amounts for Cryogen¹

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

¹ See Chapter 1 of the 2019 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.

3-1.304 ADMINISTRATIVE PENALTIES AND REMEDIES.

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

- (a) For violations of Section 3-1.216, possession, manufacture, sale, use or discharge of dangerous fireworks, the administrative penalty shall be one thousand dollars (\$1,000.00) for each specific act found to be in violation of that section.
- (b) For all violations of this chapter, other than Section 3-1.216, possession, manufacture, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.
- (c) For the purposes of this chapter, the term “responsible party” means any person or persons with the right of possession of the residence or other private property at which dangerous fireworks are possessed, manufactured, sold, used or discharged, including but not limited to:
 - (1) Any owner of the residence or other private property who occupies the residence or private property (hereinafter “owner-occupant”), meaning the record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;
 - (2) Any owner-occupant, lessee, licensee, or other person having control over a property, structure or parcel of land at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;

- (3) Any person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering where dangerous fireworks are possessed, manufactured, sold, used or discharged;
- (d) Responsibility for Proper Property Management. Every owner, occupant, lessee, tenant, or holder of any possessory interest of a residence or other private property within the City is required to maintain, manage and supervise property and all persons thereon in a manner so as not to violate the provisions of this chapter. A responsible party need not be present at the time dangerous fireworks are possessed, manufactured, sold, used or discharged in order for the City to issue an administrative citation under this section.
- (e) Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code.

SECTION 2. FINDINGS AND DECLARATION. As required by the 2019 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 2019 California Fire Code are reasonably necessary because of local climate and geographic conditions. This ordinance also prescribes local procedures to be used in the administration and enforcement of this Code; provides for local interpretations of this Code, and makes other changes in this Code consistent with local custom and practice as reflected in the prior local Fire Code.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption and its provisions shall become applicable January 1, 2020.

SECTION 4. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the

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

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

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case the activity in question is not a project and will not have a significant effect on the environment (CEQA Guidelines § 15061 (b)(3)).

SECTION 7. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or

phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

BY: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 

ADAM U. LINDGREN, City Attorney

Ord. No. 3712-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, 2019, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: January 02, 2020

ORDINANCE NO. 3713-C.S.

AN ORDINANCE AMENDING SECTION 30-3-9 OF THE ZONING MAP TO REZONE 2.66 ACRES FROM GENERAL COMMERCIAL ZONE, C-2, TO PLANNED DEVELOPMENT ZONE, P-D(607), PROPERTY LOCATED AT 722 KANSAS AVENUE

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

SECTION 1. ZONING CHANGE. Section 30-3-9 of the Zoning Map is hereby amended to reclassify the following described property from General Commercial Zone, C-2, to Planned Development Zone, P-D(607):

C-2 to P-D(607)

All that portion of the Southeast Quarter of Section 30, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Parcel One:

All that portion of Lots 4 and 5 of Maze Ranch Subdivision, in the County of Stanislaus, State of California, according to the Official Map thereof filed in the Office of the Recorder of Stanislaus County, California, on March 19, 1909, Volume 4 of Maps, Page 18, described as follows:

Commencing at the Northeast corner of said Lot 5, thence West along the North line thereof, 66.2473 feet, more or less, to the Northwest corner of the property conveyed to Vesta B. Smith, a Single Man, by Deed recorded March 30, 1948 as Instrument No. 7022; thence South along the West line of said Smith Property, 10.86 feet to a point on the South line of Parcel No. 1 of the property conveyed to Vesta B. Smith, Et Ux, to the State of California by Deed dated September 22, 1958 and recorded October 2, 1958, Volume 1506 of Official Records, Page 62, Instrument No. 24671; thence continuing South along the said West line of the Smith Property, 125 feet to the True Point of Beginning of this Description; thence East parallel with the South line of Parcel No. 1 of the State of California property above referred to, 150 feet; thence North parallel with the said West line of the Smith parcel 125 feet to a point on the South line of Parcel No. 1 of the said State of California property; thence East along the last said South line 115 feet, more or less, to a point on the East line of the

ORDINANCE NO 3713-C.S.
Effective January 9, 2020

West 2-1/4 acres of North Half of Lot 4 above referred to; thence South along the last said East line, 232 feet, more or less, to a point on the North line of the parcel of land described as Parcel No. 2 in the Deed from Vesta B. Smith, Et Ux, to the State of California, above referred to; thence along the last said North line, the following two Courses and Distances: South 83 Degrees 55' 51" West 194.03 feet and North 89 Degrees 47' 00" West 116.63 feet to a point on the West line of the property conveyed to Vesta B. Smith first above mentioned; thence North along the last said West line 123 feet, more or less, to the True Point of Beginning.

Parcel Two:

A portion of the North Half of Lot 4 of Maze Ranch Subdivision, in the County of Stanislaus, State of California, according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on March 19, 1909, Volume 4 of Maps, Page 18, described as follows: Commencing at the Northeast corner of said Lot 4; thence along the North line of said Lot, North 89 Degrees 47' 00" West 242.93 feet; thence South 0° 35' 00" East 10.84 feet to the True Point of Beginning; thence

- (1) South 89° 47' 15" East, 92.01 feet; thence
- (2) South 34° 50' 54" East, 212.03 feet; thence
- (3) South 39° 17' 14" West, 50.47 feet; thence
- (4) South 83° 55' 51" West, 179.85 feet; thence
- (5) North 0° 35' West 232.45 feet to the True Point of Beginning.

Excepting any and all rights of ingress to or egress from the above described Parcel over and across Courses No. (2), (3) and (4) herein above described, as excepted and reserved in the Deed from the State of California recorded October 14, 1965, Volume 2062 of Official Records, Page 101, Instrument No. 40303.

Also including the southerly one-half of Kansas Avenue and the westerly one-half of the right-of-way of California State Highway 99, all being immediately adjacent to the above-described property.

Containing 2.66 acres, more or less.

APN 029-015-021

ORDINANCE NO 3713-C.S.
Effective January 9, 2020

SECTION 2. USES. The following uses shall be permitted in said P-D(607)

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

1. Permanent supportive housing units, and;
2. General Commercial uses as permitted in the C-2 Zone.

SECTION 3. ZONING MAP. Section Map 30-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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


ORDINANCE NO 3713-C.S.
Effective January 9, 2020

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2019, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
for: ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO 3713-C.S.
Effective January 9, 2020

ORDINANCE NO. 3713-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, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

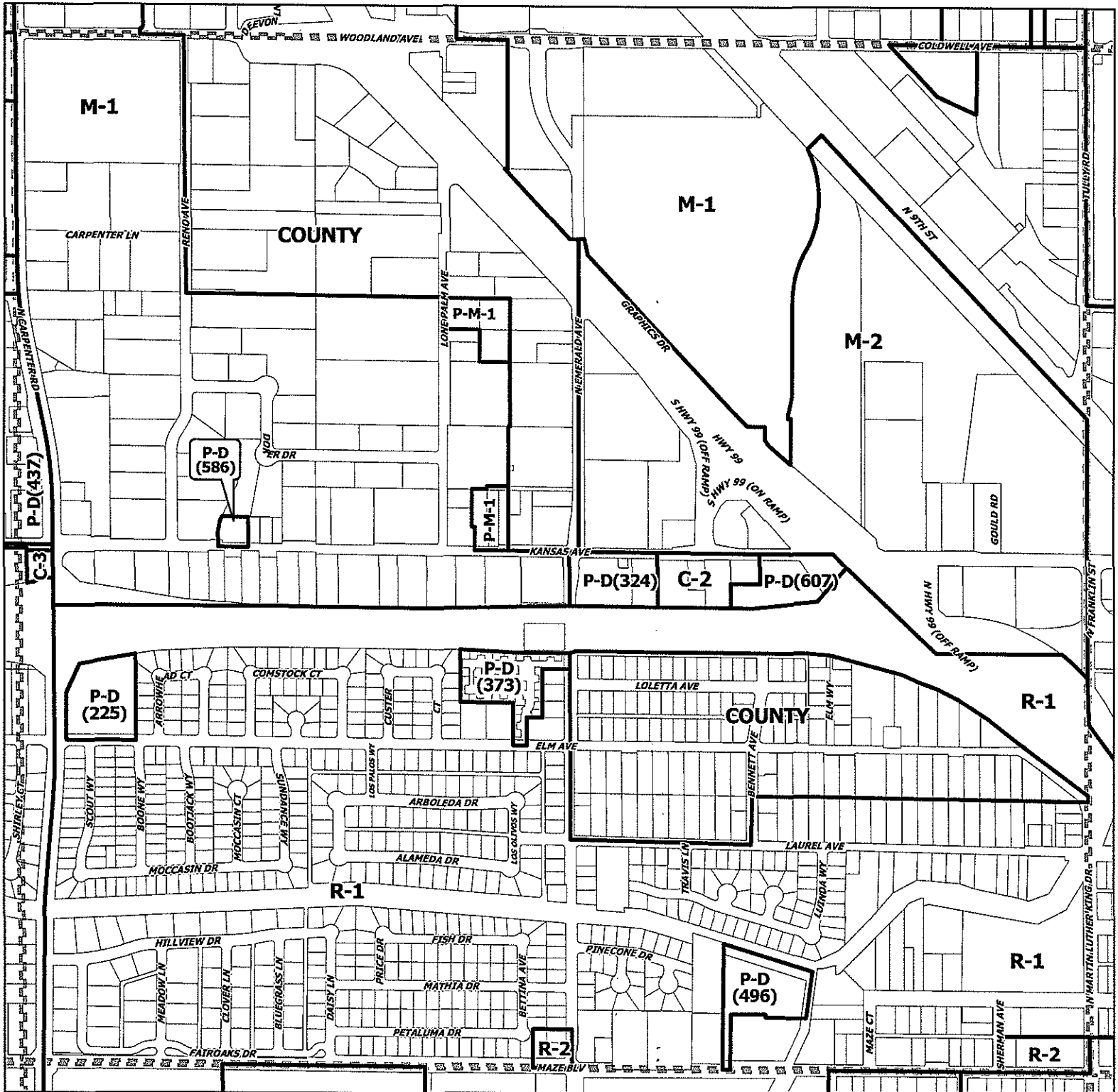
MAYOR, TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: January 9, 2020

ORDINANCE NO 3713-C.S.
Effective January 9, 2020



1 Inch = 700 feet

Ord. 3713-C.S.

ZONING MAP OF THE CITY OF MODESTO

30-3-9

ORDINANCE NO. 3714-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 3677-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 16-3-9 OF THE ZONING MAP TO REZONE FROM PLANNED DEVELOPMENT ZONE, P-D(237) TO PLANNED DEVELOPMENT ZONE P-D(602), PROPERTY LOCATED AT 1192 NORWEGIAN AVENUE"

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

SECTION 1. AMENDMENT OF ORDINANCE 3677-C.S. Section 2 of

Ordinance 3677-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(602)

Zone:

1. All uses as permitted in the Medium High Density Residential (R-3) Zone.
2. Existing radio broadcasting tower with cellular equipment and cellular equipment lease area, on an as-is basis in accordance to Article 4, Chapter 3 of Title 10 of the Modesto Municipal Code."

All other sections of the Ordinance 3677-C.S. shall remain unchanged.

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.


ORDINANCE NO. 3714-C.S.
Effective: January 9, 2020

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of December, 2019, by Councilmember Ridenour, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Grewal, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Ah You

APPROVED: 
TED BRANDVOLD, Mayor

ATTEST:


By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
for: ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

ORDINANCE NO. 3714-C.S.
Effective: January 9, 2020

ORDINANCE NO. 3714-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, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____


MAYOR, TED BRANDVOLD

ATTEST: _____


STEPHANIE LOPEZ, City Clerk

Effective Date: January 9, 2020

ORDINANCE NO. 3714-C.S.
Effective: January 9, 2020

