

**ORDINANCE NO. 3777-C.S.**

**AN ORDINANCE ADOPTING A PRECISE PLAN FOR VILLAGE ONE PRECISE PLAN AREA NO. 35 SOUTH WITH AMENDMENT OF SECTION 18-3-10 OF THE ZONING MAP TO REZONE FROM SPECIFIC PLAN-HOLDING (SP-H) ZONE TO SPECIFIC PLAN (SP), PROPERTY LOCATED EAST OF CLAUS ROAD, SOUTH OF MILNES ROAD AND NORTH OF EAST BRIGGSMORE AVENUE. (DR HORTON BAY INC)**

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

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

WHEREAS, on July 14, 2022 DR Horton Bay Inc. filed an application for a precise plan for the southern portion of Village One Precise Plan Area No. 35 and for concurrent rezoning from Specific Plan-Holding (SP-H) Zone to Specific Plan (SP) Zone for all that portion of Precise Plan Area No. 35 south of Milnes Road, generally referred to as Precise Plan Area No. 35 South, and

WHEREAS, said application was made concurrently with a proposed amendment to the Urban Area General Plan (File No. GPA-22-001) to amend the Land Use Element of the General Plan to change 140 acres from Business Park-Commercial-Residential (BCR) uses to Residential Uses (R), property located east of Merle Avenue, north of East Briggsmore Avenue, within the Village One Specific Plan, to facilitate development of a new 527-lot single-family residential project, “The Crossings”; and

WHEREAS, to facilitate said development the City of Modesto proposes an amendment to the Circulation Element of the General Plan to downgrade the classification of Claus Road between Sylvan Avenue and East Briggsmore Avenue from an Expressway to a four-lane Principal Arterial Street, and to downgrade East Briggsmore Avenue from Claus Road to the BNSF Railroad crossing from an Expressway to a four-lane Principal Arterial Street, and to amend Section VI.H.11 and VI.H.12 of the General Plan regarding the minimum sizing of Neighborhood Parks; and

WHEREAS, said application was made concurrently with a proposed amendment to the Village One Specific Plan to amend the land use designation of the above 140 acres from Business Park (BP) to Village Residential (VR) with associated text amendments (File No. SPA-22-003) together with a City-initiated amendment to the Circulation Diagram to amend the designation of Claus Road from a Class A Expressway to a four-lane Principal Arterial Street, and to amend the designation of East Briggsmore Avenue east of Claus Road from a Class C Expressway to a four-lane Principal Arterial Street; and

WHEREAS, said application was also made concurrently with a proposed Vesting Tentative Subdivision Map “The Crossings” to divide 84.1 acres of the Precise Plan area into 527 single-family residential lots, five landscape lots, and one park lot (File No. TSM-22-002); and

WHEREAS, said application was also made concurrently with a proposed Final Development Plan for the purpose of establishing residential development standards and architectural guidelines for The Crossings development (File No. FDP-22-003); and

WHEREAS, a public hearing was held by the Planning Commission on December 18, 2023, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2023-33, recommended to the City Council the adoption of Precise Plan Area No. 35 South, and

WHEREAS, said recommendation also includes that the amendment of Section 18-3-10 of the Zoning Map to reclassify the area of Precise Plan No. 35 South from Specific Plan-Holding (SP-H) to Specific Plan (SP), and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on January 23, 2024 at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, and

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

WHEREAS, the Council declared that the adoption of Precise Plan for Area No. 35 South of the Village One Specific Plan is required by public necessity convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 35 South is consistent with the Modesto Urban Area General Plan and Village One Specific Plan (as amended) because the site is adjacent to nearby single-family residential development to the west.
2. The Precise Plan document will facilitate new residential development with the establishment of land use, circulation, and utility plan requirements for such development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 35 South of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan No. 35 South, a copy of which is on file in the City Clerk's Office.

SECTION 2. ZONING CHANGE. As part of the adoption of Precise Plan Area No. 35 South, the area of the Precise Plan located in Section 18-3-10 of the Zoning Map is hereby amended to rezone the following described property from Specific Plan-Holding (SP-H) to Specific Plan (SP);

SP-H to SP

All that real property in the City of Modesto, County of Stanislaus, State of California, lying within the Northwest Quarter of Section 18, Township 3 South, Range 10 East, Mount Diablo Base and Meridian, described as follows:

Commencing from the intersection of Claus Road and Milnes Road, said point being the northwest corner of Section 18, Township 3 South, Range 10 East; thence South 89° 51' 16" West a distance of 144.5 feet to the Point of Beginning; thence the following eight courses:

1. South 3° 28' 48" East a distance of 1,326.4 feet; thence
2. North 89° 51' 10" East a distance of 70.8 feet; thence
3. South 0° 17' 48" East a distance of 4,021.53 feet; thence
4. North 89° 57' 40" East a distance of 2,807.54 feet; thence
5. South 17° 41' 1" East a distance of 85.87 feet; thence
6. South 88° 47' 30" East a distance of 105.32 feet; thence
7. North 17° 58' 35" West a distance of 5,695.10 feet; thence
8. North 89° 39' 12" West a distance of 1,358.36 feet to the Pont of Beginning.

Also including the easterly one-half of the right-of-way of Claus Road, the southerly one-half of the right-of-way of Milnes Road, and the northerly one-half of the right-of-way of East Briggsmore Avenue, all immediately adjacent to the above description.

Totaling 255.87 acres, more or less.

APNs: 014-025-002, 014-025-015, 014-025-018, 014-025-019, 014-026-003, 014-026-017, 014-026-018, 014-026-025, 014-026-030 through 014-026-035.

SECTION 3. ZONING MAP. Section 18-3-10 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 23<sup>rd</sup> day of January, 2024, by Councilmember Alvarez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

BY:   
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

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 6<sup>th</sup> day of February, 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Williams, was upon roll call carried and the Ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: March 7, 2024

**ORDINANCE NO. 3778-C.S.**

**AN ORDINANCE REPEALING AND REPLACING MODESTO MUNICIPAL CODE TITLE 5, CHAPTER 9 PROVIDING DEFINITIONS, PERMITTING REQUIREMENTS, AND OPERATING STANDARDS FOR ADULT-ORIENTED BUSINESSES ALONG WITH ADDING PERMITTING PROVISIONS FOR ADULT PERFORMERS AND NON-PERFORMERS AT ADULT-ORIENTED BUSINESSES; AND AMENDING TITLE 10, CHAPTER 3, ARTICLE 3 REGARDING DEFINITIONS FOR ADULT-ORIENTED BUSINESSES**

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MODESTO DOES ORDAIN** as follows:

**SECTION 1. FINDINGS.**

A. The City Council finds that it is necessary and appropriate to amend Chapter 9, in order to amend, add, refine and update the provisions providing: revised definitions; operational standards for adult-oriented businesses; and licensing standards for adult performers and non-performers at adult oriented facilities operating within the City of Modesto (“the City” or “Modesto”). The public health, safety and welfare of Modesto and its residents require the enactment of this Ordinance and such operating standards for adult-oriented businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult-oriented businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City; (3) protect the City’s retail and commercial trade; (4) minimize the potential for nuisances related to the operation of adult-oriented businesses; and (5) protect the peace, welfare and privacy of persons who own, operate and/or patronize adult-oriented businesses.

B. The City Council finds that the revisions to the City’s Municipal Code implemented by this Ordinance are necessary in order to respond to developments within the regulation of adult-oriented uses and the evolving case law and in order to preserve the City from the potential adverse secondary effects of adult-oriented businesses, including crime, the protection of the City’s retail trade, maintenance of property values, protecting and preserving the quality of the City’s neighborhoods and the City’s commercial districts, the protection of the City’s quality of life, and the increased threat of the spread of sexually transmitted diseases and the protection of the peace, welfare and privacy of persons who patronize adult-oriented businesses based on the referenced studies and the findings set forth in Paragraphs A-Z. Specifically, the revisions and amendments to the City’s Municipal Code included in this Ordinance, are essential and necessary to ensure the orderly implementation of adult oriented use regulations within the City by amending and refining various permitting and operating provisions in the Municipal Code to improve the City’s regulation of adult-oriented businesses, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

C. The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of Adult-Oriented Businesses in other cities: Garden Grove, California (1991); Tucson, Arizona

(1990); Seattle, Washington (1989); Report of the Attorney General’s Working Group on the Regulation of Adult-Oriented Businesses, Attorney General, State of Minnesota (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1997); Beaumont, Texas (1982); Regulating Sex Business by William Toner, Report No. 327 Planning Advisory Service of American Society of Planning Officials, Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977); New York, New York (1994); Newport News, Virginia (1996); Times Square, New York City (1994); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney’s Office (2003); Adult-Oriented Businesses: An Insider’s View – Testimony of David Sherman before the Michigan House Committee on Ethics and Constitutional Law (2000); Closin’ Time: Effective Regulation of Adult-Oriented Businesses’ Hours of Operation, by Scott Bergthold (2000); Summaries of Key Reports Concerning the Negative Secondary Effects of Adult-Oriented Businesses, by Louis Comus III (2001); Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California, by Daniel Linz *et al.* (2006); and Do Peep-shows “Cause” Crime? A response to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this ordinance to regulate the adverse secondary side effects of adult-oriented businesses, and more specifically finds that these studies provide convincing evidence that:

1. There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult-oriented businesses including, but not limited to, an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish by convincing evidence that adult-oriented businesses that are not regulated with operating standards often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

2. Regulations for adult-oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.

D. In developing this ordinance, the City Council is mindful of legal principles relating to regulation of adult-oriented businesses, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult-oriented businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of adult-oriented businesses including, but not limited to: *City of Littleton, Colorado v. Z.J. Gifts D-4*, 541 U.S. 774, 124 S.Ct. 2219, 159 L.Ed.2d 84 (2004); *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap’s A.M. (“Kandyland”)*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); and *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); decisions of the United States Court of Appeals for the Ninth Circuit, including but not limited to: *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374; *Dream*

*Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *World Wide Video v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Baby Tam & Co., Inc. v. City of Las Vegas (“Baby Tam I”)*, 154 F.3d 1097 (9th Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas (“Baby Tam II”)*, 199 F.3d 1111 (9th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas (“Baby Tam III”)*, 247 F.3d 1003 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); and *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000); several California cases, including but not limited to: *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California (“Vicary”)*, 99 Cal.App.4th 880 (2002); and *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); and other federal cases, including but not limited to: *Doctor John’s, Inc. v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006); *G.M. Enterprises v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996); *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *TK’s Video, Inc. v. Denton County, Tex.*, 24 F.3d 705 (5th Cir. 1994); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jackson*, 973 F.2d 1255 (5th Cir. 1992), *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); *N.W. Enterprises, Inc. v. City of Houston*, 372 F.3d 333 (5th Cir. 2004); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); and *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003).

E. Each of the noted negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. Further, the City’s interest in regulating adult-oriented businesses extends to preventing future secondary effects of either current or future adult-oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.

F. The City Council also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of Modesto, and thus certain requirements with respect to the ownership, operation and licensing of adult-oriented businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council takes legislative notice of the following: (1) the facts recited in the case of *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), regarding how live adult oriented entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems, and (2) the facts and holding of the case of *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374, wherein the Ninth Circuit recognized that off stage performances by performers who also perform nude and/or semi-nude at an adult oriented establishment can cause the same secondary

effects as other activities documented in studies and case law regarding adult oriented establishments, even if the performer is clothed and the establishment does not serve alcohol.

G. Relying on the following, the City finds that adult-oriented businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The City bases this conclusion on the experiences of Modesto, as well as that of other California communities, including the cities of Chula Vista, La Habra, Arcadia and San Bernardino, which the City has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:

1. Evidence indicates that some dancers, models, entertainers, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in adult-oriented businesses (collectively referred to as “performers”) have been found to engage in sexual activities with patrons of adult-oriented businesses on the site of the adult-oriented business.

2. Evidence has demonstrated that performers employed by adult-oriented businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows.

3. Evidence indicates that performers at adult-oriented businesses have been found to engage in acts of prostitution with patrons of the establishment.

4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.

5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at adult-oriented businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to Modesto and the need to regulate the secondary effects of adult-oriented businesses within the community.

6. The public health, safety, welfare, and morals of all persons in the City must be protected by the establishment of standards to diminish the possibility of infection of contagious diseases.

H. The City Council is cognizant of the specific dangers from the sexually transmitted disease AIDS, which despite advances in treatment, remains irreversible and fatal. The City Council takes legislative notice of the reports prepared by the California Department of Public Health, the California HIV Surveillance Report – 2021, released May 3, 2023 (“HIV Surveillance Report,”) The HIV Surveillance Report indicates that in Stanislaus County in 2021, there were 254 cases of newly diagnosed HIV cases reported; a total of 4,918 cases of persons living with the HIV infection; and 99 deaths reported. The City also takes legislative notice of the Stanislaus County Community Health Assessment report issued in 2020, which listed the total number of HIV cases reported in the County in 2016 as 707. It was noted that the HIV

prevalence rates for Stanislaus County and California have slowly been rising from 2012 to 2016. The City further takes legislative notice of the San Joaquin County Public Health Services, San Joaquin County Annual STDs and HIV/AIDS Report - 2015 (“SJC Health Status Report”), the Sacramento County HIV Annual Surveillance Report 2015 (“Sacramento HIV Surveillance Report”), Centers for Disease Control HIV Surveillance Report 2021, and the Fresno County Department of Public Health Report, A Summary of HIV/AIDS in Fresno County 2020 (“Fresno County HIVS/AIDS Summary”). The SJC Health Status Report states that the reported HIV cases increased 25% from 2014 to 2015 and that males have a higher burden of the disease. The Sacramento County HIV Surveillance Report indicates that from 2006 to 2015, the total number of newly diagnosed HIV cases increased by 69.7% from 89 cases in 2006 to 151 cases in 2015. From 2006 to 2015, 479 cases were deceased. The Fresno County HIVS/AIDS Summary reports that in 2014, there were 701 people living with HIV, and 1,076 people living with AIDS.

I. The City is also concerned with preventing the spread of other sexually transmitted diseases such as syphilis, gonorrhea, chlamydia and hepatitis B. The City takes legislative notice of the California Department of Public Health, STDs in California by Disease, County, Year, and Sex, indicates that in 2021, Stanislaus County reported 2,413 cases of chlamydia, 954 cases of gonorrhea, and 378 cases of Primary and Secondary Syphilis and Early Latent Syphilis. Merced County reported 1,101 cases of chlamydia, 490 cases of gonorrhea, and 96 cases of Primary and Secondary Syphilis and Early Latent Syphilis; San Joaquin County reported 4,235 cases of chlamydia, 1,749 cases of gonorrhea, 360 cases of Primary and Secondary Syphilis and Early Latent Syphilis; Fresno reported 6,451 cases of chlamydia, 2,705 cases of gonorrhea, 447 cases of Primary and Secondary Syphilis and Early Latent Syphilis; and Sacramento reported 7,659 cases of chlamydia, 3,523 cases of gonorrhea, 723 cases of Primary and Secondary Syphilis and Early Latent Syphilis. The City also takes legislative notice of the California Department of Public Health, Chronic Hepatitis B Report 2016, which indicates that in Stanislaus County there were a total of 155 reported cases; in Merced County there were 118 reported cases; in San Joaquin County there were 379 reported cases; in Fresno County there were 465 reported cases; and, in Sacramento County there were 1,653 reported cases. It should also be noted that according to the AIDS Status Report, numerous studies have shown that sexually transmitted diseases such as syphilis, gonorrhea, and chlamydia facilitate the transmission of HIV.

The City Council has a reasonable basis to conclude that the experiences of the Stanislaus, San Joaquin, Merced, Fresno, and Sacramento Counties as to these HIV/AIDS, STD, and/or blood borne diseases are relevant to the experiences of Modesto.

J. In considering appropriate operational regulations for adult-oriented businesses, the City Council finds that:

1. Enclosed or concealed booths and dimly lit areas within adult-oriented businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Requiring all indoor areas to be open to view by management at all times and adequate lighting to be provided reduces the opportunity for, and therefore the incidence of illegal conduct within adult-oriented businesses, and further facilitates the inspection of the interior of the premises thereof by law enforcement personnel.

2. Preventing the exchange of money between performers and patrons also reduces the likelihood of drug and sex transactions occurring in adult-oriented businesses.

3. Requiring separations between performers and patrons precludes them from being within earshot to communicate and thereby reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the adult-oriented business.

K. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography in support of this ordinance including, but not limited to, its recommendations that local governments ban certain features of video booths that facilitate carnal sexual encounters. A copy of the Attorney General's Report on Pornography is available online at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/attorney-generals-commission-pornography-final-report>.

1. With respect to booths, these findings include the following: The inside walls of the booth are typically covered with graffiti and messages, usually of a sexual nature and consisting of telephone numbers, names, requests and offers for sex acts, anatomical descriptions, and sketches. Some booths also contain a chart used as an appointment schedule that is utilized to schedule appointments for sex acts that take place in that particular booth. In some instances, this arrangement has been used for the solicitation of prostitutes. Many of these booths are equipped with a hole in the side wall between the booths to allow patrons to engage in anonymous sex including both oral and anal sex acts. Inside the booths, the floors and walls are often wet and sticky with liquid or viscous substances, including semen, urine, feces, used prophylactics, gels, saliva, or alcoholic beverages. The City concludes, based in part on the description of the illicit sexual activity as noted within the Attorney General's Report, that the presence of closed doors and/or any obstruction of the video booth area is likely to lead to the above described secondary effects.

2. Likewise, the City Council recognizes and relies on the findings set forth in the May 1990 study conducted by the City of Tucson in support of this ordinance including, but not limited to, the following findings with respect to booths: Holes were present in the walls of adjoining booths within adult entertainment establishments. These holes were used by male patrons to facilitate sex acts with the occupant of the neighboring booth. The City Council reasonably believes that the Tucson experience, along with the Attorney General's Report, is relevant to the problems associated with adult facilities in Modesto.

3. The City Council finds that requiring that adult booths be configured in such a manner so that there is an unobstructed view from the manager's station(s) and prohibiting closed, concealed, or unobstructed booths that are occupied by no more than one person at a time reduces the secondary effects associated with closed booths. Specifically, the provisions pertaining to booths are necessary to eliminate the masturbation and sexual activity that are known to occur in closed booths and which present significant health and safety concerns with respect to communicable diseases, including AIDS. A number of courts have held that combating the spread of AIDS and STDs is a significant government interest, and that prohibiting concealed or enclosed booths in an adult use establishment is a narrowly tailored means of serving that interest. *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002); *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123 (3rd Cir. 1993);

*Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Doe v. City of Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986). The City Council takes further note of the Ninth Circuit’s decision in *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982) and its finding that there is no constitutional right to unobserved masturbation in a public place. The City Council also recognizes the California case *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985), which found that the right to privacy guaranteed by the California Constitution does not protect the right to unobserved masturbation in a public place. Further, the City takes note of the Eleventh Circuit’s validation of a restriction on the size of adult booths in *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999), including the Court’s finding that “[a]mple evidence ... supports the ... finding that illegal and unhealthy activities take place in small rooms at adult entertainment establishments.”

L. In recognition of the negative secondary effects generated by live adult entertainment, a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and precluded direct exchange of monies between performers and patrons at adult-oriented businesses that provide live entertainment including, but not limited to: *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, cert. denied 126 S.Ct. 374; *Tily B. v. City of Newport Beach*, 69 Cal.App.4th 1 (1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *BSA, Inc. v. King County*, 804 F.2d 1104 (9th Cir. 1986); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403, 1997 FED App. 0066P (6th Cir. 1997); *Parker v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995); and *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995). Courts have found that dancers who perform nude or semi-nude on stage at adult oriented cabarets are the same individuals who then move off stage to offer lap dances, couch dances, or other similar off stage performances. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005). The lewd conduct of such performers was also documented at the totally nude facility called the Flesh Club in the City of San Bernardino where the evidence revealed lewd conduct including intercourse between performers and customers, quotations of price lists for different sex acts, regular contact between nude breasts of performers and faces of customers, and allowing patrons to peer into the females genitalia. This proposed Ordinance precludes this type of extreme “off-stage” activity, along with its companion noted secondary effects of prostitution and/or illegal drug transactions. Therefore, Modesto reasonably believes it is necessary to impose distance limitations between performers and patrons and prohibit physical contact between performers and patrons during all performances, whether on or off stage, in order to guard against the documented secondary effects.

M. The City Council believes that prohibiting physical contact between performers and patrons at adult-oriented businesses, requiring separate entrances for performers from those used for patrons, requiring separate restrooms for opposite sexes, prohibiting performers from soliciting payment from patrons, and prohibiting the direct payment to performers by patrons are a reasonable and effective means of addressing the legitimate governmental interests of preventing prostitution, the spread of sexually transmitted diseases, and drug transactions. The case law and studies serve as a reasonable basis to establish this link.

N. In recognition of the negative secondary effects generated by live adult entertainment establishments, a number of courts have upheld ordinances which require that

employees, as well as the owners and managers of such establishments submit background information on criminal convictions related to relatively recent sexual offenses so that a public entity can assess an individual's ability to function responsibly in the adult-oriented business setting. *See TK's Video, Inc. v. Denton County, Tex.*, 24 F.3d 705, 710 (5th Cir. 1994); and *see Club Southern Burlesque, Inc. v. City of Carrollton*, 265 Ga. 528, 532, 457 S.E.2d 816 (1995). This includes not only the applicant for an adult-oriented business permit, but individuals who work in adult-oriented businesses during regular business hours as performers and non-performers where the criminal background check is limited to a period of no more than five (5) years immediately preceding the date of application. *See Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150, 1171 (10th Cir. 2006); *McCrothers Corp. d/b/a Tree City Bar, et al. v. City of Mandan*, 728 N.W.2d 124 (2007); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479, 1487 (E.D. Wis. 1996); *Club Southern Burlesque, Inc.*, 265 Ga. at 532. In this regard, the City Council, in adopting operational standards, recognizes that the requirement for employee disclosure of recent criminal activity is to be narrowly tailored and to impose no greater restriction on First Amendment freedoms than is necessary to minimize the secondary harms stated in the ordinance. *See TK's Video v. Denton County*, 830 F.Supp. 335, 343 (E.D. Tex. 1993), vacated *in part on other grounds*, 24 F.3d 705 (5th Cir. 1994). When, as here, the civil disability provision of an adult-oriented business ordinance is tailored to apply to sex-related crimes only, the "relationship between the offense and the evil to be regulated is direct and substantial." *FW/PBS, Inc. v. City of Dallas*, 837 F.2d 1298, 1305 (5th Cir. 1988) and affirmed in part and vacated in part in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *see also TK's Video*, 24 F.3d at 711 and *see Déjà Vu of Nashville, Inc. v. Metro Gov't of Nashville and Davidson County*, 274 F.3d 377, 392 (6th Cir. 2001); *Brownell v. City of Rochester*, 190 F.Supp.2d 472, 494-96 (W.D.N.Y. 2001); *Tee & Bee*, 936 F.Supp. at 1490. Modesto adopts the reasoning of courts finding that "Certain employees of unregulated adult-oriented businesses ... engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments" and has a reasonable basis to believe this reasoning is applicable in the Modesto community. Further, the "fact that an applicant for an adult oriented use permit has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance." Hence, "[t]he barring of such individuals from employment in adult-oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the City." *Dr. John's*, 465 F.3d at 1171 n. 30.

O. The City Council also finds the establishment of an adult-oriented business regulatory licensing process and operational standards for adult-oriented businesses are legitimate and reasonable means of ensuring that:

1. Operators of and performers at adult-oriented businesses comply with the City's regulations;
2. The recognized adverse secondary impacts of a proposed adult-oriented business are mitigated;
3. Adult-oriented business operators have specific guidelines with respect to the manner in which they can operate an adult-oriented business; and

4. The applications for adult-oriented business regulatory permits are handled fairly and expeditiously.

P. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult-oriented businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the California Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (*i.e.*, Penal Code § 313 *et seq.*). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).

Q. While the City Council is obligated to protect the rights conferred by the United States Constitution to adult-oriented businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of adult-oriented businesses.

R. Licensing permits and operating standards are a legitimate and reasonable means of ensuring that adult-oriented businesses are conducted in a manner so as to minimize their adverse secondary effects and to help assure that such operators, businesses, licensees and permittees comply with reasonable regulations related to such requirements to minimize and control problems associated with such businesses and thereby protect the health, safety, and welfare of Modesto residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The operational requirements contained in this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult-oriented businesses in Modesto.

S. The City Council, in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. For example, the closing hours requirement means that adult-oriented businesses are free to operate seven (7) days a week for seventeen (17) hours per day. The City Council takes note of the proliferation of adult material on the Internet, satellite television, direct television, CDs, DVDs, and that these various media provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as [www.sugarinstant.com](http://www.sugarinstant.com), formerly [sugarDVD.com](http://sugarDVD.com), deliver adult videos and DVDs directly to customers' homes via the mail and subscription-based streaming services. The City Council recognizes the following review of one of these web-based services: "Sugarinstant has made it so easy to rent and view adult movies, you may never leave your house again ... Sugarinstant is discreet with quick turnaround times and a massive selection ... Sugarinstant offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (*Hustler Magazine*, January 2006.) The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. (*Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit

rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 (1996) [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions.] The emergence of the Internet brings with it a virtually unlimited additional source of adult oriented sexual materials available to interested persons in every community with a mere keystroke. An adult-oriented business no longer has to be “actually” physically located in a city to be available in the community.

T. The City Council recognizes that adult devices (*i.e.* adult oriented novelties and/or adult related products) such as dildos, fur-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. (*See Ford v. State of Texas*, 753 S.W.2d 451, 452-453 (1988); *Sewell v. State of Georgia*, 233 S.E.2d 187, 188-189 (1977); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113, 115 (1998); and *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981).)

U. The City Council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from adult facilities and reasonably relies on prior court decisions on the need for closing hours including *Center for Fair Public Policy v. Maricopa County* (“*Maricopa*”), 336 F.3d 1153 (9th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.Supp. 1428 (M.D. Fla. 1997), affirmed in part, reversed in part by *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *National Amusements Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Mitchell v. Comm’n on Adult Enter. Est. of the State of Delaware*, 10 F.3d 123 (3rd Cir. 1993); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); and *City of Colorado Springs v. 2354 Inc.*, 896 P.2d 272 (1995). The City Council also takes legislative notice of (a) the Report of the Attorney General’s Working Group on the Regulation of Sexually-Oriented Businesses, Minnesota (1989), which concluded that surrounding communities are negatively impacted by 24-hour-a-day or late night operation of adult-oriented businesses; and (b) the analysis presented by Scott Bergthold in his report, *Closin’ Time: Effective Regulation of Adult-Oriented Businesses’ Hours of Operation* (2000). Additionally, the City Council takes legislative notice of *Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California*, by Daniel Linz *et al.* (2004) and *Do Peep-shows “Cause” Crime? A response to Linz, Paul, and Yao*, by Richard McCleary *et al.* (2006). Based on these cases, reports and analyses, as well as the findings of this ordinance, the City Council has a reasonable basis to believe and does conclude that the hours of operation provision is necessary in light of the fact that adult-oriented businesses have been found to accompany and aggravate crime and to deplete police time and resources in the late night hours.

V. It is not the intent of the City Council of Modesto in enacting this ordinance or any provision thereof to condone or legitimize the distribution of obscene material, and the City and its Council recognize that state law prohibits the distribution of obscene materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Modesto.

W. The City Council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the City Council to preempt regulations of the state Department of Alcoholic Beverage Control (“ABC”).

X. Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

Y. The City Council finds that licensing and operational standards are a legitimate and reasonable means of accountability to ensure that operators and performers and non-performers employed at adult facilities comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Z. The licensing and operation provisions adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to address the adverse secondary effects associated with the establishment and operation of unregulated or under-regulated adult use businesses.

**SECTION 2. ADULT-ORIENTED BUSINESSES, DEFINITIONS**

Title 5, Chapter 9 of the Modesto Municipal Code is renamed, “Adult-Oriented Businesses”. Article 1 of Title 5, Chapter 9 is repealed and replaced as set forth below.

**TITLE 5**  
**CHAPTER 9**

**Article 1. General Provisions**

- 5-9.101 Purpose.
- 5-9.102 Definitions.
- 5-9.103 Permits required.

**5-9.101** **Purpose.** It is the purpose and intent of this Chapter to regulate the operations of adult-oriented businesses, which tend to have judicially recognized adverse secondary effects on the community, including, but not limited to, increases in crime in the vicinity of adult-oriented businesses; increases in vacancies in residential and commercial areas in the vicinity of adult-oriented businesses; interference with residential property owners’ enjoyment of their properties when such properties are located in the vicinity of adult-oriented businesses as a result of increases in crime, litter, noise, and vandalism; and the deterioration of neighborhoods. Special regulation of these businesses is necessary to prevent these adverse secondary effects and the blighting or degradation of the neighborhoods in the vicinity of adult-oriented businesses while at the same time protecting the First Amendment rights of those individuals who desire to own, operate, or patronize adult-oriented businesses.

It is, therefore, the purpose of this Chapter to establish reasonable and uniform operational standards for adult-oriented businesses.

5-9.102      Definitions. In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, for the purpose of this Chapter, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the Municipal Code, these definitions shall prevail.

A.      “Adult arcade” shall mean a business establishment to which the public is permitted or invited and where coin, card or slug operated or electronically, electrically or mechanically controlled devices, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing “specified sexual activities” or “specified anatomical areas.” Such devices shall be referred to as “adult arcade devices.”

B.      “Adult booth/individual viewing area” shall mean a partitioned or partially enclosed portion of an adult-oriented business used for any of the following purposes:

1.      Where a live or taped performance is presented or viewed, where the performances and/or images displayed or presented are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas;” or
2.      Where “adult arcade devices” are located.

C.      “Adult-oriented business” is synonymous with “adult entertainment business” and shall mean:

1.      A business establishment or concern that as a regular and substantial course of conduct operates as an adult retail store, adult motion picture theater, adult arcade, adult cabaret, adult motel or hotel, adult modeling studio; or
2.      A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes “adult-oriented material” or “sexually oriented merchandise,” or which offers to its patrons materials, products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” but not including those uses or activities which are preempted by state law.

D.      “Adult cabaret” shall mean a business establishment (whether or not serving alcoholic beverages) that features “Adult live entertainment.”

E.      “Adult cabaret dancer” shall mean any person who is an employee or independent contractor of an “Adult cabaret” or “Adult business” and who, with or without any compensation or other form of consideration, performs as a sexually oriented dancer, exotic dancer, stripper,

go-go dancer or similar dancer whose performance on a regular and substantial basis focuses on or emphasizes the adult cabaret dancer's breasts, genitals, and/or buttocks, but does not involve exposure of "specified anatomical areas" or depicting or engaging in "specified sexual activities." "Adult cabaret dancer" does not include a patron.

F. "Adult hotel/motel" shall mean a "hotel" or "motel" (as defined in the Municipal Code) that is used for presenting on a regular and substantial basis images through closed circuit television, cable television, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices that are distinguished or characterized by the emphasis on matter depicting or describing or relating to "specified sexual activities" or "specified anatomical areas."

G. "Adult live entertainment" shall mean any physical human body activity, whether performed or engaged in, alone or with other persons including, but not limited to, singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming, in which: (1) the performer (including, but not limited to, topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar performers) exposes to public view, without opaque covering, "specified anatomical areas;" and/or (2) the performance or physical human body activity depicts, describes, or relates to "specified sexual activities" whether or not the specified anatomical areas are covered.

H. "Adult modeling studio" shall mean a business establishment which provides for any form of consideration, the services of a live human model, who, for the purposes of sexual stimulation of patrons, displays "specified anatomical areas" to be observed, sketched, photographed, filmed, painted, sculpted, or otherwise depicted by persons paying for such services. "Adult modeling studio" does not include schools maintained pursuant to standards set by the Board of Education of the State of California.

I. "Adult motion picture theater" shall mean a business establishment, with or without a stage or proscenium, where, on a regular and substantial basis and for any form of consideration, material is presented through films, motion pictures, video cassettes, slides, laser disks, digital video disks, holograms, virtual reality devices, or similar electronically-generated reproductions that is characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

J. "Adult-oriented material" shall mean accessories, paraphernalia, books, magazines, laser disks, compact discs, digital video disks, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, holograms or electronically generated images or devices including computer software, or any combination thereof that is distinguished or characterized by its emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas." "Adult oriented material" shall include "sexually oriented merchandise."

K. "Adult retail store" shall mean a business establishment having as a regular and substantial portion of its stock in trade, "Adult-Oriented material."

L. “Establishment of an adult-oriented business” shall mean any of the following:

1. The opening or commencement of any “adult-oriented business” (as defined above) as a new business;
2. The conversion of an existing business, whether or not an “adult-oriented business,” to any “adult-oriented business;”
3. The addition of any “adult-oriented business” to any other existing “adult-oriented business;”
4. The relocation of any “adult-oriented business;” or
5. Physical changes that expand the square footage of an existing “adult-oriented business” by more than ten percent (10%).

M. “Non-performer” shall mean a person who is an employee or independent contractor of an adult-oriented business who works in that adult-oriented business during regular business hours. This shall not include after-hours workers providing janitorial, trash or similar after hours services.

N. “Owner/permit holder” shall mean any of the following: (1) the sole proprietor of an adult-oriented business; (2) any general partner of a partnership that owns and operates an adult-oriented business; (3) the owner of a controlling interest in a corporation or L.L.C. that owns and operates an adult-oriented business; or (4) the person designated by the officers of a corporation or the members of an L.L.C. to be the permit holder for an adult-oriented business owned and operated by the corporation.

O. “Performer” shall mean a person who is an employee or independent contractor of an adult-oriented business or any other person who, with or without any compensation or other form of consideration, provides “adult-oriented live entertainment” for patrons of an “adult-oriented business.”

P. “Religious facility” shall mean a structure or facility that is used primarily for religious worship and related religious activities.

Q. “School” shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and/or which is maintained pursuant to standards set by the Board of Education of the State of California. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education under the jurisdiction of the California Department of Education. For the purposes of this Chapter, “school” does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

R. “Sexually oriented merchandise” shall mean sexually oriented implements, paraphernalia, or novelty items such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

S. “Specified anatomical areas” shall mean and include any of the following:

1. Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, even if completely and opaquely covered human:

(a) genitals, pubic region;

(b) buttocks, anus; or

(c) female breasts below a point immediately above the top of the areola; or

2. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

T. “Specified sexual activities” shall mean and include any of the following, irrespective of whether performed directly or indirectly through clothing or other covering:

1. Human genitals in a state of sexual stimulation or arousal; and/or

2. Acts of human masturbation, sexual stimulation or arousal; and/or

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or

4. Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or

5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or

6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

5-9.103. Permits required.

A. All adult-oriented businesses are subject to the adult-oriented business regulatory permit requirements, the adult-oriented business performer permit requirements, the adult-oriented business non-performer permit and/or other permit requirements of this Chapter as well as all other applicable ordinances of the City and the laws of the State of California.

B. It shall be unlawful for any person to establish, operate, engage in, conduct, or carry on any adult-oriented business within Modesto unless the person first obtains, and continues to maintain in full force and effect all required permits, including but not limited to an adult-oriented business regulatory permit.

C. Any occurrence of the “establishment of an adult-oriented business,” as defined in this Chapter, shall require a new application for an adult-oriented business regulatory permit and any other applicable permits under this Chapter.

D. All permit requirements under this Chapter shall be subject to the development and operational standards of this Chapter and the underlying zone where the facility is located.

**SECTION 3. ADULT ORIENTED BUSINESS OPERATING STANDARDS AND ADULT-ORIENTED BUSINESS REGULATORY PERMIT**

The prior provisions found in Title 5, Chapter 9, Article 2 are repealed and replaced as set forth below.

**TITLE 5**  
**CHAPTER 9**

**Article 2: Adult-Oriented Business Operating Standards and Adult-Oriented Business Regulatory Permit**

**Sections**

- 5-9.201 Operating standards.
- 5-9.202 Adult-oriented business regulatory permit required.
- 5-9.203 Applications.
- 5-9.204 Investigation and action on application.
- 5-9.205 Basis for permit denial.
- 5-9.206 Transfer of adult-oriented business regulatory permit.
- 5-9.207 Suspension or revocation of permit.
- 5-9.208 Appeal procedures.
- 5-9.209 Violations.
- 5-9.210 Applicability of chapter to existing adult-oriented businesses.
- 5-9.211 Regulations non-exclusive.

5-9.201      Operating standards.

A.      Hours of operation. It shall be unlawful for any owner, operator, manager, employee or independent contractor of an adult-oriented business to allow such adult-oriented business to remain open for business, or to permit any employee, independent contractor or performer to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 12:00 a.m. (i.e. midnight) and 8:00 a.m. of any day excepting therefrom an “adult-oriented hotel/motel” and excepting therefrom an adult-oriented business that has been issued a license from the California Department of Alcoholic Beverage Control (“ABC”) in which case the hours of operation on the ABC license shall govern.

B.      Exterior lighting requirements. All exterior areas, including parking lots, of the adult-oriented business shall be illuminated at a minimum of 1.50 foot-candle, maintained and evenly distributed at ground level with appropriate devices to screen, deflect or diffuse the lighting in such manner as to prevent glare or reflected light from creating adverse impacts on adjoining and nearby public and private properties and to avoid night pollution. Inoperable and/or broken lights shall be replaced within twenty-four (24) hours.

C.      Interior lighting requirements. All interior areas of the adult-oriented business excepting therefrom adult hotels/motels shall be illuminated at a minimum of 1.00 foot-candle, maintained, and evenly distributed at floor level. Inoperable and/or broken lights shall be replaced within twenty-four (24) hours, excepting therefrom an “adult hotel/motel.”

D.      Regulation of adult booth/individual viewing area.

1.      No adult booth/individual viewing area shall be occupied by more than one individual at a time.

2.      Each adult booth/individual viewing area within the adult-oriented business shall be visible from a continuous and accessible main aisle in a public portion of the establishment, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the adult booth/individual viewing area from the main aisle. Any adult-oriented business may have more than one manager station in order to ensure compliance with this regulation. At all times, the manager station(s) shall be maintained to ensure a clear line of sight into the interior of the adult/booth individual viewing area. Further, no one shall maintain any adult booth/individual viewing area in any configuration unless the entire interior wherein the picture or entertainment that is viewed is visible from the manager station(s). The entire body of any patron in any adult booth/individual viewing area must be visible from the main aisle and the manager station(s) without the assistance of mirrors or any other device.

3.      No doors are permitted on an adult individual viewing area. No partially or fully enclosed adult booth/individual viewing areas or partially or fully concealed adult booth/individual viewing areas shall be maintained.

4. No holes or other openings shall be permitted between adult booths/individual viewing areas. Any such hole or opening shall be repaired within twenty-four (24) hours using “pop” rivets to secure metal plates over the hole or opening to prevent patrons from removing the metal plates.

5. No beds, couches, or chairs with a sitting area greater than twenty-four inches (24”) wide shall be permitted in an adult booth/individual viewing area.

E. On-site manager. All adult-oriented businesses shall have a responsible person who shall be at least 18 years of age and shall be on the premises to act as manager at all times during which the business is open. No performer may serve as the manager. The individual(s) designated as the on-site manager shall provide his/her name to the Chief of Police to receive all complaints and be given by the owner and/or operator the responsibility and duty to address and immediately resolve all violations taking place on the premises.

F. Interior of premises. No exterior door or window on the premises of an adult-oriented business shall be propped or kept open at any time while the business is open and any exterior windows shall be covered with opaque coverings at all times.

G. Displays of adult materials. All displays of materials characterized or distinguished on matters describing or relating to “specified sexual activities” or “specified anatomical areas,” as defined in this code, shall be completely screened from public view as viewed from adjacent sidewalks or public rights-of-way.

H. Signs. All adult-oriented businesses shall comply with the following sign requirements, in addition to those of the Modesto Municipal Code. Should a conflict exist between the requirements of the Modesto Municipal Code and this subsection, the more restrictive shall prevail.

If an adult-oriented business does not serve alcohol, it shall post a notice prior to entry to the area of public assembly and within ten feet (10') of every entrance used by customers for access to the establishment, stating that persons below the age of eighteen (18) years of age are prohibited from entering onto the premises or within the confines of the adult-oriented business. This notice shall be posted on a wall in a place of prominence. The dimensions of the notice shall be no less than six inches (6”) by six inches (6”), with a minimum typeface of 25 points. If the adult-oriented business serves alcohol, it shall comply with all notice and posting requirements of the Alcoholic Beverage Control Department.

I. Regulation of public restroom facilities. If the adult-oriented business provides restrooms for patron use, it shall provide separate restroom facilities for male and female patrons. The restrooms shall be free from adult material. Only one (1) person shall be allowed in each restroom at any time, unless otherwise required by law, in which case the adult-oriented business shall employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant shall insure that no person of the opposite sex is permitted into the restroom, and that not more than one (1) person is permitted to enter a restroom stall, unless otherwise required by law, and that the restroom

facilities are used only for their intended sanitary purposes. Access to restrooms for patron use shall not require passage through an area used as a dressing area by performers.

J. Trash. All interior trash cans shall be emptied into a single locked trash bin lined with a plastic bag or with individually bagged trash at least once a day. At least four (4) times a day, the front and rear exteriors of any adult-oriented business, along with the parking lot, shall be inspected for trash and debris and any trash and debris found shall be immediately removed and placed into a single locked trash bin lined with a plastic bag.

K. Adult-oriented business offering adult live entertainment – additional operating requirements. The following additional requirements shall apply to adult-oriented businesses providing adult live entertainment:

1. No person shall perform adult live entertainment for patrons of an adult-oriented business except upon a permanently fixed stage at least eighteen inches (18") above the level of the floor, and surrounded with a three foot (3') high barrier or by a fixed rail at least thirty inches (30") in height. No patron shall be permitted on the stage while the stage is occupied by a performer(s) and/or adult cabaret dancer(s). This provision shall not apply to an individual viewing area where the performer is completely separated from the area in which the performer is viewed by an individual by a permanent, floor to ceiling, solid barrier.

2. No performer or adult cabaret dancer shall be within six feet (6') of a patron, measured horizontally, while the performer or adult cabaret dancer is performing adult live entertainment. While on stage, no performer or adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any performer or adult cabaret dancer.

3. As to off stage performances, no performer or adult cabaret dancer shall perform "adult live entertainment" off stage. As to an adult cabaret dancer performing off stage, a distance of at least six feet (6') shall be maintained between the adult cabaret dancer and the patron(s) at all times. During off stage performances, no adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any adult cabaret dancer.

4. In addition, while on the premises, no performer or adult cabaret dancer shall have physical contact with a patron and no patron shall have physical contact with a performer or adult cabaret dancer, which physical contact involves the touching of the clothed or unclothed genitals, pubic area, buttocks, cleft of the buttocks, perineum, anal region, or female breast with any part or area of any other person's body either before or after any adult live entertainment or off stage performances by such performer or adult cabaret dancer. Patrons shall be advised of the no touching requirements by signs and, if necessary, by employees, independent contractors, performers, or adult cabaret dancers of the establishment. This prohibition does not extend to incidental touching.

5. Patrons shall be advised of the separation and no touching requirements by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. And, if necessary,

patrons shall also be advised of the separation and no touching requirements by employees or independent contractors of the establishment.

6. All employees and independent contractors of the adult-oriented facility, except therefrom performers while performing on the fixed stage, while on or about the premises or tenant space, shall wear at a minimum an opaque covering which covers their specified anatomical areas.

7. Patrons shall not throw money to performers, place monies in the performers' costumes or otherwise place or throw monies on the stage. If patrons wish to pay or tip performers, payment or tips may be placed in containers. Patrons shall be advised of this requirement by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. If necessary, patrons shall also be advised of the tipping and gratuity requirements by employees or independent contractors of the adult-oriented business.

8. The adult-oriented business shall provide dressing rooms for performers, that are separated by gender and exclusively dedicated to the performers' use and which the performers shall use. Same gender performers may share a dressing room. Patrons shall not be permitted in dressing rooms.

9. The adult-oriented business shall provide for performers an entrance/exit to the establishment separate from the entrance/exit used by patrons, which the performers shall use at all times.

10. The adult-oriented business shall provide access for performers between the stage and the dressing rooms that is completely separated from the patrons. If such separate access is not physically feasible, the adult-oriented business shall provide a minimum three foot (3') wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers and the patrons must also be three feet (3') away from the walk aisle. Nothing in this Section is intended to exempt the adult-oriented business from compliance with the provisions of Title 24 of the California Code of Regulations pertaining to handicapped accessibility.

11. All adult-oriented businesses featuring live entertainment shall employ security guards licensed by the state in order to maintain the public peace and safety, based upon the following standards:

(a) Provide at least one security guard at all times while the business is open.

(b) Provide a minimum of two (2) security personnel or bouncers for each 100 patrons to be on duty at all times during the hours that performances occur.

(c) Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Security

guard(s) shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed and bonded as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

(d) Between the hours of 8:00 p.m. and thirty (30) minutes after the established closing time of the facility, security guard(s) shall regularly patrol the parking lot and adjacent outdoor areas of the facility to maintain order therein and prevent any illicit or nuisance activity.

(e) Security guard(s) shall be regularly posted at the doors used by the performers when said doors are in use.

12. The adult-oriented business shall provide a security system that visually records and monitors all parking lot areas.

L. Adult motion picture theater additional operating requirements. The following additional requirements shall apply to adult motion picture theaters:

1. If the theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

(a) Have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the hall or auditorium area;

(b) Have a continuous main aisle alongside the seating areas in order that each person seated in the hall or auditorium area shall be visible from the aisle at all times; and

(c) Have a sign posted in a conspicuous place at or near each entrance to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area.

M. Employment of and services rendered to persons under the age of eighteen (18) years prohibited; twenty-one (21) if liquor is served.

1. Employees/independent contractors. Employees and independent contractors of an adult-oriented business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employees, or other person in charge of any adult-oriented business to employ, contract with, or otherwise retain any services in connection with the adult-oriented business with or from any person who is not at least eighteen (18) years of age. If liquor is served at the adult-oriented business, employees and independent contractors of the adult-oriented business must be at least twenty-one (21) years of age. If liquor is served at the adult-oriented business, it shall be unlawful for any owner, operator, manager, partner, director,

officer, shareholder with a ten percent (10%) or greater interest, employee, or other person in charge of any adult-oriented business to employ, contract with, or otherwise retain any services in connection with the adult-oriented business with or from any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons seeking to contract with, be employed by, or otherwise service the adult-oriented business.

2. Patrons. Patrons of an adult-oriented business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, independent contractor, or other person in charge of any adult-oriented business to permit to enter or remain within the adult-oriented business any person who is not at least eighteen (18) years of age. If liquor is served at the adult-oriented business, patrons must be at least twenty-one (21) years of age. If liquor is served at the adult-oriented business, it shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, independent contractor, or other person in charge of any adult-oriented business to permit to enter or remain within the adult-oriented business any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons entering the adult-oriented business.

3. X-rated movies. The selling, renting and/or displaying of X-rated movies, videotapes, digital video disks (DVDs), compact disks (CDs) and laser disks shall be restricted to persons over eighteen (18) years of age. If an establishment that is not otherwise prohibited from providing access to the establishment to persons under eighteen (18) years of age sells, rents, or displays movies, videos, DVDs, CDs or laser disks that have been rated "X" or rated "NC-17" by the motion picture rating industry ("MPAA"), or which have not been submitted to the MPAA for a rating, and which consist of images that are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, said movies, videos, DVDs, CDs, and laser disks shall be located in a specific Section of the establishment where these items are not visible to persons under the age of eighteen (18) and from which persons under the age of eighteen (18) shall be prohibited.

4. Inspections. Each owner, operator, manager, employee or independent contractor of an adult-oriented business or other person in charge of an adult-oriented business shall permit representatives of the police department, health department, fire department, community development department, business license division and other city departments, to inspect the adult-oriented business for the purpose of insuring compliance with the laws and operating standards applicable to adult-oriented businesses at any time it is occupied or open for business. Such inspections shall be conducted in a reasonable manner.

5-9.202 Adult-oriented business regulatory permit required. Every person who proposes to maintain, operate or conduct an adult-oriented business in the City of Modesto shall file an application with the Police Chief upon a form provided by the City of Modesto and shall

pay a filing fee, as established by resolution adopted by the City Council from time to time, which shall not be refundable.

5-9.203      Applications.

(a) All applications for an adult-oriented business regulatory permit shall include the following information:

(i) If the applicant is an individual, the individual shall state his or her legal name, including any aliases, address, and submit satisfactory written proof that he or she is at least eighteen (18) years of age.

(ii) If the applicant is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.

(iii) If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered agent for service of process.

(iv) If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with a ten (10) percent or greater interest in the business entity shall sign the application.

(v) If the applicant intends to operate the adult-oriented business under a name other than that of the applicant, the applicant shall file the fictitious name of the adult entertainment business and show proof of registration of the fictitious name.

(vi) A description of the type of adult-oriented business for which the permit is requested and the proposed address where the adult-oriented business will operate, plus the names and addresses of the owners and lessors of the adult entertainment business site.

(vii) The address to which notice of action on the application is to be mailed.

(viii) The names of all employees, independent contractors, and other persons who will perform and are required to obtain an Adult-Oriented Business Performer Permit under Article 3 of this Chapter.

(ix) A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the adult-oriented business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(x) A certificate and straight-line drawing prepared within thirty (30) days prior to application depicting the building and the portion thereof to be occupied by the adult-

oriented business, and: (1) the property line of any other adult-oriented business within five hundred (500) feet of the primary entrance of the adult-oriented business for which a permit is requested; and (2) the property lines of any religious facility, school, park, residential zone or use within three hundred (300) feet of the primary entrance of the adult-oriented business.

(xi) A diagram of the off-street parking areas and premises entries of the adult-oriented business showing the location of the lighting system required by Section 5-9.201(b).

(b) If the Police Chief determines that the applicant has completed the application improperly, the Police Chief shall promptly notify the applicant of such fact and on request of the applicant, grant the applicant an extension of time of ten (10) days or less to complete the application properly. In addition, the applicant may request an extension, not to exceed ten (10) days, of the time for the Police Chief to act on the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

(c) The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining an adult-oriented business regulatory permit.

5-9.204 Investigation and action on application.

(a) Upon receipt of a completed application and payment of the application and permit fees, the Police Chief shall immediately stamp the application as received and promptly investigate the information contained in the application to determine whether the applicant shall be issued an adult-oriented business regulatory permit.

(b) Within thirty (30) days of receipt of the completed application, the Police Chief shall complete the investigation, grant or deny the application in accordance with the provisions of this section, and so notify the applicant as follows:

(i) The Police Chief shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

(ii) If the application is denied, the Police Chief shall attach to the application a statement of the reasons for denial.

(iii) If the application is granted, the Police Chief shall attach to the application an adult entertainment business regulatory permit.

(iv) The application as granted or denied and the permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.

(c) The Police Chief shall grant the application and issue the adult-oriented business regulatory permit upon findings that the proposed business meets the locational criteria of Section 10-3.303; and that the applicant has met all of the operational standards set forth in 5-

9.201, unless the application is denied for one or more of the reasons set forth in Section 5-9.205. The permittee shall post the permit conspicuously in the adult-oriented business premises.

(d) If the Police Chief grants the application or if the Police Chief neither grants nor denies the application within thirty (30) days after it is stamped as received (except as provided in Section 5-9.203(i)), the applicant may begin operating the adult-oriented business for which the permit was sought, subject to strict compliance with the operating standard.

5-9.205      Basis for permit denial.

The Police Chief shall deny the application for any of the following reasons:

(a) The building, structure, equipment, or location used by the business for which an adult-oriented business regulatory permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of the City and State of California, or with the zoning requirements of the Modesto Municipal Code or the operational standards of this Chapter.

(b) The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for an adult entertainment business regulatory permit.

(c) An applicant is under eighteen (18) years of age.

(d) The required application fee has not been paid.

5-9.206      Transfer of adult-oriented business regulatory permit.

(a) A permittee shall not operate an adult-oriented business under the authority of an adult-oriented business regulatory permit at any place other than the address of the adult-oriented business stated in the application for the permit.

(b) A permittee shall not transfer ownership or control of an adult-oriented business or transfer an adult-oriented business regulatory permit to another person unless and until the transferee obtains an amendment to the permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief in accordance with Sections 5-9.202 and 5-9.203, accompanies the application with a transfer fee in an amount set by resolution of the City Council, the Police Chief determines in accordance with Section 5-9.204 that the transferee would be entitled to the issuance of an original permit and where the City's zoning provisions continue to allow for an adult-oriented use at that business address.

(c) No permit may be transferred when the Police Chief has notified the permittee that the permit has been or may be suspended or revoked.

(d) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

5-9.207      Suspension or revocation of adult-oriented business regulatory permit.

A. On determining that grounds for permit suspension or revocation exist, the Police Chief shall furnish written notice of the proposed suspension or revocation to the permit holder. Such notice shall set forth the time and place of a hearing and the ground or grounds upon which the hearing is based, the pertinent Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the permit holder, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date. Hearings pursuant to this Section shall be noticed in accordance with California Government Code §§ 65091 and 65905 and conducted by the Police Chief or his/her designee, which may include a third party hearing officer. Hearings pursuant to this Section shall be conducted in accordance with procedures established by the Police Chief or his/her designee but, at a minimum, shall include the following:

1. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel.
2. The Police Chief or his/her designee shall not be bound by the formal rules of evidence.
3. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or a witness at the request of the permit holder. Extensions of time or continuances sought by a permit holder shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on permit suspensions or revocations.
4. The Police Chief's or his/her designee's decision may be appealed in accordance with Section 5-9.209.

B. A permit may be suspended or revoked based on the following causes arising from the acts or omissions of the permit holder, or an employee, independent contractor, partner, director, or manager of the permit holder:

1. The building, structure, equipment, or location used by the adult-oriented business fails to comply with all provisions of these regulations and this Section relating to adult-oriented businesses, including the adult-oriented business operational standards contained herein of Title 5, Chapter 9 and the zoning requirements of Section 10-3.303, Title 10, Chapter 3, Article 3, of the Modesto Municipal Code.
2. The permit holder has failed to obtain or maintain all required City licenses.
3. The permit holder has made any false, misleading, or fraudulent statement of material fact in the application for an adult-oriented business permit.
4. The permit is being used to conduct an activity different from that for which it was issued.

5. That an individual employed by, or performing in, the adult-oriented business (whether classified as an employee or independent contractor) has been convicted of two (2) or more sex-related offenses that occurred in or on the permitted premises within a twelve (12) month period and was employed by, or performing in, the adult-oriented business at the time the offenses were committed.

6. That the use for which the approval was granted has ceased to exist or has been suspended for six (6) months or more.

7. That the transferee/new owner of an adult-oriented business or adult-oriented business permit failed to comply with the requirements of this Chapter or is unable to meet the requirements to hold a permit.

8. The permit holder, partner, director, or manager has knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult-oriented business; or a permittee has been convicted of violating any of the following state laws on the premises of the adult-oriented business:

(a) Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

(b) Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

(c) Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

(d) The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of sections 315, 316, 318 or subdivision (b) of the Section 647(b) of the California Penal Code.

(e) Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors including, but not limited to sections 311 through 313.4.

(f) Any act constituting a felony involving the sale, use, possession, or possession for sale of any controlled substance specified in sections 11054, 11055, 11056, 11057, or 11058 of the California Health & Safety Code.

(g) An act or omission in violation of any of the requirements of this Chapter if such act or omission is with the knowledge, authorization, or approval of the permit holder or is as a result of the permit holder's negligent supervision of the employees or independent contractors of the adult-oriented business. This includes the allowance of activities that are or become a public nuisance which includes the disruptive conduct of business patrons whether on or immediately off the premises where such patrons disturb the peace, obstruct traffic, damage property, engage in criminal conduct, violate the law and otherwise impair the free enjoyment of life and property.

C. After holding the hearing in accordance with the provisions of this section, if the Police Chief or his/her designee finds and determines that there are grounds for suspension or revocation, the Police Chief or his/her designee shall impose one of the following:

1. Suspension of the permit for a specified period not to exceed six (6) months; or
2. Revocation of the permit.

The Police Chief or his/her designee shall render a written decision that shall be hand delivered or overnight mailed to the permit holder within five (5) days of the public hearing.

D. In the event a permit is revoked pursuant to this section, another adult-oriented business permit to operate an adult-oriented business shall not be granted to the permittee or an entity related to the permittee within twelve (12) months after the date of such revocation.

5-9.208      Appeal procedures.

A. After approval, denial, suspension, or revocation of an adult-oriented business regulatory permit, any affected person may appeal the decision to the City Council in writing within ten (10) days after the written decision.

B. Consideration of an appeal of the decision shall be at a public hearing, notice of which shall be given pursuant to California Government Code §§ 65091 and 65905 and which hearing shall occur within thirty (30) days of the filing or initiation of the appeal.

C. The City Council action on the appeal of the decision shall be by a majority vote of the members present and upon the conclusion of the de novo public hearing, the City Council shall grant or deny the appeal. The City Council's decision shall be final and conclusive and shall be rendered in writing within four (4) city business days of the hearing, such written decision to be mailed to the party appealing the Police Chief's decision.

D. In reaching its decision, the City Council shall not be bound by the formal rules of evidence.

E. Notwithstanding any provisions in this Section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this Section or may request a continuance regarding any decision or consideration by the City of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

F. Failure of the City Council to render a decision to grant or deny an appeal of a permit denial within the time frames established by this Section shall be deemed to constitute an approval of the adult-oriented business regulatory permit.

G. The time for a court challenge to a decision of the City Council is governed by California Code of Civil Procedure § 1094.8.

H. Notice of the City Council’s decision and its findings shall include citation to California Code of Civil Procedure § 1094.8.

I. Any applicant or permit holder whose permit has been denied pursuant to this Section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure § 1094.8.

5-9.209      Violations.

A. Any owner, operator, manager, employee or independent contractor of an adult-oriented business violating or permitting, counseling, or assisting the violation of any of these provisions regulating adult-oriented businesses shall be subject to any and all civil remedies, including revocation of its adult-oriented business regulatory permit. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in subsection (a) above, any adult-oriented business that is operating in violation of these provisions regulating adult-oriented businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

C. Notwithstanding any other provision of the Modesto Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

5-9.210      Applicability of chapter to existing adult-oriented businesses.

A. *Licensing requirements.* Any adult-oriented business operating in the City prior to the effective date of this Chapter must apply for a permit under this Chapter.

B. *Interior configuration requirements.* Any pre-existing adult-oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of Section 5-9.201 shall have ninety (90) days from the effective date of this Chapter to conform its premises to said requirements

5-9.211      Regulations non-exclusive. The provisions of this Chapter regulating adult-oriented businesses are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other provisions of the Municipal Code and/or any other regulations pertaining to the operation of businesses as adopted by the City Council of Modesto.

**SECTION 4. ADULT-ORIENTED BUSINESS PERFORMER PERMIT**

The prior provisions found in Title 5, Chapter 9, Article 2 regulating adult-oriented business performer permits are hereby revised and renumbered into Article 3 and former Article 3 is repealed and replaced as set forth below.

**TITLE 5**  
**CHAPTER 9**

Article 3: Adult-Oriented Business Performer Permit

Sections

- 5-9.301 Purpose.
- 5-9.302 Adult-oriented business performer permit.
- 5-9.303 Investigation and action on adult-oriented business performer permit.
- 5-9.304 Revocation/suspension/denial of adult-oriented business performer permit.
- 5-9.305 Display of identification cards.
- 5-9.306 Adult-oriented business performer permit non-transferable.
- 5-9.307 Violations.
- 5-9.308 Regulations non-exclusive.

5-9.301 Purpose. It is the purpose and intent of this Chapter to provide for the licensing of adult-oriented business performers in order to promote the health, safety, and general welfare of the City. The goals of the performer licensing provisions are (1) to protect minors by requiring that all performers be over the age of eighteen (18) years; (2) to assure the correct identification of persons performing in adult-oriented businesses; (3) to enable the City to deploy law enforcement resources effectively; and (4) to detect and discourage the involvement of crime in adult-oriented businesses by precluding the licensing of performers with certain sex related convictions within a prior time period. It is neither the intent nor the effect of these regulations to invade the privacy of performers or to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adult-oriented businesses to communicative materials or to deny access by the distributors or exhibitors of adult-oriented businesses to their intended lawful market. Nothing in these regulations is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

The definitions contained in Chapter 5-9.102 of the Modesto Municipal Code, shall govern for purposes of these regulations.

5-9.302 Adult-oriented business performer permit.

A. No performer shall be employed, hired, engaged, or otherwise retained in an adult-oriented business to participate in or give any live performance displaying “specified anatomical areas” or “specified sexual activities” without first having a valid adult-oriented business performer permit issued by the City.

B. The Police Chief or his/her designee shall issue, deny, and renew adult-oriented business performer permits in accordance with these regulations.

C. Permit applicants shall file a written, signed, and verified application or renewal application on a form provided by the Police Chief. Such application shall contain the following information:

1. The permit applicant's legal name and any other names (including "stage names" and aliases) used by the applicant.
2. Principal place of residence.
3. Age, date, and place of birth.
4. Height, weight, hair and eye color, and tattoo descriptions and locations.
5. Each present and/or proposed business address(es) and telephone number(s) of the establishments at which the applicant intends to work.
6. Driver's license or identification number and state of issuance.
7. Social security number.
8. Satisfactory written proof that the permit applicant is a least eighteen (18) years of age.
9. The permit applicant's fingerprints on a Livescan form provided by the Modesto Police Department and two color two-by-two inch photographs clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant. Fingerprints and photographs shall be taken within six (6) months of the date of application.
10. Whether the permit applicant has pled guilty or nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor; or (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of conviction, whichever is the later date, if the conviction is a felony; or (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
11. If the application is made for the purpose of renewing a permit, the permit applicant shall attach a copy of the permit to be renewed.

D. The information provided above in subsection C of this Section, which is personal, private, confidential, or the disclosure of which could expose the applicant to the risk of harm, will not be disclosed under the California Public Records Act or the open government ordinance. Such information includes, but is not limited to, the applicant's residence address, telephone number, date of birth, age, driver's permit, and social security number. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code § 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause the same to be redacted from any copy of a completed application form made available to any member of the public, the above-mentioned information.

E. The completed application shall be accompanied by a non-refundable application fee and an annual permit fee. The amount of such fees shall be as set forth in the schedule of fees established by resolution from time to time by the City Council.

F. The completeness of an application shall be determined within six (6) business hours by the Police Chief. The Police Chief or his/her designee must be available during normal working hours Monday through Friday to accept adult-oriented business performer applications. If the Police Chief determines that the application is incomplete, the Police Chief shall immediately inform the applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Upon receipt of a completed adult-oriented business performer application and payment of the permit fee specified in Section e. above, the Police Chief shall immediately issue a temporary permit which shall expire of its own accord ten (10) business days from the date of issuance and shall only be extended as provided in Section 5-9.303(b).

G. This temporary adult-oriented business performer permit shall authorize a performer to commence performance at an adult-oriented business establishment that possesses a valid adult-oriented business permit authorized to provide live entertainment.

H. The fact that a permit applicant possesses other types of state or City permits or licenses does not exempt the permit applicant from the requirement of obtaining an adult-oriented business performer permit.

5-9.303            Investigation and action on application for adult-oriented business performer permit.

A. Upon submission of a completed application, payment of permit fees, and issuance of a temporary adult-oriented business performer permit, the Police Chief shall immediately stamp the application "Received" and in conjunction with City staff, including members of the Police Department, shall promptly investigate the information contained in the application to determine whether the permit applicant should be issued an adult-oriented business performer permit.

B. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The Police Chief's decision to issue or deny the adult-oriented business

performer permit shall be made within ten (10) business days from the date the temporary permit was issued and in no case shall the decision to issue or deny the permit application be made after the expiration of the temporary permit. In the event the Police Chief is unable to complete the investigation within ten (10) business days, he/she shall promptly notify the permit applicant and extend the temporary permit for up to ten (10) additional business days. In no case shall the investigation exceed twenty (20) days, nor shall the decision to grant or deny the permit application be made after the expiration of the temporary permit.

C. The Police Chief shall render a written decision to issue or deny the permit within the foregoing ten (10) day time period set forth above. Said decision shall be mailed first class postage prepaid or hand delivered to the applicant, within the foregoing ten (10) day period or twenty (20) day period if extended pursuant to Section b. above, and sent to the address provided by the applicant in the application.

D. The Police Chief shall notify the applicant as follows:

1. The Police Chief shall write or stamp “Issued” or “Denied” on the application and date and sign such notation.

2. If the application is denied, the Police Chief shall attach to the application a statement of the reasons for the denial. Such notice shall also provide that the permit applicant may appeal the denial to the City Manager. The City Manager or a designated hearing officer shall conduct a hearing as described in Section 5-9.304.

3. If the application is issued, the Police Chief shall attach to the application an adult-oriented business performer permit.

4. The application, as acted upon, and the permit, if any, shall be placed in the United States mail, first class postage prepaid, or hand delivered, addressed to the permit applicant at the residence address stated in the application in accordance with the time frames established herein.

E. The Police Chief shall issue the permit unless the application is denied based on one of the grounds set forth in subsection f. of this section.

F. The Police Chief shall deny the application based on any of the following grounds:

1. The permit applicant has made false, misleading, or fraudulent statements of material fact in the application for an adult-oriented business performer permit.

2. The permit applicant is under eighteen (18) years of age.

3. The adult-oriented business performer permit is to be used for performing in a business prohibited by laws of the state or city or a business that does not have a valid adult-oriented business regulatory permit.

4. The permit applicant, has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor, or (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

G. Failure of the Police Chief to render a decision on the permit within the time frames established by this Section shall be deemed to constitute an approval.

H. Each adult-oriented business performer permit, other than the temporary permit described in Section 5-9.302(f), shall expire one (1) year from the date of issuance and may be renewed only by filing with the Police Chief a written request for renewal, accompanied by the annual permit fee and a copy of the permit to be renewed. If said application conforms to the previously approved application and there has been no change with respect to the permit holder being convicted of any crime classified by this or any other state as a sex related offense, the Police Chief or his/her designee shall renew the permit for one (1) year. Any plea to or conviction of a sex related offense requires the renewal application to be set for hearing before the Police Chief in accordance with the provisions of this section. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. Applications for renewal shall be acted upon as provided herein for action upon applications for permit. The Police Chief's denial of a renewal application is subject to the hearing provisions of Section 5-9.304.

5-9.304      Revocation/suspension/denial of adult-oriented business performer permit.

A. On determining that grounds for denial of a permit, permit revocation or suspension exist, the Police Chief or his/her designee shall furnish written notice of the proposed action to the applicant/permit holder. Such notice shall set forth the time and place of a hearing before the City Manager or a designated hearing officer and the ground or grounds upon which the hearing is based, the pertinent Modesto Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/permit holder, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date.

B. On determining that grounds for denial of a permit exist, the Police Chief shall furnish written notice of the proposed action to the applicant/permit holder. The decision of the Police Chief shall be appealable to the City Manager by filing a written request for a hearing with the City Clerk within fifteen (15) days following the day of mailing of the Police Chief's decision and paying the fee for appeals provided under this code. All such appeals shall be filed with the City Clerk and shall be public records. The City Manager shall issue a notice which shall set forth the time and place of a hearing before the City Manager or a designated hearing officer which is within thirty (30) days from the date the appeal was filed and the ground or

grounds upon which the hearing is based, the pertinent Modesto Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/permit holder, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date.

C. The applicant shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The City Manager or designated hearing officer shall not be bound by the formal rules of evidence. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or a witness at the request of the permittee. Extensions of time or continuances sought by a permittee/appellant shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on permit suspensions or revocations.

D. A permit may be revoked, based on any of the following causes arising from the acts or omissions of the permit holder:

1. The permittee has made any false, misleading, or fraudulent statement of material fact in the application for a performer license.

2. The permittee has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor, or (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

3. Failure to comply with the operating standards of Chapter 9, Article 2 or the requirements of this Chapter.

E. After holding the hearing in accordance with the provisions of this section, if the City Manager or designated hearing officer finds and determines that there are grounds for revocation or suspension, the City Manager or designated hearing officer shall revoke or suspend the permit. After holding the hearing in accordance with the provisions of this Section on the denial of a permit, the City Manager or designated hearing officer shall decide to sustain the decision, modify the decision or order the decision stricken and issue such order as the City Manager or designated hearing officer finds is supported by the entire record. The City Manager or designated hearing officer shall render a written decision that shall be hand delivered or overnight mailed to the applicant/permit holder within four (4) working days of the hearing. The City Manager or designated hearing officer's failure to render such a decision within this time frame shall constitute an approval or reinstatement of the permit.

F. In the event a permit is revoked pursuant to this section, another adult-oriented business performer permit shall not be granted to the permittee within twelve (12) months after the date of such revocation.

G. The decision of the City Manager or designated hearing officer shall be final.

H. The time for a court challenge to a decision of the City Manager or designated hearing officer is governed by California Code of Civil Procedure § 1094.8.

Notice of the City Manager's or designated hearing officer's decision and his/her findings shall include citation to California Code of Civil Procedure § 1094.8.

I. Any applicant or permit holder whose permit has been denied, suspended, or revoked, pursuant to this Section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure § 1094.8.

5-9.305      Display of identification cards. The Police Chief shall provide each adult-oriented business performer required to have a permit pursuant to this Chapter with an identification card containing the name, address, photograph, and permit number of such performer. Every performer shall have such card available for inspection at all times during which he or she is on the premises of the adult-oriented business at which he or she performs.

5-9.306      Adult-oriented business performer permit non-transferable. No adult-oriented business performer permit may be sold, transferred, or assigned by any permittee or by operation of law, to any other person, group, partnership, corporation, or any other entity. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of the adult-oriented business performer permit, and the permit thereafter shall be null and void.

5-9.307      Violations.

A. Any permittee violating or causing the violation of any of these provisions regulating adult-oriented business performer permits shall be subject to permit revocation/suspension pursuant to Section 5-9.304 above, a fine of not more than one thousand dollars (\$1,000.00) pursuant to California Government Code §§ 36900 and 36901, and any and all other civil remedies. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in Section a., above, any violation of any of these provisions regulating adult-oriented business performer permits is hereby declared to constitute a public nuisance and may be abated or enjoined.

C. The restrictions imposed pursuant to this Chapter are part of a regulatory licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Modesto Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

5-9.308      Regulations non-exclusive. The provisions of this Chapter regulating adult-oriented business performer permits are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other regulations pertaining to the licensing provisions as adopted by the City Council of Modesto.

**SECTION 5. ADULT-ORIENTED BUSINESS NON-PERFORMER PERMIT**

The prior provisions found in Title 5, Chapter 9, Article 4 (Miscellaneous Provisions) are hereby repealed and replaced with Article 4 (Adult-Oriented Business Non-Performer Permit) as set forth below.

**TITLE 5**  
**CHAPTER 9**

**Article 4: Adult-Oriented Business Non-Performer Permit**

**Sections:**

- 5-9.401      Purpose.
- 5-9.402      Adult-oriented business non-performer permit.
- 5-9.403      Investigation and action on adult-oriented business non-performer permit.
- 5-9.404      Denial of adult-oriented business non-performer permit.
- 5-9.405      Violations.
- 5-9.406      Regulations non-exclusive.

5-9.401      Purpose. It is the purpose and intent of this Chapter to require certain background checks on non-performers who work in adult-oriented businesses during regular business hours to promote the health, safety, and general welfare of the City. The goals of these non-performer employee provisions are (1) to protect minors by requiring that all non-performers regularly employed be over the age of eighteen (18) years; (2) to assure the correct identification of persons working in adult-oriented businesses; (3) to enable the City to deploy law enforcement resources effectively; and (4) to detect and discourage the involvement of crime in adult-oriented businesses by precluding the employment of non-performers with certain sex related convictions within a prior time period. It is neither the intent nor the effect of these regulations to invade the privacy of adult-oriented business employees or to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adult-oriented businesses to communicative materials or to deny access by the distributors or exhibitors of adult-oriented businesses to their intended lawful market. Nothing in these regulations is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

The definitions contained in Chapter 5-9.102 of the Modesto Municipal Code, shall govern for purposes of these regulations.

5-9.402      Adult-oriented business non-performer permit.

A. No individual who works as a non-performer in an adult-oriented business shall be employed, hired, engaged, or otherwise retained in an adult-oriented business without first submitting to a background check as provided below.

B. Individuals who wish to work as non-performers in an adult-oriented business shall file a written, signed, and verified application or renewal application on a form provided by the Police Chief. Such application shall contain the following information:

1. The employee applicant's legal name and all used aliases.
2. Date of birth.
3. Driver's license or identification number and state of issuance or other state identification which confirms the name of the applicant.
4. The permit applicant's fingerprints on a Livescan form provided by the Modesto Police Department. Any fees for fingerprints shall be paid by the applicant. Fingerprints shall be taken within one (1) month of the date of application.
5. Whether the non-performer employee applicant has pled guilty or pled nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two (2) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor; or (b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period. Any applicant who admits of a recent prior sex related offense as specified above shall be denied employment in an adult-oriented business during the applicable time period for disqualification called out herein.

C. The information provided above in subsection b. of this Section which is personal, private, confidential, or the disclosure of which could expose the non-performer employee to the risk of harm will not be disclosed under the California Public Records Act. Such information includes, but is not limited to, the applicant's mailing address, date of birth, age, driver's license number, and social security number. The City Council in adopting the application system set forth herein has determined in accordance with Government Code § 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this chapter by ensuring that the applicant's privacy, confidentiality and/or security interests are protected. The City Clerk shall cause the above-mentioned information to be redacted from any copy of a completed application form made available to any member of the public.

D. The Police Chief or his/her designee must be available during normal working hours Monday through Friday to accept adult-oriented business non-performer employee applications. The Police Chief or his/her designee shall determine if an application is complete within five (5) business days. If the Police Chief determines that the application is incomplete, the Police Chief shall immediately inform the applicant of such fact and the reasons therefore, including any additional information necessary to render the application complete. Upon receipt of a completed adult-oriented business non-performer employee application in which the applicant denies any recent conviction of a sexual offense as specified in Section 5-9.402(b)(v) above, the Police Chief or his/her designee shall permit temporary employment of such applicant in an adult-oriented business that possesses a valid adult-oriented business permit.

5-9.403      Investigation and action on adult-oriented business non-performer permit.

A. Upon submission of a completed non-performer work application, by an individual who wishes to work in an adult-oriented business during regular business hours, the Police Chief or his/her designee shall immediately stamp the application “Received” and in conjunction with City staff, including members of the Police Department, shall promptly investigate the information contained in the application to determine whether the non-performer employee applicant may be permitted to work in an adult-oriented business pursuant to the disqualifying terms of Section 5-9.402 above.

B. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The Police Chief’s determination of any violation of Section 5-9.402 shall be made within ten (10) business days from the date the non-performer employment application is filed with the Police Chief. In the event the Police Chief is unable to complete the investigation within ten (10) business days, he/she shall promptly notify the non-performer employment applicant. In no case shall the investigation exceed thirty (30) days.

C. The Police Chief shall render a written decision to authorize or preclude a non-performer employee’s employment in a validly permitted adult-oriented business during regular business hours within the foregoing ten (10) day time period set forth in Section b., above. Said decision shall be mailed first class postage prepaid or hand delivered to the applicant, within the foregoing ten (10) day period or thirty (30) day period if extended, at the address provided by the applicant in the application. Notice of such decision shall also be mailed first class postage prepaid or hand delivered to the owner or management of any adult-oriented business a non-performer employee has applied to for employment within the time frame specified above for notification to the applicant.

D. The Police Chief shall notify the applicant as follows:

1. The Police Chief shall write or stamp “Issued” or “Denied” on the application and date and sign such notation.

2. If the application for work in an adult-oriented business during regular business hours is denied, the Police Chief shall attach to the application a statement of the reasons for the denial. Such notice shall also provide that the applicant may appeal the denial to

the City Manager. The City Manager or a designated hearing officer shall conduct a hearing as described in Section 5-9.404.

E. The Police Chief shall issue the application for non-performer work in an adult-oriented business unless the application is denied based on one of the grounds set forth in subsection f. of this section.

F. The Police Chief shall deny the application of a non-performer to work in an adult-oriented business based on any of the following grounds:

1. The non-performer work applicant has made a false, misleading, or fraudulent statement of material fact in the application for work in a validly permitted adult-oriented business during regular business hours.

2. The non-performer work applicant is under eighteen (18) years of age.

3. The non-performer seeks work in a business prohibited by laws of the state or city or in a business that does not have a valid adult-oriented business permit.

4. The non-performer work applicant has pled guilty, or pled nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two (2) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor, or (b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

G. Failure of the Police Chief or his/her designee to render a decision on the application of a non-performer for work in an adult-oriented business within the time frames established by this Section shall be deemed to constitute an approval of the non-performer work application.

H. Each non-performer work applicant must annually renew his/her work application, with the Police Chief or his/her designee by a written request for work renewal. If said application conforms to the previously approved application and there has been no change with respect to the applicant having been convicted of any crime classified by this or any other state as a sex related offense, the Police Chief or his/her designee shall renew the applicant's availability for work in an adult-oriented business during regular business hours for one (1) year. Any plea to or conviction of a sex related offense requires the renewal application to be set for hearing before the Police Chief in accordance with the provisions of this section. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. Applications for renewal shall be acted upon as provided herein for action upon an initial application for non-performer work in an adult-oriented business during regular business hours.

The Police Chief's denial of a renewal application is subject to the hearing provisions of Section 5-9.404.

5-9.404 Denial of adult-oriented business non-performer permit.

A. On determining that grounds exist to deny work to a non-performer in an adult-oriented business during regular business hours, the Police Chief or his/her designee shall furnish written notice of the proposed action to the applicant. The decision of the Police Chief shall be appealable to the City Manager by filing a written request for a hearing with the City Clerk within fifteen (15) days following the day of mailing of the Police Chief's decision and paying the fee for appeals provided under this code. All such appeals shall be filed with the City Clerk and shall be public records. The City Manager shall issue a notice which shall set forth the time and place of a hearing before the City Manager or a designated hearing officer which is within thirty (30) days from the date the appeal was filed and the ground or grounds upon which the hearing is based, the pertinent Modesto Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date.

B. The applicant shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The City Manager or designated hearing officer shall not be bound by the formal rules of evidence. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or a witness at the request of the permittee. Extensions of time or continuances sought by an applicant/appellant shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on denial of an employment application of a non-performer employee.

C. The application/request of a non-performer to work in an adult-oriented business may be revoked, based on any of the following causes arising from the acts or omissions of the applicant:

1. The applicant has made any false, misleading, or fraudulent statement of material fact in the application for work as a non-performer in an adult-oriented business during regular business hours.

2. The applicant has pled guilty, pled nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two (2) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor, or (b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

3. Failure to comply with the operating standards of Chapter 9, Article 2 or the requirements of this Chapter.

D. After holding the hearing in accordance with the provisions of this section, if the City Manager or designated hearing officer finds and determines that there are grounds to deny a non-performer work in an adult-oriented business during regular business hours, the City Manager or designated hearing officer shall deny the applicant work in an adult-oriented business establishment. After holding the hearing in accordance with the provisions of this Section on renewal of a work application, the City Manager or designated hearing officer shall decide to sustain the decision, modify the decision or order the decision stricken and issue such order as the City Manager or designated hearing officer finds is supported by the entire record. The City Manager or designated hearing officer shall render a written decision that shall be hand delivered or overnight mailed to the applicant and any adult-oriented business where the applicant is working within four (4) working days of the hearing. The City Manager or designated hearing officer's failure to render such a decision within this time frame shall constitute approved renewal of the applicant's work during regular business hours in a validly permitted adult-oriented business.

E. If the continuing work of a non-performer is denied pursuant to this section, the applicant may reapply for work with an adult-oriented business twelve (12) months after the date of such denial.

F. The decision of the City Manager or designated hearing officer shall be final.

5-9.405 Violations. Any violation of any of these provisions regulating adult-oriented business non-performer work applications is hereby declared to constitute a public nuisance and may be abated or enjoined.

5-9.406 Regulations non-exclusive. The provisions of this Chapter regulating adult-oriented business non-performer employment applications are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other regulations pertaining to the adult-oriented business licensing provisions as adopted by the City Council of Modesto.

## **SECTION 6. ESCORT PERMIT**

The prior provisions found in Title 5, Chapter 9, Article 2 regulating escorts and figure models are hereby revised and renumbered into Article 5 as set forth below.

### **TITLE 5** **CHAPTER 9**

#### **Article 5: Escort Permit**

##### **Sections:**

- |         |  |
|---------|--|
| 5-9.501 | Additional permits: escort.            |
| 5-9.502 | Application for escort permit.         |
| 5-9.503 | Issuance and denial of permit; appeal. |

- 5-9.504 Revocation or suspension of permit.
- 5-9.505 Term of permit.

5-9.501 Additional permits: escort.

(a) No person shall act as an escort unless an escort permit is first obtained. For purposes of this Article “escort” shall mean a person who for pecuniary compensation, monetary or other consideration, hire or reward, (1) escorts or accompanies others to or about social affairs, entertainment, or places of amusement, or (2) keeps company with others about any place or public resort or within any private quarters.

(b) The issuance of a business license pursuant to the Modesto Municipal Code shall not authorize acting as an escort until the necessary regulatory permit has been lawfully granted.

5-9.502 Application for escort permit.

(a) An applicant for an escort permit shall make an application under penalty of perjury to the Police Chief or his authorized representative upon a form provided by the City of Modesto. A nonrefundable fee, as established by resolution adopted by the City Council from time to time, shall be paid to the City of Modesto to reimburse the City for the cost of the investigation. A copy of the receipt issued by the City of Modesto Finance Department shall accompany the application. The permit fee required under this section is in addition to any other license or permit fee required by the Modesto Municipal Code.

(b) The application for permit does not authorize the applicant to act as an escort until such permit has been granted.

(c) Every application submitted to the Police Chief shall include the following information:

(i) The applicant’s full name, any other names used, date of birth, California driver’s license number or California identification number, social security number, present residence address, telephone number, gender, height, weight, color of hair, and color of eyes.

(ii) Previous two (2) residence addresses of the applicant and the inclusive dates at each address.

(iii) The applicant’s business, occupation, and employment history for five (5) years preceding the date of application and inclusive dates of same.

(iv) The permit history of the applicant; whether such person ever had any escort or adult performer permit or license issued to him or her by any other public entity in this state; the date of issuance of any such permit or license, whether any such permit or license has ever been revoked or suspended; and if any such license or permit has been revoked or suspended, the reason therefor.

(v) All convictions for any crimes involving conduct which requires registration under any state law similar to and including California Penal Code § 290, or of conduct which is a violation of the provisions of any state laws similar to and including, California Penal Code §§ 243.4, 261, 261.5, 262, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 309, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 313.1, 314, 315, 316, 318, 647(a), 647(b), 647(d), or 647.6.

(vi) Any offense requiring registration under provisions of Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered.

(vii) Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.

(viii) Written proof that the applicant is at least eighteen (18) years of age.

(ix) A complete set of fingerprints.

(x) A current photograph.

(xi) Authorization for the City of Modesto, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application.

(d) The information provided above in subsection C of this Section, which is personal, private, confidential, or the disclosure of which could expose the applicant to the risk of harm, will not be disclosed under the California Public Records Act or the open government ordinance. Such information includes, but is not limited to, the applicant's residence address, telephone number, date of birth, age, driver's license number, and social security number. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code § 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause the same to be redacted from any copy of a completed application form made available to any member of the public, the above-mentioned information.

5-9.503      Issuance and denial of permit; appeal.

(a) The Police Chief or his authorized representative shall have thirty (30) days from the date the application is accepted as complete in which to investigate the application and

background of the applicant. Upon completion of the investigation, the Police Chief or his designated representative shall approve or deny the permit. The Police Chief may refuse to issue the escort permit for any of the following reasons, which reasons will be set forth fully in writing and delivered to the applicant:

(i) The applicant has been convicted of any of the offenses enumerated in paragraphs (c)(5) and (6) of Section 5-9.602, or convicted of an offense outside the State of California that would have constituted any of the described offenses if committed within the State of California. A permit may be issued to any person convicted of any of the crimes described if such conviction occurred more than five (5) years prior to the date of the application.

(ii) The applicant has been licensed or registered in any state as a prostitute.

(iii) Any false statements made in the initial application for the escort or “figure model” permit.

(iv) That the applicant has had an escort permit denied or revoked for cause by this City within the last five (5) years.

(v) That the applicant is not at least eighteen (18) years of age.

(vi) That the applicant has not paid the required fee to the City of Modesto Finance Department.

(b) Any refusal to issue a permit pursuant to this section or the suspension, or revocation of a permit is appealable to the City Council in accordance with the provisions of Chapter 4 of Title 1 of the Modesto Municipal Code. After the denial of any such appeal, the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction pursuant to California Code of Civil Procedure Section 1094.5. The court shall promptly review the action taken by the City Council.

5-9.504      Revocation or suspension of permit.

After following the procedure in Section 5-9.304, the Police Chief may revoke or suspend the escort permit for conviction of any crimes specified in Section 5-9-.502 (c)(v) and (vi). The decision of the Police Chief shall be in writing and shall be emailed postage prepaid to the escort.

5-9.505      Term of permit.

(a) Permits issued under the provisions of the section shall be valid for a period of one (1) year from the date of issuance and shall be renewable annually.

(b) An application for renewal for an escort permit shall be accompanied by a nonrefundable filing fee, as established by resolution adopted by the City Council from time to time.

**SECTION 7. ZONING, DEFINITIONS ADULT-ORIENTED BUSINESSES**

Title 10 (Zoning Regulations), Chapter 3 (Land Use Regulations), Article 3 of the Modesto Municipal Code currently entitled “Adult Entertainment Businesses” is renamed as “Adult-Oriented Businesses”. The prior definitions found at Section 10-3.302 of Title 10, Chapter 3, Article 3 are repealed and replaced as set forth below.

**TITLE 10**  
**CHAPTER 3**

**Article 3: Adult-Oriented Businesses**

10-3.302 – Definitions. In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, for the purpose of this Article, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the Municipal Code, these definitions shall prevail for purposes of this Article.

A. “Adult arcade” shall mean a business establishment to which the public is permitted or invited and where coin, card or slug operated or electronically, electrically or mechanically controlled devices, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing “specified sexual activities” or “specified anatomical areas.” Such devices shall be referred to as “adult arcade devices.”

B. “Adult booth/individual viewing area” shall mean a partitioned or partially enclosed portion of an adult-oriented business used for any of the following purposes:

1. Where a live or taped performance is presented or viewed, where the performances and/or images displayed or presented are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas;” or

2. Where “adult arcade devices” are located.

C. “Adult-oriented business” is synonymous with “adult entertainment business” and shall mean:

1. A business establishment or concern that as a regular and substantial course of conduct operates as an adult retail store, adult motion picture theater, adult arcade, adult cabaret, adult motel or hotel, adult modeling studio; or

2. A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes “adult-oriented material” or “sexually oriented merchandise,” or which offers to its patrons materials, products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to

“specified sexual activities” or “specified anatomical areas” but not including those uses or activities which are preempted by state law.

D. “Adult cabaret” shall mean a business establishment (whether or not serving alcoholic beverages) that features “Adult live entertainment.”

E. “Adult cabaret dancer” shall mean any person who is an employee or independent contractor of an “Adult cabaret” or “Adult business” and who, with or without any compensation or other form of consideration, performs as a sexually oriented dancer, exotic dancer, stripper, go-go dancer or similar dancer whose performance on a regular and substantial basis focuses on or emphasizes the adult cabaret dancer’s breasts, genitals, and/or buttocks, but does not involve exposure of “specified anatomical areas” or depicting or engaging in “specified sexual activities.” “Adult cabaret dancer” does not include a patron. “Adult hotel/motel” shall mean a “hotel” or “motel” (as defined in the Municipal Code) that is used for presenting on a regular and substantial basis images through closed circuit television, cable television, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices that are distinguished or characterized by the emphasis on matter depicting or describing or relating to “specified sexual activities” or “specified anatomical areas.”

F. “Adult live entertainment” shall mean any physical human body activity, whether performed or engaged in, alone or with other persons including, but not limited to, singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming, in which: (1) the performer (including, but not limited to, topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar performers) exposes to public view, without opaque covering, “specified anatomical areas;” and/or (2) the performance or physical human body activity depicts, describes, or relates to “specified sexual activities” whether or not the specified anatomical areas are covered.

G. “Adult modeling studio” shall mean a business establishment which provides for any form of consideration, the services of a live human model, who, for the purposes of sexual stimulation of patrons, displays “specified anatomical areas” to be observed, sketched, photographed, filmed, painted, sculpted, or otherwise depicted by persons paying for such services. “Adult modeling studio” does not include schools maintained pursuant to standards set by the Board of Education of the State of California.

H. “Adult motion picture theater” shall mean a business establishment, with or without a stage or proscenium, where, on a regular and substantial basis and for any form of consideration, material is presented through films, motion pictures, video cassettes, slides, laser disks, digital video disks, holograms, virtual reality devices, or similar electronically-generated reproductions that is characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

I. “Adult-oriented material” shall mean accessories, paraphernalia, books, magazines, laser disks, compact discs, digital video disks, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, holograms or electronically generated images or devices including computer software, or any combination thereof that is distinguished or characterized by its emphasis on matter depicting, describing or relating to

“specified sexual activities” or “specified anatomical areas.” “Adult oriented material” shall include “sexually oriented merchandise.”

J. “Adult retail store” shall mean a business establishment having as a regular and substantial portion of its stock in trade, “Adult-Oriented material.”

K. “Church” as used in this Article shall mean a structure which is used primarily for religious worship and religious related activities and shall be synonymous with the definition of “religious facility”.

L. “Establishment of an adult-oriented business” shall mean any of the following:

1. The opening or commencement of any “adult-oriented business” (as defined above) as a new business;
2. The conversion of an existing business, whether or not an “adult-oriented business,” to any “adult-oriented business;”
3. The addition of any “adult-oriented business” to any other existing “adult-oriented business;”
4. The relocation of any “adult-oriented business;” or
5. Physical changes that expand the square footage of an existing “adult-oriented business” by more than ten percent (10%).

M. “Non-performer” shall mean a person who is an employee or independent contractor of an adult-oriented business who works in that adult-oriented business during regular business hours. This shall not include after-hours workers providing janitorial, trash or similar after hours services.

N. “Owner/permit holder” shall mean any of the following: (1) the sole proprietor of an adult-oriented business; (2) any general partner of a partnership that owns and operates an adult-oriented business; (3) the owner of a controlling interest in a corporation or L.L.C. that owns and operates an adult-oriented business; or (4) the person designated by the officers of a corporation or the members of an L.L.C. to be the permit holder for an adult-oriented business owned and operated by the corporation.

O. “Performer” shall mean a person who is an employee or independent contractor of an adult-oriented business or any other person who, with or without any compensation or other form of consideration, provides “adult-oriented live entertainment” for patrons of an “adult-oriented business.”

P. “Religious facility” shall mean a structure or facility that is used primarily for religious worship and related religious activities.

Q. “School” shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and/or which is maintained pursuant to standards set by the Board of Education of the State of California. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education under the jurisdiction of the California Department of Education. For the purposes of this Chapter, “school” does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

R. “Sexually oriented merchandise” shall mean sexually oriented implements, paraphernalia, or novelty items such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

S. “Specified anatomical areas” shall mean and include any of the following:

1. Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, even if completely and opaquely covered human:

- (a) genitals, pubic region;
- (b) buttocks, anus; or
- (c) female breasts below a point immediately above the top of the areola; or

2. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

T. “Specified sexual activities” shall mean and include any of the following, irrespective of whether performed directly or indirectly through clothing or other covering:

- 1. Human genitals in a state of sexual stimulation or arousal; and/or
- 2. Acts of human masturbation, sexual stimulation or arousal; and/or
- 3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or
- 4. Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or
- 5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or

6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

**SECTION 8. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.**

The City Council has reviewed the proposed activity for compliance with the California Environmental Quality Act (“CEQA”) and has determined that this proposed activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the action proposed is not subject to CEQA.

**SECTION 9. SEVERABILITY.**

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof is held for any reason to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, the remaining sections, subsections, paragraphs, sentences, clauses, and phrases shall not be affected thereby.

The City Council hereby declares that it would have adopted these sections and the Ordinance to which they are a part regardless of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases may be determined to be unconstitutional, invalid, or ineffective.

**SECTION 10. EFFECTIVE DATE.**

This Ordinance shall be effective thirty (30) days after its adoption, and the City Clerk shall certify the adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

**SECTION 11. 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 23<sup>rd</sup> day of April 2024, by Council Member Ricci, who moved its introduction and passage to print, which motion being duly seconded by Council Member Williams, was upon roll call carried and ordered printed and published by the following vote:

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

NAYS: Councilmembers: None

Absent: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
  
BY: DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of May 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Mayor Zwahlen, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Escutia-Braaton,

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: June 6, 2024

**ORDINANCE NO. 3779-C.S.**

**ORDINANCE AMENDING SECTION 3-1.303 OF THE MODESTO MUNICIPAL CODE, TITLED “ADMINISTRATIVE PENALTIES AND REMEDIES,” TO INCREASE THE ADMINISTRATIVE FINES FOR VIOLATIONS OF THE FIRE CODE, INCLUDING ILLEGAL FIREWORKS VIOLATIONS, ADDING SECTION 3-1.304 RELATED TO THIRD PARTY ADMINISTRATIVE CITATIONS, ADDING SECTION 3-1.305 RELATED TO RESPONSE COSTS AND MAKING OTHER CHANGES RELATED TO ENFORCEMENT AND ADMINISTRATION OF THE FIRE CODE**

WHEREAS, illegal fireworks pose a danger to life and property and are offensive to public peace; and

WHEREAS, each year, serious injuries and property damage occur from fires sparked by illegal fireworks; and

WHEREAS, the use of illegal fireworks is also detrimental to sensitive populations such as veterans experiencing Post Traumatic Stress Disorder, children, and animals and their owners; and

WHEREAS, in past years, the City has issued administrative fines to penalize and deter the use and possession of illegal fireworks; and

WHEREAS, the City of Modesto continues to experience a high number of individuals using illegal fireworks; and

WHEREAS, based on the continued use of illegal fireworks throughout the years in the City of Modesto, staff recommends amending the Municipal code to increase current penalties to help curb this illegal activity; and

WHEREAS, staff is also recommending making other amendments related to enforcement and administration of the Fire Code.

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

**SECTION 1. AMENDMENTS:**

1. The City of Modesto Municipal Code Title 3, Chapter 1 is hereby amended by

amending the following sections to read as follows:

Section 3-1.215(c) of the City's Municipal Code is hereby amended to read as follows:

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

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

Section 3-1.218(2)(A) of the City's Municipal Code is hereby amended to read as follows:

**3-1.218 Sales of Fireworks.**

- (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, private, or charter school located within the city limits of Modesto. Each new organization shall provide the City with a copy of their "Letters of Incorporation" as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State's Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of California and IRS if nonprofit status comes into question.

Section 3-1.218(3) of the City's Municipal Code is hereby amended to read as follows:

**3-1.218 Sales of Fireworks.**

- (3) Sales permits for retail sales of California State Fire Marshall approved "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.

Section 3-1.219(1)(A) and (1)(B) of the City's Municipal Code is hereby amended to read as follows:

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

Section 5608 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

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

- (A) Wholesale Storage. Wholesalers may store California State Fire Marshall approved "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H3 occupancy classification requirements as defined by the 2022 California Building Code.
- (B) Retailers Storage. Retailers may store California State Fire Marshall approved "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:
  - (1) Within the permitted fireworks stand with a responsible adult on the premises at all times.
  - (2) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
  - (3) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.
  - (4) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
  - (5) In an approved and permitted fireworks warehouse.

Section 3-1.219(3)(1) of the City's Municipal Code is hereby amended to read as follows:

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

3. Temporary Fireworks Stands.

- (1) All retail sales of California State Fire Marshall approved "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.

Section 3-1.303 of the City’s Municipal Code is retitled and the introduction and Sections 3-1.303(a) and (b) of the City’s Municipal Code are hereby amended to read as follows:

**3-1.303 Administrative Penalties, Remedies, and Social Host Liability.**

Illegal fireworks pose a danger to life and property and are offensive to the public peace and morals of the community. The City Council hereby declares the possession, manufacture, sale, use or discharge of dangerous and illegal fireworks to be a public nuisance. Such nuisance may be abated in the manner set forth in the Modesto Municipal Code and provided by law for the abatement of public nuisances.

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

- (a) For violations of Section 3-1.215 manufacture and sale, of dangerous fireworks, the administrative penalty shall be ten thousand dollars (\$10,000) for each specific act found to be in violation of that section. For violations of Section 3-1.215, possession, use, or discharge of dangerous fireworks, the administrative penalty shall be two thousand dollars (\$2,000) for the first violation, three thousand dollars (\$3,000) for a second violation within any thirty-six (36) month period, and four thousand dollars (\$4,000) for any subsequent violations within any thirty-six (36) month period.
- (b) For all violations of this chapter, other than Section 3-1.215 possession, manufacture, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be five hundred dollars (\$500) for the first violation, one thousand (\$1,000) for a second violation within any twelve (12) month period, and one thousand five hundred (\$1,500) for any subsequent violations within any twelve (12) month period.

**SECTION 2. ADDITIONS:**

2. The City of Modesto Municipal Code Title 3, Chapter 1, Article 3 is hereby amended by adding Sections 3-1.304, “Third-Party Administrative Citations,” and 3-1.305, “Response Cost” to read as follows:

**3-1.304 - Third-Party Administrative Citations.**

- (a) Whenever two or more private, adult persons observe a violation of section 3-1.215 of the Modesto Municipal Code pertaining to possession, manufacture, sale, use or discharge of dangerous fireworks, they may request that an administrative citation be issued to a responsible party by an enforcement officer. The private persons will be required to sign an affidavit under penalty of perjury verifying that they personally observed a violation of

section 3-1.215, and may be required to testify at an administrative hearing as provided in the Modesto Municipal Code if the administrative citation is appealed. Failure of the private persons to testify at an administrative hearing if required by the department prosecuting the violation on behalf of the private persons may result in a dismissal of the administrative citation. The enforcement officer shall have the discretionary authority to issue an administrative citation to a responsible party where, on the basis of an affidavit and any other available evidence, a violation of section 3-1.215 of the Modesto Municipal Code has occurred.

- (b) Each third-party administrative citation shall contain:
1. The date of the violation;
  2. The address or a definite description of the location where the violation occurred;
  3. The section of this Code violated and a description of the violation;
  4. The amount of the fine for the Code violation;
  5. A description of the fine payment process, including a description of the time within which and the place to which the fine must be paid;
  6. An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;
  7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
  8. The name, signature and department issuing the citation on behalf of the private persons.
- (c) Each third-party administrative citation shall be accompanied by an affidavit from the private persons setting forth a description of the violation as observed by the private persons signed under penalty of perjury.

**3-1.305 - Response Cost.**

- (a) In addition to any fines or penalties which may otherwise be levied by the City pursuant to this article, the City shall be entitled to recover from any person found to be in violation of any provision of this article, the City's full response costs.
- (b) For purposes of this article, the term "response costs" shall mean those reasonable and necessary costs directly incurred by the City for a response to a complaint of discharging illegal fireworks prohibited under this article and shall include the cost of providing police, code enforcement, fire, and/or other emergency response services at the scene to include, but not limited to:

1. Salaries and benefits of code and/or law enforcement and/or fire and/or emergency personnel for the full amount of time spent responding to, remaining at, or otherwise dealing with such illegal fireworks, and the administrative costs attributable to such responses;
  2. The cost of any medical treatment to or for any code and/or law enforcement and/or fire and/or emergency personnel injured while responding to, remaining at, or leaving the scene; and
  3. The cost of repaying for any City equipment or property damaged and the cost of the use of any such equipment used in responding to, remaining at or leaving the scene.
- (c) The expense of a response cost shall be a charge against the responsible party liable for expenses under this article. The charge constitutes a debt of that person and is collectible by the City in the same manner as in the case of an obligation under a contract, expressed or implied, except that liability for the expenses provided for in this article shall not be insurable and no insurance policy shall provide or pay for the expenses.

### **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 any other person or circumstance. The City Council or the City of Modesto hereby declares that it would have adopted each section, sentence, clause, or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases of this Ordinance be declared invalid, unenforceable or unconstitutional.

### **SECTION 4. 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 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 7<sup>th</sup> day of May 2024, by Councilmember Alvarez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Escutia-Braaton

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

By:   
DIANE NAYERES PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of May, 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: June 13, 2024

**ORDINANCE NO. 3780-C.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MODESTO DECLARING FORMATION OF THE MODESTO TOURISM  
MARKETING DISTRICT PURSUANT TO THE PROPERTY AND  
BUSINESS IMPROVEMENT DISTRICT LAW OF 1994 FOR A  
RENEWED TEN-YEAR TERM**

WHEREAS, the City of Modesto (City) created the MTMD on May 7, 2019 by Resolution No. 2019-213; and

WHEREAS, the MTMD was created for a four (4) year and eleven (11) month term which ends on June 30, 2024; and

WHEREAS, the Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et. seq.) authorizes the City to renew business improvement districts upon petition by a weighted majority of the business owners located within the boundaries of the district; and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner, within the boundaries of the MTMD have petitioned the City Council to renew the MTMD; and

WHEREAS, the renewed MTMD will include all lodging businesses with twenty (20) rooms or more, existing and in the future, available for public occupancy within the boundaries of the City of Modesto; and

WHEREAS, included with the petitions was a Management District Plan (Plan) summary that describes the proposed assessment to be levied on certain lodging businesses, existing and in the future, available for public occupancy within the MTMD to pay for marketing and sales promotions, and other improvements and activities set forth in the Plan; and

WHEREAS, the Plan establishes that the assessment is imposed for a specific benefit received by the businesses paying the assessment is no more than necessary to cover the costs to the City in providing the specific benefit, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor; and

WHEREAS, the assessed lodging businesses within the MTMD will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on March 12, 2024 at 5:30 PM at the City Council Chambers located at 1010 10<sup>th</sup> Street, Lower Level, Modesto, CA 95354, the City Council adopted a Resolution of Intention, Resolution No. 2024-087; and

WHEREAS, the public meeting and public hearing to consider the renewal of the MTMD have been properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on May 7, 2024 at 5:30 PM at the City Council Chambers located at 1010 10<sup>th</sup> Street, Lower Level, Modesto, CA 95354, the City Council held a public meeting regarding the renewal of the MTMD, introduced and conducted a first reading of the Ordinance regarding the renewal of the MTMD, and the City Council heard comments from the public and interested parties regarding the renewal of the MTMD and the levy of the proposed assessment; and

WHEREAS, on May 14, 2024 at 5:30 PM at the City Council Chambers located at 1010 10th Street, Lower Level, Modesto, CA 95354, the City Council held a public hearing regarding the renewal of the MTMD, and the City Council heard and received all objections and protests, if any, to the renewal of the MTMD and the levy of the proposed assessment; and

WHEREAS, the City Clerk has determined that there was no majority protest. A majority protest is defined as written protests received from owners of businesses in the renewed MTMD which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, Streets and Highways Code sections 36625 and 36660 specify that the MTMD may be renewed through adoption of a Resolution of Formation; and

WHEREAS, any action that is authorized or required to be taken by a resolution of the City Council may also be taken by an ordinance of the City Council; and

WHEREAS, the City Council desires to adopt this Ordinance to renew the MTMD for a ten year term.

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

SECTION 1. ADOPTION OF UNCODIFIED ORDINANCE.

1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.

2. The MTMD is hereby renewed for a ten (10) year term, beginning July 1, 2024, or as soon as possible thereafter, and ending ten (10) years from its start date.

3. The Plan dated January 10, 2024, and included as an attachment to the City Council staff report dated May 14, 2024, is hereby adopted and approved.
4. The activities to be provided to benefit businesses in the MTMD will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the MTMD; to provide activities or improvements outside the MTMD; or for any purpose other than the purposes specified in this Ordinance, the Resolution of Intention, and the Plan. Notwithstanding the foregoing, improvements and activities that must be provided outside the MTMD boundaries to create a specific benefit to the assessed businesses may be provided, but shall be limited to marketing or signage pointing to the MTMD.
5. The City Council finds as follows:
  - a) The activities funded by the assessment will provide a specific benefit to assessed businesses within the MTMD that is not provided to those not paying the assessment.
  - b) The assessment is a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
  - c) The assessment is a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
  - d) Assessments imposed pursuant to the MTMD are levied solely upon the assessed business, and the business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as the “MTMD Assessment” or “Tourism Assessment”.
6. The assessments levied for the MTMD shall be applied towards marketing and sales promotions to market MTMD lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan.
7. Assessments levied on lodging businesses pursuant to this ordinance shall be levied on the basis of benefit. Because the services provided are intended to increase sleeping room rentals, an assessment based on gross short-term sleeping room rental revenue is the best measure of benefit.
8. The assessments for the entire MTMD will total approximately \$430,540 in year one (1).

9. Bonds shall not be issued to fund the MTMD.
10. The MTMD shall include all lodging business with twenty (20) rooms or more, existing and in the future, located within the boundaries of the City of Modesto. A boundary map as shown in **Exhibit A** is **attached** hereto and incorporated herein by reference.
11. The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the MTMD assessment is levied as long as they are used consistent with the requirements set forth herein.
12. The assessments to fund the activities and improvements for the MTMD will be collected by the City on a quarterly basis and is subject to change as determined by the City, and in accordance with Streets and Highways Code §36631.
13. The City Council, through adoption of this Ordinance and the Plan, has the right pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the MTMD as defined in Streets and Highways Code §36612. The City Council has determined that Visit Modesto, Inc. shall be the MTMD Owners' Association. The City Council may, from time to time, identify an alternative qualified entity to serve as Owner's Association of the MTMD.
14. Visit Modesto, Inc., pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the MTMD.
15. The MTMD renewed pursuant to this Ordinance will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).
16. The City Clerk, or his or her designee, is directed to take all necessary actions to complete the renewal of the MTMD and to levy the assessments.
17. Adoption of this Ordinance shall constitute the levy of an assessment in each fiscal year referred to in the Plan.

SECTION 2. ENVIRONMENTAL REVIEW. The proposed Ordinance is exempt from CEQA under the general rule in CEQA Guidelines section 15061(b)(3), that CEQA only applies to projects that have the potential for causing a significant effect on the environment. The Ordinance adopts an assessment that will be used for tourism marketing

activities. It does not authorize or finance any development, improvements or any other project with the potential to have a significant effect on the environment.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Modesto declares that it would have passed and adopted this Ordinance and each and all provisions irrespective of the fact that any one or more of said provisions may be declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

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 7<sup>th</sup> day of May 2024, by Councilmember Ricci, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Wright, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Escutia-Braaton


APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

By:   
DIANE NAYERES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of May, 2024, Councilmember Escutia-Braaton moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_

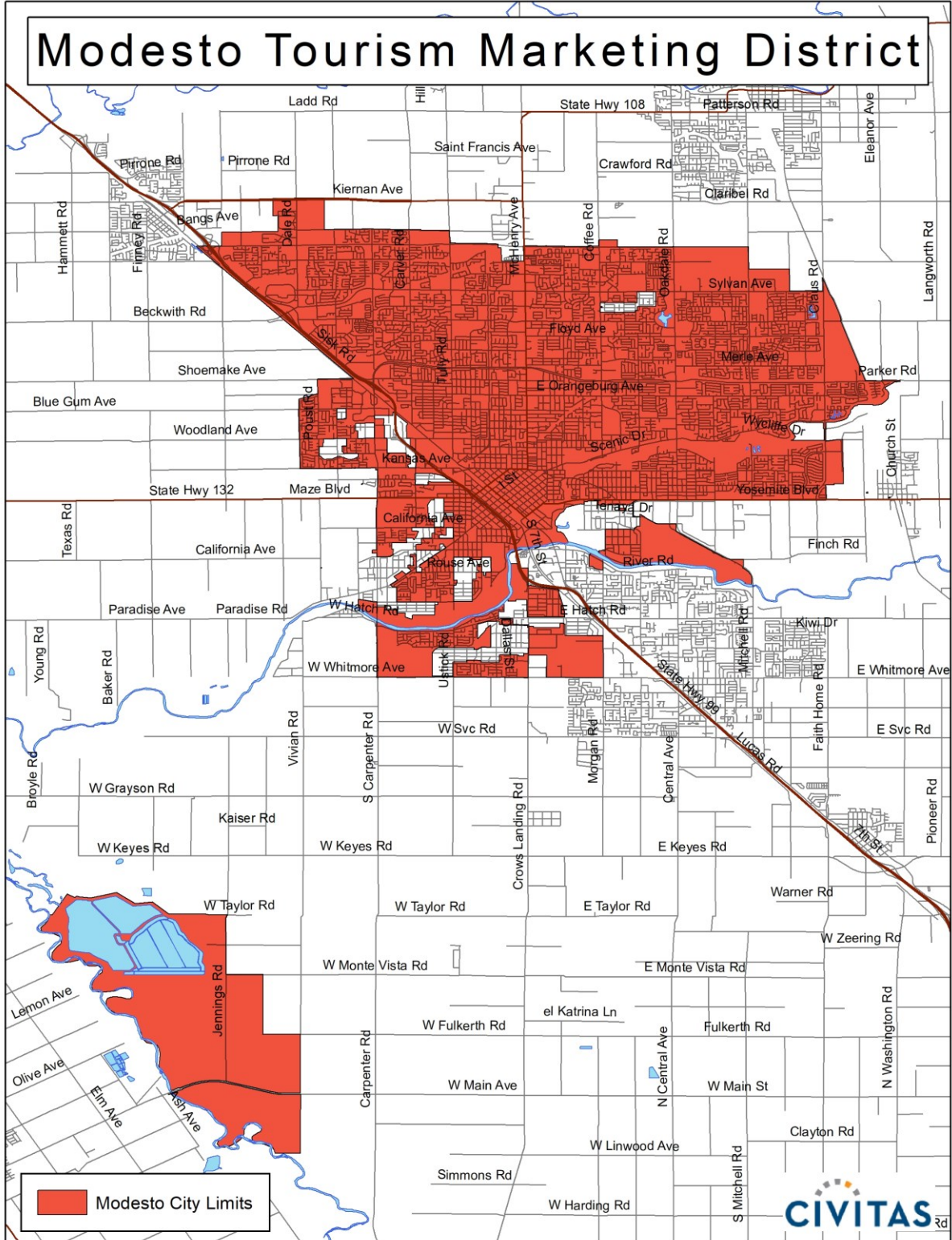
  
SUE ZWAHLEN, MAYOR

ATTEST: \_\_\_\_\_

  
DIANE NAYARES-PEREZ, City Clerk

Effective Date: June 13, 2024

Exhibit A



**ORDINANCE NO. 3781-C.S.**

**ORDINANCE AMENDING SECTIONS 2-1.24 “COMPENSATION OF MAYOR,” AND 2-1.26 “COMPENSATION OF CITY COUNCILMEMBERS,” OF CHAPTER 1, “CITY COUNCIL ORGANIZATION AND PROCEDURE,” OF TITLE 2, “ADMINISTRATION,” OF THE MODESTO MUNICIPAL CODE, TO INCREASE THE SALARIES OF THE MAYOR AND CITY COUNCILMEMBERS PURSUANT TO CHARTER SECTION 703 AND THE RECOMMENDATIONS OF THE CITIZEN’S SALARY SETTING COMMISSION OF 2024**

WHEREAS, on February 5, 2008, voters approved Measures M, titled “Accountability in City Hall,” which amended Modesto City Charter Section 703; and

WHEREAS, Charter Section 703 sets out the processes for establishing the salaries for the Mayor and Councilmembers. Section 703(b) requires the formation of a Citizens’ Salary Setting Commission (“Commission”) whose function is to recommend the compensation for the Mayor and Members of the Council; and

WHEREAS, according to the Charter, the Commission shall meet between March 1st and April 30th of every even-numbered year and make any salary recommendation to the Council by April 30th; and

WHEREAS, compensation for the Mayor and Councilmembers was last adjusted in May of 2008; and

WHEREAS, the Commissions met again in 2010, 2012, and 2014, recommending no change in salary. The Commission also began the process in 2016; however was unable to meet during the timeframe required by the Charter, therefore no recommendation was provided; and

WHEREAS, pursuant to Charter Section 703(b), on November 7, 2023, the Council appointed five members to serve on the Commission; and

WHEREAS, the Commission held eight (8) public meetings during the months of March and April, which included two (2) noticed public hearings on April 5, 2024 and April 11, 2024 to discuss possible salary recommendations for the Mayor and Councilmembers. All Commission meetings were open to the public; and

WHEREAS, the Commission reviewed information related to the duties of the Mayor and Councilmembers, compensation data from other cities, including cities in the surrounding area, and received comments from the public; and

WHEREAS, Charter Section 703(c) establishes salary limitations for Mayor and Councilmember salaries. The Charter Section limits the salary of the Mayor as follows: “The salary of the Mayor shall not be more than 50 percent (50%) of the amount of the salary of a Judge of the Superior Court of Stanislaus County.” The salary of a Stanislaus County Superior Court Judge is currently \$238,479; 50% of that amount is \$119,239.50; and

WHEREAS, Charter Section 703(c) establishes the following Councilmember salary limitation: “The salary of a Councilmember shall not be more than 50 percent (50%) of the median family income for the Modesto Metropolitan Statistical Area as reported by the United States Census Bureau. The salary of each Councilmember shall be the same.” The median family income for the Modesto Metropolitan Statistical Area is \$73,375; 50% of that amount is \$36,687.50; and

WHEREAS, at the April 23, 2024 Council meeting, the Commission presented their final recommendation, including reasons for the recommendation, to Council for acceptance. Pursuant to Charter Section 703(d), “[w]hen such final recommendation has

been submitted to the Council, it shall not thereafter be amended by the Commission;”  
and

WHEREAS, the recommendation was to increase the compensation for the Mayor from forty-three thousand two hundred dollars (\$43,200) to fifty-four thousand dollars (\$54,000) annually and increase the compensation for Councilmembers from twenty-four thousand dollars (\$24,000) to thirty thousand dollars (\$30,000) annually; and

WHEREAS, pursuant to Charter Section 703(d), “[u]pon receiving the final recommendation from the Commission, the Council may adopt the compensation as recommended by the Commission or may adopt compensation in some lower amount, but in no case may adopt compensation in some higher amount;” and

WHEREAS, on April 23, 2024, Council accepted the Commission’s recommendation and directed staff to set a public hearing on May 14, 2024, to consider the recommended compensation increases by the Commission; and

WHEREAS, pursuant to Charter Section 703(d), a 20-day public hearing notice was published in the Modesto Bee on April 24, 2024; and

WHEREAS, the Council may only adopt changes to compensation by ordinance. Pursuant to Charter Section 703(d), “[s]alaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section.”

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

**SECTION 1. “COMPENSATION OF MAYOR” - AMENDMENT.**

The City of Modesto Municipal Code Section 2-1.24, titled “Compensation of Mayor,” of Chapter 1, “City Council Organization and Procedure,” of Title 2, “Administration” is hereby amended to read as follows:

**“2-1.24 Compensation of Mayor.**

The annual salary of the Mayor shall be fifty-four thousand dollars (\$54,000), pursuant to the recommendation of the Citizens Salary Setting Commission. In accordance with Section 703 of the Charter, the Mayor's compensation and appropriate benefits shall be reviewed by the Citizens Salary Setting Commission biannually, and a recommendation made to the City Council as to the appropriate compensation. The annual salary shall be payable from and after the operative date of the ordinance at the same time and in the same manner as the salaries are paid to other officers and employees of the City.”

**SECTION 2. “COMPENSATION OF COUNCILMEMBERS” – AMENDMENT.**

The City of Modesto Municipal Code Section 2-1.26, titled “Compensation of City Councilmember,” of Chapter 1, “City Council Organization and Procedure,” of Title 2, “Administration” is hereby amended to read as follows:

**“2-1.26 Compensation of City Councilmembers.**

The annual salary of each member of the City Council, except the Mayor, shall be thirty thousand dollars (\$30,000). In accordance with Section 703 of the Charter, the Councilmember's compensation and appropriate benefits shall be reviewed by the Citizens Salary Setting Commission biannually, and a recommendation made to the City Council as to the appropriate compensation. The annual salary shall be payable from and

after the operative date of the ordinance at the same time and in the same manner as the salaries are paid to other officers and employees of the City.”

**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 any other person or circumstance. The City Council or the City of Modesto hereby declares that it would have adopted each section, sentence, clause, or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases of this Ordinance be declared invalid, unenforceable or unconstitutional.

**SECTION 4. 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 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 14<sup>th</sup> day of May 2024, by Councilmember Bavaro, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

By:   
DIANE NAYERES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of June 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: July 4, 2024

**ORDINANCE NO. 3782-C.S.**

**ORDINANCE APPROVING THE MODESTO POLICE DEPARTMENT’S MILITARY EQUIPMENT USE POLICY (POLICY 710) IN ACCORDANCE WITH CA ASSEMBLY BILL 481, AND APPROVING THE PURCHASE OF ADDITIONAL EQUIPMENT THAT QUALIFIES AS “MILITARY EQUIPMENT” IN FISCAL YEAR 2024-2025 AND RESCINDING ORDINANCE NO. 3763-C.S.**

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

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

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

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

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

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

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

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

WHEREAS, the Modesto City Council approved Ordinance No. 3763-C.S. on May 2, 2023 approving the MPD Military Equipment Use Policy (MPD Policy 710); and

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

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

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

WHEREAS, AB 481 requires an annual renewal of the MPD Military Equipment Use Policy (MPD Policy 710) by ordinance, therefore staff requests Ordinance No. 3763-C.S. be rescinded with the approval of this ordinance.

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

**SECTION 1. FINDINGS**

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

- 1. The City Council hereby approves the Modesto Police Department Military Equipment Use Policy 710, attached hereto.

2. The City Council finds that the purchase of the requested military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; the use of the equipment under the military equipment use policy will safeguard the public’s welfare, safety, civil rights, and civil liberties; and the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
3. Ordinance No. 3763-C.S. is hereby rescinded.

**SECTION 2. SEVERABILITY.**

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

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

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

**SECTION 4. EFFECTIVE DATE.**

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

**SECTION 5. PUBLICATION.**

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

**THIS ORDINANCE WAS  
RESCINDED BY CITY COUNCIL  
MODESTO CITY COUNCIL  
ORDINANCE NO. 3794-C.S.  
ON JUNE 12, 2025**

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of May 2024, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

By:   
DIANE NAYERES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

THIS ORDINANCE WAS RESCINDED BY COUNCIL OF MODESTO CITY COUNCIL ON JUNE 12, 2025. ORDINANCE NO. 379-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 4<sup>th</sup> day of June 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Sue Zwahlen*  
SUE ZWAHLEN, MAYOR

ATTEST: *Diane Nayares-Perez*  
DIANE NAYARES-PEREZ, City Clerk

Effective Date: July 4, 2024

**ORDINANCE NO. 3783-C.S.**

**AN ORDINANCE AMENDING PLANNED DEVELOPMENT ZONE P-D(470) TO CHANGE THE ALLOWABLE USES TO ALLOW CERTAIN HIGHWAY COMMERCIAL (C-3) USES FOR PROPERTY LOCATED AT 1101 N CARPENTER ROAD (APN 081-052-045)**

WHEREAS, on January 12, 2024, the City of Modesto received an application from Juan Bautista Mendoza to amend Planned Development P-D(470) to allow Highway Commercial (C-3) uses; and

WHEREAS, by Ordinance No. 2705 C.S., approved on April 3, 1990, the City Council established P-D(470); and

WHEREAS, P-D(470) currently allows the Neighborhood Commercial (C-1) Zone uses, and the proposed ordinance would substitute that for Highway Commercial (C-3) uses; and

WHEREAS, the proposed change is consistent with the zoning of the parcels to the north of 1101 N Carpenter Road, which have existing Highway Commercial (C-3) zoning designations; and

WHEREAS, after a public hearing held on April 15, 2024, the Planning Commission adopted Resolution No. 2024-08, to recommend to the City Council that the proposed Amendment to Planned Development Zone P-D(470) to amend allowable uses to allow certain Highway Commercial (C-3) uses for property located at 1101 N Carpenter Road (APN 081-052-045).; and

WHEREAS, a duly noticed public hearing was held by City Council on August 13, 2024, at which hearing evidence both oral and documentary was received and considered.

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

SECTION 1. FINDINGS. After a public hearing held on August 13, 2024, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 for the following reasons:
  - a. The proposed amendment is consistent with the Modesto Urban Area General Plan. The site is designated Commercial, which the proposed amendment's change to Highway Commercial (C-3) uses is consistent with.
  - b. The type of project is described in Chapter II of the Modesto Urban Area General Plan Master EIR (MEIR).
  - c. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.
  - d. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project is within the scope of the MEIR.
  - e. Based on the Initial Study, the City of Modesto finds and determines:

- i. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
  - ii. No new or additional mitigation measures or alternatives are required.
  - iii. The subsequent project is within the scope of the project covered by the Master EIR.
  - iv. All applicable policies, regulations, and/or mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.
  - v. The application for the project was received on January 12, 2024, less than five years after the certification of the Master EIR, which occurred on March 6, 2019.
- f. The Initial Study, Environmental Assessment No. EA/C&ED 2024 04, provides substantial evidence to support findings 1(e)(i) through 1(e)(v), noted above.
2. The requested change will result in an orderly planned use of land because the proposed allowable uses are comparable to those allowed in the parcels directly to the north of Planned Development P-D(470), and that, in consideration of the Residential uses to the west of the proposed site of the amendment, certain uses that could create potential nuisances have

been excepted from the allowable uses of the Highway Commercial (C-3) Zone, as specified below; and

3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plans because the General Plan designation for the proposed site of the amendment is Commercial (C), which the proposed amendment is in accordance with, and no Specific Plans are applicable to this area.

SECTION 2. AMENDMENT OF ORDINANCE 2705-C.S. Section 2, uses, of Ordinance 2705-C.S. is hereby amended to read as follows. Deletions are made in strikethrough text while additions are made in underline text. With the exception of the specified changes, all existing language in Ordinance No. 2705-C.S. remains unmodified.

“SECTION 2. USES. The following uses shall be permitted in Planned Development P-D(470) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

- ~~1. All permitted and conditional Neighborhood Commercial, C-1 Zone, uses.~~
- ~~2. Off street parking as shown on the approved plan.~~
1. Uses as allowed in the Highway Commercial (C-3) Zone, with the exception of the following uses that shall not be permitted:
  - Outdoor Display, Major
  - Recycling Facility, Large
  - Banquet Hall
  - Car Wash
  - Ambulance Service
  - Sign Painting Shop
  - Heavy Vehicle Services
    - Farm Equipment Sales, Rental, Repair, & Service
    - Truck & Trailer Sales, Rental, Repair, & Service
  - Light Vehicles
    - Minor Maintenance (minor tune up, smog check)
    - Repair and Service, Minor
    - Stereo Installation”

SECTION 3. CEQA. The City Council certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2024-04, which concludes that the proposed amendment is within the scope of the General Plan Master Environmental Impact Report (SCH No. 2014042081), finds the amendment in conformance with the Urban Area General Plan Master EIR, find the amendment will have no additional significant effect as defined in CEQA Regulations Section 21158, and that therefore no further environmental review is necessary.

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 13<sup>th</sup> day of August 2024, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

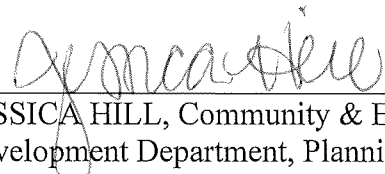
By:   
DIANE NAYERES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By:   
JESSICA HILL, Community & Economic Development Department, Planning Division

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of August 2024, Councilmember Williams moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: September 26, 2024

**ORDINANCE NO. 3784-C.S.**

**AN ORDINANCE AUTHORIZING THE LEVY OF SPECIAL TAXES  
WITHIN THE CITY OF MODESTO HELD WITHIN CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 2024-1 (TIVOLI)**

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

WHEREAS, on August 13, 2024, this City Council adopted Resolution No. 2024-279, stating its intention to form City of Modesto Community Facilities District No. 2024-1 (Tivoli) (the “Community Facilities District”), designate an improvement area (“Improvement Area No. 1”), and designate certain property for future annexation to the Community Facilities District (the “Future Annexation Area”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain facilities and services and incidental expenses to be incurred in connection with financing the foregoing; and

WHEREAS, on August 13, 2024, this City Council adopted Resolution No. 2024-280, stating its intention to incur bonded indebtedness for the Community Facilities District in an amount not to exceed \$120,000,000 to be secured by certain facilities special tax of the Community Facilities District, pursuant to the Act; and

WHEREAS, the City Council has held a noticed public hearing concerning the establishment of the Community Facilities District, including the designation of Improvement Area No. 1 and the Future Annexation Area, and the incurrence of bonded debt for the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to said hearing, the City Council adopted resolutions entitled,

“ Declaring The Formation of City of Modesto Community Facilities District No. 2024-1 (Tivoli), Conditionally Authorizing the Levy of Special Taxes Therin and Conditionally Establishing An Annual Appropriations Limit, (the “Resolution of Formation”), and “Resolution Of The City Council of the City of Modesto, Acting as the Legislative Body of the City of Modesto Community Facilities District No. 2024-1 (Tivoli)Declaring the Necessity to Incur Bonded Indebtedness in the Aggregate Principal Amount of Not To Exceed \$120,000,000 and Calling a Special Election,” which resolutions established the Community Facilities District, authorized the levy of special taxes therein, authorized bonded indebtedness, and called an election within Improvement Area No. 1 of the Community Facilities District on the propositions of (a) the levy of special taxes in accordance with the rate and method of apportionment of special tax set forth in the Resolution of Formation (the “Special Taxes”), (b) the authorization of bonded indebtedness of the Community Facilities District in an amount not to exceed \$120,000,000, and (c) the establishment of an appropriations limit for the Community Facilities District (the “Proposition”); and

WHEREAS, an election was held on September 24, 2024, within Improvement Area No. 1 of the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the Proposition.

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2024-1 (Tivoli), DOES ORDAIN as follows:

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

SECTION 2. By the passage of this Ordinance, the City Council authorizes and levies special taxes within Improvement Area No. 1 of the Community Facilities District at the rates and in accordance with the methods of apportionment set forth in Attachment A to the Resolution of Formation and which, for reference purposes, is attached hereto as Attachment A and incorporated by this reference, or as may be modified or amended from time to time by a resolution of change or resolution of annexation adopted pursuant to the provisions of the Act (the “Rate and Method”).

By passage of this Ordinance, the City Council authorizes the levy of a special tax for any approved future annexations in accordance with the then-existing Rate and Method.

SECTION 3. The City’s Community Development Manager shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor’s parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the City’s Community Development Manager is authorized to determine the specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method. In connection with the foregoing, the Administrator of the Infrastructure Financing Program of the City shall take any and all steps necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Facilities Special Tax and the Annual Maintenance Special Tax (as defined in the Rate and Method) levies, including the amount of each such tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special taxes may be levied at lower rates.

SECTION 4. Properties of entities of the state, federal or other local governments shall be exempt from the above-referenced special taxes only to the extent set forth in the Rate and Method,

and otherwise shall be subject to tax consistent with the provisions of Section 53317.3 of the Act in effect as of the date of adoption of this Ordinance.

SECTION 5. All of the collections of the special taxes shall be used only as provided for in the Act and the Resolution of Formation and any resolution of change or resolution of annexation adopted from time to time by the City Council. The special taxes shall be levied only so long as needed to accomplish the purposes described in the Resolution of Formation and the Rate and Method, and to be described in any resolution of change or resolution of annexation adopted from time to time by the City Council.

SECTION 6. The Annual Facilities Special Tax and the Annual Maintenance Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time. Notwithstanding the foregoing, the City's Community Development Manager may collect, or cause to be collected, one or more installments of such special taxes by means of direct billing of the property owners within the Community Facilities District if, in the judgment of the City's Community Development Manager, such means of collection will reduce the burden of administering the Community Facilities District or is otherwise appropriate in the circumstances. In such event, such special taxes shall become delinquent if not paid when due as set forth in any such respective billing to the property owners.

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

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

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24<sup>th</sup> day of September 2024, by Councilmember Ricci, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Wright, was upon roll call carried and ordered printed and published by the following vote:

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

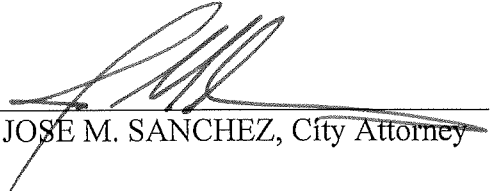
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
  
By: \_\_\_\_\_  
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:  
  
By: \_\_\_\_\_  
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8<sup>th</sup> day of October 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Williams, was upon roll carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Sue Zwahlen*  
SUE ZWAHLEN, Mayor

ATTEST:

By: *Diane Nayares-Perez*  
DIANE NAYARES-PEREZ, City Clerk

Effective Date: November 7, 2024

**ORDINANCE NO. 3785-C.S.**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW AND RELOCATION OR PHYSICAL EXPANSION OF EXISTING TOBACCO RETAILER BUSINESSES, ALSO KNOWN AS SMOKE SHOPS, WITHIN THE CITY OF MODESTO TO BECOME EFFECTIVE IMMEDIATELY**

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

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

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

**WHEREAS**, Government Code section 65858, subdivision (a) provides that the legislative body of a city may, to protect the public safety, health, and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal the City Council is considering or studying or intends to study; and

**WHEREAS**, the City has seen a proliferation of tobacco retailer businesses, also known as smoke shops, within the City; and

**WHEREAS**, there are currently 41 tobacco retailer businesses/smoke shops who have an active business license in the City of Modesto. Staff and the Police Department are currently assessing whether there are additional establishments operating without a business license in the City; and”

**WHEREAS**, the City is concerned about this recent proliferation of tobacco retailer businesses, locations of tobacco retailer businesses, the harmful effects of tobacco and other products sold at these establishments containing industrial hemp on the health, safety, and welfare of City residents and especially youth; and

**WHEREAS**, tobacco retailer businesses have also been a source of unlawful activities in the City, which, if not curtailed present an immediate threat to the public health, safety, and welfare; and

**WHEREAS**, tobacco retailer businesses can be a target for theft and vandalism, as well as may be affiliated with the sale of illegal cannabis products and drug paraphernalia that encourage illegal activity; and

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

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

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

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

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

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

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

**WHEREAS**, aside from new regulations related to hemp, many state laws have been adopted, which acknowledge the public health impacts of tobacco, especially flavored tobacco products, and specifically its effect on minors. For example, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees. State law also prohibits smoking in playgrounds. State law also prohibits smoking within twenty (20) feet of the main entrances and exits of public buildings; and

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

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

**WHEREAS**, cities still retain the authority to draft and enforce local flavored tobacco bans for products; and

**WHEREAS**, Government Code section 36937 authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety; and

**WHEREAS**, Government Code section 65858 provides that to protect against any current and immediate threats to public health, safety, or welfare, the City Council may adopt, as an urgency measure, an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City plans to study; and

**WHEREAS**, this temporary moratorium will provide staff with the opportunity to study the various options to regulate tobacco retailer businesses.

**NOW, THEREFORE**, the City Council of the City of Modesto hereby ordains as follows:

**SECTION 1. Recitals.**

The above recitals are true and correct and are hereby adopted as the City Council’s findings.

**SECTION 2. Purpose and Authority.**

In the interest of protecting the health, safety, and welfare of the residents in the City of Modesto, it is the purpose and intent of this Ordinance to place a temporary moratorium on the issuance of any new permit, license, or other entitlement for any tobacco retailer business, also known as smoke shop, in the City of Modesto. This includes any new permit, license, or other entitlement for the relocation or physical expansion of existing business falling under the definition of a tobacco retailer as defined under this Ordinance. The City Council has the authority to adopt this Ordinance pursuant to California Government Code section 65858 as an urgency measure prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

**SECTION 3. Findings.**

The City Council hereby finds and determines that Tobacco Retailer Businesses and Smoke Shops constitute an immediate threat to the public health, safety, and welfare. The approval of

additional entitlements for Tobacco Retailer Businesses and approval of the relocation or physical expansion of existing Tobacco Retailer Businesses under the City’s current regulations will further threaten the public health, safety, and welfare. The adoption of this Urgency Ordinance is therefore necessary for the immediate protection of public health, safety, and welfare. The above recitals are incorporated herein by reference as true and correct and as the Council’s findings.

**SECTION 4. Definitions.**

- A. “Person” shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
  
- B. “Tobacco Paraphernalia” means any device, product, equipment, or material of any kind that is intended or designed for use for smoking, inhaling, or ingesting tobacco or cannabis, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting any controlled substance. Tobacco paraphernalia includes, but is not limited to, all of the following: (i) metal, ivory, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured bowls; (ii) water pipes; (iii) bongos; (iv) chillums; (v) ice pipes or chillers; (vi) cigarette papers or wrappers; (vii) cigarette rolling machines; (viii) blunt wraps, as defined in Section 308 of the Penal Code; (ix) hookahs and similar devices constructed with a receptacle or container in which water or some other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested; and (x) any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. Tobacco Paraphernalia shall include any component, part, or accessory of the foregoing, whether or not sold separately.
  
- C. “Tobacco Product” means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, e-cigarettes (with or without flavoring), cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, or vaping accessories. Tobacco Product shall include any component, part, or accessory of the foregoing, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketing and solely for such an approved purpose.

- D. “Tobacco Retailer Business” or “Smoke Shop” shall mean a retailer or wholesale business or any person that: (1) sells, offers for sale, or offers to exchange for any form of consideration, tobacco, hemp products, Tobacco Products, or Tobacco Paraphernalia; and (2) has fifteen percent (15%) or more of the square feet in the establishment used for the sale or display of tobacco, hemp products, Tobacco Products, or Tobacco Paraphernalia.

**SECTION 5. Moratorium Imposed.**

- A. Scope. In accordance with the authority granted the City of Modesto under Article XI, Section 7 of the California Constitution and California Government Code section 65858, from and after the effective date of this Ordinance, no license, permit, or other entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued by the City for the establishment, relocation or physical expansion of a Tobacco Retailer Business. Additionally, the establishment, relocation, or physical expansion of the Tobacco Retailer Business is hereby expressly prohibited in all areas and zoning districts of the City.
- B. Exceptions. This Ordinance shall not prohibit the renewal of a business license for an existing Tobacco Retailer Business, provided that the renewal seeks to maintain the business without physical expansion and in its current location, and the Tobacco Retailer Business is operating in a manner, and housed within a building, which complies with all City, State, Federal, or otherwise applicable, codes, rules, regulations, or laws.

**SECTION 6. Violation.**

Except as otherwise permitted under this Ordinance, the establishment, relocation, or physical expansion of a Tobacco Retailer Business within the limits of the City is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions or administrative or criminal penalties under the Modesto Municipal Code.

**SECTION 7. Term of Ordinance.**

This Ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to California Government Code section 65858 or other applicable law, as approved by the City Council.

**SECTION 8. Environmental Review / California Environmental Quality Act (CEQA).**

This Ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this Ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act (“CEQA”), and it is exempt from CEQA.

**SECTION 9. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the 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 hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions be severed, and the balance of the Ordinance be enforced.

**SECTION 10. Effective Date and Publication.**

This Ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an interim Urgency Ordinance for preserving the public health, safety, and welfare and shall take effect and be enforced immediately upon adoption pursuant to Government Code section 36937.

PASSED and ADOPTED this 8th day of October 2024 by the following vote:

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

NOES: None

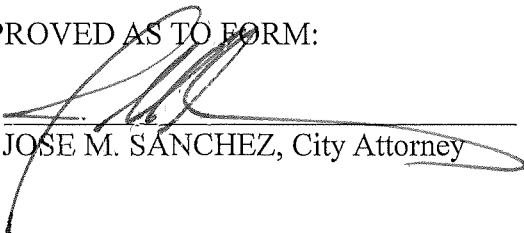
ABSENT: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8th day of October, 2024, Councilmember Escutia-Braaton moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the Ordinance adopted by the following vote:

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

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

**ORDINANCE NO. 3786-C.S.**

**AN ORDINANCE AUTHORIZING THE LEVY OF SPECIAL TAXES WITHIN THE CITY OF MODESTO HELD WITHIN CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2024-2 (FAIRVIEW VILLAGE #2)**

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

WHEREAS, on September 10, 2024, this City Council adopted Resolution No. 2024-318, stating its intention to form City of Modesto Community Facilities District No. 2024-2 (Fairview Village #2) (the “Community Facilities District”), and designate certain property for future annexation to the Community Facilities District (the “Future Annexation Area”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain facilities and services and incidental expenses to be incurred in connection with financing the foregoing; and

WHEREAS, the City Council has held a noticed public hearing concerning the establishment of the Community Facilities District, including the designation the Future Annexation Area, as required by the Act; and

WHEREAS, subsequent to said hearing, the City Council adopted resolutions entitled “A Resolution Declaring the Formation of City of Modesto Community Facilities District No. 2024-2 (Fairview Village #2), Conditionally Authorizing the Levy of Special Taxes Therein, and Conditionally Establishing an Annual Appropriations Limit of \$12,100,000” (the “Resolution of Formation”), and Resolution of the City Council of the City of Modesto, California, acting as the Legislative Body of the City of Modesto Community Facilities District No. 2024-2 (Fairview Village #2), Calling a Special Election,” which resolutions established the Community Facilities District, authorized the levy of special taxes therein, and called an election within the Community

Facilities District on the propositions of (a) the levy of special taxes in accordance with the rate and method of apportionment of special tax set forth in the Resolution of Formation (the “Special Taxes”), and (b) the establishment of an appropriations limit for the Community Facilities District (the “Proposition”); and

WHEREAS, an election was held on October 22, 2024, within the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the Proposition.

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2024-2 (Fairview Village #2), DOES ORDAIN as follows:

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

SECTION 2. By the passage of this Ordinance, the City Council authorizes and levies special taxes within the Community Facilities District at the rates and in accordance with the methods of apportionment set forth in Attachment A to the Resolution of Formation and which, for reference purposes, is attached hereto as Attachment A and incorporated by this reference, or as may be modified or amended from time to time by a resolution of change or resolution of annexation adopted pursuant to the provisions of the Act (the “Rate and Method”).

By passage of this Ordinance, the City Council authorizes the levy of a special tax for any approved future annexations in accordance with the then-existing Rate and Method.

SECTION 3. The City’s Community Development Manager shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor’s parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the City’s Community

Development Manager is authorized to determine the specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method. In connection with the foregoing, the Administrator of the Infrastructure Financing Program of the City shall take any and all steps necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Maintenance Special Tax (as defined in the Rate and Method) levies, including the amount of each such tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special taxes may be levied at lower rates.

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

SECTION 5. All of the collections of the special taxes shall be used only as provided for in the Act and the Resolution of Formation and any resolution of change or resolution of annexation adopted from time to time by the City Council. The special taxes shall be levied only so long as needed to accomplish the purposes described in the Resolution of Formation and the Rate and Method, and to be described in any resolution of change or resolution of annexation adopted from time to time by the City Council.

SECTION 6. The Annual Maintenance Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time. Notwithstanding the

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

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

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

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

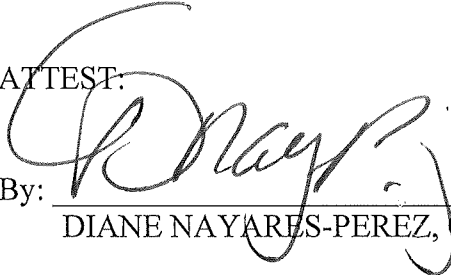
The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22<sup>nd</sup> day of October 2024, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

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

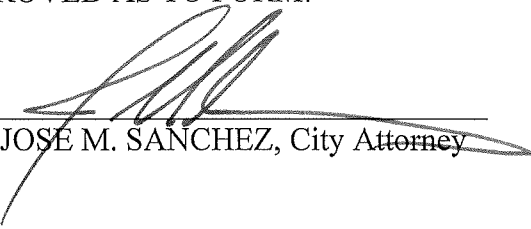
NOES: Councilmembers: None

ABSENT: Councilmembers: Bavaro

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
  
By: DIANE NAYARES-PEREZ, City Clerk

(SEAL)

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

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5<sup>th</sup> day of November 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Alvarez, was upon roll carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

By:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: December 5, 2024

**ORDINANCE NO. 3787-C.S.**

**AN ORDINANCE AMENDING VARIOUS SECTIONS AND TABLES  
WITHIN TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING  
TO ACCESSORY DWELLING UNITS**

WHEREAS, housing production in the State of California has not kept pace with demand, resulting in the lack of housing and in particular lack of affordable housing; and

WHEREAS, changes to state laws that became effective on January 1, 2024 and March 25, 2024 are intended to encourage the development of accessory dwelling units in areas zoned for single-family and multi-family uses to contribute to the affordable housing supply in the city; and

WHEREAS, this code amendment will update the City of Modesto's Zoning Regulations consistent with state law regarding accessory dwelling units and make other minor miscellaneous changes; and

WHEREAS, this code amendment is necessary at this time as the city undertakes an update of both the General Plan and the Housing Element; and

WHEREAS, a public hearing was held by the Planning Commission on August 19, 2024, 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 which makes corrections and clarifications to the regulations related to accessory dwelling units and junior accessory dwelling units is Statutorily Exempt from CEQA pursuant to Section 15282 (h) of the State CEQA Guidelines that exempts the adoption of an ordinance regarding second units in a single-family or multi-family residential zone by a city or county to implement the provisions of Government Code Section 66310 et. seq.; and

WHEREAS, after a public hearing held on August 19, 2024, 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; and

WHEREAS, the proposed code amendment will result in an orderly planned use of land because the amended regulations for accessory dwelling units, including junior accessory dwelling, units will clarify where and how they may be built; and

WHEREAS it 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 allows for the development of more accessory dwelling units consistent with the goals of the Housing Element, a portion of the General Plan; and

WHEREAS, by Resolution No. 2024-xx adopted on August 19, 2024, the Planning Commission recommended to the City Council that the proposed amendments to Title 10 of the Modesto Municipal code, be approved, and

WHEREAS, this proposed code amendment was set for a public hearing on November 12, 2024, 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 amendments to Title 10 of the Modesto Municipal Code, and

WHEREAS, evidence, both written and oral, was duly presented and considered by the 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 November 12, 2024, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this City 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 in compliance with building standards, especially affordable housing, will benefit the community.
2. The requested change will result in an orderly planned use of land because the amended regulations for accessory dwelling units, including junior accessory dwelling units, will clarify where and how they may be built.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plans because the proposed code amendment allows for the development of more accessory dwelling units consistent with the goals of the Housing Element, a portion of the General Plan.

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 4, "Development Standards," Article 1, "Residential Zones," Section 10-4.102, "Development Standards," Table 4.1-1, "Residential Development Standards," is hereby amended to read as follows (with deletions in ~~striketrough~~ and additions in underlined):

**Section 10-4.102 – Development Standards**

**Table 4.1-1 Residential Development Standards**

Development Standards	Zoning Districts			Notes
	R-1	R-2	R-3	
<b>LOT REQUIREMENTS</b>				
<b>Area</b> (minimum in Sq Ft) <sup>(1)</sup>				
Interior Lot	5,000	6,000	6,000	See Section 10-4.103
Corner Lot	5,500	6,500	6,500	
<b>Density</b>				
Minimum	-	-	-	See Section 10-4.104
Maximum	-	-	-	
<b>Width</b> (minimum in feet)				
Interior Lot	50	60	60	See Section 10-4.105 a
Corner Lot	60	60	60	See Section 10-4.105 b
Flag Lot	20	20	20	See Section 10-4.105 c
<b>Coverage</b> (maximum in %)				
Interior Lot	50	55	60	See Section 10-2.141. For accessory dwelling units, see <del>Section 10-4.115</del> <u>Article 5</u> .
Corner Lot	55	60	65	
<b>SETBACK REQUIREMENTS</b>				
<b>Front and Street-Side (corner lot)</b> (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	
<b>Side, (interior)</b> (minimum in feet)				See Section 10-4.107
Buildings, Main - One Story Portion	5	5	5	
- Two Story Portion	Adjacent to R-1 <sup>(+2)</sup>	10	15	See Sections 10-4.107 a and 10-4.110 for 2 <sup>nd</sup> story dwellings
	Not Adjacent to R-1 <sup>(+2)</sup>	10	10	
- Three Story Portion	Adjacent to R-1 <sup>(+2)</sup>	-	-	20
	Not Adjacent to R-1 <sup>(+2)</sup>	-	-	10
Accessory Building, Garage, Carport, Parking Space - One Story	5	5	5	See Section 10-4.108 b, <del>See Section 10-4.114</del>
- Two Stories	5	5	5	
Accessory Building (other)	-	-	-	See Section 10-4.114
Accessory Dwelling Unit				See Article 5
<b>Rear</b> (minimum in feet)				
Buildings, Main - One Story Portion	10	10	10	See Section 10-4.108 a, and Section 10-4.108 c for <u>Patio Covers</u>
- Two Story Portion	15	15	15	

- Three Story Portion	Adjacent to R-1 <sup>(+2)</sup>	-	-	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	5	
Accessory Building (other)		-	-	-	See Section 10-4.114
Accessory Dwelling Unit					See Article 5
<b>HEIGHT REQUIREMENTS</b>					
Structure (maximum height in stories/feet, whichever is less)		2/30	2/30	3/42	See Sections 10-4.109 and 10-4.110
<b>OTHER REQUIREMENTS</b>					
Parking					See Chapter 5
Signs					See Chapter 6
Fencing					See Section 10-4.406
Street Frontage					See Section 10-4.111
Lots with Existing Units					See Section 10-4.112
Design					See Section 10-4.113
<sup>(1)</sup> Minimum lot size requirements do not apply to the construction of ADUs.					
<sup>(2)</sup> 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 2. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards,” Article 1, “Residential Zones,” Section 10-4.107, “Side Setback,” and Section 10-4.108, “Rear Setback” are hereby amended to read as follows (with deletions in ~~strike through~~ and additions underlined):

**Section 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 permitted only in subdivisions where

a permanent side yard use easement is granted from one (1) parcel to the adjacent parcel creating a de facto zero lot line subdivision. An example of a de facto zero lot line subdivision is 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.

(e) ~~For accessory dwelling units, see Section 10-4.115.~~

**Section 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 patio 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.

(e) ~~For accessory dwelling unit, see Section 10-4.115.~~

SECTION 3. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards,” Article 1, “Residential Zones,” Section 10-4.114, “Accessory Buildings” is hereby amended to read as follows (with deletions in ~~striketrough~~ and additions underlined):

**Section 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). These regulations do not apply to ADUs:

SECTION 4. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards,” Article 5, “Accessory Dwelling Units,” is hereby amended to read as follows (with deletions in ~~striketrough~~ and additions underlined):

**Section 10-4.501 Purpose and intent.**

This Article implements the requirements of Government Code Sections ~~65852.2 and 65852.22.~~ 66310 et. seq.

**Section 10-4.502 Accessory Dwelling Units - General.**

- (a) ~~The following regulations provided below and in apply to accessory dwelling units and junior accessory dwelling units in any zone that allows single family or multi-family, or mixed-use.~~ Accessory Dwelling Units (ADUs) may be created in any zone that allows single-family residential, multi-family residential, or mixed-use, or as expressly permitted in this Article.
- (b) ~~Accessory dwelling units and junior accessory dwelling units may only be rented in increments of thirty (30) days or more.~~ Junior Accessory Dwelling Units (JADUs) may be created only in zones that allow single-family residential on a lot with an existing or proposed single-family dwelling.
- (c) ~~An accessory dwelling unit includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code.~~ accessory dwelling units ADUs and junior accessory dwelling units JADUs may only be rented in increments of thirty (30) days or more.
- (d) ~~An accessory dwelling unit includes a manufactured home, as defined in Section 18007 of the Health and Safety Code.~~ An ADU includes an efficiency unit as defined in section 17958.1 of the health and safety code.
- (e) ~~These regulations may be applicable to lots zoned for single-family residential uses and built with units in compliance with Senate Bill No. 9 (Chapter 162, Statues of 2021).~~ An ADU includes a manufactured home, as defined in section 18007 of the health and safety code.
- (f) These regulations may be applicable to lots zoned for single-family residential uses and built with units in compliance with Senate Bill No. 9 (Chapter 162, Statues of 2021). ~~An Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) conforming to the standards of this Article shall:~~
  - (1) ~~Be deemed to be an accessory use or accessory building.~~
  - (2) ~~Be deemed a residential use that is consistent with the existing General Plan or zoning designation for the lot.~~
  - (3) ~~Not be considered in the application of any local ordinance, policy, or program to limit residential growth.~~
  - (4) ~~Not be considered to exceed the allowable density for the lot upon which the ADU or JADU is located.~~
  - (5) ~~Not be considered to be a new residential use for calculating connection fees or capacity charges for utilities, including water and sewer services, unless the ADU or JADU was constructed with a new single-family dwelling.~~
  - (6) ~~Except as provided in Government Code Section 65852.26, an accessory dwelling unit~~

~~may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.~~

~~(7) A JADU shall not be sold separate from the single-family residence.~~

- (g) An Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) conforming to the standards of this Article shall:
- (1) Be deemed to be an accessory use or accessory building.
  - (2) Be deemed a residential use that is consistent with the existing General Plan and ~~or~~ zoning designation for the lot.
  - (3) Not be considered in the application of any local ordinance, policy, or program to limit residential growth.
  - (4) Not be considered to exceed the allowable density for the lot upon which the ADU or JADU is located.
  - (5) Except as provided in Government Code Section ~~65852.26~~ 66310 et. seq., an accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

#### **Section 10-4.503 Application Filing, Processing, and Review.**

- (a) Ministerial Approval Only. A local agency shall ministerially approve an application for a building permit for an ADU or JADU.
- (1) Timeframe for Review. If there is an existing single-family or multi-family dwelling on the lot, the permitting agency shall either approve or deny the application within sixty (60) days from the date the permitting agency receives the completed application.
    - (i.) If the applicant requests a delay, the sixty (60) day<sub>2</sub> time period shall be tolled for the period of the delay.
  - (2) If the local agency has not approved or denied the completed application within sixty (60) days, the application shall be deemed approved.
  - (3) If a building permit for an ADU or JADU is submitted with a permit application for a new single-family or multi-family dwelling on the lot, the permitting agency may delay approval or denial of the ADU or JADU application until the permitting agency either approves or denies the application to create the new single-family or multi-family dwelling.
  - (4) A demolition permit for a detached garage that will be replaced with an ADU shall be reviewed with the application for the ADU and issued at the same time.
    - (i.) Written notice or the posting of a placard for the demolition of a detached garage, per subparagraph (4), above, shall not be required, unless the subject property is located within an architecturally and historically significant historic district.
  - (5) If the permitting agency denies an application for an ADU or JADU, the permitting agency shall, within the sixty (60) day time-period, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.
- (b) Fire Sprinklers. An ADU shall not be required to provide fire sprinklers if they are not required for the primary residence; and the construction of an ADU shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

- (c) **Passageways.** ~~The construction of an ADU shall not trigger a requirement for construction of a passageway, as defined in Government Code Section 65852.2. An ADU shall not be required to provide a passageway in conjunction with the construction of an ADU.~~
- (d) **Nonconforming Zoning Conditions.** ~~The construction of an ADU shall not trigger requirements to correct nonconforming zoning conditions. No increase in of nonconforming zoning conditions shall be allowed. An ADU shall not be required, as a condition for ministerial approval, to correct nonconforming zoning conditions.~~
- (e) **Building Code Requirements.** Local building code requirements that apply to detached dwellings shall apply to ADUs, except that the construction of an ADU shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency make a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety.
- (1) Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was uninhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.
- (f) **Other Regulations.** No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or use permit under this subdivision.
- (g) **Construction Fees.** Fees charged for the construction of accessory dwelling units shall be determined in accordance with ~~Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012) of the Modesto Municipal Code. Government Code section 66324, as amended and renumbered from time to time Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).~~
- (h) **Utilities.** An ADU shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating ~~on~~ connection fees or capacity changes for utilities, including water and sewer service, unless the ADU was constructed along in conjunction with a new single-family dwelling. The City may require a new or separate utility connection, as well as a corresponding connection fee or capacity charge, in accordance with Government Code section 66324.
- (i) **Impact Fees, under 750 square feet.** ~~A local agency, special district, or water corporation~~ The City shall not impose any impact fee upon the development of an ADU less than seven hundred fifty (750) square feet in floor area.
- (j) **Impact Fees, 750 or more square feet.** An impact fee charged for an ADU of seven hundred fifty (750) square feet or more in floor area shall be charged proportionately in relation to the square footage of the primary dwelling unit.

- (k) ~~Lot Coverage.~~ For an ADU of eight hundred (800) square feet or less, lot coverage as shown on Table 4.1-1 (Residential Development Standards) shall not apply.

#### **Section 10-4.504 Types and Locations of Accessory Dwelling Units (ADUs).**

- (a) **Attached.** An ADU may be attached to a proposed or existing ~~primary~~ single-family dwelling or multi-family dwelling.
- (b) **Detached.** An ADU may be detached (free-standing) from ~~the~~ a proposed or existing ~~primary~~ single-family or multi-family dwelling on ~~the same~~ a lot; (e.g., a new-construction, detached ADU).
- (c) **Converted.** An ADU may be located within ~~the~~ a proposed or existing ~~primary~~ single-family or multi-family dwelling, ~~in areas currently not used for living spaces (e.g., an existing attached garage or laundry room); or in an existing (free-standing) accessory building on the lot.~~ other living space to be converted to an ADU (e.g., master bedroom suite); or an existing detached accessory structure to be converted to an ADU.  
(1) For multi-family dwellings, an ADU may be located in areas currently not used for living spaces (e.g., garage storage room, laundry room), or in an existing (free-standing) accessory building on the lot.
- (d) **Junior ADU (JADU).** A JADU is a special type of ADU that is not more than five hundred (500) square feet in size and is contained entirely within the walls of an existing or proposed single-family residence. JADUs may only be created in single-family zones.

#### **Section 10-4.505 Number and type of Accessory Dwelling Units Permitted**

- (a) **Lots with a Single-family Dwelling.** On a lot developed with an existing or proposed single family dwelling, an applicant may choose from any of the following ADU types (i.e., attached, detached, converted) or a JADU, or a combination thereof not to exceed two (2) additional units beyond the primary single-family residence.
- ~~(1) One (1) Junior Accessory Dwelling unit (JADU) is allowed per lot in a residential or mixed-use zone, where there is only one (1) existing or one (1) proposed single family dwelling.~~
- ~~(i) Junior Accessory Dwelling Units shall conform to the requirements in Section 10-4.508, below.~~
- ~~(2) One (1) Detached (new construction) ADU is allowed per lot in a residential or mixed-use zone, where there is only one (1) existing or one (1) proposed single family dwelling:~~
- ~~(i) Not exceeding eight hundred fifty (850) square feet in floor area (one (1) bedroom); This does not preclude the creation of an efficiency unit.~~
- ~~(ii) Not exceeding one thousand two hundred (1,200) square feet in floor area (more than one (1) bedroom).~~
- ~~(iii) Four (4) foot side and four (4) foot rear yard setbacks are allowed.~~
- (1) An Attached (new construction) ADU meeting the requirements of this chapter.
- (2) A Detached (new construction) ADU; is allowed per lot in a residential or mixed-use zone, where there is only one (1) existing or one (1) proposed single family dwelling;:

- (i) ~~Not exceeding 850 square feet in floor area (one bedroom); This does not preclude the creation of an efficiency unit. Minimum F~~ four (4) foot side and four (4) foot rear yard setbacks are allowed required.
- (ii) ~~Not exceeding 1,200 square feet in floor area (more than one bedroom).~~
- (iii) ~~Four (4) foot side and four (4) foot rear yard setbacks are allowed.~~
- (3) A Converted ADU may be located within an existing single-family dwelling (i.e., in living space to be converted to an ADU, e.g., a master bedroom suite), or within an existing detached accessory structure (e.g., a detached garage).
  - (i) The ADU located within an existing or proposed single-family dwelling must have exterior access.
  - (ii) The side and rear setbacks of the existing accessory structure to be converted must be sufficient for fire and safety.
- (4) One (1) Junior Accessory Dwelling Unit (JADU) is allowed per lot zoned for single-family in a residential or mixed-use zone, where there is only one (1) existing or one (1) proposed single family dwelling.
  - (i) Junior Accessory Dwelling Units shall conform to the requirements in Section 10-4.509, below.

**(b) Lots with Multi-family Residential Dwellings.**

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

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

- (1) An ADU may be developed on a lot, meeting the following requirements:
  - (i) Zoned Residential or Commercial, and excluding the Industrial Zones (C-M, M-1, and M-2);
  - (ii) Developed with an existing or proposed place of worship; and
  - (iii) Where the church or place of worship meets the Internal Revenue Service (IRS) requirements for tax exempt status under Internal Revenue Code (IRC) Section 501(c)(3).
- (2) Not more than two (2) detached ADUs may be built.

- (3) Each ADU may not exceed 1,200 square feet in floor area.
- (4) Each ADU shall meet the required front setbacks of the respective zoning district.
- (5) Each ADU shall meet the required street-side setbacks of the respective zoning district.
- (6) Each ADU shall have a minimum four (4) foot interior side and rear yard setbacks.
- (7) No additional off-street parking is required for the ADUs, if at least one (1) existing off-street parking space is reserved for tenants in each proposed ADU.
- (8) The ADUs shall have a maximum height of sixteen (16) feet.

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

- (a) Attached ADUs. If there is an existing primary dwelling on the lot, then the total floor area of an attached accessory dwelling unit shall not exceed fifty (50) percent of the existing or proposed primary dwelling. This limitation shall not preclude development of an attached ADU of up to 800 square feet.
- (b) Detached ADUs. ~~The total floor area for a detached accessory dwelling unit shall not exceed twelve hundred (1,200) square feet or the square footage of the primary structure, whichever is less.~~
  - (1) The total floor area for a detached ADU shall not exceed twelve hundred (1,200) square feet.
  - (2) A detached ADU shall not exceed the square footage (in floor area) of the existing or proposed single family dwelling.
- ~~(c) A JADU shall not exceed five hundred (500) square feet in area.~~

(c) Converted ADUs.

- (1) When an existing detached accessory structure is converted to an ADU, a maximum one-hundred-fifty (150) square-foot expansion beyond the dimensions of the existing accessory structure is allowed, provided the expansion is used solely for accommodating ingress and egress.
- (2) Any expansion to an existing structure that is nonconforming as to its setbacks, shall provide a minimum four (4) foot interior side yard and four (4) foot rear yard setbacks.

**Section 10-4.507 Accessory Dwelling Unit: Height Limits**

- (a) Lots with a Single-family Dwelling.
  - (1) A height limit of sixteen (16) feet for a detached accessory dwelling unit on a lot with an existing or proposed single-family; or,
  - (2) A height limit of eighteen (18) feet, ~~if the lot is within one-half mile (walking distance) of a major stop or high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code.~~ for a detached accessory dwelling unit on a lot with an existing or proposed single-family dwelling that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 2115 of the Public Resources Code.
  - (3) An additional two (2) feet ~~in~~ of height is allowed to accommodate a roof pitch on an accessory dwelling unit that is aligned with the roof pitch of the primary dwelling.
  - (4) For an ADU that is attached to a primary dwelling, a maximum height of twenty-five (25)

feet or the height limitation in the zone that applies to the single-family dwelling, whichever is lower. ~~This does not require the City to allow an accessory dwelling unit to exceed two stories.~~ Notwithstanding the foregoing, an ADU shall not exceed two stories.

(b) Lots with Multifamily Dwellings.

- (1) A height limit of sixteen (16) feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily dwelling; or,
- (2) A height of eighteen (18) feet for a detached accessory dwelling unit on a lot with an existing or proposed multistory, multifamily dwelling; or unit, that is within one-half of one mile walking distance of a major transit stop or high quality transit corridor, as those terms are defined in Section 2115 of the Public Resources Code.
- (3) A height limit of eighteen (18) feet, if the lot is within one-half mile (walking distance) of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two (2) feet of height is allowed to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary multifamily dwelling unit.
- (4) A height of eighteen (18) feet on a lot with an existing or proposed multifamily, multistory, dwelling.

**Section 10-4.508 Junior Accessory Dwelling Units (JADU)**

~~(a) A junior accessory dwelling unit (JADU) shall be contained within the walls of the existing or proposed single family residence.~~

- ~~(1) For the purposes of this section, contained within, a single family residence includes the conversion of an attached garage.~~

~~(b) A JADU shall not exceed five hundred (500) square feet in area.~~

~~(c) The JADU shall include a separate entrance from the main entrance to the existing or proposed single family dwelling.~~

~~(d) A Junior Accessory Dwelling Unit (JADU) may include separate sanitation facilities or may share sanitation facilities with the existing single family residence. If the a JADU does not include a separate bathroom, the JADU shall include a separate entrance from the main entrance to the structure, with and an interior entry to the main living area.~~

~~(e) A junior accessory dwelling unit shall have an efficiency kitchen which includes all of the following:~~

- ~~(1) A cooking facility with appliances;~~
- ~~(2) A food preparation counter; and~~
- ~~(3) Storage cabinets of a reasonable size in relation to the size of the JADU.~~

~~(f) Prior to final inspection of a JADU, the property owner shall record a notice of conditions (deed restriction), which shall run with the land, specifying that owner shall occupy either the JADU or the remaining portion of the single family residence at all times, unless the owner is a governmental agency, land trust, or housing organization.~~

- (g) ~~Prior to final inspection of a JADU, the property owner shall record with the City a deed restriction, which shall run with the land, that shall include both of the following:~~
- ~~(1) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.~~
  - ~~(2) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with Government Code Section 65852.22.~~
- (h) ~~A JADU shall not be sold separately from the single-family residence.~~

#### **Section 10-4.508 Parking, Accessory Dwelling Units.**

- (a) No more than one (1) off-street parking space shall be required for an accessory dwelling unit.
- (1) Parking may be tandem in an existing driveway.
  - (2) An uncovered off-street parking space, for an accessory dwelling unit, may be located, on a paved surface, in either a required front setback (existing driveway) or (if a lot has alley access) in a required rear setback.
- (b) When a garage, carport, or other covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or is converted to an accessory dwelling unit, the lost off-street parking is not required to be replaced.
- (c) No parking is required for an ADU or a JADU unit if:
- (1) The unit is within one-half (0.5) mile walking distance of ~~either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code~~ public transit stop.
  - (2) The accessory dwelling unit is within an architecturally and historically significant district.
  - (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
  - (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
  - (5) When there is a car share vehicle located within one (1) block of the accessory dwelling unit.
  - (6) When a permit application for an ADU (in compliance with these requirements) is submitted as part of a permit application to create a new single-family, or new multifamily dwelling on the same lot.

#### **Section 10-4.509 Junior Accessory Dwelling Units (JADU)**

- (a) A junior accessory dwelling unit (JADU) shall be contained within the walls of the existing or proposed single-family residence.
- (1) For the purposes of this section, contained within, a single-family residence includes the conversion of an attached garage.

- (b) A JADU shall not exceed five-hundred (500) square feet in area.
- (c) The JADU shall include a separate entrance from the main entrance to the existing or proposed single-family dwelling.
- (d) A (JADU) may include separate sanitation facilities or may share sanitation facilities with the existing single-family residence. If ~~the~~ a JADU does not include a separate bathroom, the JADU shall include a separate entrance from the main entrance to the structure, with ~~and~~ an interior entry to the main living area.
- (e) A JADU unit shall have an efficiency kitchen which includes all of the following:
  - (4) A cooking facility with appliances;
  - (5) A food preparation counter; and
  - (6) Storage cabinets of a reasonable size in relation to the size of the JADU.
- (f) Prior to final inspection of a JADU, the property owner shall record a notice of condition (deed restriction), which shall run with the land, specifying that owner shall occupy either the JADU or the remaining portion of the single-family residence at all times, unless the owner is a governmental agency, land trust, or housing organization.
- (g) Prior to final inspection of a JADU, the property owner shall record with the City a deed restriction, which shall run with the land, that shall include both of the following:
  - (1) A prohibition on the sale of the JADU unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
  - (2) A restriction on the size and attributes of the JADU unit that conforms with Government Code Section 66310 *et seq.*
- (h) A JADU shall not be sold separately from the single-family residence.

#### **Section 10-4.510 General Development Standards**

- (a) The maintenance of a single-family dwelling appearance is encouraged through means such as:
  - (1) For an attached ADU or JADU, locating the second unit entrance to the side or rear of the main building so it is not readily visible from the street.
  - (2) Employing construction materials and architectural styles which blend the units so they appear as a single residence (if attached) or as single residence and accessory building, if detached.
- (b) Where a second story accessory dwelling unit (ADU) is built adjacent a rear or side yard of a lot developed with a one (1) story, single-family residential dwelling, any walls of the accessory dwelling unit that could provide unobstructed views of a neighboring rear yard or actively used side yard shall have either no windows or windows shall a bottom sill located at least five (5) feet eight (8) inches from the finished floor of the second story. This does not apply to a window required by the Building Code to be usable for accessible emergency

access. This limitation shall not preclude the development of an ADU.

- (c) 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.

**Section 10-4.511 By-right ADUs.** Notwithstanding anything in this Article to the contrary, the City shall ministerially approve the types of ADUs specified in Government Code section 66323.

**Section 10-4.512 Compliance with State Law.** In the event of a conflict between this Code and the requirements of Government Code section 66310 *et seq.*, as amended and renumbered from time to time, the requirements of State law shall apply.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). This ordinance is Statutorily Exempt from CEQA pursuant to Section 21080.17 of the Public Resources Code, which states: This division does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Article 2 (commencing with Section 66314) of Chapter 13 of Division 1 of Title 7 of the Government Code.

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


The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12<sup>th</sup> day of November 2024, by Councilmember Bavaro, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

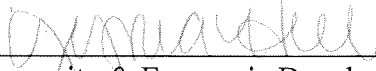
ATTEST:  
  
By: DIANE NAVARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By:   
Community & Economic Development  
Department, Planning Division

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3<sup>rd</sup> day of December 2024, Councilmember Bavaro moved its final adoption, which motion being duly seconded by Councilmember Williams, was upon roll carried and the ordinance adopted by the following vote:

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

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

By:   
DIANE NAYARES-PÉREZ, City Clerk

Effective Date: January 2, 2025

**ORDINANCE NO. 3788-C.S.**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO MAKING FINDINGS AND EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW AND RELOCATION OR PHYSICAL EXPANSION OF EXISTING TOBACCO RETAILER BUSINESSES, ALSO KNOWN AS SMOKE SHOPS, WITHIN THE CITY OF MODESTO FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15) DAYS, TO BECOME EFFECTIVE IMMEDIATELY**

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

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

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

**WHEREAS**, Government Code section 65858, subdivision (a) provides that the legislative body of a city may, to protect the public safety, health, and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal the City Council is considering or studying or intends to study; and

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

**WHEREAS**, Urgency Ordinance No. 3785-C.S. will, unless extended, expire by its own terms on November 22, 2024; and

**WHEREAS**, Government Code section 65858, subdivision (a) authorizes the extension of an urgency ordinance, for ten (10) months and fifteen (15) days after a noticed public hearing, to prohibit uses of land which may conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering, studying, or intends to study within a reasonable period of time; and

**WHEREAS**, the City has seen a proliferation of tobacco retailer businesses, also known as smoke shops, within the City; and

**WHEREAS**, there are currently 41 tobacco retailer businesses/smoke shops who have an active business license in the City of Modesto. Staff and the Police Department are currently assessing whether there are additional establishments operating without a business license in the City; and

**WHEREAS**, the City is concerned about this recent proliferation of tobacco retailer businesses, locations of tobacco retailer businesses, the harmful effects of tobacco and other products sold at these establishments containing industrial hemp on the health, safety, and welfare of City residents and especially youth; and

**WHEREAS**, tobacco retailer businesses continue to be a source of unlawful activities in the City, which, if not curtailed, present an immediate threat to the public health, safety, and welfare; and

**WHEREAS**, tobacco retailer businesses can be a target for theft and vandalism, as well as may be affiliated with the sale of illegal cannabis products and drug paraphernalia that encourage illegal activity; and

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

**WHEREAS**, following the City Council's adoption of the forty-five (45) day moratorium, the Modesto Police Department conducted further inspections of City tobacco retailers. These inspections resulted in seizures of marijuana/cannabis-infused items, illicit drugs, and flavored tobacco products, including multiple tobacco retailers who had previously had items seized by the Police Department; and

**WHEREAS**, during these inspections, Modesto Police Department visited 43 tobacco retailers, and all 43 retailers were found to have illegal flavored tobacco products for sale; and

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

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

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

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

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

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

**WHEREAS**, aside from new regulations related to hemp, many state laws have been adopted, which acknowledge the public health impacts of tobacco, especially flavored tobacco products, and specifically its effect on minors. For example, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees. State law also prohibits smoking in playgrounds. State law also prohibits smoking within twenty (20) feet of the main entrances and exits of public buildings; and

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

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

**WHEREAS**, cities still retain the authority to draft and enforce local flavored tobacco bans for products; and

**WHEREAS**, Government Code section 36937 authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety; and

**WHEREAS**, Government Code section 65858 provides that to protect against any current and immediate threats to public health, safety, or welfare, the City Council may adopt, as an urgency measure, an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City plans to study; and

**WHEREAS**, the initial forty-five (45) day moratorium period established by Ordinance 3785-C.S. was insufficient to complete a study and adoption of new or amended regulations. City staff continues to develop updated regulations impacting tobacco retailers; and

**WHEREAS**, for all the reasons set forth above, the City has determined that a ten (10) month and fifteen (15) day extension of the moratorium on the establishment of new and the relocation or physical expansion of existing tobacco retailer businesses within the City is necessary. This moratorium shall continue in effect pending completion of the City’s study of the potential impacts of tobacco retailer businesses, also known as smoke shops, and its potential adoption of amendments to the Modesto Municipal Code and other appropriate regulations for the protection of the public health, safety, and welfare; and

**WHEREAS**, the City has complied with Government Code section 65858(d), which requires the City’s legislative body to issue a written report describing the measures taken to alleviate the conditions which led to the adoption of Ordinance 3785-C.S. ten (10) days prior to the expiration of the interim ordinance.

**NOW, THEREFORE**, the City Council of the City of Modesto hereby ordains as follows:

**SECTION 1. Recitals.**

The above recitals are true and correct and are hereby adopted as the City Council’s findings.

**SECTION 2. Purpose and Authority.**

In the interest of protecting the health, safety, and welfare of the residents in the City of Modesto, it is the purpose and intent of this Ordinance to place a temporary moratorium on the issuance of any new permit, license, or other entitlement for any tobacco retailer business, also known as smoke shop, in the City of Modesto. This includes any new permit, license, or other entitlement for the relocation or physical expansion of existing business falling under the definition of a tobacco retailer as defined under this Ordinance. The City Council has the authority to adopt this Ordinance pursuant to California Government Code section 65858 as an urgency measure prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

**SECTION 3. Findings.**

The City Council hereby finds and determines that Tobacco Retailer Businesses and Smoke Shops constitute an immediate threat to the public health, safety, and welfare. The approval of additional entitlements for Tobacco Retailer Businesses and approval of the relocation or physical expansion of existing Tobacco Retailer Businesses under the City’s current regulations will further threaten the public health, safety, and welfare. The adoption of this Urgency Ordinance is therefore necessary for the immediate protection of public health, safety, and

welfare. The above recitals are incorporated herein by reference as true and correct and as the Council's findings.

**SECTION 4. Definitions.**

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
  
- B. "Tobacco Paraphernalia" means any device, product, equipment, or material of any kind that is intended or designed for use for smoking, inhaling, or ingesting tobacco or cannabis, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting any controlled substance. Tobacco paraphernalia includes, but is not limited to, all of the following: (i) metal, ivory, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured bowls; (ii) water pipes; (iii) bongos; (iv) chillums; (v) ice pipes or chillers; (vi) cigarette papers or wrappers; (vii) cigarette rolling machines; (viii) blunt wraps, as defined in Section 308 of the Penal Code; (ix) hookahs and similar devices constructed with a receptacle or container in which water or some other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested; and (x) any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. Tobacco Paraphernalia shall include any component, part, or accessory of the foregoing, whether or not sold separately.
  
- C. "Tobacco Product" means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, e-cigarettes (with or without flavoring), cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, or vaping accessories. Tobacco Product shall include any component, part, or accessory of the foregoing, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketing and solely for such an approved purpose.
  
- D. "Tobacco Retailer Business" or "Smoke Shop" shall mean a retailer or wholesale business or any person that: (1) sells, offers for sale, or offers to exchange for any form of consideration, tobacco, hemp products, Tobacco Products, or Tobacco Paraphernalia; and (2) has fifteen percent (15%) or more of the square feet in the establishment used for the sale or display of tobacco, hemp products, Tobacco Products, or Tobacco Paraphernalia.

**SECTION 5. Moratorium Imposed.**

- A. Scope. In accordance with the authority granted the City of Modesto under Article XI, Section 7 of the California Constitution and California Government Code section 65858, from and after the effective date of this Ordinance, no license, permit, or other entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued by the City for the establishment, relocation or physical expansion of a Tobacco Retailer Business. Additionally, the establishment, relocation, or physical expansion of the Tobacco Retailer Business is hereby expressly prohibited in all areas and zoning districts of the City.
- B. Exceptions. This Ordinance shall not prohibit the renewal of a business license for an existing Tobacco Retailer Business, provided that the renewal seeks to maintain the business without physical expansion and in its current location, and the Tobacco Retailer Business is operating in a manner, and housed within a building, which complies with all City, State, Federal, or otherwise applicable, codes, rules, regulations, or laws.

**SECTION 6. Violation.**

Except as otherwise permitted under this Ordinance, the establishment, relocation, or physical expansion of a Tobacco Retailer Business within the limits of the City is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions or administrative or criminal penalties under the Modesto Municipal Code.

**SECTION 7. Term of Ordinance.**

This Ordinance is an extension of the moratorium established by Ordinance 3785-C.S. pursuant to Government Code section 65858. It shall be in effect from the date of adoption of this Urgency Ordinance for a period of ten (10) months and fifteen (15) days unless it is extended pursuant to California Government Code section 65858 or other applicable law, as approved by the City Council.

**SECTION 8. Environmental Review / California Environmental Quality Act (CEQA).**

This Ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this Ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act (“CEQA”), and it is exempt from CEQA.

**SECTION 9. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the 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 hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions be severed, and the balance of the Ordinance be enforced.

**SECTION 10. Effective Date and Publication.**

This Ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an interim Urgency Ordinance for preserving the public health, safety, and welfare and shall take effect and be enforced immediately upon adoption pursuant to Government Code section 36937.

PASSED and ADOPTED this 12<sup>th</sup> day of November 2024 by the following vote:

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

NOES: None


ABSENT: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12<sup>th</sup> day of November, 2024, Wright moved its final adoption, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk