

ORDINANCE NO. 3736- C.S.

AN ORDINANCE AMENDING MODESTO MUNICIPAL CODE SECTION 4-23.02 BY ADDING ADDITIONAL RESTRICTED ITEMS FOR MANNER REGULATIONS AS TO PUBLIC ASSEMBLIES

SECTION 1. FINDINGS

A. The City Council of the City of Modesto hereby finds as follows: revisions to the City’s Municipal Code implemented by this Ordinance are immediately necessary as an emergency measure in order to respond to preserve the public health, safety and welfare. Specifically, the revisions and amendments to Municipal Code Title 4, Chapter 23, Section 4-23.02 included in this Ordinance are essential and immediately necessary to improve the City’s regulation of public assemblies, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

B. The City Council desires to amend Title 4 entitled “Public Welfare, Safety and Health,” Chapter 23, entitled “Restrictions on Use of Specified Items During Public Assembly,” by amending Section 4-23.02 to provide additional critically needed rules regulating the use of certain objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property so as to safeguard against violence and promote peaceful assembly for Modesto citizens, police and visitors alike. These regulations serve to deter violence, property damage and any bodily harm to individuals that wish to engage in peaceful protests and demonstrations.

C. In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as sidewalks, streets and public parks. The City Council does not intend to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place

and manner regulations that address the need to prevent violent, dangerous and hazardous situations from arising and to promote the safety of both the public and the police.

D. The revisions to the City’s Municipal Code implemented by this Ordinance are necessary to respond to recent developments regarding planned public assemblies that are proposed to take place in the City in the coming weeks, including events that have previously lead to significant violence, and which raise serious and alarming safety concerns regarding protecting citizens and police alike from violent disputes, and in order to reduce the threat of serious bodily injury or property damage during this proposed event and for future public events in Modesto. Specifically, the amendments to the City’s Municipal Code Title 4, Chapter 23, Section 4-23.02 included in this Ordinance are essential and immediately necessary to ensure the orderly implementation of restrictions on specified items used at public assemblies to reduce the likelihood of violence and property damage and to ensure the safety of the general public, event attendees, counter-protestors and the police, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

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

F. At these events, devices such as poles, sticks, signs, wood and metal pipes, bats, chains, projectiles (such as rocks, concrete, pellets and ball bearings), as well as certain types of containers including but not limited to glass bottles, metal containers, balloons, super soakers and toy or replica guns, filled with flammable or noxious substances (such as urine) and aerosol sprays deployed to cause flames or attack olfactory systems, and other items have been used as improvised

weapons resulting in injuries and property damage. Demonstrators have also carried shields, thrown objects at police, used fire accelerant to light fires, used large poles and sticks as weapons to threaten bodily harm and to attack businesses. Rigid-support materials used on signs have frequently been used as weapons and turned upon police officers, marchers, or other demonstrators.

G. In addition, at these events, certain demonstrators also wear equipment specifically intended to facilitate engaging in violence, such as helmets, tactical gear, riot gear, flak jackets, stab/bullet-resistant vests, and load bearing vests. Violent individuals have also used certain tools and equipment in order to prevent law enforcement from maintaining peace and order, including laser pointers, umbrellas to shield activity, and gas masks or other breathing devices designed to overcome the use of the chemical agents disbursed locally by law enforcement to restore order and prevent ongoing violence.

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

I. In past events, participants employed apparel and equipment in an apparent effort to intimidate and physically engage opposing factions.

J. As law enforcement has evolved in response to subjects bent on endangering others and disrupting the exercise of constitutional rights, so have protestor tactics. While existing Modesto Municipal Code guidelines have proven effective in helping provide a safe environment, observed local behavior and an examination of similar incidents throughout the nation have identified a need for additional safeguards.

K. The City Council desires to amend Chapter 23.02 (9) Restrictions with the addition of “or metal containers” to read “Glass bottles or metal containers, whether empty or filled.”

L. The City Council desires to amend Chapter 23.02 Restrictions with the addition of the following “(14) Any gas masks or similar breathing devices;” “(15) Any impact resistant helmet, including, but not limited to: motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets;” “(16) Any laser pointing devices;” “(17) Any umbrellas in the absence of rain. During rainy weather an umbrella shall not exceed 16” in its longest dimension when fully collapsed and shall have a blunt end;” “(18) Any professionally manufactured or personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant, stab-resistant, or impact resistant, including, but not limited to: riot control gear, sports equipment, bullet-resistant vests, flak jackets, or stab-resistant vests; and” “(19) Load-bearing or similar “tactical” vests designed to carry weapons, tactical equipment, or armor plates, commonly used by law enforcement or military institutions.”

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

N. It is imperative that individuals engaging in peaceful expressive public activity do so without fear of violence and that law enforcement personnel dedicated to protecting such activity be allowed to do so without suffering injury. This Ordinance provides a narrowly tailored content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies in the City of Modesto.

O. On August 10, 2021, the City Council held a public meeting during which it considered this Ordinance. At the August 10 meeting, the City Council considered a staff report, presentation from staff, public comment and other written materials.

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

SECTION 2. AMENDMENT OF MUNICIPAL CODE.

The City of Modesto Municipal Code Section 4-23.02 "Restrictions" is hereby amended to read as follows (with additions underlined):

Section 4-23.02 Restrictions

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

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

17. Any umbrellas in the absence of rain. During rainy weather an umbrella shall not exceed 16” in its longest dimension when fully collapsed and shall have a blunt end;

18. Any professionally manufactured or personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant, stab-resistant, or impact resistant, including, but not limited to: riot control gear, sports equipment, bullet-resistant vests, flak jackets, or stab-resistant vests; and

19. Load-bearing or similar “tactical” vests designed to carry weapons, tactical equipment, or armor plates, commonly used by law enforcement or military institutions.

- (b) It shall be unlawful and a misdemeanor to violate any provisions of this Chapter.
- (c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this Chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.
- (d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this Chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.
- (e) Nothing in this Chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 *et seq.* (Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 *et seq.* upon a finding by the Chief of Police that such modification will not impair or threaten public safety.
- (f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.

SECTION 3. SEVERABILITY.

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

SECTION 4. EFFECTIVE DATE.

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

SECTION 5. PUBLICATION.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of August, 2021, by Councilmember Ricci, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following votes:

AYES:	Councilmembers:	Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: _____
SUE ZWAHLEN, Mayor

ATTEST:

BY: _____
STEPHANIE LOPEZ, 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 7th day of September, 2021, by Councilmember Kenoyer, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Kenoyer, Madrigal, Ricci, Wright, Zoslocki,
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Escutia-Braaton

APPROVED: _____
SUE ZWAHLEN, Mayor

ATTEST:

BY: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

Effective Date: October 7, 2021