

ORDINANCE NO. 3760 -C.S.

AN ORDINANCE REPEALING AND REPLACING CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE AMENDING THE CITY'S FIRE CODE TO ADOPT THE 2022 CALIFORNIA FIRE CODE

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

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

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

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

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

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

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

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 Chapter 1 of Title 3 of the Modesto Municipal Code is hereby repealed in its entirety and replaced with the following.

Chapter 1. - Adoption of the California Fire Code, 2022 Edition

ARTICLE 1. FIRE CODE

3-1.101 Findings for Adoption of the California Fire Code, 2022 Edition.

The City Council of the City of Modesto hereby finds and determines: That the International Code Council is a private organization which has been in existence for at least three (3) years. That the California Fire Code, 2022 Edition, published by said organization, is a nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said California Fire Code, 2022 Edition has been printed and published as a code in book form within the meaning of Section 50022.2 et seq. of the Government Code. That one (1) copy of the California Fire Code, 2022 Edition, certified by the City Clerk of the City of Modesto to be a true copy, has been filed for use and examination by the public in the office of the City Clerk of the City of Modesto. Sections of the California Fire Code, 2022 Edition may be referred to by the number used in said published compilation, preceded by the words "California Fire Code Section" or "Fire Code Section", and may also be referred to by additional reference to the Modesto Municipal Code and sections therein pertaining to said California Fire Code, 2022 Edition.

The additional requirements and standards established herein are needed to properly protect the health, safety, and welfare of the existing and future residents and workers of the City of Modesto. Said requirements and standards are reasonably necessary because of local climatic, geological, and topographical conditions, and comply with existing state laws and regulations.

Amendment of the California Fire Code, 2022 Edition, is necessary so as to provide more stringent standards for fire extinguishing systems; fire hazard and hazardous materials controls are necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following climatic and topographical local conditions:

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

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

3-1.102 Adoption by Reference of the California Fire Code, 2022 Edition.

- (a) That certain document, one (1) copy of which is on file in the office of the City Clerk of the City of Modesto, being marked and designated as the California Fire Code, 2022 Edition, California Code of Regulations Title 24, Part 9, including Appendix Chapter 4, and Appendix B, BB,C CC,D, F, G, I, K, , N, O and Division 1 California Administration and Division II Scope and Administration as published by the International Code Council, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said California Fire Code, 2022 Edition, on file in the office of the City Clerk of the City of Modesto is hereby referred to, adopted, and made a part in accordance with, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in this chapter and is hereby adopted as the Fire Code of the City of Modesto.

- (b) These regulations shall be known as the Fire Code of the City of Modesto and may be cited as such or may be cited as the "California Fire Code, 2022 Edition," the "2022 California Fire Code", "the Fire Code", or "this Code."

3-1.103 Repeal of Conflicting Ordinances.

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or with the 2022 California Fire Code as adopted and amended are hereby repealed.

ARTICLE 2. AMENDMENTS, ADDITIONS AND DELETIONS TO THE 2022 CALIFORNIA FIRE CODE

3-1.201 Combustible Waste Material.

Section 304.1.2 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

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

3-1.202 Vehicle Impact Protection.

Section 312.2 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

Posts. Guard posts or other approved means shall be provided to protect storage tanks and connected piping, valves and fittings; dispensing areas; and use areas subject to vehicular damage. When guard posts are installed, the posts shall be:

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

3-1.203 Fire Protection and Water Supplies.

Section 507.1 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

Required Water Supply.

- (a) An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, building or portions of buildings are hereafter constructed or moved into or within the jurisdiction. See Appendix-B of the 2022 California Fire Code.
- (b) Fire hydrants shall be located on the supply side of the fire suppression system check valve.
- (c) Fire hydrants shall be accessible to the Fire Department apparatus by roads meeting the requirements of Section 503.1 of the 2022 California Fire Code.

3-1.204 Where Required.

Section 507 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

Where required. Where a portion of a facility or building hereafter constructed or moved into or within the jurisdiction is more than 200 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

3-1.205 Incinerators.

Section 605.8 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

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

Section 307.1 of the 2022 California Fire Code is hereby adopted by reference:

A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with sections 307.1.1 through 307.5

3-1.207 Automatic Sprinkler Systems.

Section 903 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

New Construction.

- (a) An approved automatic fire sprinkler system is required in all new buildings and structures constructed on or after the effective date of this ordinance, notwithstanding the use and occupancy thereof, when any fire area, as defined in the California Fire Code exceeds five thousand (5,000) square feet.
- (b) When automatic sprinkler systems are required by the Modesto Municipal Code or the 2022 California Fire Code for certain uses and/or occupancies, the requirements of Section 903.2 of the 2022 California Fire Code shall also apply.
- (c) An approved automatic residential fire sprinkler system shall be installed in all one and two-family dwellings and townhouses in accordance with NFPA 13D or Section R313.3 of the 2019 California Residential Code.

EXCEPTION:.

- 1. U Occupancies and gas station canopies
- 2. Fire areas that are 5,000 square feet or less, unless the specific building occupancy classification requires sprinklers.

Existing Buildings and Structures.

An approved automatic fire sprinkler system shall be installed in all existing buildings and structures when either of the following conditions are met:

- (a) The value of additions, alterations or repairs that exceed fifty (50) percent of the current county assessed valuation for improvements only in the existing building or structure that exceeds five thousand (5,000) square feet.
- (b) Following any catastrophic event such as fire, flood, or natural disaster.

EXCEPTION:

- 1. U Occupancies and gas station canopies
- 2. Fire areas that are 5,000 square feet or less, unless the specific building occupancy classification requires sprinklers.

3-1.208 Monitoring.

Section 903.4.1 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

3-1.209 Portable Fire Extinguishers.

Section 906.9.1 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

3-1.210 Fire Alarm and Detection Systems.

Section 907. 2 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

Where required - New Buildings and Structures. An approved fire alarm system installed in accordance with the provisions of this code and NPFP 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 of the California Fire (2022 Edition) and provide occupant notification in accordance with Section 907.5, unless other requirements are provided by another section of this code.

- a. All fire alarm and detection systems shall require Central Station Services monitoring as defined by and in accordance with the 2016 Edition of NFPA 72, Chapter 26. A (UL) Underwriters Laboratories Certificate of (FM) Factory Mutual Placard, in accordance with the 2016 Edition of NFPA 72, Chapter 26, shall be issued by the UL listed or FM approved prime contractor for all newly installed fire alarm systems that are newly installed in commercial occupancies for which permits are required by the Modesto Fire Department, Division of Fire Prevention, on or after 1/1/2020.
- b. Any existing fire alarm system in a commercial occupancy wherein the fire alarm control panel and alarm system components require replacement, shall be considered newly installed for the purposes of this section and shall require Central Station Service in accordance with the 2016 Edition of NFPA 72 Chapter 26.
- c. Central Station Service in full compliance with the 2016 Edition of NFPA Chapter 26, shall be maintained at the protected property, so long as the requirement for the fire alarm system exist.

Exception. Supervisory service is not required for:

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

3-1.211. False Fire Alarms.

Section 907 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

3-1.212 Hazardous Materials Occupancies.

Section 5001 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

Section 5003.3.1.4 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

3-1.214 Stationary Containers.

Section 5504.3.1.1.3 of the 2022 California Fire Code is adopted by reference, in addition to the following:

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

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

Section 5604 of the 2022 California Fire Code is hereby adopted by reference in addition to the following:

Dangerous Fireworks (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.

- (b) It shall be unlawful for any person to possess, manufacture, sell, use or discharge dangerous fireworks, or a dangerous firework kit, unless a permit authorizing such possession, sale, manufacture, use or discharge has been issued by the Fire Code Official to the person or responsible party, as is defined in Section 3-1.304 of the Modesto Municipal Code, using, selling, manufacturing, discharging or found in possession of said fireworks or kits, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal. The Fire Code Official may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.
- (c) The Fire Code Official, or designee, shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of dangerous fireworks offered or exposed for sale, stored, or held in violation of this chapter.

3-1.216 Explosive Materials Prohibited and Limited Acts.

Section 5605.1 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

3-1.217 Manufacturing of Fireworks.

Section 5605 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

3-1.218 Sales of Fireworks.

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

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

- (1) Effective 2005, the total number of sales permits issued in any given year shall be limited to seventy (70).
- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
 - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment,

youth or charitable purposes, as defined by Section 501(c) of the Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Modesto. Each new organization shall provide the City with a copy of their "Letters of Incorporation" as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State's Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of California and IRS if nonprofit status comes into question.

- (B) Public school organizations shall provide current written verification of affiliation from the school each year.
 - (C) A "local nonprofit organization" must have its principal and permanent meeting place in the City of Modesto or within the City of Modesto sphere of influence. The organization must have obtained nonprofit status and have been organized and established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership. Applications shall be signed by two (2) bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by State laws, administrative regulations, and all stipulations of this Code and the permit if permission to operate a fireworks stand is granted to the organization.
 - (D) An "existing local for-profit organization" must have a permitted fixed business location in the City of Modesto, have been issued a fireworks sales permit the previous year, have remained under the same management and/or ownership continuously since 1999, and have paid all business license and mill tax fees due the City of Modesto by the close of the application period. In the event mill taxes and business license fees are not current the organization's application will be denied.
 - (E) If any of the above items fail to be met at the time of application, the organization's application shall be denied.
- (3) Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.
 - (4) All applications for sales permits shall be in writing to the Fire Code Official on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.

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

- (5) Applications shall set forth the proposed location of the fireworks stand including the nine (9) digit parcel number (APN) of the Stanislaus County Assessor, a site map, and other information as may be required by the Fire Code Official.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Code Official of approval or disapproval of such application. Sales permits will be issued after final inspection of the stand reveals compliance with all state and local regulations. Organizations shall not open for sales prior to the final inspection of their stand. If an organization's stand fails to pass inspection there will be a re-inspection fee charged for the third (3rd) inspection, and each inspection thereafter until final inspection is approved, as established by Resolution No. 03-446.
- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.22(3). Other items required at the time of application will be the organization's verification of eligibility as stated in 2(A) above, list of bona fide members, and current written permission signed by the property owner of record (with respect to lessee permission, approval shall be in the sole discretion of the Fire Code Official to sell fireworks at that location. Organizations representing public schools, as stated in 2(B) above, require written verification from the school of their affiliation.
- (8) Every application shall be accompanied by a nonrefundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of the Modesto Municipal Code.
- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously permitted since 1999) organizations will have first option for a permit.
 - (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such permits, a lottery will be held to fill any vacancies.
 - (B) This lottery will be held fourteen (14) days after the last day of the filing period specified in paragraph 4 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period. If the fourteenth (14th) day falls on a weekend the lottery will be held on the next business day.
 - (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.
 - (D) Any organization having an approved application that fails to open their stand for that sales year will automatically forfeit their permit and a new organization will be chosen the following year provided a permit is available.
- (10) A nonprofit organization may apply for a sales permit with regard to a stand located in an area annexed by the City of Modesto under the following conditions:

- (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
- (B) The applicant has received a valid City of Modesto business license; and
- (C) The organization must either:
 - (1) Meet the criteria of set forth in Section 33-1.223(2) (A) or
 - (2) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.
- (D) Annexed property that was previously used for a temporary booth by an organization whose current primary meeting place is outside the city limits of Modesto is not eligible to make application for a sales permit.

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

3-1.219 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 "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 "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:

- (1) Within the permitted fireworks stand with a responsible adult on the premises at all times.
 - (2) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
 - (3) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.
 - (4) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
 - (5) In an approved and permitted fireworks warehouse.
2. Operator Safety. Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall attend a stand operator safety seminar conducted by the City of Modesto Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sale fireworks for that calendar year.
3. Temporary Fireworks Stands.
 - (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
 - (2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.
 - (3) Temporary fireworks stand shall not be set up before application for permit has been approved no earlier than June 14.
 - (4) The fireworks stands shall be located at least twenty (20) feet from other structures.
 - (5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330 of the Modesto Municipal Code.
 - (6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
 - (7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
 - (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.

- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not removed by 12:00 noon on the 12th day of July.

4. Safety Precautions.

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

5. Stand Construction.

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
 - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (B) The stand shall be provided with a roof.
 - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.
 - (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.
 - (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
 - (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
 - (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
 - (H) An approved fire extinguisher having a minimum classification of 2A10BC shall be located in the stand, near the exit and readily accessible.
 - (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Fire Code Official.

- (J) Stands will be limited to twenty-four (24) feet by eight (8) feet or one hundred ninety-two (192) square feet in size. Pre-existing stands as identified by the fireworks suppliers shall retain the right to operate their oversized stands, without change, until said stand or organization forfeits or loses their operating permit. A copy of said list shall remain on file with the Fire Code Official.

6. Operation of Fireworks Stand Only by Permittee.

- (1) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operation of such fireworks stand. Violations will result in the immediate loss of the organization's permit.
- (2) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.
- (3) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

3-1.220 Revocation of Permit and Seizure of Fireworks.

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

Revocation of Fireworks Sales Permit. The Fire Code Official, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks sales permit of any location or organization when any of the provisions of Sections 3-1.220, 3-1.221, or 3-1.223 are violated. The Fire Code Official shall inform the permittee that permittee may seek review of the Fire Code Official's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Code Official shall provide the City Manager with written notice that a fireworks sales permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Fire Code Official, or his/her designee, that day to review the Fire Code Official's decision. The decision of the City Manager shall be final.

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

3-1.221 Fireworks Displays Insurance Required.

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

Insurance.

- 1. The permittee shall furnish a certificate of insurance for each policy required, executed by the company issuing such policy, and approved as to form by the Risk Manager.

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

2. The permittee/licensee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.
 - (a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of five hundred thousand dollars (\$500,000).
 - (b) General Liability insurance with a minimum limit of liability per occurrence of five million dollars (\$5,000,000) for bodily injury and five hundred thousand (\$500,000) for property damage. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent permittee/licensees and subcontractors; products and completed operations; and professional liability.
 - (c) Automobile Liability insurance with a minimum limit of liability per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand (\$100,000) for property damage or one million (\$1,000,000) combined single limit. This insurance shall cover any automobile for bodily injury and property damage. If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the permittee/licensee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the permittee/licensee to furnish, deliver or maintain such insurance and certificates as above provided, the permit/license is automatically revoked. Failure of the permittee/licensee to obtain and/or maintain any required insurance shall not relieve the permittee/licensee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the permittee/licensee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers. The permittee/licensee's insurance policy(ies) shall include a provision that the

coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The permittee/licensee must deliver certificates evidencing existence of the insurance listed above to the Finance Director at the time the permit is granted.

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

For any claims related to a permit, the permittee/licensees insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the permittee/licensee's insurance and shall not contribute with it.

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

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

Section 5704 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

Location Where above Ground Tanks are Prohibited. Storage of Class I and II Liquids in aboveground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Chapter 57 of the 2022 California Fire Code. In addition, all above ground tanks shall be UL 2085 listed. The provisions of this section shall not apply to facilities for the production, generation, or transmission of electric energy that provide power to entities furnishing retail electrical services to the general public within the city of Modesto.

3-1.223 Storage of Flammable and Combustible Liquids.

Section 5706 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following amended to read as follows:

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

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

Section 5706.4 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

Bulk Plants. Portions of properties where flammable and combustible liquids are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, pipelines, tank cars, tank vehicles or containers shall be in accordance with Section 5706.4.1 through 5706.4.10.4 of the 2022 California Fire Code.

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

3-1.225 Bulk Transfer and Process Transfer Operations.

Section 5706.5 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

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

3-1.226 Permits for Liquified Petroleum Gases.

Section 6101.2 of the 2022 California Fire Code is hereby adopted by reference, in addition to the following:

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

EXCEPTION:

1. Residential occupancies. Containers shall not exceed ten (10) gallons water capacity with an aggregate total of twenty (20) gallons.
2. Approved containers not exceeding sixteen and four-tenths (16.4) ounces when displayed for sale in mercantile occupancies.
3. Factory installed containers for recreational vehicles not exceeding ten (10) gallon water capacity.
4. Factory installed tanks that are permanently attached to recreational vehicles.

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

ARTICLE 3. ADMINISTRATION

3-1.301 Fees and Related Fees.

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

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

Sections 107.1 and 107.5 of the 2022 California Fire Code is hereby added:

107.1 Fees: A permit shall not be issued until the fees have been paid, nor shall an amendment to the permit be released until the additional fee, if any, has been paid.

107.5 Related fees: The payment of the fee for the construction, alteration, removal, or demolition of work done in connection to or concurrently with the work or activity authorized by a permit shall not relieve the applicant or holder of the permit from the payment of the other fees that are prescribed by law.

3-1.302 Appeals.

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

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

4. When it is claimed that the true intent and meaning of the code have been misconstrued or wrongly interpreted.

3-1.303 Administrative Penalties and Remedies.

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

- (a) For violations of Section 3-1.215 possession, manufacture, sale, use or discharge of dangerous fireworks, the administrative penalty shall be one thousand dollars (\$1,000.00) for each specific act found to be in violation of that section.
- (b) For all violations of this chapter, other than Section 3-1.215 possession, manufacture, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.
- (c) For the purposes of this chapter, the term "responsible party" means any person or persons with the right of possession of the residence or other private property at which dangerous fireworks are possessed, manufactured, sold, used or discharged, including but not limited to:
 - (1) Any owner of the residence or other private property who occupies the residence or private property (hereinafter "owner-occupant"), meaning the record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;
 - (2) Any owner-occupant, lessee, licensee, or other person having control over a property, structure or parcel of land at the time of the possession, manufacture, sale, storage, use or discharge of dangerous fireworks;
 - (3) Any person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering where dangerous fireworks are possessed, manufactured, sold, used or discharged;
- (d) Responsibility for Proper Property Management. Every owner, occupant, lessee, tenant, or holder of any possessory interest of a residence or other private property within the City is required to maintain, manage and supervise property and all persons thereon in a manner so as not to violate the provisions of this chapter. A responsible party need not be present at the time dangerous fireworks are possessed, manufactured, sold, used or discharged in order for the City to issue an administrative citation under this section.
- (e) Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code.

SECTION 2. FINDINGS AND DECLARATION. As required by the 2022 California Fire Code, Section 101.1 the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to the 2022 California Fire Code are reasonably necessary because of local climate and geographic conditions. The ordinance also prescribes local procedures to be used in the administration and enforcement of this Code; provides for local interpretations of this Code and makes other changes in this Code consistent with local custom and practices as reflected in the prior local Fire Code.

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

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

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

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

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 7. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of March, 2023, by Councilmember Wright who moved its introduction and passage to print, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, 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 4th day of April, 2023, Councilmember Escutia-Braaton 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: May 4, 2023