

ORDINANCE NO. 3701- C.S.

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

SECTION 1. FINDINGS

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

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

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

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

attendees, counter-protestors and the police, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

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

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

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

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

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

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

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

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

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

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

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

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

Q. Mr. Grundermann has informed various news outlets that the proposed straight pride event scheduled for August 24, 2019 will happen at some other location in the City on August 24, 2019. On August 12, 2019, Mr. Grundermann started the process with City staff to possibly rent the Centre Plaza location in the City for August 24, 2019.

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

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

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

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

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

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

T. It is imperative that individuals engaging in peaceful expressive public activity do so without fear of violence and that law enforcement personnel dedicated to protecting such activity be allowed to do so without suffering injury. This Urgency Ordinance provides a narrowly tailored content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies in the City of Modesto. Among other things, the restrictions limit the objects that can be used for signs, but still allow for signs to be utilized. Likewise, the restrictions limit the use of facial covering that obscure one's identity at these specific public events (with exceptions for religious and medical reasons) without banning costumes or other expressive clothing. The restrictions are also directed at limiting other items (such as baseball bats, aerosol spray, weapons, glass bottles, shields, bricks, and rocks) that can, and have been weaponized, while still allowing for peaceful expressive activity.

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

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

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

SECTION 2. AMENDMENT OF MUNICIPAL CODE.

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

CHAPTER 23 RESTRICTIONS ON USE OF SPECIFIED ITEMS DURING PUBLIC ASSEMBLY

Section 4-23.01 Purpose

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

Section 4-23.02 Restrictions

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

weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs), including, but not limited to, Tasers or stun guns, metal/composite/wooden knuckles, or any chains greater than 20 inches in length or greater than 1/4 inch in diameter;

8. Balloons, bottles or any other container such as water cannons, super-soakers, or toy or replica firearms filled with any flammable, biohazard or other noxious matter which is injurious, or nauseous, sickening or irritating to any of the senses, with intent to throw, drop, pour, disperse, deposit, release, discharge or expose the same in, upon or about any demonstration, rally, protest, picket line or public assembly;

9. Glass bottles, whether empty or filled;

10. Open flame torches, lanterns or other devices that utilize combustible materials such as gasoline, kerosene, propane or other fuel sources;

11. Shields made of metal, wood, hard plastic or any combination thereof;

12. Bricks, rocks, pieces of asphalt, concrete, pellets or ball bearings; and

13. The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer's face from view and conceals the wearer's identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.

(b) It shall be unlawful and a misdemeanor to violate any provisions of this Chapter.

(c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this Chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.

(d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this Chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.

(e) Nothing in this Chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 *et seq.* (Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 *et seq.* upon a finding by the Chief of Police that such modification will not impair or threaten public safety.

(f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.

SECTION 3. SEVERABILITY.

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

SECTION 4. EFFECTIVE DATE/URGENCY.

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

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

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|-------|-----------------|---|
| AYES: | Councilmembers: | Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold |
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| NAYS: | Councilmembers: | None |
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| ABSENT: | Councilmembers: | None |
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APPROVED: _____
TED BRANDVOLD, Mayor

ATTEST:

By: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____
ADAM U. LINDGREN, City Attorney

FINAL ADOPTION CLAUSE

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

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|-------|-----------------|---|
| AYES: | Councilmembers: | Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold |
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| NOES: | Councilmembers: | None |
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| ABSENT: | Councilmembers: | None |
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APPROVED: _____
TED BRANDVOLD, Mayor

ATTEST:

By: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

Effective Date: August 13, 2019