

**ORDINANCE NO. 3741-C.S.**

**ORDINANCE AMENDING SECTION 1-2.10 OF TITLE 1, “GENERAL PROVISIONS,” CHAPTER 2, “PENALTY PROVISIONS,” OF THE MODESTO MUNICIPAL CODE, RELATING TO ISSUANCE OF CITATIONS BY DESIGNATED EMPLOYEES, TO INCLUDE PARK RANGERS AND POLICE CADET II’S**

WHEREAS, the City of Modesto operates and maintains 76 parks within the city park system for the community to enjoy and recreate in; and

WHEREAS, for many years, community complaints, departmental reports, and police calls for service have identified consistent issues in city parks, open spaces, and trails within the city to include the following: vandalism, illegal camping and trespassing, drug use, dogs off leashes and failure to clean up after dogs, damage to natural habitat and delayed enforcement response times; and

WHEREAS, the City of Modesto strives to be an inviting and safe community with thriving neighborhoods. Ensuring city parks, open spaces, and trails are safe and attractive place for our citizens to enjoy helps achieve this vision; and

WHEREAS, to help achieve a sustained presence in our city parks, trails, and open spaces, the Modesto Police Department recommends implementing an eighteen (18) month Park Ranger pilot program; and

WHEREAS, the program would utilize four (4) full time cadets who would be assigned as Park Rangers for the duration of the pilot program; and

WHEREAS, the enforcement authority of the Park Rangers would be limited to the issuance of citations for violations of state law or any violation of the City of Modesto Municipal Code.

WHEREAS, to provide this authority, the Modesto Police Department requests amending MMC 1-2.10- Issuance of Citations by Designated Employees, to allow the positions of police cadet II and park ranger to issue citations.

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

#### SECTION 1. AMENDMENTS:

Title 1, “General Provisions,” Chapter 2, “Penalty Provisions,” Section 1-2.10 of the City’s Municipal Code is hereby amended to read as follows:

1-2.10 - Issuance of Citations by Designated Employees.  
Pursuant to the provisions of Penal Code Section 836.5, the code enforcement staff of the Neighborhood Preservation Unit of the Community Development Department and the Animal Licensing Officers, Park Rangers, and Police Cadet II’s of the Modesto Police Department are authorized to arrest a person without a warrant whenever such employee has reasonable cause to believe that the person to be arrested had committed, in the employee's presence, a misdemeanor or infraction violation of an ordinance which he or she has the discretionary duty to enforce; and to issue a notice to appear; and release such person on his or her written promise to appear in court, pursuant to California Penal Code Sections 853.5 through 853.6a. Employees so designated shall not be deemed to be peace officers.

#### SECTION 3. SEVERABILITY

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

#### SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

The City Council hereby finds that the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines.

Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

#### SECTION 5. EFFECTIVE DATE

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

#### SECTION 6. PUBLICATION

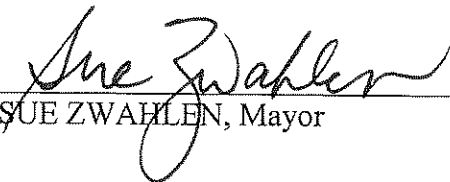
At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance,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

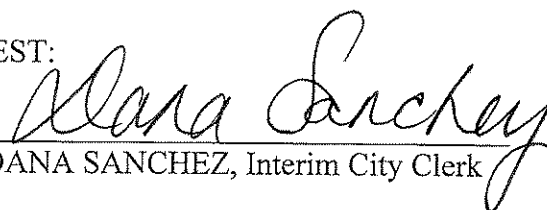
The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25<sup>th</sup> day of January, 2022, by Councilmember Ricci, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Wright, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

NOES: Councilmembers: None

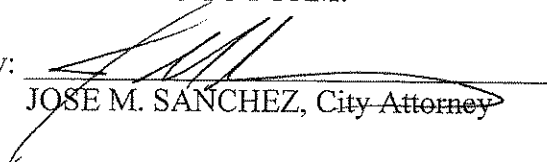
ABSENT: Councilmembers: Kenoyer

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
By:   
DANA SANCHEZ, Interim 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 1<sup>st</sup> day of February, 2022, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

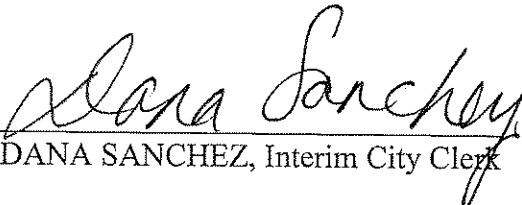
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DANA SANCHEZ, Interim City Clerk

Effective Date: March 3, 2022

**ORDINANCE NO. 3741-C.S.**

**ORDINANCE AMENDING SECTION 1-2.10 OF TITLE 1, "GENERAL PROVISIONS," CHAPTER 2, "PENALTY PROVISIONS," OF THE MODESTO MUNICIPAL CODE, RELATING TO ISSUANCE OF CITATIONS BY DESIGNATED EMPLOYEES, TO INCLUDE PARK RANGERS AND POLICE CADET II'S**

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WHEREAS, the City of Modesto strives to be an inviting and safe community with thriving neighborhoods. Ensuring city parks, open spaces, and trails are safe and attractive place for our citizens to enjoy helps achieve this vision; and

WHEREAS, to help achieve a sustained presence in our city parks, trails, and open spaces, the Modesto Police Department recommends implementing an eighteen (18) month Park Ranger pilot program; and

WHEREAS, the program would utilize four (4) full time cadets who would be assigned as Park Rangers for the duration of the pilot program; and

WHEREAS, the enforcement authority of the Park Rangers would be limited to the issuance of citations for violations of state law or any violation of the City of Modesto Municipal Code.

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

SECTION 1. AMENDMENTS:

Title 1, "General Provisions," Chapter 2, "Penalty Provisions," Section 1-2.10 of the City's Municipal Code is hereby amended to read as follows:

1-2.10 - Issuance of Citations by Designated Employees.  
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SECTION 3. SEVERABILITY

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#### SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

The City Council hereby finds that the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines.

Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

#### SECTION 5. EFFECTIVE DATE

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

#### SECTION 6. PUBLICATION

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



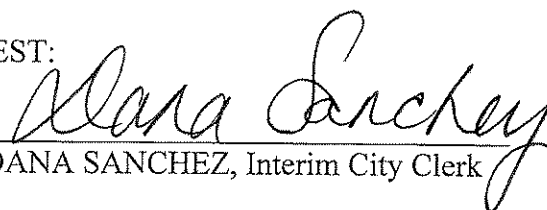
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AYES: Councilmembers: Escutia-Braaton, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

NOES: Councilmembers: None

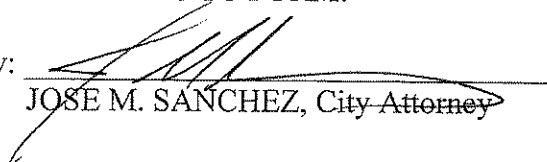
ABSENT: Councilmembers: Kenoyer

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
By:   
DANA SANCHEZ, Interim 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 1<sup>st</sup> day of February, 2022, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

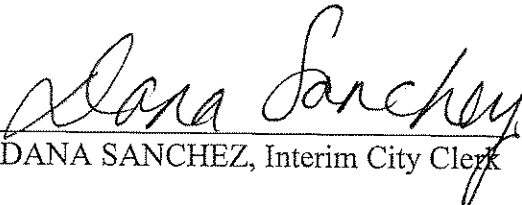
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DANA SANCHEZ, Interim City Clerk

Effective Date: March 3, 2022

**ORDINANCE NO. 3742-C.S.**

**ORDINANCE AMENDING SECTION 10-3.704, “APPLICATION AND PERMIT PROCEDURES,” OF ARTICLE 7 OF CHAPTER 3 OF TITLE 10, “COMMERCIAL CANNABIS USES,” OF THE MODESTO MUNICIPAL CODE TO RENAME THE “CANNABIS PERMIT COMMITTEE” TO BE KNOWN AS THE “CANNABIS PROGRAM AND PERMIT REVIEW COMMITTEE” IN ORDER TO CAPTURE THE STANDING COMMITTEE’S NEW EXPANDED ROLE**

WHEREAS, on November 8, 2016, California voters approved Proposition 64, also known as the Adult Use of Marijuana Act (“AUMA”), legalizing recreational use of cannabis for adults 21 years of age and older; and

WHEREAS, the California Legislature passed Senate Bill 94 in June 2017, which was signed by the Governor and went into effect immediately, and which repealed the Medical Cannabis Regulation and Safety Act (“MCRSA”), and merged certain portions of that law with AUMA to create a more comprehensive regulatory structure for both medical and recreational cannabis; and

WHEREAS, the comprehensive regulatory system created by Senate Bill 94, intended to regulate all commercial cannabis uses, is called the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, the California Bureau of Cannabis Control has promulgated and adopted regulations (“BCC Regulations”) regarding commercial cannabis uses within the state; and

WHEREAS, the City of Modesto (“City”) adopted ordinances regulating all commercial cannabis activities within the City; and

WHEREAS, pursuant to Ordinance No. 3684-C.S, Section 10-3.704(f) of the Modesto Municipal Code/Zoning Code, the City Council is authorized to establish a Cannabis Permit Review Committee; and

WHEREAS, pursuant to Section 10-3.704(f), the Council adopted Resolution No. 2021-132, establishing a three (3) member standing committee, the Cannabis Permit Review Committee, to review and approve non-storefront and non-delivery commercial cannabis permits; and

WHEREAS, in order to expand the role of the standing committee, the Council adopted Resolution No. 2022-109, rescinding City Resolution No. 2021-132 and establishing a Cannabis Program and Permit Review Committee to not only review and approve non-storefront and non-delivery commercial cannabis permits but also to make recommendations to the City Council regarding cannabis-related programs, laws, and regulations; and

WHEREAS, the City Council desires to amend the Modesto Municipal Code to reflect the Standing Committee's new name in order to capture its expanded role.

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

SECTION 1. AMENDMENT TO CHAPTER 3 OF TITLE 10. Article 7, entitled "Commercial Cannabis Uses," of the Modesto Municipal Code is hereby amended to read as follows:

**10-3.704 - Application and Permit Procedures.**

...

(f) Commercial Cannabis Permits.

(1) Commercial Cannabis Permits shall require City Council approval or the approval of a Cannabis **Program and** Permit Review Committee made up of three City Council members appointed by a majority of the entire Council, except with respect to Commercial Cannabis Delivery Permits, which shall be governed by Section 10-3.713. Permit applicants must meet all operator and application requirements to be considered for permit issuance by the City Council or Cannabis **Program and** Permit Review Committee.

(2) City staff shall provide notice in accordance with Section 10-9.201 at least ten (10) days prior to the City Council's or Cannabis **Program and** Permit Review Committee's consideration of the permit.

...

(4) Appeals.

(i) If a Cannabis **Program and** Permit Review Committee is appointed, applicants may appeal its decisions on Cannabis Permits to the full City Council in writing in accordance with Section 10-9.302. The City Council's decision on such appeals shall be final.

(ii) If no Cannabis **Program and** Permit Review Committee is appointed, City Council decisions on Cannabis Permits shall be final.

...

(g) Cannabis Permit Application Procedure.

(1) The City Manager, or his or her designee, may design application forms and procedures specific to each permitted license type, including online permitting, and require inspections of proposed facilities before issuing a permit under this article. Such procedures may include a request for proposal (“RFP”) process for certain license types where deemed necessary.

(2) Applications shall be reviewed by City staff or qualified consultants, as designated by the City Manager. Such review may include a scoring or ranking system. Applications failing to meet minimum qualifications or scoring requirements may not be submitted to the City Council or Cannabis **Program and** Permit Review Committee for consideration.

...

## SECTION 2. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Modesto hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

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

The proposed Ordinance is exempt from CEQA under the general rule in CEQA Guidelines section 15061(b)(3), that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

SECTION 4. EFFECTIVE DATE.

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

SECTION 5. PUBLICATION.

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

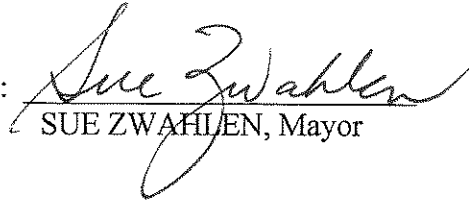
The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1<sup>st</sup> day of March, 2022, by Councilmember Ricci, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and ordered printed and published by the following vote:

AYES: Council Members: Kenoyer, Madrigal, Ricci, Wright, Zoslocki,  
Mayor Zwahlen

NOES: Council Members: None

ABSENT: Council Members: Escutia-Braaton

APPROVED:

  
SUE ZWAHLEN, Mayor

ATTEST:


BY:

  
DANA SANCHEZ, Interim City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:

  
JOSE M. SANCHEZ, City Attorney



FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8<sup>th</sup> day of March, 2022, Council Member Wright moved its final adoption, which motion being duly seconded by Council Member Kenoyer, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Council Members: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

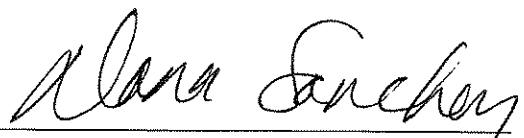
NOES: Council Members: None

ABSENT: Council Members: Zoslocki

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DANA SANCHEZ, Interim City Clerk

Effective Date: April 7, 2022

**ORDINANCE NO. 3743-C.S.**

**ORDINANCE AMENDING SECTION 2-1.18, “STANDING COMMITTEES,” OF THE MODESTO MUNICIPAL CODE TO INCLUDE THE “CANNABIS PROGRAM AND PERMIT REVIEW COMMITTEE” AS A STANDING COMMITTEE OF THE CITY**

WHEREAS, on November 8, 2016, California voters approved Proposition 64, also known as the Adult Use of Marijuana Act (“AUMA”), legalizing recreational use of cannabis for adults 21 years of age and older; and

WHEREAS, the California Legislature passed Senate Bill 94 in June 2017, which was signed by the Governor and went into effect immediately, and which repealed the Medical Cannabis Regulation and Safety Act (“MCRSA”), and merged certain portions of that law with AUMA to create a more comprehensive regulatory structure for both medical and recreational cannabis; and

WHEREAS, the comprehensive regulatory system created by Senate Bill 94, intended to regulate all commercial cannabis uses, is called the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, the California Bureau of Cannabis Control has promulgated and adopted regulations (“BCC Regulations”) regarding commercial cannabis uses within the state; and

WHEREAS, the City of Modesto (“City”) adopted ordinances regulating all commercial cannabis activities within the City; and

WHEREAS, pursuant to Ordinance No. 3684-C.S, Section 10-3.704(f) of the Modesto Municipal Code/Zoning Code, the City Council is authorized to establish a Cannabis Permit Review Committee; and

WHEREAS, pursuant to Section 10-3.704(f), the Council adopted Resolution No. 2021-132, establishing a three-member standing committee, the Cannabis Permit Review Committee, to review and approve of non-storefront and non-delivery commercial cannabis permits; and

WHEREAS, in order to expand the role of the standing committee, the Council adopted Resolution No. 2022-109, rescinding Resolution No. 2021-132 and establishing a Cannabis Program and Permit Review Committee to not only review and approve non-storefront and non-delivery commercial cannabis permits but also to make recommendations to the City Council regarding cannabis-related programs, laws, and regulations; and

WHEREAS, the City Council desires to amend the Modesto Municipal Code to include the “Cannabis Program and Permit Review Committee” as a standing committee of the City under the Municipal Code.

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

SECTION 1. AMENDMENT TO CHAPTER 1 OF TITLE 2. Section 2-1.18, entitled “Standing Committees,” of the Modesto Municipal Code is hereby amended to read as follows:

**2-1.18 - Standing Committees.**

The standing committees of the Council shall be the Safety and Communities Committee, the Economic Development Committee, the Finance Committee, the Appointments Committee, the Audit Committee, **and the Cannabis Program and Permit Review**

**Committee**, each of which committees shall consist of three (3) members of the Council

appointed by the Mayor. The responsibilities of the Appointments and Audit Committee shall be to review and make recommendations for appointments to City Boards, Commissions, and Committees, and such other responsibilities established from time to time by resolution of the City Council.

#### SECTION 2. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Modesto hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

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

The proposed Ordinance is exempt from CEQA under the general rule in CEQA Guidelines section 15061(b)(3), that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

#### SECTION 4. EFFECTIVE DATE.

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

SECTION 5. PUBLICATION.

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1<sup>st</sup> day of March, 2022, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:


AYES: Council Members: Kenoyer, Madrigal, Ricci, Wright, Zoslocki,  
Mayor Zwahlen

NOES: Council Members: None

ABSENT: Council Members: Escutia-Braaton

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

BY:   
DANA SANCHEZ, Interim City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

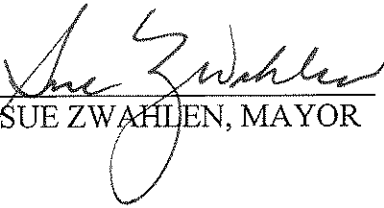
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AYES: Council Members: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright,  
Mayor Zwahlen

NOES: Council Members: None

ABSENT: Council Members: Zoslocki

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DANA SANCHEZ, Interim City Clerk

Effective Date: April 7, 2022

**ORDINANCE NO. 3744-C.S.**

**ORDINANCE ADDING ARTICLE 7, “LOCAL HIRING PREFERENCES IN PUBLIC WORKS CONTRACTS,” AND ARTICLE 8, “UTILIZING SKILLED AND TRAINED WORKFORCE IN PUBLIC WORKS CONTRACTS,” TO TITLE 8, CHAPTER 3 OF THE MODESTO MUNICIPAL CODE**

WHEREAS, the unemployment rate in the City of Modesto (“City”) has generally been higher than in the State of California as a whole. The average unemployment rate in the City between 2018 and 2021 was 7.66%. During the same time period, the average annual unemployment rate for the State of California as a whole was 6.69%; and

WHEREAS, the City has determined that expanding the employment base by implementing a local hiring preference in Public Works Contracts within the City and Stanislaus County will benefit the region as a whole; and

WHEREAS, the City has determined that it is in the public interest and welfare to add Article 7 to Chapter 3 of Title 8 of the Modesto Municipal Code; and

WHEREAS, the City has determined that Public Works Contracts utilizing a skilled and trained workforce will result in a higher quality work product; and

WHEREAS, the City has determined that it is in the public interest and welfare to add Article 8 to Chapter 3 of Title 8 of the Modesto Municipal Code.

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

follows: **SECTION 1. FINDINGS**

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



## **SECTION 2. ADDITIONS**

1. The City of Modesto Municipal Code Title 8 Chapter 3 is hereby amended by adding ARTICLE 7 entitled “Local Hiring Preferences in Public Works Contracts” in its entirety to read as follows:

### Article 7 – Local Hiring Preferences in Public Works Contracts

#### **8-3.701 – Findings and Purpose**

- (a) The City Council finds and declares as follows:
  - (1) The unemployment rate in the City has generally been higher than in the State of California as a whole. The average annual unemployment rate in the City between 2018 and 2021 was 7.66%. During the same time period, the average annual unemployment rate for the State of California as a whole was 6.69%.
  - (2) Statistics indicate that the City’s higher unemployment rate correlates to a higher number of families living in poverty and to a higher crime rate.
  - (3) Expanding the employment base by implementing a local hiring preference in Public Works Contracts within the City and Stanislaus County will benefit the region as a whole.
  - (4) The City spends significant amounts in contracting for services and in constructing improvements to real property or to existing facilities. The funds used in contracting for those services are derived, in part, from taxes, fees, and other revenues of local businesses in the City. To the extent possible, such funds should be placed back into the local economy.

- (5) The construction industry is a potential path to stable employment and is, therefore, a critical opportunity to connect residents with economic opportunities.
  - (6) A local hiring preference in Public Works Contracts will aim to provide job opportunities to City and Stanislaus County residents, expand the region's employment base, lessen the drain on public assistance resources, and reduce the City workforce's pattern of commuting outside the region for employment.
- (b) The purpose of this Article is to improve the local economy by:
- (1) Increasing the local workforce base by decreasing unemployment and thereby enhancing and retaining job skills; and
  - (2) Increasing local spending power, which will result in a stronger, more self-reliant economy.

**8-3.702 – Exclusions and Exceptions**

The provisions of this Article shall not apply under any of the following circumstances:

- (a) When a state or federal law or regulation applicable to a particular Public Works Contract prohibits a local hiring requirement;
- (b) When a particular Public Works Contract utilizes grant funding, where the conditions of the grant prohibit a local hiring requirement;
- (c) When the City, in its sole discretion, determines that a contract is necessary to respond to any emergency which endangers the public health, safety, or welfare;

- (d) When the City, in its sole discretion, determines that a suitable pool of Qualified Individuals who are Local Residents does not exist for a specific Public Works Contract; and/or
- (e) When the estimated cost of the construction of the Public Works Contract is less than \$500,000.

**8-3.703 – Definitions**

Except as otherwise expressly set forth herein, the following words and terms as used in this Article shall have the following meanings:

- (a) “Construction Work Hours” means the total hours worked on a Public Works Contract by qualified individuals, whether those individuals are employed by a Contractor or Subcontractor.
- (b) “Contractor” means any of the following:
  - (1) Any person or entity who submits a bid as the prime entity to the City for a Public Works Contract.
  - (2) Any person or entity who provides labor and/or materials for the City pursuant to a Public Works Contract.
- (c) “City” means the City of Modesto, California.
- (d) “Days” means calendar days unless otherwise specified.
- (e) “Local Resident” means an individual who is legally domiciled, as defined by Elections Code section 349(b), in Stanislaus County immediately preceding the date of the notice of solicitation or bid advertisement by the City. An individual’s domicile is his or her one and only true, fixed, and permanent home and principal establishment. An individual shall verify his or her domicile upon request of the

Contractor or City by producing satisfactory documentation such as a rent/lease agreement, utility bills, a valid state-issued driver's license or identification card, or any other similar and reliable evidence.

- (f) "Public Works Contract" has the same meaning as set forth in Section 1307 of the City Charter, as amended or supplanted.
- (g) "Qualified Individuals" means any and all skilled and unskilled workers, including but not limited to, work site foremen, journeymen, technical engineers, apprentices, construction trainees, and construction helpers. Qualified Individuals also include any and all other workers appropriate for construction activities regardless of level of skill.
- (h) "Subcontractor(s)" means any person or entity that assumes, by secondary contract, some or all of the obligations of a Contractor.

**8-3.704 – Requirements for Contractors**

- (a) Every Contractor submitting a bid to the City for a Public Works Contract shall agree to make a good faith effort to hire Qualified Individuals who are Local Residents in sufficient numbers so that, with respect to such Public Works Contract, no less than 25% of the total construction workforce, including the Subcontractor workforce, measured in Construction Work Hours, is comprised of Local Residents.
- (b) A "good faith effort" means a Contractor will take all of the following or similar actions to recruit and maintain Local Residents as part of the construction workforce:

- (1) Contact local recruitment sources to identify Qualified Individuals who are Local Residents;
  - (2) Advertise for Qualified Individuals who are Local Residents in trade papers and newspapers of general circulation within the City and the County of Stanislaus, or by equivalent electronic means, unless time limits imposed under the applicable Public Works Contract relative to the commencement and/or completion of work do not permit such advertising; and
  - (3) With respect to any portion of a Public Works Contract to be performed by a Subcontractor, identify Subcontractors whose workforce includes Qualified Individuals who are Local Residents.
- (c) Every Contractor shall complete and sign, under penalty of perjury, a certification of good faith effort to hire Local Residents, on the form provided in the City's bid package, and shall submit the same with its sealed bid no later than the date and time of the bid opening.
- (d) A Contractor shall include in each and every subcontract relating to a Public Works Contract, a provision whereby the Subcontractor agrees to make a good faith effort to hire Qualified Individuals who are Local Residents. A Contractor shall be responsible for a Subcontractor's compliance with the provisions of this Article.
- (e) The City Purchasing Manager, or his or her designee, shall prescribe rules, regulations, and procedures relating to the application, administration, and interpretation of the provisions of this Section. Such rules, regulations, and

procedures shall be consistent with the provisions of this Section and may specify details and forms to be used.

- (f) If in the sole discretion of the City, the City finds that a Contractor has failed to make a good faith effort to use Local Residents in the course of performance of any applicable Public Works Contract pursuant to the requirements of this Article, the City may deem the Contractor in breach of contract. In the alternative of any other available legal remedies, the City may require that Contractor to develop a written plan to recruit Qualified Individuals who are Local Residents as a method of complying with the requirements of this Article. If the Contractor fails to comply with a written plan described by this Section, the City may, at its sole discretion, deem the Contractor non-responsible in the evaluation of future Public Works Contract bid opportunities.

**8-3.705 – Hiring Discretion**

This Article does not limit the Contractor’s or the Subcontractor’s ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Article shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for a position in question, or to employ any particular worker.

**8-3.706 – Nonresponsive Bids**

- (a) Nothing in this Article alters the City’s obligation to award a contract to the lowest bidder. The City may declare a bid to be nonresponsive under the provisions of this Article for good cause including, but not limited to, the following circumstances:

- (1) If a Contractor fails to complete and sign, under penalty of perjury, the certificate of good faith effort to hire Local Residents and/or fails to submit the same with its sealed bid no later than the date and time of bid opening; or
- (2) If a Contractor, or a Subcontractor listed by a Contractor, fails to comply with the good faith effort requirements set forth in 8-3.703.

### **8-3.707 – Required Documentation**

During its performance of a Public Works Contract, a Contractor shall keep an accurate record on a standardized form showing the name, place, of residence, trade classification, hours employed, proof of a Qualified Individual status, per diem wages and benefits, or each person employed by the Contractor on the specific public works project, including full-time, part-time, permanent and temporary employees. A Contractor shall require each Subcontractor performing work pursuant to a Public Works Contract awarded by the City to the Contractor to maintain records of the same information for the Subcontractor's workforce and shall require each Subcontractor to provide a copy of such records to the Contractor upon the Contractor's request. A Contractor shall make the records and documents set forth in this Section available to the City, upon request, within five (5) business days.

### **8-3.708 – Forms Submitted Under Penalty of Perjury**

All forms required under this Article shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

### **8-3.709 – Monitoring**

From time to time, and at its sole discretion, the City may monitor and investigate the compliance of any Contractor and/or Subcontractor with respect to the requirements of this Article. The City shall have the right to engage in random inspections of job sites, subject to the construction schedule and safety concerns. Each Contractor and Subcontractor shall allow representatives of the City, in the performance of their duties, to engage in random inspections of job sites and to have access to the employees of the Contractor and Subcontractor and the records required to document compliance with this Article. The City shall establish a procedure for City monitoring of compliance with this Article and to address allegations of noncompliance. The City shall have sole authority over the administration of this Article.

2. The City of Modesto Municipal Code Title 8 Chapter 3 is hereby amended by adding ARTICLE 8 entitled “Utilizing Skilled and Trained Workforce in Public Works Contracts” in its entirety to read as follows:

Article 8 – Utilizing Skilled and Trained Workforce in Public Works Contracts

**8-3.801 – Findings and Purpose**

- (a) The City Council finds and declares as follows: The purpose of this Article is to improve the quality of public works projects undertaken in the City by:
- (1) Increasing the percentage of individuals utilized in Public Works Contracts meeting the definition of a skilled and trained workforce.
  - (2) Utilizing a greater percentage of skilled and trained workforce will increase the quality of public works projects completed in the City because the workforce is more experienced and qualified to perform such work.



### **8-3.802 – Exclusions and Exceptions**

The provisions of this Article shall not apply under any of the following circumstances:

- (a) When a state or federal law or regulation applicable to a particular Public Works Contract prohibits a skilled and trained workforce requirement;
- (b) When a particular Public Works Contract utilizes grant funding, where the conditions of the grant prohibit a skilled and trained workforce requirement;
- (c) When the City determines that a contract is necessary to respond to any emergency which endangers the public health, safety, or welfare;
- (d) When the City, in its sole discretion, determines that a suitable pool of Qualified Individuals who meet skilled and trained workforce requirements does not exist for a specific Public Works Contract.
- (e) When the estimated cost of the construction of the Public Works Contract is less than \$500,000; and/or
- (f) When a Public Works Project is governed by a particular State law or regulation prescribing skilled and trained workforce requirements inconsistent with this Article.

### **8-3.803 – Definitions**

Except as otherwise expressly set forth herein, the following words and terms as used in this Article shall have the following meanings:

- (a) “Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor code before January 1, 2014.

- (b) “Construction Work Hours” means the total hours worked on a public works contract by qualified individuals, whether those individuals are employed by a Contractor or Subcontractor.
- (c) “Contractor” means any of the following:
  - (1) Any person or entity who submits a bid as the prime entity to the City for a Public Works Contract.
  - (2) Any person or entity who provides labor and/or materials for the City pursuant to a Public Works Contract.
- (d) “City” means the City of Modesto, California.
- (e) “Days” means calendar days unless otherwise specified.
- (f) “Public Works Contract” has the same meaning as set forth in Section 1307 of the City Charter, as amended or supplanted.
- (g) “Qualified Individuals” means any and all skilled and trained workers, including but not limited to, work site foremen, journeymen, technical engineers, apprentices, construction trainees, and construction helpers. Qualified Individuals also include any and all other workers appropriate for construction activities regardless of level of skill.
- (h) “Skilled and trained workforce” means a workforce that meets all of the following conditions:
  - (1) All the workers performing work in an apprenticable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief

of the Division of Apprenticeship Standards of the Department of Industrial Relations.

- (2) At least 60% of the skilled journeypersons employed to perform work on the contract or project by every Contractor and each of its Subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.
- (3) For the occupations exempted from the requirements of Paragraph 2 of this Section (definition of “skilled and trained workforce”), at least 30% of the skilled journeypersons employed to perform work on the contract or project by every Contractor and each of its Subcontractors at every tier must be graduates of an apprenticeship program for the applicable occupation.
  - (i) “Skilled journeyperson” means a worker who either:
    - (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

- (2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (j) “Subcontractor(s)” means any person or entity that assumes, by secondary contract, some or all of the obligations of a Contractor.

**8-3.804 – Requirements for Contractors**

- (a) Each Contractor and Subcontractor that performs work on a Public Works Contract shall make a good faith effort to employ a skilled and trained workforce, pursuant to California Public Contract Code § 2601, to perform all work on the project that falls within an Apprenticable Occupation in the building and construction trades, as defined by California Public Contract Code § 2601.
- (b) Each Contractor and Subcontractor that performs work on a Public Works Contract shall make a good faith effort to use graduates of an apprenticeship program as defined by Public Contract Code § 2601(c), in the percentages required by Section 8-3.803(i) of this Article.
- (c) A “good faith effort” means a Contractor will take all of the following or similar actions to recruit and maintain skilled and trained workforce in the performance of any Public Works Contract meeting the requirements of this Article:
  - (1) Contact recruitment sources to identify Qualified Individuals;
  - (2) Advertise for Qualified Individuals in trade papers and newspapers of general circulation within the City and the County of Stanislaus, or by

equivalent electronic means, unless time limits imposed under the applicable Public Works Contract relative to the commencement and/or completion of work do not permit such advertising; and

- (3) With respect to any portion of a Public Works Contract to be performed by a Subcontractor, identify Subcontractors whose workforce includes Qualified Individuals.
- (d) Each Contractor shall certify that it made a good faith effort to use a skilled and trained workforce, on the form provided in the City's bid package, and shall submit the same with its sealed bid no later than the date and time of the bid opening.
- (e) Each Contractor shall include in each and every subcontract relating to a Public Works Contract, a provision requiring the Subcontractor to certify that it made a good faith effort to use a skilled and trained workforce in that contract. Each Contractor shall be responsible for a Subcontractor's compliance with the requirements of this Article.
- (f) Failure of any Contractor or Subcontractor to comply with any requirement of this Article may be deemed, in the sole discretion of the City, a material breach of the Public Works Contract.

**8-3.805 – Hiring Discretion**

This Article does not limit the Contractor's or the Subcontractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions.

No provision of this Article shall be interpreted so as to require a Contractor or

Subcontractor to employ a worker not qualified for a position in question, or to employ any particular worker.

**8-3.806 – Nonresponsive Bids**

(a) Nothing in this Article alters the City’s obligation to award a contract to the lowest bidder. The City may declare a bid to be nonresponsive under the provisions of this Article for good cause including, but not limited to, the following circumstances:

- (1) If a Contractor fails to complete and sign, under penalty of perjury, the certification that the Contractor made a good faith effort to use a skilled and trained workforce and/or fails to submit the same with its sealed bid no later than the date and time of bid opening; or
- (2) If a Contractor, or a Subcontractor listed by a Contractor, fails to comply with the requirements set forth in 8-3.804.

**8-3.807 – Required Documentation**

For three (3) years following substantial completion of any Public Works Contract, each Contractor and Subcontractor shall keep accurate payroll records, showing the name, address, and work classification for each worker who worked on the project; the straight time and overtime hours worked each day and week; whether the worker qualifies as a skilled journeyman under California Public Contract Code § 2601; and whether the worker is a graduate of an apprenticeship program in the applicable occupation. These records shall be made available upon request by officers and agents of the City. Records shall be made available no later than ten (10) days subsequent to the request.

**8-3.808 – Forms Submitted Under Penalty of Perjury**

All forms required under this Article shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

### **8-3.809 – Monitoring**

From time to time, and at its sole discretion, the City may monitor and investigate compliance of any Contractor and/or Subcontractor with respect to the requirements of this Article. The City shall have the right to engage in random inspections of job sites, subject to the construction schedule and safety concerns. Each Contractor and Subcontractor shall allow representatives of the City, in the performance of their duties, to engage in random inspections of job sites and to have access to the employees of the Contractor and Subcontractor and the records required to document compliance with this Article. The City shall establish a procedure for City monitoring of compliance with this Article and to address allegations of noncompliance. Within sixty (60) days of Contractor completing all substantial work associated with a Public Works Contract pursuant to this Article, Contractor shall submit documentation as set forth in Section 8-3.807 in a form acceptable to the City. The City shall have sole authority over the administration of this Article.

### **8-3.810 – City’s Remedies**

If in the sole discretion of the City, the City finds that a Contractor has failed to make a good faith effort to use a skilled and trained workforce in the course of performance of any applicable Public Works Contract pursuant to the requirements of this Article, the City may deem the Contractor in breach of contract. In the alternative of any other available legal remedies, the City may require that Contractor to develop a written plan to recruit qualified individuals as a method of complying with the requirements of this

Article. If the Contractor fails to comply with a written plan described by this Section, the City may, at its sole discretion, deem the Contractor non-responsible in the evaluation of future Public Works Contract bid opportunities.

**SECTION 3. SEVERABILITY.**

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

**SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)**

The City Council hereby finds that the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines.

Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

**SECTION 5. EFFECTIVE DATE.**

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



**SECTION 6. PUBLICATION.**

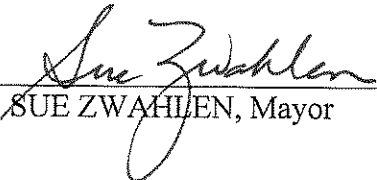
At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in the Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this Ordinance,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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1<sup>st</sup> day of March, 2022, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

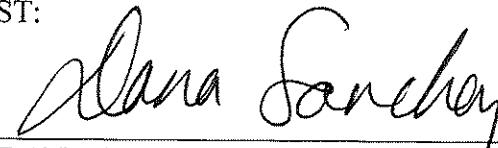
AYES: Council Members: Madrigal, Ricci, Zoslocki, Mayor Zwahlen

NOES: Council Members: Kenoyer, Wright,

ABSENT: Council Members: Escutia-Braaton

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:

BY:   
DANA SANCHEZ, Interim City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8<sup>th</sup> day of March, 2022, Councilmember Madrigal moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Council Members: Escutia-Braaton, Madrigal, Ricci, Zoslocki,  
Mayor Zwahlen

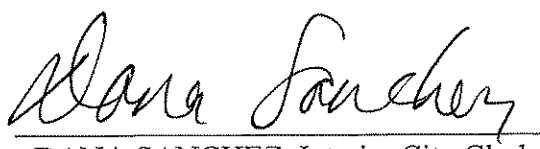
NOES: Council Members: Kenoyer, Wright,

ABSENT: Council Members: None

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DANA SANCHEZ, Interim City Clerk

Effective Date: April 7, 2022

**ORDINANCE NO. 3745-C.S.**

**ORDINANCE APPROVING THE MODESTO POLICE DEPARTMENT MILITARY EQUIPMENT USE POLICY 710**

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

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

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

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

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

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

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

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

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

**SECTION 1. FINDINGS**

The City Council of the City of Modesto finds that all of the above Recitals and within this Ordinance are true and correct and incorporated herein by reference. The City Council hereby approves the Modesto Police Department Military Equipment Use Policy 710, attached hereto.

**SECTION 2. SEVERABILITY.**

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

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

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

**SECTION 4. EFFECTIVE DATE.**

THIS ORDINANCE IS RESCINDED BY ORDINANCE NUMBER 3763-C.S. ON MAY 9, 2023

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

**SECTION 5. PUBLICATION.**

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

**THIS ORDINANCE IS RESCINDED  
BY ORDINANCE NUMBER 3763-C.S.  
ON MAY 9, 2023**

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3<sup>rd</sup> day of May, 2022, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Mayor Zwahlen, was upon roll call carried and ordered printed and published by the following vote:

AYES: Council Members: Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Council Members: None

ABSENT: Council Members: Escutia-Braaton

APPROVED: *Sue Zwahlen*  
SUE ZWAHLEN, Mayor

ATTEST:

BY: *Diane Nayer-Piccoli*  
DIANE NAYER-PICCOLI, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: *Jose M. Sanchez*  
JOSE M. SANCHEZ, City Attorney

**THIS ORDINANCE IS RESCINDED  
BY ORDINANCE NUMBER 3763-C.S.  
ON MAY 9, 2023**

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 10<sup>th</sup> day of May, 2022, Councilmember Kenover moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Council Members: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwaahlen

NOES: Council Members: None

ABSENT: Council Members: None

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DIANE NAYA, City Clerk

Effective Date: June 9, 2022



**ORDINANCE NO. 3746-C.S.**

**AN ORDINANCE ADDING ARTICLE 12 TO  
CHAPTER 2 OF TITLE 8 OF THE MODESTO  
MUNICIPAL CODE IMPOSING A TRANSACTIONS  
AND USE TAX**

The People and the City Council of the City of Modesto do ordain as follows:

**WHEREAS**, the People and the City Council of the City of Modesto desire to restore critical City Services aimed at reducing crime, maintaining a safe and inviting community, and improving quality of life; and

**WHEREAS**, the City of Modesto (“City”) has a special history and a bright future, with a treasured small-town feel; however, it is a growing City with big-city problems such as homelessness, blight, and crime; and

**WHEREAS**, the City does not receive enough funding from taxes, the State or the County to address local residents’ growing needs and concerns; and

**WHEREAS**, the City’s sales tax rate of 7.875% is one of the lowest percentiles statewide and in the region; with the City’s portion of that revenue being only one percent (1%); and

**WHEREAS**, the residents of the City receive far fewer services per capita than other benchmark cities in California; and

**WHEREAS**, since the Great Recession, the City’s organization has been decimated with the cutting of twenty-seven percent (27%) of the staff in the General Fund departments, including seventy-seven (77) sworn Police officers and fifty-six (56) Fire personnel; and

**WHEREAS**, the cuts the City has had to make have resulted in a decrease in Police, Fire, and Emergency Medical Service response times at unacceptable levels far below industry standards; and

**WHEREAS**, even with these cuts the City has had to make to Police and Fire personnel, public safety represents eight (80%) of the City's General Fund; and

**WHEREAS**, the City's once robust recreation services have also seen drastic changes. Due to funding shortages, the City's parks system has deteriorated to unacceptable conditions, with Seventy-Four Million Dollars (\$74,000,000) in deferred maintenance; and

**WHEREAS**, due to these funding shortages, it now takes months or even several years to respond to tree and sidewalk maintenance requests; and

**WHEREAS**, the City struggles to provide even basic City services without the reliance on one-time State and Federal funds assistance; and

**WHEREAS**, the City of Modesto is committed to long-term fiscal prudence, responsibility, innovation, and self-reliance; and

**WHEREAS**, a one percent (1%) general revenue sales tax would enable the City to proactively develop a plan to improve City services and the quality of life for the citizens of Modesto. This additional funding would help to improve City Services such as, but not limited to:

- Addressing homelessness.
- Providing quicker responses to 911 emergencies, including DUIs, gang, and drug-related crimes.

- Supporting neighborhood police patrols, crime prevention, traffic enforcement, fire protection, and paramedics.
- Fixing and maintaining roads and sidewalks.
- Keeping parks, recreation facilities, and public areas safe and clear of trash and litter.

**WHEREAS**, even after a one percent (1%) general revenue sales tax, the City’s sales tax rate will still be one of the lowest in the region; however, it will help keep the City competitive and attractive to business investment; and

**WHEREAS**, a one percent (1%) general revenue sales tax would reduce the City’s need to rely on State and Federal dollars, which often come with regulations on how the money can be spent. Instead, the City could use these local funds to satisfy local needs and priorities; and

**WHEREAS**, these local funds cannot be taken by the County, State, or Federal Government and are subject to local oversight.

**SECTION 1. INCORPORATION OF RECITALS.** The City Council and the People of Modesto find that all the Recitals are true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MUNICIPAL CODE.** Article 12 is hereby added to Chapter 2 of Title 8 of the Modesto Municipal Code to read as follows:

**“ARTICLE 12. TRANSACTION AND USE TAX.**

**8-2.1201- Title.**

This Ordinance shall be known as the Modesto Transactions and Use Tax Ordinance. This Ordinance shall be applicable in the incorporated territory of the City (hereinafter “City.”)

**8-2.1202 - Operative Date.**

“Operative Date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance, the date of such adoption being as set forth below.

**8-2.1203 - Purpose.**

This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and

requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this Ordinance.

**8-2.1204 - Contract With State.**

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

**8-2.1205 - Transactions Tax Rate.**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this Ordinance.

**8-2.1206 - Place of Sale.**

For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

**8-2.1207 - Use Tax Rate.**

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this Ordinance for storage, use or other consumption in said territory at the rate of one percent (1%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

**8-2.1208 - Adoption of Provisions of State Law.**

Except as otherwise provided in this Ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Ordinance as though fully set forth herein.

**8-2.1209 - Limitations on Adoption of State Law and Collection of Use Taxes.**

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;
2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance;
3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
  - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
  - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.
1. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds Five Hundred Thousand Dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

**8-2.1210 - Permit Not Required.**

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

**8-2.1211 - Exemptions and Exclusions.**

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.



B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
  - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
  3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.
  4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.
  5. For the purposes of Subparagraphs (3) and (4) of this Section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
  2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a

certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.
4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.
5. For the purposes of Subparagraphs (3) and (4) of this Section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
6. Except as provided in Subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent,

canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

- D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

#### **8-2.1212- Amendments.**

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this Ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

**8-2.1213 - Enjoining Collection Forbidden.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**8-2.1214 - Annual Audit.**

Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of the City’s financial activities. The auditor shall include an accounting of the revenue received from the tax in the audited financial statements. The auditor’s report shall be presented to the City Council, be reviewed by the Oversight Board, made available on the City’s website and made available to the public.

**8-2.1215 – Oversight Board**

The City Council shall appoint a nine (9) -member Oversight Board by June 30, 2023 to meet publicly at least semi-annually to review all revenues and expenditures of funds from the tax authorized by this Ordinance, review annual audit reports related to the tax measure, and make at least one (1) written annual report to the City Council at a public meeting summarizing the Oversight Board’s findings. The Oversight Board shall consist of a representative from each Council district and three “at-large” Modesto residents. The City Council shall give strong preference to members that represent a cross-section of the community, possibly including, but not limited to, representatives of schools, local trade associations, chambers of commerce, nonprofit organizations, senior citizen groups, non-partisan political organizations (such as the League of

Women Voters), tax-payer association, and neighborhood organizations (including individuals retired from such groups).

**8-2.1216 – Amendments by City Council.**

The following amendments to this Ordinance must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of Section 8-2.1112); or extending the tax. The City Council may otherwise amend this Ordinance without submitting the amendment to the voters for approval.

**8-2.1217 – Termination Date.**

The authority to levy the tax imposed by this Ordinance shall expire when ended by the voters of the City.”

**SECTION 3. ADJUSTMENT OF APPROPRIATIONS LIMIT.** Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2022-23 and each year thereafter.

**SECTION 4. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.** The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). This Ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA

Guidelines section 15378(b)(4), the Ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

**SECTION 5. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

**SECTION 6. EFFECTIVE DATE.** This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon applicable voter approval.

The foregoing Ordinance was adopted by City Council of the City of Modesto, subject to voter approval, on November 8, 2022 by the following vote:

AYES: Council Members: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Council Members: None

ABSENT: Council Members: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST,

BY:   
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

5110148.6



**ORDINANCE NO. 3747-C.S.**

**AN ORDINANCE AMENDING SECTION 17-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, AND COMMERCIAL-INDUSTRIAL ZONE, C-M, TO PLANNED DEVELOPMENT ZONE, P-D(615), PROPERTY LOCATED AT 1601 AND 1625 MCHENRY AVENUE (CITY INITIATED)**

WHEREAS, a verified application for an amendment to Section 17-3-9 of the Zoning Map was filed by the City of Modesto on May 10, 2022, to rezone from Low Density Residential Zone. R-1, and Commercial-Industrial Zone, C-M, to Planned Development Zone, P-D(615) property located at 1601 and 1625 McHenry Avenue; and

WHEREAS, after a public hearing held on June 20, 2022, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because the Commercial Industrial (C-M) Zone is a legacy zone that permits industrial uses that are not compatible with nearby residential uses, the requested zone change will result in an orderly planned use of land because the rezone will align the property with the current General Plan Corridor Development Concept for this site and allow land use compliant with the goals and policies for site development, and the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan and any applicable specific plans(s) because the change would allow existing professional office and non-auto related retail commercial uses to remain; and

WHEREAS, by Resolution No. 2022-18, adopted on June 20, 2022, the Planning Commission recommended to the Council that the application of the City of Modesto to amend Section 17-3-9 of the Zoning Map to rezone the hereinafter described

property from Low Density Residential Zone, R-1, and Commercial-Industrial Zone, C-M, to Planned Development Zone, P-D (615), be approved.

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

SECTION 1. After a public hearing held on August 9<sup>th</sup>, 2022, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because the current Commercial Industrial (C-M) Zone is a legacy zone that permits industrial uses that are not compatible with nearby residential uses, said zone originally enacted in July of 1955 to allow for the operation of a then-existing milk processing facility that has since been demolished and redeveloped with new retail commercial and professional office uses. The requested change to Planned Development Zone, P-D(615) would allow for professional office and non-auto related retail commercial uses to remain. Industrial uses would not be allowed that could be incompatible with surrounding uses.
2. The requested change will result in an orderly planned use of land because rezone will align the property with the current General Plan Corridor Development Concept for this site and allow land use compliant with the goals and policies for site development.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the change would allow existing professional office and non-auto related retail commercial uses to remain.

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

SECTION 2. ZONING CHANGE. Section 17-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density

Residential Zone, R-1, and Commercial-Industrial Zone, C-M, to Planned Development Zone, P-D(615):

R-1 to P-D(615)

All that certain real property situates in the City of Modesto, County of Stanislaus, State of California, lying within the Southeast Quarter of Section 17, Township 3 South, Range 9 East, Mount Diablo Meridian, described as follows:

Lots 1 through 5 and the northerly 19.61 feet of Lot 6 in Block 6198 of the Hudelson Tract, recorded on December 9, 1946, in Volume 16 of Maps at Page 9, Stanislaus County Records.

Also including the southerly one-half of Judith Lane, the easterly one-half of Timothy Avenue and the 20-foot wide alley, all being immediately adjacent to the above description.

1.46 acres, more or less.

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

APN 119-005-017.

C-M to P-D(615)

All that certain real property situates in the City of Modesto, County of Stanislaus, State of California, lying within the Southeast Quarter of Section 17, Township 3 South, Range 9 East, Mount Diablo Meridian, described as follows:

All that portion of Lot 1 of the Fresno Tract being more particularly described as follows:

Commencing from the southeast corner of Lot 1 of the Fresno Tract, recorded on March 14, 1903 in Volume 1 of Maps at Page 76, Stanislaus County Records, said southeast corner also being the southeast corner of Section 17, Township 3 South, Range 9 East, North 00° 19' 01" West a distance of 30 feet; thence North 87° 54' 27" West a distance of 42 feet to the Point of Beginning of this description, thence the following four courses:

1. North 00° 19' 00" West, a distance of 500 feet
2. North 88° 31' 43" West a distance of 278 feet
3. South 00° 19' 02" East a distance of 500 feet,

4. thence South 88° 31' 43" East a distance of 278 feet to the Point of Beginning.

Also including the southerly half of Judith Lane, the westerly half of McHenry Avenue and the northerly half of Granger Avenue, all immediately adjacent to the above description.

4.1 acres, more or less.

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

APNs 119-005-003 and 119-005-004.

SECTION 3. USES. The following uses shall be permitted in said P-D(615) Zone, with proposed new development subject to consideration and approval by the Planning Commission in a public hearing prior to issuance of a building permit, in accordance to Modesto Municipal Code Title 10, Chapter 7:

1. Mixed use new development that shall include:
  - (a) Residential development at densities permitted in the Medium High Density Residential (R-3) Zone, and
  - (b) Retail commercial and office uses as permitted in the General Commercial (C-2) Zone, excluding the following vehicle-oriented uses: new and/or used vehicle rental or sales; gas stations, vehicle audio/stereo installation; vehicle repair and service; towing and service yard; recreational vehicle sales, service or storage.
  - (c) Proposed new development shall include residential uses of at minimum 14.5 units per net acre.
- (2) Reuse of the existing retail commercial building for C-2 uses, excluding the above vehicle-oriented uses.

SECTION 4. ZONING MAP. Section 17-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9<sup>th</sup> day of August, 2022, by Councilmember Escutia-Braaton, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Sue Zwahlen*  
SUE ZWAHLEN, Mayor

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

(SEAL)

APPROVED AS TO FORM:

By: *Jose M. Sanchez*  
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: *Steve Mitchell*  
Community & Economic Development  
Department, Planning Division

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> of August, 2022, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
SUE ZWAHLEN, MAYOR

ATTEST:

  
DIANE NAYARES-PEREZ, City Clerk

Effective Date: September 22, 2022

**ORDINANCE NO. 3748-C.S.**

**AN ORDINANCE AMENDING SECTION 17-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM COMMERCIAL-INDUSTRIAL (C-M) ZONE TO GENERAL COMMERCIAL (C-2) ZONE, PROPERTY LOCATED AT 1707 MCHENRY AVENUE (CITY OF MODESTO)**

WHEREAS, a verified application for an amendment to Section 17-3-9 of the Zoning Map was filed by the City of Modesto on May 10, 2022, to rezone from Commercial-Industrial Zone, C-M, to General Commercial Zone, C-2, property located at 1707 McHenry Avenue; and

WHEREAS, after a public hearing held on June 20, 2022, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because the current Commercial Industrial (C-M) Zone is a legacy zone that permits industrial uses that are not compatible with nearby residential uses, the requested zone change will result in an orderly planned use of land because the rezone will align existing retail and professional office development with the current General Plan land use designation of Commercial (C) uses and provide for uses as allowed in the General Commercial (C-2) Zone, and the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan and any applicable specific plans(s) because the change would allow existing professional office and retail commercial uses to remain; and

WHEREAS, by Resolution No. 2022-17, adopted on June 20, 2022, the Planning Commission recommended to the Council that the application of the City of Modesto to amend Section 17-3-9 of the Zoning Map to rezone the hereinafter described property from Commercial-Industrial Zone, C-M, to General Commercial Zone, C-2, be approved.



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

SECTION 1. After a public hearing held on August 9<sup>th</sup> 2022, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because the current Commercial Industrial (C-M) Zone is a legacy zone that permits industrial uses that are not compatible with nearby residential uses, said zone originally enacted in July of 1955 to allow for the operation of a then-existing milk processing facility that has since been demolished and redeveloped with new retail commercial and professional office uses. The requested change to General Commercial (C-2) would allow for the retail and professional office buildings to remain. Industrial uses would not be allowed that could be incompatible with surrounding uses.
2. The requested change will result in an orderly planned use of land because rezone will align existing retail and professional office development with the current General Plan land use designation of Commercial (C) uses and provide for uses as allowed in the General Commercial (C-2) Zone.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the change would allow existing professional office and retail commercial uses to remain.

SECTION 2. ZONING CHANGE. Section 17-3-9 of the Zoning Map is hereby amended to rezone the following described property from Commercial-Industrial Zone, C-M, to General Commercial, C-2:

C-M to C-2

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, lying within the Southeast Quarter of Section 17, Township 3 South, Range 9 East, Mount Diablo Meridian, described as follows:

All that portion of Lot 2 of the Fresno Tract being more particularly described as follows:

Beginning at the northwest corner of "Parcel A" of the Parcel Map recorded on December 21, 1966 in Volume 2 of Parcel Maps at Page 113, Stanislaus County Records, thence South 00°30' 40" East along the west line of said "Parcel A" a distance of 419.11 feet, thence North 88° 31' 30" West a distance of 259.39 feet, thence North 00° 30' 00" West a distance of 411.82 feet, thence South 89° 46' 25" West a distance of 256.71 feet to the point of Beginning.

Also including the northerly half of Judith Lane and the westerly half of McHenry Avenue immediately adjacent to the above description.

3.34 acres, more or less.

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

APN 119-005-021.

SECTION 3. ZONING MAP. Section 17-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9<sup>th</sup> day of August, 2022, by Councilmember Wright, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Sue Zwahlen*  
SUE ZWAHLEN, Mayor

ATTEST:

By: *Diane Nayeres-Perez*  
DIANE NAYERES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: *Jose M. Sanchez*  
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: *Steve Mitchell*  
Community & Economic Development  
Department, Planning Division

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> of August, 2022, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright,  
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: September 22, 2022

**ORDINANCE NO. 3749-C.S.**

**AN ORDINANCE AMENDING SECTION 12-4.202(b)(2) OF ARTICLE 2 TO CHAPTER 4 OF TITLE 12 OF THE MODESTO MUNICIPAL CODE RELATING TO USE OF PARK AND RECREATION AREAS AND FACILITIES TO AUTHORIZE THE DIRECTOR OF PARKS, RECREATION AND NEIGHBORHOODS TO SET HOURS OF OPERATIONS FOR ALL PARKS, TRAILS, GREEN SPACE, AND RECREATION FACILITIES**

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

**SECTION 1. AMENDMENT OF CODE.** Section 12-4.202(b)(2) of Article 2 to Chapter 4 of Title 12 of the Modesto Municipal Code is hereby amended to read as follows:

**12-4.202. GENERAL REGULATIONS GOVERNING USE OF PARKS.**

- (b) Except as otherwise authorized by law, it shall be unlawful and a misdemeanor for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) It shall be unlawful for any person to consume alcoholic beverages without a permit in any City-owned or operated park which has been conspicuously posted with signs alerting the public to this prohibition.
  - (2) The Director is authorized to set hours of operation for all parks, trails, green spaces, and recreation facilities. No person shall remain in any park, trail, green space, or recreational facility outside the posted hours of operation.
  - (3) The prohibitions contained in subsection (b)(2) of this section will not apply to:
    - (i) Special use facilities, as may be posted by the Department extending use hours;
    - (ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the Department or permit therefor, has been issued by the Department;

- (iii) Any person exiting such park immediately after the conclusion of any activity set forth in subsection (b)(3)(ii) of this section;
- (iv) Any peace officer or employee of the City while engaged in the performance of his/her duties

**SECTION 2. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Modesto hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13<sup>th</sup> day of September, 2022, by Councilmember Kenoyer, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Councilmembers: None

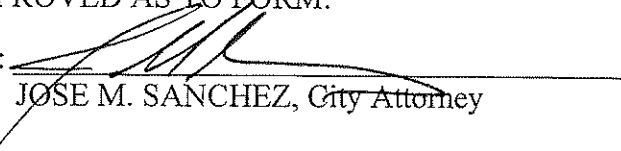
ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
BY:   
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of September, 2022, Councilmember Kenoyer, moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright,  
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARÉS-PÉREZ, City Clerk

Effective Date: October 27, 2022



**ORDINANCE NO. 3750-C.S.**

**ORDINANCE REPEALING AND REPLACING  
SECTION 10-3.505 OF ARTICLE 3 OF TITLE 10 OF  
THE CITY OF MODESTO MUNICIPAL CODE AND  
AMENDING THE TITLE OF SECTION 10-3.506 OF  
ARTICLE 3 OF TITLE 10 OF THE CITY OF  
MODESTO MUNICIPAL CODE**

WHEREAS, the City of Modesto (the “City”) does, from time to time, amend the zoning designation and/or Zoning Map for properties within the City; and

WHEREAS, the intent of these amendments is to achieve the City’s goals for safe, harmonious, and prosperous development and redevelopment of properties within the City; and

WHEREAS, existing uses that do not conform to the requirements of the amended zoning designation and/or Zoning Map can create unsafe conditions, disharmony with planned uses, and can make planned uses financially unviable; and

WHEREAS, to eliminate the negative impacts of nonconforming uses as described above, the City does intend to provide for the amortization of such nonconforming uses; and

WHEREAS, the City recognizes that property owners may have made substantial investment in uses that are rendered nonconforming by the City’s adoption of amendments to the zoning designation and/or Zoning Map; and

WHEREAS, the City desires to provide adequate time for owners of nonconforming uses to recoup their investments or find alternative locations for their uses; and

WHEREAS, the City further recognizes that certain nonconforming uses such as uses of historical significance, existing religious uses, and residential units may not create unsafe or disharmonious conflicts with planned development.

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

**SECTION 1. REPEAL AND REPLACEMENT OF SECTION 10-3.505 OF ARTICLE 3 OF TITLE 10 OF THE CITY OF MODESTO MUNICIPAL CODE.** Section 10-3.505 is repealed in its entirety and replaced with the following:

“Section 10-3.505 – Termination of Nonconforming Uses.

A. Violation of Title. Any of the following violations of this Title shall immediately terminate the right to operate a nonconforming use, except as otherwise provided in this Title:

1. Increasing or enlarging the area, space, or volume occupied by or devoted to such nonconforming use except as provided in Section 10-3.502(b) and (c).

2. Changing a nonconforming use to a use not permitted in the zone except as provided in Section 10-3.502(d);

3. Addition to a nonconforming use of another use not permitted in the zone.

B. Discontinuance. Discontinuance of a nonconforming use pursuant to Section 10.3.502(e) shall result in the termination of any rights to continue the nonconforming use.

C. Amortization of Nonconforming Uses.

1. Notwithstanding Section 10-3.502, any and all uses of real property which become nonconforming uses by reason of an amendment to this Title and/or to the City of Modesto Zoning Map adopted by the City Council of the City of Modesto on or after January 1, 2022, shall be allowed to continue for a period of not more than six (6) months after the effective date of the ordinance rendering such use a nonconforming use. On or before such date, all such nonconforming uses shall be terminated unless an application for extension of time has been approved in accordance with the provisions of Section 10-3.506.

2. Exemptions.

a. Historical Structures. Nonconforming structures that have been certified to be a historic resource by the City, County of Stanislaus, the State of California, or in the National Register of Historic Places are exempt from this section.

b. Nonconforming Due to Lack of a conditional use permit.

i. Conformity of Uses Requiring Conditional Use Permits. A use that becomes nonconforming only because it is a use that would be required by amendment to this Title or to the Zoning Map to have conditional use permit approval shall be deemed conforming.

ii. Previous Conditional Use Permits in Effect. A use that was authorized by a conditional use permit prior to adoption of an amendment to this Title, but is identified by the amendment as a use that is not allowed in its current location, may continue, but only in compliance with the original conditional use permit.

c. Religious Institutions. Religious Institutions of a permanent nature which became nonconforming at the time of adoption of an amendment to this Title or to the Zoning Map may be continued, reconstructed, structurally altered, extended, or enlarged subject to plans approved by the Community Development Director or his or her designee for any reconstruction, alteration, extension, or enlargement and provided such reconstruction, alteration, extension, or enlargement conforms with all other provisions of this title; and provided, further, that said extension, reconstruction, alteration or enlargement shall not be extended to additional property beyond the parcel(s) upon which the nonconforming use exists.

d. Residential Units. Residential Units which became nonconforming uses at the time of adoption of an amendment to this Title or to the Zoning Map may be continued,

reconstructed, structurally altered, extended, or enlarged in conformance to the previous residential zone.

3. Failure to terminate a nonconforming use constitutes a public nuisance. Failure to terminate a nonconforming use within the time periods provided in this Section shall constitute a violation of this Code and is a public nuisance subject to abatement in accordance with the provisions of this Code.

D. Unlawful Uses and Structures. Uses and structures that did not comply with the applicable provisions of this Code or prior planning and zoning regulations when established are violations of this Code and are subject to the provisions of this Code regarding the administration and enforcement of this Code. This section does not grant any right to continue unlawful use of property containing an illegal use or structure.”

**SECTION 2. AMENDMENT TO SECTION 10-3.506 OF ARTICLE 3 OF TITLE 10 OF THE CITY OF MODESTO MUNICIPAL CODE.** The title to Section 10-3.506 shall be amended to read “Extension of Time for Termination of Nonconforming Use.”

**SECTION 3. SEVERABILITY.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Modesto hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”).**

The proposed Ordinance is exempt from CEQA under the general rule in CEQA Guidelines section 15061(b)(3), that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

**SECTION 5. EFFECTIVE DATE.**

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

**SECTION 6. PUBLICATION.**

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

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of September, 2022, by Council Member Wright, who moved its introduction and passage to print, which motion being duly seconded by Council Member Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Mayor Zwahlen

NOES: Councilmembers: None

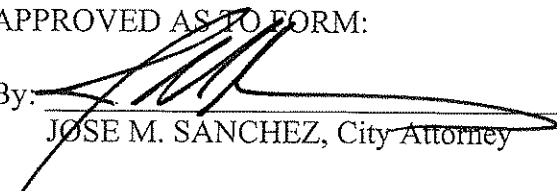
ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, Mayor

ATTEST:  
  
By: DIANE NAYERES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of October, 2022, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright,  
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: November 3, 2022

5123047.5

**ORDINANCE NO. 3751-C.S.**

**ORDINANCE AMENDING TITLE 6 OF THE MODESTO MUNICIPAL CODE,  
“BUSINESS, PROFESSIONS AND TRADES,” BY ADDING CHAPTER 9,  
“AUTOMOBILE BUSINESSES,” RELATED TO USE OF PUBLIC STREETS AND  
HIGHWAYS BY AUTOMOBILE BUSINESSES**

WHEREAS, the City of Modesto (“City”) has experienced an excess of automobiles associated with businesses (“Automobile Businesses”) parked and stored in residential neighborhoods and other City streets; and

WHEREAS, excess parking and storage of automobiles in residential neighborhoods degrades the aesthetic character of residential neighborhoods and streets within the City; and

WHEREAS, the City has determined that prohibiting the parking and storage of automobiles associated with Automobile Businesses on City streets is in the public interest and welfare of its residents; and

WHEREAS, the City has determined that it is in the public interest and welfare of its residents to add Chapter 9, “Automobile Businesses,” to Title 6, “Business, Professions and Trades,” of the Modesto Municipal Code adding regulations related to how Automobile Businesses use public streets and highways.

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

**SECTION 1. FINDINGS**

The City Council of the City of Modesto finds that all of the above recitals and within this Ordinance are true and correct and incorporated herein by reference.

**SECTION 2. AMENDMENT OF MUNICIPAL CODE**

1. The City of Modesto Municipal Code Title 6, Business, Profession and Trades,” is hereby amended by adding Chapter 9, entitled “Automobile Businesses,” to read as follows:

**“Chapter 9 – Automobile Businesses**



### **6-9.101 – Findings and Purpose**

- (a) The City Council finds and declares as follows:
  - (1) The City of Modesto has experienced an excess of automobiles associated with businesses (“Automobile Businesses”) parked and stored on City streets and within residential neighborhoods.
  - (2) Excess parking and storage of automobiles in residential neighborhoods degrades the aesthetic character of residential neighborhoods and streets within the City.
  - (3) Prohibiting the parking and storage of automobiles associated with Automobile Businesses on City streets is in the public interest and welfare of its residents.
- (b) The purpose of this Article is to improve the aesthetic appearance of City streets and residential neighborhoods by prohibiting the parking and storage of automobiles associated with Automobile Businesses on such streets.

### **6-9.102 – Definitions**

Except as otherwise expressly set forth herein, the following words and terms as used in this Article shall have the following meanings:

- (a) “Automobile” shall mean cars, light trucks, motorcycles, mopeds, motor scooters, mobile trailers, commercial vehicles, and other similar forms of vehicular transport.
- (b) “Auto Repair Shop” shall mean any shop, building, room, place, or space wherein, for compensation, any automobile, other motor vehicles, or any parts thereof are repaired, remodeled, overhauled, reconditioned, or painted.
- (c) “Automobile Dealer” shall mean and include any person engaged in, conducting, managing, or carrying on the business of buying, selling, offering to buy, offering to sell,

consigned to be sold, or otherwise dealing in new or used motor vehicles, or both, as the term “motor vehicle” is defined in the California Vehicle Code.

- (d) “Automobile wrecking” shall mean the principal use of any premises for the dismantling, demolition, or crushing of any automotive vehicle or for the storage of abandoned or irreparably damaged vehicles.
- (e) “Car rental agency” shall mean any business involving the rental, leasing, repossession, or transportation of new or used vehicles for rental or leasing.

**6-9.103 – Automobile Dealers – New and Used – Parking on Street Prohibited**

- (a) No person engaged in conducting or carrying on the business of an automobile dealer, as defined in Section 6-9.102(c), shall store, display, wash, recondition, detail or otherwise perform work on, or park for such purposes any automobile in his/her possession or under his/her control upon any public street or highway. This Section shall not apply to any automobile registered in the name of such person or to any automobile for which an application and fee for registration in the name of such person has been filed with the Department of Motor Vehicles as long as the automobile is not for sale or repairs or any other function of the auto dealer are not being performed on the automobile.

**6-9.104 – Auto Repair Shops – Use of Public Street Prohibited**

- (a) No person engaged in conducting or carrying on the business of an auto repair shop as defined by Section 6-9.102(b), shall repair, remodel, overhaul, recondition, or paint any automobile or other motor vehicle, or any parts thereof, in his/her possession or under his/her control, upon any public street or highway.
- (b) No person engaged in conducting or carrying on the business of an auto repair shop as defined by Section 6-9.102(b), shall store, display, or park upon any street or highway,

any automobile in his/her possession or under his/her control for the purposes of performing repairs, or which is inoperable, has any parts removed therefrom, or is in any way in the process of being painted.

- (c) No person engaged in conducting or carrying on the business of an auto repair shop as defined by Section 6-9.102(b), shall store, display, or park upon a public street or highway any automobile in his/her possession or under his/her control unless otherwise authorized on a temporary basis by the City Manager or his or her designee. This Section shall not apply to the parking of any automobile registered in the name of such person or to any automobile for which an application and fee for registration in the name of such person has been filed with the Department of Motor Vehicles as long as the automobile is not for sale or repairs or any other function of the auto repair shop are not being performed on the automobile.
- (d) The business of auto repair shall only be conducted at a location approved by the Planning Department and shall not be operated as a mobile business that goes house to house or building to building.

**6-9.105 – Auto Wreckers – Use of Streets Prohibited**

- (a) No person engaged in conducting or carrying on the business of an auto wrecking shop as defined in Section 6-9.102(d), shall dismantle, wreck, or otherwise tear down any automobile, truck, or parts thereof, in his/her possession or under his/her control, upon any public street or highway.
- (b) No person engaged in conducting or carrying on the business of an auto wrecking shop as defined in Section 6-9.102(d), shall store, display, or park for any such purposes any automobile in his/her possession or under his/her control, upon any public street or

highway. This Section shall not apply to the parking of any automobile registered in the name of such person or to any automobile for which an application and fee for registration in the name of such person has been filed with the Department of Motor Vehicles as long as the automobile is not for sale or repairs or any other function of the auto wrecking business are not being performed on the automobile.

#### **6-9.106 – Car Rental Agencies – Use of Streets Prohibited**

- (a) No person engaged in conducting or carrying on the business of a car rental agency, as defined in Section 6-9.102(e), shall store, display, or park for such purposes any automobile in his/her possession or under his/her control upon any public street or highway.
- (b) This Section shall not apply to any automobile registered in the name of such person or to any automobile for which an application and fee for registration in the name of such person has been filed with the California Department of Motor Vehicles, as long as the vehicle is not for rent or lease by the owner of the business. This Section shall not apply to any automobile rented or leased by an individual from a car rental agency.”

#### **6-9.107- Enforcement and Administrative Remedies**

Title 1, Chapter 6, of this Code established the administrative enforcement of remedies for violations of this Code and applicable State Codes. The general remedies include administrative abatement, summary abatement, civil penalties, administrative citations, recordation of notices of violation and mediation. The City may pursue any of these administrative remedies for violations of this Chapter and may also revoke any permit issued by the City.

**SECTION 3. SEVERABILITY.**

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

**SECTION 4. 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 4<sup>th</sup> day of October, 2022, by Councilmember Kenoyer , who moved its introduction and passage to print, which motion being duly seconded by Councilmember Wright, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, 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 11<sup>th</sup> day of October, 2022, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright,  
Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYAKES-PEREZ, City Clerk

Effective Date: November 10, 2022

5174392.1

\*Amended due to clerical error of numbering/lettering format.

**ORDINANCE NO. 3752-C.S.**

**ORDINANCE REPEALING TITLE 5, “SANITATION AND HEALTH,” CHAPTER 11 “ORGANIC WASTE DISPOSAL” OF THE MODESTO MUNICIPAL CODE IN ITS ENTIRETY, AND REPEALING AND REPLACING TITLE 5, CHAPTER 5, “SOLID WASTE” OF THE MODESTO MUNICIPAL CODE**

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

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

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

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

WHEREAS, Solid Waste staff has reviewed the Modesto Municipal Code and recommends repealing Title 5, “Sanitation and Health,” Chapter 11 “Organic Waste Disposal” of the Modesto Municipal Code in its entirety, and repealing and replacing Title 5, Chapter 5, “Solid Waste” of the Modesto Municipal Code.

**NOW, THEREFORE**, the City Council of the City of Modesto does ordain that Title 5, “Sanitation and Health,” Chapter 5, “Solid Waste” of the Modesto Municipal Code is replaced as follows:



## TITLE 5 - SANITATION AND HEALTH

### Chapter 5- SOLID WASTE

#### Article 1. Solid Waste

##### 5-5.101 Declaration of Policy.

The accumulation, collection, removal and disposal of solid waste must be controlled by the City for the protection of the public health, safety and welfare. The Council finds that to give effect to this policy, a comprehensive system for the periodic collection, removal and disposal of solid waste from all premises in the City is essential and benefits all occupants of premises in the City, and, therefore, all such occupants are required to provide for removal or collection of solid waste from all premises in the City in accordance with the provisions of this chapter.

##### 5-5.102 Penalty Provisions.

A violation of any provision of this chapter shall be punishable as an infraction as set forth in Section 1-2.01 of this Code, except where provisions of this chapter specifically make such violation a misdemeanor.

##### 5-5.103 Definitions.

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

- 1) "AB 341" means Assembly Bill 341 of 2011 approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time.
- 2) "AB 1826" means Assembly Bill 1826 of 2014 approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time.
- 3) "Administrative Citation" means a document issued by an enforcement officer to a person violating the provisions of Modesto Municipal Code or applicable state codes.
- 4) "Annexation" means the legal process of including new territory within the incorporated boundaries of the City.
- 5) "Backhaul" means generating and transporting organic waste to a destination owned and operated by the generator using the generator's own employees and equipment.
- 6) "Bin" means a container, watertight and with a cover, designed for direct dumping into a collection vehicle, and constructed in standard sizes with a minimum of one (1) cubic yard in capacity, as approved by the Public Works Director, and furnished by a collector

- 7) "Black container" means the container used for the purpose of storage and collection of Garbage.
- 8) "Blue Container" means the container used for the purpose of storage and collection of source separated recyclable materials.
- 9) "Bulky items" means discarded: furniture; carpets; mattresses; household appliances including refrigerators, ranges, washers, dryers, water heaters, and dishwashers and other similar items (commonly known as "white goods");
  - i. Bulky items does not include electronic equipment such as stereos, televisions, computers, and VCRs and other similar items (commonly known as "brown goods"); clothing; tires; and any motor vehicle or any subassembly, component or part thereof.
- 10) "Bulky Item Collection Program" means a program for customers of residential and multi-family units to participate twice annually by appointment in the collection of Bulky Items
- 11) "CalRecycle" means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations.
- 12) "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).
- 13) "Cannery or food processing waste" means the solid residues resulting from canning/food processing operations, which is segregated by the generator, and which is collected for reuse.
- 14) "Cart" means a wheeled container provided by the hauler and intended for automated solid waste collection, which is a type approved by the CITY and has a capacity of 90 gallons with an attached, tight-fitting lid.
- 15) "City" means the City of Modesto.
- 16) "Collection" means the collection and transport of solid waste.
- 17) "Collection routes" means streets or areas designated for collection on a particular day/schedule.
- 18) "Collection vehicle" means any vehicle used by the collector for the collection of solid waste.
- 19) "Collector" or "Hauler" means a person or firm authorized by a valid service agreement with the City of Modesto to collect solid waste within the City limits.
- 20) "Commercial" means occurring in a business zone. "Commercial Business" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling with 5 or more units, or as otherwise defined in 14 CCR Section 18982(a)(6).
- 21) "Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery

Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

- 22) "Commercial Waste Generator" means a business subject to subdivision (a) of Section 42649.2 of the Public Resources Code.
- 23) "Compliance Review" means a review of records by the City to determine compliance with this ordinance.
- 24) "Community Composting" means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or, as otherwise defined by 14 CCR Section 18982(a)(8).
- 25) "Compost" has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this ordinance, that "Compost" means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility.
- 26) "C&D" means construction and demolition debris.
  - i. Recyclable and non-recyclable waste building materials, packaging and rubble resulting solely from construction, remodeling, repair and demotion operations on any house, residential property, commercial building, pavement or other structure for which the City requires a building or demolition permit issue.
  - ii. Rock, concrete, asphalt and dirt.
  - iii. Construction and Demolition Debris may include materials that have been Source Separated.
- 27) "Construction and demolition sites" means sites where construction or demolition activities are taking place.
- 28) "Container Contamination" or "Contaminated Container" means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).
- 29) "Customer" means any person, firm or corporation receiving service under the provisions of this chapter.
- 30) "Designee" means an entity that the City contracts with or otherwise arranges to carry out any of the City's responsibilities of this ordinance as authorized in 14 CCR Section 18981.2. A designee may be a government entity, a hauler, a private entity, or a combination of those entities.
- 31) "Designated collection location" means any container designated by posted signs, marked or labeled as a container for a specified material type, and any place where an authorized collector has contracted to collect Solid Waste or material segregated from other waste material, including the curbside of a Residential Premises or the service alley of a Commercial Business.
- 32) "Designated recycling collection location" means the location where an authorized

recycling collector has agreed with a with a customer to pick up segregated recyclable materials as approved by the Public Works Director.

- 33) "Disposal" means the final disposition of solid waste at a solid waste facility.
- 34) "Drop box container" means a metal box designed for loading upon a vehicle for transportation to a solid waste facility, with a minimum of ten (10) cubic yards' capacity, of a design approved by the Public Works Director, and furnished by a collector.
- 35) "Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this ordinance or as otherwise defined in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded. Nothing in this ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.
- 36) "Enforcement Action" means an action of the City to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- 37) "Enforcement Official" means the City Manager, Public Works Director, or their authorized designee(s) who is/are responsible for enforcing the ordinance.
- 38) "Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in City's, or its designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose City, or its designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in single-family or multi-family solid waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
- 39) "Exclusive Service Agreement" means an agreement held by the City for the collection of commercial and residential garbage/recyclables and containerized organic waste. As of the effective date of this ordinance, the City holds exclusive service agreements with Bertolotti Disposal Service and Gilton Solid Waste Management.
- 40) "Finance Director" means the Finance Director of the City of Modesto or his/her designee.
- 41) "Food Distributor" means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores, or as otherwise defined in 14 CCR Section 18982(a)(22).
- 42) "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.

- 43) "Food Recovery" means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).
- 44) "Food Recovery Organization" means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:
- a. A food bank as defined in Section 113783 of the Health and Safety Code;
    1. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and, A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.
  - b. A food recovery organization is not a commercial edible food generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7). If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this ordinance.
- 45) "Food Recovery Service" means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A food recovery service is not a commercial edible food generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- 46) "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are source separated from other food scraps.
- 47) "Food-Soiled Paper" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.
- 48) "Food Waste" means food scraps and food-soiled paper.
- 49) "Garbage" means any solid, semisolid, cooking oil, non-organic garbage, diapers and soiled bathroom tissue, animal feces, animal litter and bedding, feminine hygiene products, plastic bags, styrofoam, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter. Garbage does not include materials that are separated and set aside for Recycling or Composting and does not include Hazardous Material
- 50) "Green container" means the container used for the purpose of storage and collection of source separated organic waste.
- 51) "Hauler Route" means the designated itinerary or sequence of stops for each segment of the City's collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

- 52) "Hazardous materials, hazardous substance, or hazardous waste" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in the Health and Safety Codes or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act and all future amendments thereto
- 53) "Household hazardous waste" means hazardous waste generated at a residential location within the City. It includes but not limited to, leftover household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care when you dispose of them.
- 54) "Illegal dumping" means the willful, intentional or negligent depositing, throwing, dropping, placing or dumping of solid waste or hazardous materials on public or private property that is not expressly designated for the purpose of disposal or dumping of solid or hazardous materials. "Illegal dumping" does not include littering, discarding or dropping small quantities of solid waste ordinarily carried on or about the person, or escaping from trash containers or garbage carts including but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspapers and magazines.
- 55) "Industrial areas" means areas which are zoned industrial by the City's Zoning Code as defined in Title 10 of the Modesto Municipal Code.
- 56) "Industrial waste" means solid waste produced by any person, firm or corporation engaged in the business of processing or manufacturing agricultural products, animals, poultry, goods, wares or other products or materials, who processes or manufactures the same for the purpose of wholesale in processed or manufactured form, and shall include cannery/food processing waste. Industrial garbage also means garbage produced by any person, firm or corporation engaged in the business of building construction and/or building demolition.
- 57) "Industrial waste collector" means an agent or employee of the City, or any person, or the employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of industrial waste.
- 58) "Initial term and any extensions" means the term of a service agreement and any extensions beyond that time period as established by the City Council.
- 59) "Inspection" means a site visit where the City reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of organic waste or edible food handling to determine if the entity is complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).
- 60) "Local Education Agency" means a school district, charter school, or county office of education that is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).
- 61) "Large green waste" means shrubbery, brush, tree limbs, tree branches, tree trimmings and similar material, excluding tree limbs larger than six (6) feet in length or six (6) inches in diameter, and any single piece of large green waste weighing more than fifty (50) pounds.

- 62) "Litter" means all solid waste which has been improperly discarded or which has migrated by wind or equipment away from the operations area. Litter includes, but is not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state.
- 63) "Multi-Family Residential Dwelling" or "Multi-Family" means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-family premises do not include hotels, motels, or other transient occupancy facilities, which are considered commercial businesses.
- 64) "Non-Organic Recyclables" means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).
- 65) "Notice of Violation (NOV)" means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4. and Title 5 Chapter 5 of the Modesto Municipal Code.
- 66) "Organic container" means an organic container to be used for the source separation, storage and collection of small green waste and organic waste.
- 67) "Organic waste" means solid wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, inedible food, small green waste, and pruning waste, lumber, wood, paper products, printing and writing paper, and cardboard.
- 68) "Organic waste disposal reduction target" is the statewide target to reduce the disposal of organic waste by 75 percent by 2025, based on the 2014 organic waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code.
- 69) "Organic waste generator" means a person or entity that is responsible for the initial creation of organic waste, or as otherwise defined in 14 CCR Section 18982(a)(48).
- 70) "Paper Products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).
- 71) "Place" or "Premises" means every dwelling house, dwelling unit, multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, hospital, office building, department store; manufacturing, processing or assembling shop or plant; warehouse; and every other property or building where any person resides or any business or activity is carried on or conducted within the City of Modesto.
- 72) "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).
- 73) "Prohibited Container Contaminants" means the following:
- a. Discarded materials placed in an organic container that are not identified as acceptable source separated organic waste for the City's green container organic

- container.
  - b. Discarded materials placed in the black container that are identified as acceptable source separated green container organic waste or blue container recycling waste.
  - c. Discarded materials placed in the blue container that are not identified as acceptable source separated recyclable materials for the blue container recycling waste.
  - d. Excluded waste as defined in 5-11.102(p) placed in any container.
- 74) "Property value" means a worth to the extent that a person will collect the materials involved with compensation to the owner or producer, or at no cost to the owner or producer.
- 75) "Public Works Director" means the Public Works Director of the City of Modesto and/or their duly authorized agent.
- 76) "Recovered organic waste products" means products made from California, landfill-diverted recovered organic waste processed at a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).
- 77) "Recovery" means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).
- 78) "Recyclables" means domestic, commercial or industrial materials which are segregated from other waste material. Recyclables are by-products which may have an economic value if recycled, which may be source separated, set aside, handled, packaged or offered for collection by the residence/business. Recyclables include, but are not limited to, glass, clean cardboard, plastics, metal, bi-metal, aluminum, and other materials.
- 79) "Recycled-Content Paper" means paper products and printing and writing paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).
- 80) "Recycling" means the process of collecting, sorting, cleansing, treating, reconstituting, and/or marketing recyclable materials which would otherwise be disposed of in a landfill. The collection, transport or disposal of Solid waste which is not intended for, or capable of being, reused, shall not be construed to be Recycling.
- 81) "Recycling center" means a facility or site which accepts segregated or commingled recyclable materials for the purpose of recycling and shall include a facility or site established pursuant to the California Beverage Container Recycling and Litter Reduction Act, California Public Resources Code, Section 14500 et seq
- a. In order to be a recycling center, the facility or site must be in conformance with all applicable federal, state and local laws and regulations.
- 82) "Recycling collector" means a person, firm, organization or company which the City has authorized to provide recycling service in the City.
- 83) "Recycling container" means any container provided by an authorized Collector to a Customer for the purpose of segregating recyclable materials for collection by collector. Recycling containers shall be clearly marked to indicate purpose and to warn that theft of the container, theft of its contents, or diversion for uses other than by the collector are punishable under this Code.



- 84) "Removal" means transportation and disposal of Solid waste by noncustomers in accordance with the provisions of this chapter.
- 85) "Residential premises" means any dwelling unit; the occupant of which places his/her solid waste in a standard container.
- 86) "Route Review" means a visual inspection of containers along a Hauler Route for the purpose of determining container contamination and may include mechanical inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).
- 87) "Rubbish" means nonputrescible, useless, unused, unwanted or discarded material or debris, either compostable or noncompostable, which by their presence may injuriously affect the health, safety and comfort of persons and property in the vicinity thereof.
- 88) "SB 1383" or "SB 1383 Regulations" or "SB 1383 Regulatory" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added
- a. Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.
- 89) "Salvageable waste" means matter and material which will be reused and which has a property value.
- 90) "Self-Hauler" means a person, who hauls solid waste, organic waste or recyclable material they have generated to a Transfer/processing station. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting organic waste to a destination owned and operated by the generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).
- 91) "Service area" means the area of the City to be served by a collector as described in the service agreement between City and Collector
- 92) "Single-Family" or "Single-family dwelling" means of, from, or pertaining to any residential premises with fewer than five (5) units.
- 93) "Small green waste" means leaves, weeds, grass clippings, vines, twigs and other similar soft vegetative materials, and woody prunings from trees no longer than two (2) foot length or six (6) inches in diameter, except that small green waste shall not include large green waste or leaves separated and set out for collection between November 1 and December 31 of each year pursuant to Article 11 of Chapter 7 of Title 4 of this Code.
- 94) "Solid waste" means all putrescible and nonputrescible solid, semisolid and liquid waste accumulated or delivered for collection and disposal within the City and includes, but is not limited to, garbage, recycling, organics, rubbish, ashes, industrial wastes, demolitions and construction wastes and bulky waste.
- a. Solid waste does not include:
    - i. Hazardous waste, as defined in the California Public Resources Code Section 40141.

- ii. Infectious waste fecal matter such as: blood, body fluids, sharps waste, and human specimens.
  - iii. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to Division 30 of the State Public Resources Code.
  - iv. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).
  - v. Recyclable materials when recycled
  - vi. Sewage
  - vii. Abandoned automobiles.
- 95) "Solid Waste Enforcement Officer" means the Solid Waste Enforcement Officer of the City of Modesto.
- 96) "Solid Waste Enforcement Supervisor" means the Solid Waste Enforcement Supervisor of the City of Modesto.
- 97) "Solid Waste Enclosure" means a walled structure with a solid cover for the storage of Solid Waste with a drainage system connected to the sanitary sewer and wash system that are adequate to accommodate anticipated waste generated at the Premises.
- 98) "Solid Waste Room" means an enclosed and ventilated space with a drainage system connected to the sanitary sewer and wash system that are adequate to accommodate anticipated waste generated at the Premises.
- 99) "Source Separation" or "Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the ordinance, Source Separated shall include separation of materials by the generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from Black Container Waste/Mixed Waste or other Solid Waste for the purposes of collection and processing.
- 100) "Source Separated Blue Container for Recyclables" means Source Separated Recycling that is intended for the separate collection of recycling by the generator, excluding Organic Waste and garbage.
- 101) "Source Separated Green Container for Organic Waste" means Source Separated

Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the generator, excluding Source Separated recyclables, garbage, carpets, and textiles.

- 102) "Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.
- 103) "Standard container" means a black , blue or, green, plastic cart, watertight and with a close-fitting cover, of not more than ninety (90) gallons' net capacity of a design satisfactory to the Public Works Director, or such other disposal unit approved by the Public Works Director, and supplied by the solid waste collector to its residential and commercial customers. The Public Works Director shall make the determination of what size container a residential and commercial customer receive.
- 104) "State" means the State of California.
- 105) "Swill" means all classes of putrescible, animal, fish, fowl, fruit or vegetable matter, and shall include matter or substances used in the preparation, cooking, dealing in or storage of meats, fowl, fish, fruits and vegetables that are subject to immediate decay and the attraction of flies or rodents, and having a property value.
- 106) "Swill collector" means an agent or employee of the City, or any person, or the agents, assignees, or employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of swill.
- 107) "Tier One Commercial Edible Food Generator" means a commercial edible food generator that is one of the following:
- a. Supermarkets with a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).
  - b. Grocery stores with a total facility size equal to or greater than ten thousand (10,000) square feet defined as a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).
  - c. Food service provider defined as an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).
  - d. Food distributor defined as a company that distributes food to entities including, but not limited to, supermarkets and grocery stores, or as otherwise defined in 14 CCR Section 18982(a)(22).
  - e. Wholesale food vendor defined as a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 18982(a)(76).

- 108) "Tier Two Commercial Edible Food Generator" means a commercial edible food generator that is one of the following:
- a. Restaurant with two hundred fifty (250) or more seats, or a total facility size equal to or greater than five thousand (5,000) square feet.
  - b. Hotel with an on-site food facility and two hundred (200) or more rooms
  - c. Health facility with an on-site food facility and one hundred (100) or more beds.
  - d. Large venue defined as a permanent venue facility that annually seats or serves an average of more than two thousand (2,000) individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one (1) large venue that is contiguous with other large venues in the site, is a single large venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this ordinance
  - e. Large event defined as an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than two thousand (2,000) individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this ordinance
  - f. A State agency with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet.
  - g. A local education agency facility with an on-site food facility
  - h. If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this ordinance.

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

110) "Transfer/processing station" means a facility or site where solid wastes are transferred from hauling vehicles to transfer vehicles and the solid waste or a portion thereof may undergo incidental processing, recycling or further handling before transport to a disposal facility or other waste handling facility, and includes a facility or site where solid wastes are subject to processing operations involving reduction, separation, resource recovery or conversion. The facility or site is operating pursuant to a solid waste facility permit issued pursuant to Chapter 3 of Part 4 of Division 30 of the California Public Resources Code; and the facility or site is in conformance with all applicable federal, state and local laws and regulations including without limitation the applicable provisions of the Modesto Zoning Code contained in Modesto Municipal

Code.

#### 5-5.104 Responsibility for compliance.

The primary responsibility for proper handling of solid waste generated or accumulated on any premises shall be on the generator of the solid waste. Should the generator refuse, neglect or fail to provide for the proper handling of solid waste in accordance with this chapter, the owner of the premises within or upon which the solid waste has been generated or accumulated shall provide for proper handling of the solid waste in accordance with the provisions of this chapter.

#### 5-5.105 Segregation and Disposition of Solid Waste Materials.

Every producer of solid waste must segregate garbage, recycling, and organics, industrial garbage, rubbish, and/or swill, and dispose of the materials as provided in this chapter.

#### 5-5.106 Illegal Dumping, Depositing or Burying Solid Waste.

It is unlawful and shall constitute an abatable nuisance for any person to place garbage, recycling, organic waste, large green waste, small green waste, hazardous waste, and bulky items as defined in Sections 5-5.103 (49), 5-5.103(80), 5-5.103 (67) 5-5.103 (61) 5-5.103 (93), 5-5.103 (52), 5-5.103 (9), upon any public property or private property without the consent of the property owner, unless approved by the Public Works Director. This section does not apply to:

- a. customers participating in the Bulky Item Collection Program as defined in Section 5-5.103(10)
  - b. customers participating in the green waste and leaf collection as defined in Title 4, Chapter 7, Article 11 of the Modesto Municipal Code.
  - c. garbage, green waste, recycling, organic waste or hazardous waste dropped off at a permitted solid waste or composting facility approved for such use.
  - d. Intent to remove the garbage, recycling organic waste or hazardous waste shall not constitute a defense to this offense.
- (b) It is unlawful for any person to place hazardous waste as defined in Section 5-5.103(52), into any waste container, street, alley or public right-of-way.
- (c) It is unlawful for any person to place garbage, recycling, organics, large green waste, small green waste, or hazardous waste as defined in Sections 5 Sections 5-5.103 (49), 5-5.103(80), 5-5.103 (67) 5-5.103 (61) 5-5.103 (93), 5-5.103 (52), into any garbage, recycling, or organic container without the permission or consent of the person owning, renting or having legal control of that container.
- (d) Persons operating leaf blowers are to ensure that leaves, dirt and other debris are not blown onto public properties or public-right-of-way. All leaves, dirt and other debris generated by the leaf blower shall be removed and deposited into the appropriate containers.
- (e) The penalty for failure to comply with Section 5-5.106 is as follows:
- a. One thousand dollars (\$1,000.00) for the first violation
  - b. Fifteen hundred dollars (\$1,500.00) for a second violation within a twelve (12) month period of the first violation; and

- c. Two thousand dollars (\$2,000.00) for a third violation within a twelve (12) month period of the second violation, and for each successive violation within the same twelve (12) month period.

5-5.107 Explosives or Hazardous Materials.

No person shall deposit in any container used for solid waste, any explosive, highly flammable, radioactive or otherwise hazardous material or substance. A violation of this section shall be punishable as a misdemeanor or administrative fine. The penalty for failure to comply with Section 5-5.107 is as follows:

- a. One thousand dollars (\$1,000.00) plus the cost of disposal for the first violation
- b. Fifteen hundred dollars (\$1,500.00) plus the cost of disposal for a second violation within a twelve (12) month period of the first violation; and
- c. Two thousand dollars (\$2,000.00) plus the cost of disposal for a third violation within a twelve (12) month period of the second violation, and for each successive violation within the same twelve (12) month period.

#### 5-5.108 Accumulation of Garbage, Recycling, or Organic Waste

Every person occupying premises, every owner of any property, and every owner of multiple-dwelling buildings shall keep the same in a clean and sanitary condition, and shall not cause, suffer, or permit any garbage, recycling, or organic waste to accumulate on such premises or property for a period in excess of two (2) calendar weeks; or cause, suffer, or permit any rubbish to accumulate on their premises for a period in excess of one (1) calendar month; provided, however, that this provision shall not be construed to prohibit any person from keeping building materials on any premises or property during the period of active construction, reconstruction, or repair of a building or structure thereon under a current valid building permit; nor the neat storage of clean recyclables intended to be taken by the occupant to a recycling center, nor the keeping of wood, neatly piled, upon such premises for household use; nor the composting of grass or trimmings in a manner allowed pursuant to the Composting Regulations of the State of California.

#### 5-5.109 Garbage, Recycling, Organic Waste, and Swill Collection Requirements.

1. Collection or removal of garbage, recycling, and organic waste shall be made at least every other week
2. Collection of swill shall be made daily.
3. Collectors shall transfer the contents of all containers into the correct collection vehicle provided therefore without spilling any contents.

#### 5-5.110 Containers Required.

- (1) It shall be unlawful for any person occupying any premises within the City, or for any person, controlling or maintaining any premises within the City where solid waste is generated, produced, or accumulated, to fail or neglect to provide a sufficient number of each approved type of standard containers for receiving and holding, without leakage or escape of odors, all solid waste produced, generated, or accumulated upon such premises, except as hereinafter provided; and all such persons shall deposit all such solid waste in the correct containers, and all such containers shall be at all times kept in a good, usable and sanitary condition.
- (2) Containers shall be kept continuously closed except when solid waste is being placed therein or removed therefrom, and shall at all times be closed against the access of flies, rodents, animals, and odors to the contents thereof.
- (3) It shall be unlawful for any person to place anything other than garbage and rubbish in a black container or detachable container used for garbage.
- (4) It shall be unlawful for any person to place anything other than recycling in a blue container or detachable container used for recycling.
- (5) It shall be unlawful for any person to place anything other than small green waste or organic waste in a green container or detachable container used for organic waste.
- (6) No standard container shall exceed one hundred (100) pounds in weight when filled for collection or removal, except when detachable or drop box containers are used.

#### 5-5.111 Number of Containers Required.

All places or premises within the City shall have sufficient containers of the approved type to hold all garbage, recycling and organic waste generated, produced or accumulated on the place or premises In



determining the sufficiency of the number of containers required, the following minimum standards shall apply.

- (a) single family dwellings as defined in 5-5.103 (92) :
  - a. one (1) black standard container per dwelling unit for garbage
  - b. one (1) blue standard container per dwelling unit for recyclables
  - c. one (1) green standard container per dwelling unit for organic waste
  - d. Authorization for a lesser number may be authorized by the Public Works Director or his/her designee.
- (b) Multi-Family Residential Dwelling as defined in 5-5.103 (63) and Motel, hotel, trailer park, or mobile home park:
  - a. One (1) container per building equivalent to one (1) black standard container per dwelling unit for garbage
  - b. One (1) container per building equivalent to one (1) blue standard container per dwelling unit for recyclables,
  - c. One (1) container per building equivalent to one (1) green standard container per dwelling unit for small green waste and organic waste
  - d. Authorization for a lesser number may be authorized by the Public Works Director or his/her designee.
- (c) Commercial place or business:
  - a. One (1) container per building equivalent to one (1) black standard container per dwelling unit for garbage
  - b. One (1) container per building equivalent to one (1) blue standard container per dwelling unit for recyclables,
  - c. One (1) container per building equivalent to one (1) green standard container per dwelling unit for small green waste and organic waste
  - d. Authorization for a lesser number of any container(s) may be authorized by the Public Works Director or his/her designee.
  - e. Customers responsible for solid waste removal or collection services for multiple-dwelling buildings, commercial and industrial places or premises may arrange for the use of bins and/or drop box containers instead of standard containers. These arrangements shall be made with the collector on the basis of charges established for this purpose.

5-5.112 Shared Solid Waste Containers- Contract required.

- a) No person shall store Residential Solid Waste on any Premises other than the Residential Premises where the Residential Solid Waste was generated except in accordance with a contract issued pursuant to this Section.
- b) No person shall collect Garbage, Organics, or Recyclables from a container shared by two (2) or more Multi-Family Dwelling units unless the Public Works Director has issued

a contract pursuant to this Section authorizing the Residential Premises to share that container.

- c) The Public Works Director may issue a contract to authorize two (2) neighboring households to share Garbage, Organic, and Recyclable containers if all of the following conditions are satisfied:
  - a. The Owners of the adjacent residential property, or the Owners' agents, apply to the Director, in writing, for a contract to share Garbage, Organic, and recyclables containers.
  - b. The application for the contract includes a written statement signed by the responsible party of each of the affected households, or the Owner's agents, designating which of the responsible parties will assume full responsibility for the payment of all charges for Solid Waste collection services made available to the affected household, designating which of the responsible party shall be responsible for the maintenance of the containers and the area in which the containers are placed, and designating, by address and assessor's parcel number, which of the affected households shall be subject to the special assessment procedures.
  - c. The Director has determined that placement of Garbage, Organics, and Recyclable Materials in the shared containers can be accomplished without transporting the Garbage, Organics, or Recyclable Materials on or across any public street (excluding alleys between the affected Premises).
  - d. The Director has determined that space constraints at the households makes it difficult to site Garbage, Organic Materials, or Recyclables containers in such numbers and such sizes as will accommodate the volume of Garbage, Organic Materials, or Recyclable Material generated at the Premises.
  - e. The Director has determined that the level of service is sufficient to sustain the number of people residing at the household.
  - f. The Director has determined that there is a financial hardship of the non-billed customer.
  - g. The accounts requesting the shared service are in good standing with the City and Haulers.
- d) No person shall store Commercial Solid Waste on any Premises other than the Commercial Premises where the Commercial Solid Waste was generated except in accordance with a contract issued pursuant to this Section.
- e) The Public Works Director may issue a contract to authorize up to four (4) neighboring commercial businesses to share Garbage, Organic, and Recyclable containers if all of the following conditions are satisfied:
  - a. The Owners of the adjacent Commercial Business, or the Owners' agents, apply to the Director, in writing, for a contract to share Garbage, Organic, and recyclables containers.
  - b. The application for the contract includes a written statement signed by the responsible party of each of the affected commercial business, or the Owner's agents, designating which of the responsible parties will assume full responsibility for the payment of all charges for Solid Waste collection services made available to the affected commercial business, designating which of the responsible party shall be responsible for the maintenance of the containers and the area in which

the containers are placed, and designating, by address and assessor's parcel number, which of the affected commercial business shall be subject to the special assessment procedures.

- c. The Director has determined that placement of Garbage, Organics, and Recyclable Materials in the shared containers can be accomplished without transporting the Garbage, Organics, or Recyclable Materials on or across any public street (excluding alleys between the affected Premises).
  - d. The Director has determined that space constraints at the commercial business makes it difficult to site Garbage, Organic Materials, or Recyclables containers in such numbers and such sizes as will accommodate the volume of Garbage, Organic Materials, or Recyclable Material generated at the Premises.
  - e. The Director has determined that the level of service is sufficient to sustain the size of the commercial business.
  - f. The Director has determined that there is a financial hardship of the non-billed customer.
  - g. The accounts requesting the shared service are in good standing with the City and Haulers.
- f) The Director may impose conditions on the contract issued pursuant to subsection a. or subsection b., as determined by the Director to be consistent with the purposes and provisions of this Chapter. Such conditions may include, but are not limited to, restrictions on the number of containers, restrictions on the size or capacity of containers, and restrictions on the placement of the containers.
- g) Upon written notice to the Owners of the dwellings or commercial businesses, or to the Owners' agents, the Director may revoke any contract to share Garbage, Organics, Recyclables containers given pursuant to subsection a. or b. above if the Director finds any of the following conditions exists:
- a. The ownership of any of the affected Dwellings has changed.
  - b. The space constraints which made it difficult to site Garbage, Organics, Recyclables containers sufficient to accommodate the volume of Garbage, Organics, and Recyclables generated at the Residential Premises no longer exist.
  - c. The sharing of containers is not in conformance with the conditions of the contract.
  - d. The bill for collection services made available at the Premises remains delinquent for more than ninety (90) days.
  - e. The Solid Waste generated or accumulated on any of the Premises is not handled in conformance with the requirements of this Chapter or applicable law.

#### 5-5.113 Enclosures required.

- a) All Solid Waste, Recyclable, or Organics produced on a Commercial Premises, or Multi-Family Dwellings with a Solid Waste Enclosure or Solid Waste Room shall be stored in the Solid Waste Enclosure or Solid Waste Room when such material is not set out for collection by an authorized Collector.
- b) All Commercial Premises, or Multi-Family Dwellings constructed, enlarged, or structurally altered after January 1, 2023 shall have a Solid Waste Enclosure or Solid Waste Room. For the purposes of this Section, "structurally altered" means any change in the supporting members of a building, such as bearing walls, columns, beams, or girders. The Director may grant waiver to this requirement.

- c) The development permit application shall show the proposed path of travel for the authorized collector to access a Solid Waste Enclosure, Solid Waste Room, or the material generated at the Premises when set out for collection. The path of travel must accommodate the required width, turning radius, and overhead clearances of the collector's vehicle. The Director may require alterations to the development application to accommodate the travel and collection activities conducted by a collector vehicle.
- d) The development permit application shall show the Solid Waste Enclosure or Solid Waste Room shall have sufficient capacity to accommodate containers for, at a minimum, Garbage, Recycling, and Organics Material, and containers shall be appropriately sized to accommodate the expected material that will be generated for the Commercial Premises at the proposed frequency of collection, which must be no less than allowed in Section 5- 5.113. The enclosure(s) shall be secured to prevent unauthorized collection, tampering, and unlawful placement of garbage, organics, or recyclable materials, but must be accessible to collection personnel during herein before stated collection hours. Additional charges may be assessed, as determined by the solid waste collection company, for additional trips to service a previously locked enclosure.
- e) Each development project, as that term is defined in Public Resources Code section 42905, for which an application for a building permit has been submitted after the effective date of this chapter, shall conform to the requirements of the model ordinance adopted by the California integrated waste management board and required by the California Solid Waste Reuse and Recycling Access Act of 1991.

#### 5-5.114 Requirements for Single-Family Generators

Single-family generators shall comply with the following requirements except single-family generators that meet the self-hauler requirements in Section 5-5-130:

- a) Shall subscribe the City's Solid Waste collection system and shall source separate their waste as follows:
  - 1) Generator shall place only garbage, and/or rubbish, in the black container.
  - 2) Generator shall place only source separated organic waste in the green container.
  - 3) Generator shall place only source separated recyclables in the blue container.
- b) It shall be unlawful to place anything other than the approved source separated material into a Black Container, Green Container, or Blue Container.
- c) City shall have the right to review the number and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, single-family generators shall adjust its service level for its collection services as requested by the City.

**Generators may additionally manage their organic waste by preventing or reducing their organic waste, managing organic waste on site, and/or using a community composting site pursuant to 14 CCR Section 18984.9(c). (Ord. No. 3740-C.S., § 2, effective 12-23-21)**

5-5.115 Requirements for Commercial Businesses, Mobile Homes, Motels, Hotels and Multi-Family Dwelling Generators

Generators that are commercial businesses shall:

- (a) Subscribe to City's three (3) container collection services and comply with requirements of those services; except commercial businesses that meet the self-hauler requirements in Section 5-5.130 or granted a waiver from the public works director.
  - a. City shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, commercial businesses shall adjust their service level for their collection services as requested by the City.
  - b. Generator shall place garbage in the container designated for garbage
  - c. Generator shall place only source separated organic waste in the container designated for organic waste.
  - d. Generator shall place only source separated recyclables in the blue container.
- (b) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with subsections (d)(1) and (d)(2) below) for employees, contractors, tenants, and customers, consistent with City's black container, green container, and blue container collection service in accordance with Section 5-5.109 or, if self-hauling, per the commercial businesses' instructions to support its compliance with its self-haul program, in accordance with Section 5-5.130.
- (c) Excluding multi-family residential dwellings, provide containers for the collection of source separated containers in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a commercial business does not generate any of the materials that would be collected in one (1) type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
  - (1) A body or lid that conforms with the container colors provided through the collection service provided by City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
  - (2) Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the

container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

(d) To the extent practical through education, training, Inspection, and/or other measures, prohibit employees and tenants from placing materials in a container not designated for those materials per the City's black container, green container and blue container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 5-5.130.

(e) All premises shall periodically inspect black container, green container and blue container for contamination and inform employees and tenants if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

(f) Annually provide information to employees, contractors, tenants, and customers about organic waste recovery requirements and about proper sorting of source separated black container, green container and blue container.

(g) Provide City approved education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep source separated black container, green container and blue container and the location of containers and the rules governing their use at each property.

(h) Provide or arrange access for City or its agent to their properties during all Inspections conducted in accordance with Section 5-5.150 of this ordinance to confirm compliance with the requirements of this ordinance.

(i) If a commercial business requests to self-haul, meet the Self-Hauler requirements in Section 5-5.130 of this ordinance.

(j) Nothing in this section prohibits a generator from preventing or reducing waste generation, managing organic waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

(k) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 5-5.122.

#### 5-5.116 Organic Waste Waivers for Commercial Business Generators.

(a) De minimis waivers - City may waive a commercial business' obligation (including multi-family residential dwellings) to comply with some or all of the organic waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of organic waste material as described below.

Commercial Businesses requesting a de minimis waiver shall:

- a. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted below.
- b. Provide documentation that either:

- i. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and organic waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
    - ii. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and organic waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
  - c. Notify City if circumstances change such that Commercial Business's organic waste exceeds threshold required for waiver, in which case waiver will be rescinded.
  - d. Provide written verification of eligibility for de minimis waiver every five years, if City has approved de minimis waiver.
- (b) Physical Space Waivers - City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the organic waste collection service requirements if the City has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the organic waste collection requirements.

A Commercial Business or property owner may request a physical space waiver through the following process:

- a. Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
- b. Provide documentation that the premises lacks adequate space for Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
- c. Provide written verification to City that it is still eligible for physical space waiver every five (5) years, if City has approved application for a physical space waiver.
- d. Review and Approval of Waivers will be completed by the Public Works Director and/or their designated agent.

#### 5-5.117 Recycling Waste Waivers for Commercial Business Generators.

- a) City may waive a commercial business' obligation (including multi-family residential dwellings) to comply with some or all of the recycling waste requirements of this ordinance if the Commercial Business provides documentation that the business donates or sells recycling materials or the premises lacks adequate space for blue recycling containers including documentation from its hauler.
- b) Provide written verification to City that it is still eligible for physical space waiver every five (5) years, if City has approved application for a physical space waiver.
- c) Review and Approval of Waivers will be completed by the Public Works Director and/or their designated agent.

#### 5-5.118 Mandatory Solid Waste, Recyclable Materials, and Organic Materials Collection.

a) The Owner of a Commercial Premises or the Generator of Solid Waste at such Premises or the agent of the Owner or Generator shall subscribe to and pay for Solid Waste, Recyclable Materials, and Organic Materials collection services provided by a Solid Waste Collector authorized to provide Commercial Solid Waste collection services pursuant to Section 5-5.111

b) The minimum level of service to which the Owner, Generator or agent shall subscribe shall be the number and size of Solid Waste containers suitable for Garbage collection and the frequency of collection which is necessary for the removal and disposal of all Solid Waste generated at the Premises, which shall be not less than one (1) time per week.

c) The minimum level of service necessary for the collection of all Solid Waste, Recyclable Materials, and Organic Materials generated at any Commercial Premises in a seven (7)-day period shall be determined by the Owner, Generator or agent and the Solid Waste Collector. In the event the Owner, Generator or agent and the Solid Waste Collector do not agree on the minimum level of service necessary, such determination shall be made by the Director or the Health Officer and shall be a minimum of thirty-two (32) gallons of Recycling collection service and thirty-two (32) gallons of organics Recycling collection service for every one (1) cubic yard of Solid Waste generated per week. In other words, for every two (2) cubic yards of Solid Waste generated per week, there must be at least sixty-four (64) gallons of Recycling collection service and sixty-four (64) gallons or organics Recycling collection service per week. The Director or their designee may grant exemptions to this requirement if the business can demonstrate that they do not produce thirty-two (32) gallons of Organic Material or thirty-two (32) gallons of Recycling per week.

d) The Director or their designee shall have the right to review the number and size of a Commercial Premises' containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation and containment of materials. The responsible party of the commercial business shall adjust their service level for their collection services as requested by the Director or their designee.

e) Nothing in this Chapter prohibits an Owner or a Generator of a commercial business from preventing or reducing discarded materials generation, managing Organic Material on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

#### 5-5.119 Ashes, stable matter and contaminated matter.

- a) No person shall place or keep hot ashes, hot cinders or any burning matter in any garbage, organic or recyclables container.
- b) No person shall place or keep other ashes or cinders, stable matter, or solid waste described in Section 5-5.103 (94) in any garbage container unless such material is first wrapped in paper or other material.

#### 5-5.120 Prohibited Storage Location of Containers.

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



- (b) Garbage, recycling, organic, rubbish, swill, and industrial garbage containers shall not be placed or allowed to remain in or on any street right-of-way, except on service day between the hours of service as defined in Section 5-5.126. Unless otherwise authorized by the Public Works Director.
- (c) Container shall be stored inside of an enclosure or solid waste room at all times except on collection day

5-5.121 Container Collection Locations.

- (a) On single-family premises, standard garbage containers, organic, and recycling containers shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:
  - a) Where alley service exists, immediately adjacent to the property and accessible from the alley without the necessity of entering the premises.
  - b) Where alley service does not exist, containers shall be placed in front of or on the side of the property from where the contents were generated, on the abutting asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other location as approved by the Public Works Director.
  - c) The Public Works Director may close alleys to service as needed due to safety concerns and/or size restrictions for collection vehicles.
  - d) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an acceptable residential container location shall be as determined by the Public Works Director.
  - e) All containers should be screened from public view, except within twenty-four (24) hours prior to and following service day, in a manner approved by the Public Works Director.
- (b) Standard containers and bins for solid waste service to multifamily-dwellings, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case of dispute, the location shall be as determined by the Public Works Director.
- (c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Public Works Director.

5-5.122 Requirements for Commercial Edible Food Generators.

- (a) Tier One Commercial Edible Food Generators must comply with the requirements commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must

comply with the requirements of this section commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

(b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

(c) Commercial Edible Food Generators shall comply with the following requirements:

(1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.

(2) Contract with or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

(3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

(4) Allow City's designated Solid Waste Enforcement Officer/Supervisor or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.

(5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

- a. A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
- b. A copy of all contracts or written agreements between the Commercial Edible Food Generator and a Food Recovery Service or organization.
- c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
  - i. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
  - ii. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
  - iii. The established frequency that food will be collected or self-hauled.
  - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

(6) No later than April 1 of each year commencing no later than April 1, 2023 for Tier One Commercial Edible Food Generators and April 1, 2025 for Tier Two Commercial Edible Food Generators, provide an annual Food Recovery report to the City that includes the following information:

- a. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
  - b. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
  - c. The established frequency that food will be collected or self-hauled.
  - d. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (d) Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

5-5.123 Requirements for Food Recovery Organizations and Services.

- (a) Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
  - (2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
  - (3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
  - (4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- (b) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
  - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
  - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

- (c) Food Recovery Organizations and Food Recovery Services shall inform generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).
- (d) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City it is located in the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) no later than April 1, of each year.
- (e) Food Recovery Capacity Planning
  - (1) Food Recovery Services and Food Recovery Organizations. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, City, special district that provides solid waste collection services, or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

5-5.124 Requirements for Haulers and Facility Operators.

(a) Requirements for Haulers

- (1) Exclusive Service Agreement haulers providing Residential, Commercial, or Industrial organic waste collection services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect organic waste:
  - (a) Through written notice to the City annually on or before April 1, of each year identify the facilities to which they will transport organic waste including facilities for Source Separating.
  - (b) Transport Source Separated Green Container organic waste, to the City of Modesto Composting Facility, operation, activity, or property that recovers organic waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.
  - (c) Obtain approval from the City to haul organic waste, unless it is transporting Source Separated organic waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1.
- (2) Exclusive Service Agreement hauler authorization to collect organic waste shall comply with education, equipment, signage, container labeling, container color,

contamination monitoring, reporting, and other requirements contained within its service agreement, permit, license, or other agreement entered into with City.

(b) Requirements for Facility Operators and Community Composting Operations

(1) Owners of facilities, operations, and activities that recover organic waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon City request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.

(2) Community Composting operators, upon City request, shall provide information to the City to support organic waste capacity planning, including, but not limited to, an estimate of the amount of organic waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within sixty (60) days.

5-5.125 Spillage of Solid Waste.

All solid waste collected and transported by any person over public streets in the City shall be secured during the hauling thereof so as to prevent spillage or blowing.

5-5.126 Furnishing of Bins and Drop Box Containers.

Any agreement entered into by the City for garbage, recycling, or organic waste collection shall provide for the availability of approved bins and drop box containers by the collector on a rental basis. The collector shall be responsible for the general repair and upkeep of all bins and drop box containers. The customer shall maintain all rented bins and drop box containers in sanitary condition at all times.

5-5.127 Hours of Collection.

- (a) No collections shall be made in residential districts (single family and multi-family dwellings), as shown on the Zoning Map of the City of Modesto, or at schools, churches, hospitals, offices or commercial establishments in or adjacent to said residential district except between the hours of 6:00 a.m. and 6:00 p.m. year-round.
- (b) Collections may be made in commercial areas when not adjacent to residential areas between the hours of 6:00 a.m. and 9:00 p.m. Monday through Sunday.
- (c) No collection shall be made from premises in residential or commercial areas other than described in subsections (a) and (b) of this section except when prior approval has been given by the Public Works Director.

5-5.128 Collection Equipment.

All collections shall be made with vehicles of a design approved by the Public Works Director. All collections shall be made as quietly as possible, and use of any unnecessarily noisy trucks or equipment is prohibited. All vehicles shall be maintained and operated to avoid unnecessary blowing, leakage and spillage.

5-5.129 Agreement to Collect Solid Waste.

- (a) It shall be unlawful for any person or entity to engage in the business of collecting garbage, recycling, organic waste, or bulky items within the City unless such person or entity is an employee or agent of the City, or is a party to an agreement approved by the Council pursuant to this chapter, or is the employee of such a party.
- (b) It shall be unlawful for any commercial or industrial establishment to enter into any agreement for collection of garbage, recycling, or organic waste unless such person or entity is party to an agreement approved by the council pursuant to this chapter or is the employee of such a party unless otherwise approved by the Public Works Director.
- (c) It shall be unlawful for any person to interfere in any manner with the lawful operations of such a collector or their authorized agents or assignees.
- (d) The City may provide in any agreement pursuant to this chapter that the collector may assign a portion or portions of the solid waste collection services for which that person or entity is so contracted to one (1) or more agents or assignees upon approval of the City Council. The collector shall be responsible for the operation and conduct of such agents or assignees.

5-5.130 Self-Haul Requirements. (Contract Required)

Notwithstanding the provisions of Section 5-5.129:

- a) Any person may remove or may cause to be removed from premises occupied by that person or under their control, all solid waste created or produced on such premises if all of the following conditions have been met or will be complied with:
  - 1. Removal shall be made only by the owner or occupant personally, or by employees of such owner or occupant.
  - 2. All vehicles used in carrying out removal shall be owned by or under the exclusive control of the owner or occupant, and such vehicles and activities shall meet all the requirements of this chapter and all other laws and ordinances of the State of California and the City relating to solid waste disposal.
  - 3. All vehicles used in the transportation of garbage, organics, and recycling, shall be covered to prevent blowing, spillage, or leakage of material.
- b) Every Self-Hauler, shall Source Separate their Recyclable Materials and Organic Materials (materials that City otherwise requires Generators to separate for collection in the City's Recyclable Materials and Organic Materials collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Section 18984.1 or 18984.2 as applicable, and the City's collection program.
- c) Self-Haulers shall deliver their materials to facilities as described below:
  - a. Source Separated Recyclable Materials shall be delivered to a facility that recovers those materials

- b. Source Separated Organic Material to a facility, operation, activity, or property that processes or recovers Source Separated Organic Material
  - c. Garbage shall be disposed of at facility or transfer facility or operation that processes or disposes of garbage
  - d. Manure shall be disposed of at a facility that manages manure in conformance with 14 CCR Article 12 and such that the manure is not landfilled, used as alternative daily cover (ADC), or used as alternative intermediate cover (AIC).
- d) Self-Haulers that are Owners or responsible parties of commercial businesses or multi-family Premises shall keep records of the amount of Recyclable Materials, Organic Material, and garbage delivered to each facility, operation, activity, or property that processes or recovers Recyclable Materials and Organic Material and processes or disposes of Solid Waste or shall keep records of Solid Waste delivered to High Diversion Organic Waste Processing Facilities. These records shall be subject to inspection by the City or its designee. The records shall include the following information:
- a. Delivery receipts and weight tickets from the entity accepting the Recyclable Materials, Organic Materials, and Garbage.
  - b. The amount of material in cubic yards or tons transported by the Generator or responsible party to each entity.
- e) If the material is transported to an entity that does not have scales on-site or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Recyclable Materials, Organic Materials, and garbage.
- f) Self-Haulers shall retain all records and data required to be maintained by this Section for no less than five (5) years after the Recyclable Materials, Organic Materials, and/or garbage was first delivered to the facility accepting the material.
- g) Self-Haulers that are commercial businesses or multi-family Premises shall provide copies of records required by this Section to City if requested by the Director or their designee and shall provide the records at the frequency requested by the Director.
- h) A single-family Generator or single-family responsible party that self-hauls recyclable materials, organic material, or garbage is not required to record or report information in subsections c and d.
- i) Persons removing solid waste in excess of normal annual residential volume (defined herein as three thousand (3,000) pounds per year) shall comply with the following additional requirements:
- a. No waste shall be permitted to leak, blow, litter or fall from any vehicle engaged in such removal.
  - b. All removal shall be done safely and quietly with due regard to the property of others.

- c. No person shall remove solid waste from any location within two hundred (200) feet of a public or private elementary, junior high, or high school, where such school is shown on an official map of the City, as designated by the Public Works Director, during the forty-five (45) minutes before the commencement of the regular school day and forty-five (45) minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school.
  - d. Persons engaged in solid waste removal pursuant to these requirements shall be responsible for any damage in excess of normal wear and tear to the City's driving surfaces, whether or not paved, resulting from the illegal weight of, or any leakage or spillage of oils, fluids or solids by vehicles used in such solid waste removal.
  - e. Vehicles used shall comply with CHP and D.O.T. regulations and shall be thoroughly washed and disinfected inside the collection body following each use.
  - f. No driver shall operate a vehicle as in subsection (b)(3)(v) of this section, without a valid and appropriate driver's license.
  - g. All vehicles as in subsection (b)(3)(v) of this section shall be clearly identified with the name and local telephone number of its operator affixed thereto.
  - h. Garbage shall be disposed of at a permitted transfer facility or at the Fink Road Sanitary Landfill. If disposed of outside of Stanislaus County, the county where disposal occurs shall have an export agreement with the City of Modesto.
  - i. Organic waste, large green waste and small green waste shall be separated from garbage and taken to a permitted composting facility or such other locations as defined in 5-5.123 as directed by the Public Works Director.
  - j. Insurance requirements as specified from time to time by the City's Risk Manager shall be complied with.
- j) A cash security deposit shall be deposited with the City in an amount set from time to time by Council resolution, to ensure prompt removal of solid waste in the event it is not removed from the premises on a regular weekly basis by a noncustomer owner or person in control of the premises. A security deposit shall be made for each separate residential property or business location owned or controlled by a noncustomer, based on the frequency and volume of past collection. Events requiring City to use a noncustomer's deposit for solid waste removal shall be treated as a public nuisance subject to immediate abatement and charged to such noncustomer. Conduct requiring City to expend noncustomer deposit moneys shall constitute a misdemeanor.
- k) Persons engaged in solid waste removal shall procure and retain a receipt from a permitted solid waste facility for each week they remain a noncustomer of a collector and display all such receipts for the preceding one-quarter ( $\frac{1}{4}$ ) calendar year upon reasonable request by appropriate City authority. Failure to show proof of solid waste disposal for each week that a person is a noncustomer shall constitute a public health and safety risk sufficient to permit City to administratively require such person to become a customer.



- l) Any producer of industrial garbage or swill, or their employees, may transport the same upon or through any street or public place of the City for disposal at a permitted disposal facility or site.
- m) It shall be unlawful for any person acting as an employee of a producer of industrial garbage or swill to collect or transport such industrial garbage or swill from more than one (1) industrial producer thereof.
- n) Any person engaged in the business of gardening or tree trimming, or building demolition, or construction cleanup work, including both yards and building interiors, is authorized to remove small green waste, rubbish or salvageable waste produced as an incident to such business. It shall be unlawful to dispose of small green waste, organic waste and recyclable waste. These materials shall be taken to an approved recycling or compost facility locations as defined in 5-5.123 unless otherwise approved by the Public Works Director.

#### 5-5.131 Rate-Setting for Solid Waste Collection Services.

- (a) The City shall not engage in rate-making with respect to charges for solid waste collection service, except to set maximum rates as set forth in subsection (b) of this section.
- (b) Inasmuch as collectors granted service agreements will have no competition with respect to customers who do not wish to be noncustomers, the City Council reserves the right to set maximum rates that may be charged for any solid waste collection services offered by collectors having agreements with the City specifying that the collector has an exclusive service agreement with respect to such service or services. No collector may charge differing rates within the same class of solid waste customer.
- (c) The City shall review and set the maximum rates annually or more often if requested by collectors authorized under service agreement.

#### 5-5.132 Collection of Solid Waste and Industrial Waste.

The privilege of engaging in the businesses of collecting solid waste, industrial waste or swill is conditioned on entering into a contractual relationship with the City to provide some or all of these services.

#### 5-5.133 Fee for Collection of Swill.

The fee for the privilege of engaging in the business of collecting swill in the City shall be the sum of twenty-five dollars (\$25.00) per calendar quarter, or fraction thereof, payable in advance.

#### 5-5.134 Collectors Delinquent Fees.

- (a) Penalty: To all fees not paid within thirty (30) days following the close of the preceding quarter there shall be added a penalty of five (5) percent of the amount of fees due per month or fraction thereof until paid. The maximum penalty imposed on any one (1)

delinquency occurring heretofore or hereafter shall not exceed twenty-five (25) percent of the amount of service agreement fees due.

- (b) Interest: In addition to any penalties imposed by this section, delinquent service agreement fees heretofore or hereafter occurring shall be subject to interest at the rate of seven (7) percent per annum until paid.

#### 5-5.135 Collection Agreement Proposals.

Proposals to enter into a collection agreement with the City pursuant to this chapter shall be submitted in writing to the City Clerk. The City shall charge a reasonable fee, as determined by a resolution adopted by the City Council, to the proponent of a proposal to cover the City's costs associated with the due diligence in consideration of the proposal. Each proposal shall contain the following information:

- (a) Name and Address of the Proponent. If the proponent is a firm or partnership, names of all owners and partners of all classes, limited and general, shall be listed. If the proponent is a corporation, the names and titles of each of the officers and directors shall be listed, and in addition the names of all stockholders owning, holding or controlling five (5) percent or more of corporate stock shall be listed;
- (b) The types of services offered;
- (c) The number, kind and capacity of the vehicles and other equipment to be used for such purposes;
- (d) A financial statement showing the proponent's financial status and their financial ability to conduct the collection operation proposed in their proposal;
- (e) Proposed consideration to the City if agreement is reached.

#### 5-5.136 Procedure to Enter into Agreement.

Upon receipt of a proposal to enter into an agreement hereunder, the Council shall pass a resolution declaring its intention to consider the proposal, setting forth notice of the day, hour and place, when and where any and all persons may appear before the Council and be heard thereon. The time fixed for such hearing shall be not less than ten (10) days nor more than thirty (30) days after the date of the passage of said resolution.

#### 5-5.137 Protests May Be Filed.

At any time not later than the hour set for the hearing to consider a proposal, any person interested may make written protest stating objections against the proposed agreement. Such protest must be signed by the protestant and delivered to the City Clerk.

#### 5-5.138 Hearing.

At the time set for the hearing, the Council shall proceed to hear the matter, and all persons shall be given opportunity to be heard. The Council may adjourn said hearing from time to time.

#### 5-5.139 Competitive Bids.

The Council may in its discretion, in lieu of considering proposals for agreements, advertise for competitive bids for agreements specified by the City.

#### 5-5.140 Entering Agreements.

Upon consideration of a proposal or bid for an agreement, the Council may enter into an agreement with any proponent or bidder it determines to be best qualified to render proper and efficient collection service. The Council also has the right to reject all bids and proposals.

Every agreement entered into by the Council pursuant to the provisions of this chapter shall cover the following matters:

- (a) The name and address of the person, firm or corporation with whom the agreement is made;
- (b) The type of collection service authorized;
- (c) Whether the agreement is exclusive or nonexclusive; limited or unlimited;
- (d) The term of the agreement, which in no case shall be longer than ten (10) years;
- (e) Such other conditions as the Council may provide.

#### 5-5.141 Limit on Number of Agreements.

In order to preserve the health, safety and welfare of the people in the City, the Council hereby retains the authority to limit the number of agreements for the collection of solid waste, swill, and industrial waste which will be made under this chapter.

#### 5-5.142 Insurance.

Each collector engaging in the collection of solid waste and industrial waste shall provide the Finance Director with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager. Such amounts shall be set forth from time to time by resolution of the City Council and shall be the same for all collectors.

#### 5-5.143 Faithful Performance Bond by Solid Waste Collectors.

Each party other than City to an agreement to collect solid waste pursuant to the provisions of this chapter shall file with the City Clerk a faithful performance bond or other form of security satisfactory to the City in an amount required by the agreement, and said amount shall be the same for all collectors. Said bond or security shall be conditioned upon the faithful performance of all of the terms and conditions of said agreement and the provisions of this chapter, insofar as they are applicable to said collector.

#### 5-5.144 Assignment of Agreements.

No agreement entered into by the Council with a collector pursuant to the provisions of this chapter and no ownership interest in any party to such an agreement can be sold, gifted, transferred, leased, assigned, mortgaged, pledged, hypothecated, or otherwise encumbered or disposed of, in whole or in part, directly or indirectly, whether voluntarily or by operation of law, or through any stock transfer, transfer in trust, change in control, consolidation or merger of any company or corporation, without the prior written consent of the City Council granted after a public hearing in accordance with the procedures specified in Sections 5-5.131 through 5-5.143 of this chapter. The Council may grant or deny such a request, and may impose such conditions

as it may deem to be in the public interest including, but not limited to, conditions requiring acceptance of amendments to this service agreement and the payment to City of a reasonable transfer fee in an amount to be determined by the City Council sufficient to cover the City's costs associated with the transfer. Any attempted disposition made without such consent shall be void.

(a) Proof of Financial Responsibility. In the event of any assignment duly authorized by the Council, the assignee shall assume the liability and responsibilities of the collector. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the office of the City Clerk with thirty (30) days after any such transfer or assignments. Consent of the Council may not be unreasonably refused; provided, the proposed assignee shall demonstrate to the City Council the financial responsibility as required by all the provisions of this chapter and the service agreement.

(b) Hypothecation. Prior consent of the Council shall be required for a transfer in trust, mortgage or other hypothecation, in whole or in part, to secure an indebtedness, when such indebtedness hypothecations shall equal or exceed fifty (50) percent of the independently appraised market value of the property used by collector in its operation. Such consent shall not be unreasonably withheld.

(c) Acquisitions of Interest. In the event the collector is a corporation, it shall notify the Council when ownership of more than thirty (30) percent of the voting stock of the collector is acquired by a person or group of persons acting in concert, none of whom already own twenty (20) percent or more of the voting stock, singly or collectively. Any such acquisition shall require the approval of the Council which approval shall not be unreasonably withheld. Failure to comply with this provision shall be grounds for the termination of the service agreement pursuant to the provisions of this chapter and the service agreement.

(d) Bankruptcy. In the event that collector should become insolvent or if proceedings in bankruptcy shall be instituted by or against collector, or if collector shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of collector shall be appointed in any suit or proceeding brought by or against collector, or if collector shall make an assignment for the benefit of creditors, and during the pendency of said proceeding the collector fails to maintain service levels as required herein or by any other applicable law, City may initiate termination of the service agreement.

#### 5-5.145 Termination of Agreements.

Any agreement entered by the Council pursuant to the provisions of this chapter may be terminated by the Council, if after conducting a public hearing on said termination, the Council finds and determines that the person doing business by virtue of such agreement has failed to comply with any of its material terms, or this chapter, has failed to render satisfactory collection services, or without cause in accordance with the provisions of the agreement.

(a) Termination for Cause. The City further reserves the right to terminate the service agreement or impose liquidated damages in the event of any of the following:

- (1) If collector practices, or attempts to practice, any fraud or deceit upon the City.

- (2) If collector becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of collector in a bankruptcy proceeding.
- (3) If collector fails to provide or maintain in full and in effect, any or all of the bonds and/or coverages required by its service agreement with the City.
- (4) If collector willfully and materially violates any orders or rulings of any regulatory body having jurisdiction over collector relative to its service agreement with the City, provided that the collector may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the service agreement shall be deemed to have occurred.
- (5) If collector ceases to provide collection services as required by the service agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of the collector.
- (6) If the collector willfully fails and/or refuses to provide City with required information, reports, and/or test results related to vehicle incidents or other incidents where such tests are conducted as part of an investigation of an incident, in a timely manner as provided in its service agreement.
- (7) Any other act or omission by the collector, which materially violates the terms, conditions, or requirements of its service agreement.

(b) Process for Imposing Damages for Termination. The Solid Waste Manager may file a complaint with the Public Works Director charging a failure of collector to comply with the provisions of this chapter or the service agreement.

- (1) Upon issuance of the Solid Waste Manager's complaint, the Public Works Director shall conduct a factual investigation thereof and render a decision relative to the justification for complaint, in writing, within ten (10) days following the decision.
- (2) If the Public Works Director determines that the collector's performance pursuant to its service agreement with the City has not been in conformity with the provisions of either the service agreement, the requirements of this chapter, or the requirements of the California Integrated Waste Management Board, including, but not limited to, the laws governing transfer, storage, or disposal of special wastes, the Public Works Director may advise collector in writing of such deficiencies. The Public Works Director may set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the receipt by the collector of such written notice. The Public Works Director shall review the

collector's response and notify the collector of his/her decision, in writing.

- (3) A decision or order of the Public Works Director shall be final and binding on collector if the collector fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the Director's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with subsection (b)(4) of this section, or refer the matter to a hearing officer.
- (4) The City Council shall set the appeal on the matter referred by the City Manager for hearing within sixty (60) days from receipt by the City Manager of the appeal or referral. At the hearing, the City Council shall consider the report of the Public Works Director indicating the deficiencies, and shall give the collector, or its representatives and any other interested person, a reasonable opportunity to be heard.
- (5) Based on the evidence presented at the public hearing, the Council shall determine whether the service agreement should be terminated, liquidated damages imposed, or both. The City Council may also find in favor of collector. The decision of the City Council shall be final and binding. Collector's performance under the service agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

(c) Remedies—Liquidated Damages. The City Council may, at its discretion, assess liquidated damages not to exceed the sum of five thousand dollars (\$5,000.00) per day, for each calendar day that service is not provided by collector in accordance with the service agreement for a period not to exceed forty-five (45) days.

(d) Additional Remedies. In addition to liquidated damages, above, the City shall have the following rights:

- (1) To Rent or Lease Equipment from Collector. The City may rent or lease equipment from collector for the purpose of collecting, transporting, and disposing of solid waste which collector is obligated to collect, transport, and dispose of pursuant to its service agreement, for a period not to exceed six (6) months.
- (2) To Contract with Others to Perform the Services. The City may contract others to perform the services otherwise to be performed by collector hereunder, or perform such services itself.
- (3) To Obtain Injunctive Relief. In the event of a breach under the terms of the service agreement by collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of the service agreement and to enjoin the breach thereof.

- (4) To Reduce the Service Area. If at the time of the annual review the total number of unresolved complaints exceeds two and one-half tenths (2.5) of one (1) percent of the total annual stops for the prior year, the City Council may determine whether it is appropriate to decrease the service area of collector because of poor performance and authorize another collector to provide services. The maximum reduction in service area for poor performance under this provision shall be ten (10) percent for each occurrence.
- (5) To Invoke Eminent Domain. Nothing set forth in a service agreement entered into between City and collector shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the collector, either by purchase or through the exercise of the right of eminent domain, at fair market value, or be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.
- (6) To Collect and Bill Collector. Should collector fail to provide collection services as stipulated in its service agreement, within twenty-four (24) hours of a request being communicated by the City to collector to do so, the City may collect and dispose of same and collector shall be liable for all expenses incurred including, but not limited to, disposal, operating, administration, and legal costs. Reimbursement to City for such expenses will be paid by collector within thirty (30) days after date of invoice.
- (7) To Conduct Inspections. At all reasonable times during any normal business hours, the collector shall permit the City's authorized representatives to examine all property of the collector, and to examine and copy any and all records kept or maintained by the collector under its control which pertain to the service agreement.

(e) Force Majeure. Collector shall not be in default under its service agreement in the event that any of the services provided by the collector under the terms of the agreement are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts, other labor disturbances or other catastrophic events which are beyond the reasonable control of collector. Other catastrophic events do not include the financial inability of the collector to perform or failure of the collector to obtain any necessary permits or licenses from other governmental agencies or the right to use the omissions of the collector. In the event a labor disturbance interrupts collection services as required by a service agreement, City may elect to exercise its rights under the service agreement.

#### 5-5.146 Customer May Contract for Excess Collection.

Any owner or occupant of any premises may contract with a City collector, or their agents or assignees, for special haul services for the removal of solid waste or rubbish in excess of services provided by the collector under regular collection fees.

#### 5-5.147 Collection of Solid Waste Charges.

Any agreement entered into by the Council pursuant to the provisions of this chapter for the collection of solid waste, except industrial waste, shall specify that all charges for solid waste service shall be collected solely by the collector or by the City pursuant to contract with a collector. The City may contract with a collector to perform customer billing and collection services. Nevertheless, such a contract shall not obligate the City to, and the City shall not, use its police power to collect bills remaining overdue or unpaid.

#### 5-5.148 Records Required.

Each collector pursuant to the provisions of this chapter shall maintain detailed records of all receipts and expenditures received or incurred in the operation of such business, including all fees collected for services rendered. Records shall be kept and made available to the City for review for at least five (5) years. All records shall be kept and maintained at the approved location per the service agreement. The City, its officers and employees shall be entitled to inspect, audit and copy such books and records upon notice at all reasonable times.

#### 5-5.149 Annual Financial Report by Solid Waste Collectors.

Each collector of solid waste or industrial waste pursuant to the provisions of this chapter shall file each year with the Finance Director a detailed financial statement, including a balance sheet and profit and loss statement. Said statement shall be filed on or before the date set forth in said agreement for the fiscal or calendar year specified in said agreement. Any collector who fails to file said statement on or before said date shall pay a penalty of one hundred dollars (\$100.00) a day for each calendar day, or part thereof, until said statement is filed. This section shall not apply to swill collectors.

#### 5-5.150 Inspection.

- a) The Solid Waste Enforcement Officer, the Solid Waste Enforcement Supervisor and/or the Public Works Director may, from time to time, inspect all premises within the City to determine compliance with and to enforce the provisions of this chapter.
- b) City representatives and/or its designated entity, including Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or source separated materials to confirm compliance with this ordinance by organic waste generators, commercial businesses (including multi-family residential dwellings), property owners, commercial edible food generators, haulers, self-haulers, food recovery services, and food recovery organizations, subject to applicable laws. This section does not allow City to enter the interior of a private residential property for inspection.
- c) Regulated entity shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the City's employee or its designated entity/designee during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials



in containers, edible food recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for:

- i. Access to an entity's premises;
  - ii. Access to records for any inspection or investigation is a violation of this ordinance and may result in penalties described.
- d) Any records obtained by the City during its inspections, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.
  - e) City representatives, its designated entity, and/or designee are authorized to conduct any inspections, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.
  - f) City shall receive written or verbal complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

#### 5-5.151 Enforcement.

- (a) Violation of any provision of this ordinance shall constitute grounds for issuance of a notice of violation and/or assessment of a fine by the Enforcement Official or representative. Enforcement actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.
- (b) Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.
- (c) Responsible Entity for Enforcement.
  - (1) Enforcement pursuant to this ordinance may be undertaken by the Enforcement Official, which may be the City Manager, the Public Works Director, and/or their designated entity, legal counsel, or combination thereof.
  - (2) Enforcement may also be undertaken by a Stanislaus County Enforcement Official, designated by the City, in consultation with Enforcement Official.
    - a. Enforcement Official(s) and/or County Agency Enforcement Official, will interpret ordinance; determine the applicability of waivers, if violation(s) have occurred; implement enforcement actions; and, determine if compliance standards are met.
    - b. Enforcement Official(s) and County Enforcement Official may issue notices of violation(s).

(d) Process for Enforcement.

- (1) Enforcement Officials or County Enforcement Officials and/or their designee will monitor compliance with the ordinance randomly and through compliance reviews, route reviews, investigation of complaints, and an inspection program.
- (2) City may issue an official notification to notify regulated entities of its obligations under the ordinance.
- (3) For incidences of prohibited container contaminants found in containers, City will issue a notice of violation to any generator found to have prohibited container contaminants in a container. Such notice will be provided via a cart tag or other communication upon identification of the prohibited container contaminants after determining that a violation has occurred. If the City observes prohibited container contaminants in a generator's containers on more than one (1) occasion within a twelve (12) month period, the City may assess contamination penalties on the generator.
- (4) With the exception of violations of generator contamination of container contents addressed under subsection (d)(3) above, City shall issue a notice of violation requiring compliance within sixty (60) days of issuance of the notice. Absent compliance by the respondent within the deadline set forth in the notice of violation, City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to Section 1-6.305.
- (5) Absent compliance by the respondent within the deadline set forth in the notice of violation, City shall commence an action to impose penalties, via an administrative citation.

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or commercial property or to the party responsible for paying for the collection services, depending upon available information.

(e) Compliance Deadline Extension Considerations. The City may extend the compliance deadlines set forth in a notice of violation if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

- (1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- (2) Delays in obtaining discretionary permits or other government agency approvals;  
or,
- (3) Deficiencies in organic waste recycling infrastructure or edible food recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(f) Appeals Process. Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation within twenty (20) calendar days of the mailing of the citation. A hearing will be held only if it is requested within the time prescribed and consistent with City's procedures in the City's codes for

appeals of administrative citations. Evidence may be presented at the hearing. The City will appoint a hearing officer who shall conduct the hearing and issue a final written order.

- (g) Education Period for Non-Compliance. City will conduct inspections, route reviews or waste evaluations, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if City determines that organic waste generator, self-hauler, hauler, Tier One Commercial Edible Food Generator, food recovery organization, food recovery service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required and that violations may be subject to administrative civil penalties.
- (h) Civil Penalties for Non-Compliance. Prior to or beginning on January 1, 2024, If the City determines that an organic waste Generator, self-hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, food recovery organization, food recovery service, or other entity is not in compliance with this ordinance, it shall document the noncompliance or violation, issue a notice of violation, and take enforcement action as needed.

#### 5-5.152 Application of Other Provisions of this Code.

Except for the provisions of Article 3 thereof, the provisions of Chapter 1 of Title 6 of this Code shall not apply to collectors under the provisions of this chapter.

#### 5-5.153 Collection.

- (a) It shall be unlawful and punishable as an infraction for any person, other than an authorized curbside recycling collector, or its employees or agents, to remove salvageable waste which has been placed at a designated collection location. Placement of salvageable waste at a designated collection location shall constitute consent to its collection by an authorized recycling collector.
- (b) Theft of containers or diversion of said containers to uses other than their designated purpose shall be punishable as an infraction.

#### 5-5.154 Mandatory Commercial Recycling (AB341)

- (a) Per Public Resources Code Section 42649.2, the owner or operator of a business that contracts for solid waste services and generates more than four (4) cubic yards of total solid waste per week or is a multifamily residential dwelling of five (5) units or more shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.
- (b) A commercial waste generator shall take either of the following actions:
  - (1) Separate specified recyclable materials from solid waste and subscribe to a basic level of recycling service that includes the collection of those recyclable materials or specific provisions for authorized self-hauling.
  - (2) Subscribe to an alternative type of recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

#### 5-5.155 Mandatory Commercial Organic Recycling AB1826

Per California Public Resources Code §§ 42649 et seq., the owner or operator of a business shall comply with all state statutes and regulations, as those may be amended from time to time, specifically for commercial organic recycling in the manner specified below:

- (a) A commercial waste generator shall take one of the following actions:
  - (1) Source separate organic waste materials from solid waste and subscribe to a basic level of recycling service that includes the collection of organic and green waste materials.
  - (2) Recycle its organic waste onsite
  - (3) Partake in specific provisions for authorized self-hauling its own organic waste for recycling to a permitted composting facility or donation of edible food
  - (4) Sell or donate its organic waste by subscribing to a service that may include mixed waste processing that specifically recycles organic waste that yields diversion results comparable to source separation.
  - (5) Backhaul material to a central or corporate location to be collected for organic processing.
  - (6) When arranging for gardening or landscaping services, the contract or work agreement between a business subject to this section and a gardening or landscaping service shall require that the organic waste generated by those services be managed in compliance with this chapter.

#### 5-5.156 Residential Bulky Item Collection Program.

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

- (a) Bulky items consist of items which are too large or heavy to be prepared for regular solid waste collection, and may include the following: furniture and large appliances such as washers, dryers, stoves, refrigerators, freezers, and air conditioners; carpet and padding; water heaters or tanks; doors; automotive fenders, bumpers, hoods and seats; toilets and toilet tanks, tubs and sinks; and bicycles, tricycles, swing sets, portable pools, pool covers, and pool heaters.
- (b) Items unacceptable for bulky item collection include, but are not limited to, glass, liquids, tires, engine parts, large and small green waste, hazardous waste, items over eight (8) feet in length; items weighing in excess of five hundred (500) pounds; building materials from private contractors; lumber/wood, tree trimmings, and Christmas trees.
- (c) No bulky item will be collected on private property. All bulky items shall be placed in the street no more than twelve (12) hours before the scheduled bulky item collection appointment. Bulky items shall be placed adjacent to the property which

requested the bulky item collection, and must be a minimum of five (5) feet away from any fixed object or parked vehicle. There shall be only one (1) bulky item collection location for each residence.

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

(e) Any person found to be in violation of this section, shall be subject to the penalty provisions of Sections 5-5.106(e) and 1-2.01 of this Code.

#### 5-5.157 Multi-Family Bulky Item Collection Program.

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

(a) Bulky items consist of items which are too large or heavy to be prepared for regular solid waste collection, and may include the following: furniture and large appliances such as washers, dryers, stoves, refrigerators, freezers, and air conditioners; carpet and padding; water heaters or tanks; doors; automotive fenders, bumpers, hoods and seats; toilets and toilet tanks, tubs and sinks; and bicycles, tricycles, swing sets, portable pools, pool covers, and pool heaters.

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

(c) No bulky item will be collected on private property, unless prior authorization has been received by the Public Works Director. All bulky items shall be placed in the street no more than twelve (12) hours before the scheduled bulky item collection appointment. Bulky items shall be placed adjacent to the property which requested the bulky item collection, and must be a minimum of five (5) feet away from any fixed object or parked vehicle. There shall be only one (1) bulky item collection location for each multi-family dwelling.

(d) Only bulky items present at the multi-family service address at the time the bulky item collection is scheduled.

(e) Any person found to be in violation of this section, shall be subject to the penalty provisions of Sections 5-5.106(e) and 1-2.01 of this Code.

## **Article 2. Unauthorized Entry into Waste Containers.**

### 5-5.201 Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section: (a) "Waste container(s)" means any and all containers defined or identified in Article 1 of this chapter, including but not limited to automated collection container, carts, bins, and drop box container.

5-5.202 Unauthorized Entry into Waste Containers.

- (a) The City Council recognizes that there is an increasing problem both nationally and locally involving persons who forage waste containers.

The City Council finds that there is risk to the public health and safety when:

- (1) Waste is strewn about;
  - (2) Waste containers are left open to animals;
  - (3) Waste containers and lids are left in roadways or walkways.
- (b) The City Council further finds that entry into waste containers by unauthorized individuals may subject owners to public nuisance liabilities for which they have no remedy unless provided by an addition to the Modesto Municipal Code.
  - (c) The Council hereby finds that an ordinance is needed for the preservation of the public peace, health, safety and general welfare of the residents of the City of Modesto based upon the finding of facts declared by the City Council hereinabove stated.

5-5.203 Unlawful Search and Entry—Penalty.

- (a) It shall be unlawful for any person, except the owner or someone with the owner's consent or authorized City, County, State, or Federal personnel, or employees of the solid waste company that owns the waste container, in the performance of their duties, to rummage, explore, tamper with, move, remove, tip, deface, destroy, scavenge or otherwise search a waste container or the contents thereof.
- (b) Any and each violation of subsection (a) of this section shall constitute a separate and distinct offense punishable as provided in Section 5-5.205 of this chapter.

\*Amended due to clerical error

#### 5-5.204 Public Nuisance.

Rummaging, exploring, scavenging, or otherwise searching a waste container is a violation of the provisions of this article and is hereby declared a public nuisance.

#### \*5-5.205 Violation and Penalty.

- (a) Any person in violation of this article shall be guilty of a misdemeanor and shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment in the Stanislaus County jail for not more than six (6) months, or both.
- (b) Any person that continues in violation of this article shall be guilty of a separate and distinct offense for each and every violation.

### **SECTION 3. SEVERABILITY.**

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

### **SECTION 4. 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 6<sup>th</sup> day of December, 2022, by Councilmember Ricci, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Bavaro, 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 NAVERES-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 13<sup>th</sup> day of December, 2022, Councilmember Wright moved its final adoption, which motion being duly seconded by Councilmember Alvarez, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
SUE ZWAHLEN, MAYOR

ATTEST:   
DIANE NAYARES-PEREZ, City Clerk

Effective Date: January 12, 2023