

ORDINANCE NO. 3492-C.S.

**ORDINANCE AMENDING ARTICLE 4 OF CHAPTER I OF
TITLE 4 OF THE MODESTO MUNICIPAL CODE
RELATING TO ENTERTAINMENT**

WHEREAS, the Council of the City of Modesto recognizes and values the **variety** of entertainment and entertainment venues **that** exist in the City which provide a rich and **diverse** cultural experience for **the** residents of **the** City **as well as** visitors to the City, and

WHEREAS, the City Council **hereby** finds that entertainment establishments are a **key** component of a well-rounded and vibrant community and **are an** important part **of** the local economy, and

WHEREAS, entertainment establishments have a need to be regulated in order to protect the **community from excess** noise generation, disorderly conduct **by** patrons, and **the attendant** adverse health, safety and welfare of the surrounding **business** and residential communities, *and*

WHEREAS, it is the purpose of this Article to encourage the development of new entertainment businesses and to **regulate** entertainment establishments to maintain the **public** health, safety and welfare of the City, and

WHEREAS, the City Council finds that the **imposition** of conditions tailored to **the** particular establishment will allow the business or **event to** flourish while **meeting** the City's public health, safety and welfare **needs**. This **approach also** would **avoid** placing **unnecessary** conditions on existing establishments or organizations with a history of compliance with the City laws and requirements.

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

SECTION 1. AMENDMENT OF CODE. Article 4 of Chapter 1 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 4. ENTERTAINMENT ESTABLISHMENTS AND SPECIAL EVENTS

4-1.401. DEFINITIONS.

For the purpose of **this** Article, the following words and phrases shall mean and include:

- (a) "ABC License" **means** the license issued by the California Department of Alcoholic Beverage Control.
- (b) "Police Chief" means the Police Chief of the City of **Modesto**, or his or her designee.
- (c) "City" means the City of **Modesto**.
- (d) "City Manager" means **the** City Manager of the City of **Modesto**, or his or her designee.
- (e) "Dance and Dancing" means movement of the human body, **accompanied** by music or rhythm.
- (f) "**Entertainment**" or "Entertainment Establishment" **means** any single event, **a series of events**, or an ongoing activity **or business**, occurring **alone** or as part of another business, to which the public is invited or allowed to **watch**, listen, or participate or that is conducted **for** the purposes of holding the attention of, gaining the attention of or diverting or **amusing** guests **or** patrons, and that is not exempted by this Article, including, but not limited to:
 - (1) Presentations by single or multiple performers, such **as** hypnotists, mimes, comedians; musical song or **dance** acts, **plays**, concerts, any type of contest; sporting events, exhibitions, carnival, rodeo or circus acts, demonstrations of talent, shows, reviews and **any** other such **activity** which may be **attended by** members of the public;
 - (2) Dancing to **live** or recorded music.
- (g) "Entertainment Commission" and "Commission" **means** the Modesto Entertainment Commission, and includes, **where** appropriate, the **Permit Administrators** and other staff designated by the City **Manager** to perform the functions of the Commission specified by **this Article**, the **Modesto Municipal Code**, or other **applicable law**.
- (h) "Operations Plan" means a plan that (i) provides the number of patrons anticipated to attend the event and the number of security guards, (ii) plans on how to **secure** a perimeter around the establishment that will prevent injury to persons and/or damage to property, (iii) provides for the orderly disbursement of persons and traffic from the Entertainment

Establishment or Special Event, (iv) the **identity** of the manager or managers who shall be on the premises during any hours of operation, and (v) the amount of parking, both on-site and off-site, to be provided. The Entertainment Commission, in consultation with the appropriate City departments, such **as**, Police and Fire, shall develop rules and regulations implementing this Ordinance.

- (i) "Operator" means **any** person operating an Entertainment Establishment in the **City of Modesto**, either directly or indirectly, including, but not limited to, the owner **or** proprietor of **such** premises, **lessee, sublessee**, mortgagee in possession, permittee or any other person operating such place of entertainment or amusement.
-) "Permit" means a conditional authorization from the City **to** own, conduct, operate, maintain, or participate therein, an Entertainment Establishment.
- (k) "Permittee" means a **person**, persons, or business entity that has been issued a permit as provided in this Article.
- (l) "Permit Administrator" means the Permit Administrator who serves **as** staff to the Modesto Entertainment Commission, as appointed by the City Manager.
- (m) "Person" means **any** person, individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, **trustee**, syndicate or any other **group** or combination acting **as** a unit excepting the United **States** of America, the State of California, and any political subdivision of either thereof.
- (n) "Public Dance" means any dance to which members of the public may gain admittance under any **of** the following circumstances:
 - (1) Payment of any type of **fee, dues, or charge** for admission whatsoever, whether collected in advance of the event at which dancing is conducted or whether collected during said event;
 - (2) Payment for entrance or attendance at an event at which dancing is conducted by purchase of tickets, **dues, fees, or other admission devices**:

- (3) Dances conducted or given in connection with the sale of food or beverages in restaurants, bars, cafes, or hotel dining rooms to which the general public is admitted;
- (4) Dances conducted in connection with the provision of other amusement or entertainment for **profit**.

"Public Dance" also includes, but **is** not limited to, the presentation of prerecorded or live music, whether advertised or referred to **as a dance**, concert, festival, "battle of the bands" or any other presentation or event involving public dancing conducted or operated by the management of a hotel, restaurant, bar or **café**, or any agent, employee, representative or concessionaire of **such person** or entity. "Public Dance" does not include on stage-live performances where patrons ate not dancing.

- (o) "Public Dance Halt" means a room, ballroom, patio, garden, space, area, premises or **place** which is **part of a permanent** building, structure or installation designed, maintained **or** operated for **dancing** or with an improved surface suitable for dancing, including, but not limited to, such areas located in a hotel, restaurant, bar or **café**.
- (p) "Reasonable efforts" means the provision of **an** adequate number of licensed security personnel, the adoption and posting of **operating** policies that **are** consistent **with** the requirements of this Article and the **permit** and the adherence to **those** policies, the documented training **of** employees in **the** carrying **out** of the establishment operating policies, notifying the police of **apparent** criminal activity, **and** the **taking** of all additional measures, **consistent with** sound business judgment, necessary **to** accomplish the required result.
- (q) "Responsible Person" means the officers, managers, or members with a right **of** possession or **use** of the establishment, that are responsible for the management of business, special **event**, activity or **gathering**.
- (r) "Special event" means an anticipated gathering of persons on or adjacent **to public property** or roadways that is likely to require police services, fire services, toilet facilities, traffic control, exclusive **of** residential traffic control, the availability of potable water or other City services to protect the health, safety and welfare of participants, neighbors or other persons likely to be affected by the event. including but not limited to spontaneous gatherings on Halloween, Fat Tuesday, X Fest, **St. Patrick's Day** and **New Year's Eve**, and where all of the following circumstances exist:

- (1) Entertainment will **only** be offered for a limited period of time, not to exceed five (5) days;
- (2) The entertainment is not a recurring *or* regularly scheduled event or celebration.

If a business that currently holds an Entertainment Establishment Permit wants to conduct an event outside the four walls of their establishment, then they must secure a Special Event permit.

- (s) "Theater" means any establishment where regular sporting events, concerts, motion picture screenings or theatrical performances **are** given, **usually** on a stage, and usually with ascending row seating or some arrangement of permanent seating.

4-1.402. ESTABLISHMENT OF ENTERTAINMENT COMMISSION; QUALIFICATIONS.

- (a) Establishment of Commission. There is hereby established the Modesto Entertainment Commission consisting of seven (7) members.
- (b) Appointment of Commissioners. Appointment **of** the members of the Commission shall be made by the City Council upon recommendation by the City Council **Safety** and Communities Committee. The Commission members shall be subject to **removal by** resolution of **the** Council if adopted by at least four (4) City Council member votes.
- (c) Terms of Commissioners. For purposes of staggering the terms of the commissioners, the initial appointments shall have terms as follows: three (3) commissioners shall have initial terms of four (4) **years**, two (2) commissioners shall have initial **terms** of three (3) years, and two (2) commissioners shall have initial terms of two (2) years. **All** terms of the initial appointees to the **Commission shall be deemed to** commence upon the same date, which shall be **the date upon** which the last of the seven (7) initial **appointees** assumes office. **Thereafter**, all appointments and reappointments shall be for a term of four (4) **years**.
- (d) Chairperson. The Commission shall elect annually a chairperson who will serve for a term **of** one (1) **year**. The Commission may reappoint the chairperson to serve additional terms. The chairperson may call special meetings, instruct City staff to undertake all steps necessary or appropriate

for the Commission to issue, deny, condition, suspend, revoke and transfer entertainment-related permits in a timely manner, and to **perform** such other duties as may be set forth in the by-laws of the Commission.

4-1.403. POWERS AND DUTIES OF THE ENTERTAINMENT COMMISSION.

The Commission shall have the following powers **and** duties:

- (a) **Accept**, review, gather information regarding, and conduct hearings upon applications for entertainment establishment permits, and **special event permits, and** rule upon and issue, deny, condition, suspend, modify, revoke or transfer these permits in accordance with applicable **laws and** regulations set forth in this Article. The Commission may authorize the Permit Administrator to rule upon **applications** and issue, deny, condition, transfer or modify specified types of **entertainment** permits deemed by the Commission to be routine and unlikely to pose significant **negative impacts** on persons in the vicinity of the **event** or **establishment** for which the permit is sought, provided **that** any City department with an interest in the permit or person having a right **to appeal** to the City Council, **as** set forth in Chapter 4 of Title 1 of the Modesto Municipal Code may, in writing, (i) request **that** the permit application be heard in the first instance by the Commission, or (ii) request reconsideration by the Commission of the Permit Administrator's decision. If the Commission grants a request for reconsideration, it **may** hear the matter **de novo**, or may limit its review to the administrative **record** that **was** before the Permit Administrator at the time of his or her decision. If the **Permit Administrator** rules on a completed application, the decision must be presented to the Commission **as a consent item**.
- (b) Impose reasonable conditions upon **the** issuance or renewal of **entertainment** establishment permits and special event permits consistent with the applicable rules, laws and regulations.
- (c) Suspend, revoke or withdraw entertainment establishment permits and special event permits in accordance with the **laws** and regulations governing such **permits**.
- (d) Conduct **an** appeal hearing of fines or penalties imposed and **may affirm**, modify, or suspend the imposition of such fines and penalties.
- (e) Coordinate with all relevant City departments for the conduct of my inspection or investigation necessary or appropriate for the full and fair

consideration of applications for the issuance, renewal, modification or revocation of entertainment establishment permits and special event permits, including without limitation the Police Department, Fire Department, Parks, Recreation and Neighborhoods Department and Community and Economic Development Department.

- (f) Review and approve applications for coordination of the provision of City services for special events permits, or where identified organizers, promoters or sponsors must work with City staff to provide adequate planning and coordination for the size, geographic distribution or nature of the event.
- (g) Prepare and submit to the City Council a report analyzing the Commission's effectiveness in advancing the policies specified in this Article and the laws governing entertainment-related permits, and making recommendations related thereto. The Commission shall submit the report to the City Council within one (1) year of effective date of this Article, and not less than once every three years thereafter.
- (h) Review and act upon such other matters within the jurisdiction of the Entertainment Commission.

4-1.404. PERMIT ADMINISTRATOR/STAFF TO THE ENTERTAINMENT COMMISSION.

The City Manager shall designate a City Department/City staff that promotes economic development to serve as Permit Administrator for the Entertainment Commission. The Administrator shall be responsible for, in addition to other duties, receiving and reviewing applications and advising applicants regarding the submission of all necessary information and documentation for the Commission to process applications in a timely manner; verifying information contained on entertainment-related permit applications; assisting other City departments, including but not limited to Police, Fire, Zoning, Public Works, Parks, Recreation and Neighborhoods and other public agencies as required in the review of applications for permits necessary for and coordinating investigations by developing instructions, manuals and forms for entertainment-related permit applications that can be accessed on the internet, and for such other duties as prescribed by the City Manager or the Entertainment Commission.

The Permit Administrator shall also work in partnership with other external organizations, such as the Convention and Visitors Bureau, to encourage,

promote, and seek out opportunities to bring entertainment and entertainment establishments into the City.

4-1.405. ANNUAL REPORTS; REPORT OF FEES.

The Entertainment Commission shall issue an annual report to the City Council no later than March 1st of every year, regarding its activities for the preceding year.

Within one (1) year after the operative date of this Article, and annually thereafter as part of the Annual Report required herein, the Entertainment Commission shall also submit a report to the City Council analyzing the fee revenue generated from the issuance, renewal and processing of applications for entertainment-related permits, and proposing fees therefore that will cover the annual operating costs of the Commission. Within three (3) years of the operative date of this Article, the City Council shall review the established fees for entertainment-related permits to ensure they are set at levels sufficient to cover the estimated annual operating costs of the Commission.

4-1.406. PERMIT REQUIRED; APPLICATION FOR PERMITS.

It shall be unlawful for any person to own, conduct, operate, maintain or to participate therein, or to cause or permit to be conducted, operated or maintained, any place of entertainment in the City of Modesto without first having obtained a permit from the Entertainment Commission. The issuance of a permit shall not eliminate compliance with all other local, state and federal rules, regulations and/or laws.

Any place or premises where an entertainment establishment permit is sought must conform to all existing health, safety, ABC, building and zoning, and fire and life safety ordinances of the City of Modesto, and must have a valid business license and any other permit required by law to operate. The Entertainment Commission may issue a permit under this Section conditioned upon the applicant receiving the other required permits.

4-1.407. FILING.

Every person desiring an entertainment establishment permit or a special event permit pursuant to this Article shall file an application with the Entertainment Commission upon a form provided by the Entertainment Commission and shall pay a filing fee as established by resolution of the City Council.

4-1.408. FEES.

Every application for an entertainment establishment permit or a special event permit shall be accompanied by a nonrefundable application fee as established by resolution of the City Council. This application fee shall be in addition to the City's business license tax and any other license or permit fee imposed by this Article upon the applicant.

4-1.409. APPLICATION FORM.

Operators under any permit issued pursuant to this Article shall be limited to the terms of the application or permit. Except as otherwise provided herein, an application for a permit pursuant to the provisions of this Article shall be submitted to the Permit Administrator on forms prescribed by the Permit Administrator and specify:

- (a) The address of the location for which the permit is required, together with the business name of such location.
- (b) The name and address of the applicant, and all other persons having a financial interest in the operation of the Entertainment Establishment or premises where the entertainment is to be located. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation; and the applicant shall also set forth the date and place of incorporation, the names and residence addresses of each of the officers, directors, and each stockholder owning a financial interest in the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant apply.
- (c) Whether or not the applicant or any responsible person(s), as the case may be, has ever been convicted of any crime except misdemeanor traffic violations, including but not limited to, conduct which requires registration under California Penal Code Section 290, or of conduct violating Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 314, 315, 316, 318, 647(a) and 647(b) or convicted of an attempt to commit any of the above-referenced offenses or convicted in any state of any offense which, if committed or attempted in this State, or conspiracy to commit any of the above offenses, would have been punishable as one (1) or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude, or Health & Safety Code Sections 11054,

11055, 11056, 11057, or 11058. Any corporate applicant shall state whether or not any stockholder, as set forth in the financial interest statement filed with the State of California, has ever been convicted of any crime, including violations of the statutes listed above, except misdemeanor traffic violations. If any person referenced in this subsection has been so convicted, a statement must be made giving the name of the person so convicted, the place and court in which the conviction was had, the specific charge under which the conviction was obtained, and the sentence imposed as the result of said conviction.

- (d) The names and addresses of the persons who have authority or control over the place or event for which the permit is requested and a brief statement of the nature and extent of such authority and control.
- (e) The proposed opening date and hours of operation of the entertainment establishment. For special or limited duration events, the date or dates, hours and location of the proposed entertainment.
- (f) An operation plan for the entertainment establishment or special event, specifying (i) the number of patrons anticipated to attend the event and the number of security guards, (ii) plans on how to secure a perimeter around the establishment that will prevent injury to persons and/or damage to property, (iii) provides for the orderly disbursement of persons and traffic from the Place of Entertainment, (iv) the identity of the manager or managers who shall be on the premises during all hours of operation, (v) the amount of parking, both on-site and off-site, to be provided, and (vi) the proposed security arrangements for the control of patrons. Any changes to the operation plan must be immediately submitted to the Permit Administrator.
- (g) Whether the application is for a new permit or for the renewal of an existing permit, a liability insurance policy naming the City of Modesto as an additional insured by separate binder at the limits prescribed by the Risk Manager of the City of Modesto is required.
- (h) The address to which notice, when required, is to be sent or mailed, and the name and address of a person authorized to accept service of process, if not otherwise set forth therein.
- (i) A description of the proposed entertainment, including the maximum number of persons who are expected to be present within the entertainment establishment at any one time.

- (j) In the case of events with an expected attendance or participation of more than one thousand (1,000) people at any one time, permit applicants shall submit an emergency medical services plan to the Entertainment Commission with their permit application. The Entertainment Commission shall forward the applicant's proposed emergency medical services plan to the Fire Chief, along with a deadline for reviewing the plan and submitting recommendations to the Entertainment Commission. If the Fire Chief submits recommendations to the Entertainment Commission, the Entertainment Commission shall consider the recommendations. The Entertainment Commission shall notify the Fire Chief of the approval or disapproval of the application.
- (k) Written consent for the proposed entertainment on the premises from the owner of the property on which the entertainment is to be conducted.
- (l) The applicant and all responsible persons shall submit to fingerprinting by the Police Chief.
- (m) Such other information as the Entertainment Commission may require, as it deems necessary.

4-1.410. VERIFICATION OF APPLICATION.

Every application for a permit under this Article shall be verified as provided in the California Code of Civil Procedure for the verification of pleadings by the Permit Administrator.

4-1.411. RECEIPT OF APPLICATION, NOTICE OF DEFICIENCY; INVESTIGATION.

- (a) Upon receipt of an application for an Entertainment Establishment or Special Event Permit, the Permit Administrator shall review the application to ensure all the required information has been submitted. In the event that the Permit Administrator's review identifies missing information, a Notice of Deficiency shall be sent to the applicant setting forth the required information along with a response date. The Notice of Deficiency shall be sent out within ten (10) calendar days of receipt of the application.
- (b) The Permit Administrator shall investigate each application for a permit under this Article by distributing the completed application to the City departments for review and comment. The departments shall provide any

comments or recommendations to the Permit Administrator within thirty (30) calendar days after distribution to them, as required by the Permit Administrator.

- (c) At the time of filing an application, the applicant shall notify the Entertainment Commission of any outstanding requests for permits or approvals from other City departments relating to the premises of the proposed Entertainment Establishment. The Entertainment Commission shall notify those departments of the filing of the application. Those departments shall complete all necessary inspections and report their determinations to the Entertainment Commission within twenty (20) calendar days of the filing of the application.
- (d) Thereafter, the Permit Administrator shall make a recommendation to the Entertainment Commission as to whether to grant or deny said permit. The Permit Administrator shall recommend the conditions, if any, to be imposed on permits granted in accordance with department recommendations. Applications for which permits are denied shall be returned to the applicant with a statement of the reason or reasons for denial.
- (e) The Permit Administrator shall recommend the issuance of the entertainment establishment or special event permit if he or she finds:
 - (1) That issuance of the permit and conduct of the entertainment at the proposed location, as conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s); and
 - (2) That issuance of the permit at the proposed location, as conditioned, will not constitute an undue burden on the neighborhood because of its proximity to residences, inadequate parking or other neighborhood circumstances and will not interfere with the reasonable use and enjoyment of the neighborhood by its residents; and
 - (3) Neither the applicant or any responsible person or principal of the applicant has, within the past five (5) years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of premises upon which the entertainment activities are conducted; and

- (4) Neither the applicant, any responsible person, nor a principal of the applicant has a history of committing, permitting or failing to prevent significant violations of the Modesto Municipal Code, or any license or permit, in connection with an entertainment establishment for which he or she was a responsible person; and
- (5) It does not appear, based upon the information before the Permit Administrator, that the applicant has provided false or misleading material information on the application.

4-1.412. POSTING PREMISES – APPLICATION FOR ENTERTAINMENT OR SPECIAL EVENT PERMIT.

- (a) Upon receipt of a complete Entertainment Establishment Permit application or Special Event application, and at least twenty (20) days prior to the hearing, the Permit Administrator shall provide to the applicant a notice of application and public hearing for an entertainment establishment permit. The applicant shall post the notice on the exterior of the premises for which the permit is sought within twenty-four (24) hours after receiving the notice and for no less than fourteen (14) consecutive days.
- (b) Except as provided below, the Entertainment Commission shall either approve or deny the application within forty-five (45) calendar days of receipt of the complete application. The City Manager may extend the time for consideration of the application for up to an additional fifteen (15) calendar days with the written consent of the applicant. The failure of the Entertainment Commission to hold a public hearing shall result in a conditional approval of the permit. The conditional approval shall be defined by the Entertainment Commission.

4-1.413. DETERMINATION OF APPLICATION; ISSUANCE BY COMMISSION.

- (a) When an application is filed for a permit under this Article and it is deemed complete, the Entertainment Commission shall fix a time and place for a public hearing to determine whether issuance of the permit would result in any of the conditions set forth in Subsection (e). The hearing must be held within forty-five (45) calendar days of the date the completed application is received, unless otherwise waived by the applicant.

- (b) The Entertainment Commission shall require the applicant for an entertainment establishment or special event permit to post the notice of application and of such hearing in a conspicuous place on the property in which or on which the proposed place of entertainment is to be operated. Such notice shall, in a form as prescribed by the Entertainment Commission, set forth the specific type of entertainment which the applicant intends to conduct. The applicant shall post the notice within twenty-four (24) hours of receipt and shall maintain said notice as posted for fourteen (14) consecutive calendar days. Notice of such hearing shall be mailed by the Entertainment Commission at least twenty (20) calendar days prior to the date of such hearing to any person who has filed a written request for such notice.
- (c) At the hearing, the applicant and any other interested party, including the Police Department, or any other Department or public agency, shall be allowed to introduce evidence and present arguments. The Entertainment Commission shall make a final decision upon the application at a public hearing, and shall notify the applicant, and any other interested party who has made a written request, of the final decision by first class mail.
- (d) No time limit shall commence running until the submission of a completed application. Upon the applicant's request, the Entertainment Commission may continue the hearing to allow the applicant the opportunity to comply with the requirements of this Article or any other state or local law. Notice of the date of any continuance of the hearing shall be posted in the same place and manner as the original notice for not less than seven (7) consecutive calendar days. Upon the applicant's request, the Entertainment Commission shall also issue a conditional approval of the permit application, pending approval of the permit by other County or City agencies, if sufficient information has been provided to allow for adequate evaluation of the proposal and if grounds for denial, as set forth in Subsection (e), are not present.
- (e) The Entertainment Commission shall grant a permit pursuant to this Article unless it finds that:
 - (1) The building, structure, equipment or location of the proposed Entertainment Establishment does not comply with or fails to meet all of the health, zoning, fire and life safety requirements or standards of all the laws of the State of California or ordinances of the City of Modesto applicable to such business operation; or

- (2) The building, structure, equipment or location of the proposed Entertainment Establishment cannot adequately accommodate the type and volume of vehicle and pedestrian traffic anticipated; or
 - (3) The building, structure, equipment or location of the proposed Entertainment Establishment lack adequate safeguards to prevent emissions of noise, glare, dust or odor that substantially interfere with the public health, safety and welfare or the peaceful enjoyment of neighboring property; or
 - (4) The applicant or any responsible person or principal of the applicant has, within the past five (5) years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of premises upon which the entertainment activities are conducted; or
 - (5) The applicant or any responsible person or principal of the applicant has a history of committing, permitting or failing to prevent violations of the Modesto Municipal Code, state law or any license or permit, connection with an entertainment establishment for which he or she was a responsible person; or
 - (6) The applicant has provided false or misleading information in the application.
- (f) In issuing the permit, the Entertainment Commission may impose conditions relating to the operation of the entertainment establishment.
- (1) Conditions may relate to:
 - (i) The days, hours and location of operation;
 - (ii) Restrictions designed to prevent minors from obtaining alcohol, such as separate entrances, exits, and restroom facilities on the premises;
 - (iii) The number and age of persons allowed on premises;
 - (iv) Whether security guards are required, and if so, how many;

- (v) Specific measures the permittee must undertake to control the conduct of patrons so as to prevent or minimize disorderly conduct within the establishment;
 - (vi) Specific measures the permittee must undertake to remove trash attributable to the establishment or its patrons in and around the establishment, the surrounding neighborhood and the public right of way;
 - (vii) Specific measures the permittee must undertake to prevent the entertainment and its patrons from disturbing the peace and quiet of the surrounding neighborhood;
 - (viii) Specific measures the permittee must undertake to prevent its patrons from engaging in disorderly conduct in the surrounding neighborhood;
 - (ix) Whether the Police Chief must receive advance notice of the date of a particular event if that event is not held as part of the regularly scheduled events of the business; or
 - (x) Other matters related to public health, safety and welfare.
 - (xi) Display of Permit. Every Permittee under this article shall display said permit with attachment of any prescribed conditions in a conspicuous place at the premises identified in the permit. Permittee shall show such permit whenever requested by any peace officer upon said premises.
 - (xii) Admission of Police Officers, Fire Life and Safety Personnel. Any on duty member of the Modesto Police Department or other enforcement agency shall be admitted free of charge to any establishment, location or event for purposes related to law enforcement, crime prevention, or fire life and safety issues.
 - (xiii) Unpermitted Conduct. No conduct of a violent, disorderly or unlawful nature shall be permitted at any public business in the City.
- (2) Conditions shall be based on specific and articulable facts reasonably related to insuring the public health, safety and welfare,

including, but not limited to, the protection of minors from alcohol and other criminal activity, the conservation of limited city public safety resources and the prevention of public nuisance activity that detracts from the peace and quiet of residential neighborhoods.

- (3) Conditions shall be listed on, or attached to, the permit.
 - (4) Conditions may not be imposed that conflict with any local, state or federal law, or that conflict with the permittee's ABC license. Nothing in this subsection is intended to prevent the Entertainment Commission from imposing any condition related to the age of patrons inside an ABC establishment if the ABC license does not address that issue. The intent of this subsection is to allow the sale and service of food to minors in a bona fide public eating place (ABC license types 41, 47 and various club licensed premises) with reasonable conditions placed on the permit to prevent curfew violations and protect the minors from alcohol and other criminal activity.
 - (5) No condition may be imposed pursuant to this article that suppresses or regulates expression in any manner contrary to law.
- (g) An applicant whose application for a permit has been denied pursuant to this Section may appeal to the City Council. Any person whose application was denied by the Entertainment Commission, pursuant to this Article, may appeal to the City Council in accordance with the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code. Failure to appeal shall constitute a failure to exhaust administrative remedies.

4-1.414. PERMIT REQUIREMENT EXEMPTIONS.

The provisions of Section 4-1.406 relating to a permit shall not apply to any place of entertainment used exclusively for any of the following purposes:

This exemption does not relieve any exempt entertainment establishment from complying with all other applicable laws, particularly those laws related to noise levels and nuisances.

The Entertainment Commission reserves the right to remove an established exemption from a qualified establishment if the establishment poses a threat to public safety or welfare.

- (a) Entertainment provided for invited guests at a private event, such as a wedding reception, banquet, worship services, or where the event takes place at a property that is a residential occupancy.
- (b) Performances by students at educational institutions as defined by the Education Code where such performances are part of an educational or instructional curriculum or program;
- (c) Motion picture theaters not providing live entertainment;
- (d) Dance lessons, theatrical and performing arts lessons and student recitals;
- (e) Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;
- (f) Entertainment consisting of ambient or incidental music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, traditional jukebox, karaoke, guitarist or band. However, if there is an admission charge required to observe or attend such entertainment, the music will not be considered ambient or incidental;
- (g) Any establishment, venue or assemblage of seventy-five (75) persons or less, as described in the maximum occupancy load of the business;
- (h) Entertainment lawfully conducted at any of the following regulated businesses that is regulated or excluded by other established City Municipal Ordinances:
 - (1) "Adult-related establishments," regulated under Chapter 5-9.101, et seq.;
 - (2) "Amusement arcades," regulated under Chapter 4-1.100, et seq. However, if entertainment, other than the operation of amusement machines, is conducted on the premises of any amusement arcade, such amusement arcade shall not, by virtue of this provision, be exempt from the permit requirement of this Article;
- (i) Billiard and Pool Parlors. However, if entertainment, other than the playing of billiard or pool, is conducted on the premises of any billiard or pool parlor, such entertainment establishment shall not, by virtue of this provision, be exempt from the permit requirement of this Article.

- (j) Miniature Golf. However, if entertainment, other than the playing of miniature golf, is conducted on the premises of any miniature golf establishment, such miniature golf establishment shall not, by virtue of this provision, be exempt from the permit requirement of this Article.
- (k) The normal and customary fitness services provided by an athletic club or fitness center.
- (l) Parades.
- (m) Sporting Events.

4-1.415. EXEMPTION FROM THE PERMIT FEE REQUIREMENT.

The provisions of Section 4-1.408 relating to a permit fee shall not apply to any place of entertainment used exclusively for any of the following purposes:

This exemption does not relieve any fee exempt entertainment establishment from complying with all other applicable laws, particularly Section 4-1.406 of this Code and those laws related to noise levels and nuisances.

- (a) Entertainment conducted or sponsored by any religious organization, bona fide club, organization, society or association that is exempt from taxation pursuant to Internal Revenue Code Sections 501(c)(3) and 501(c)(4), when all proceeds, if any, arising from such entertainment are used exclusively for the benevolent purposes of such religious organization, club, society, or association.

4-1.416. POLICE CHIEF OR FIRE CHIEF AUTHORITY WHERE THERE IS IMMEDIATE THREAT TO PUBLIC SAFETY.

- (a) Nothing herein shall prevent or interfere with the authority of the Police Chief or the Fire Chief to require a permittee or responsible person to close down operations and disperse all patrons for the remainder of its daily operation whenever conduct by disorderly patrons reaches a magnitude that presents an immediate threat to the public safety or well-being of the patrons and general public in the vicinity, including fire and life safety threats.
- (b) It is unlawful for any person to fail to comply with any directive issued by the Police Chief under authority of Section 1-6.202 of this Code.

4-1.417. DENIAL, SUSPENSION AND REVOCATION OF ENTERTAINMENT ESTABLISHMENT PERMIT.

- (a) Any permit falling under the terms of this Article may be denied, suspended or revoked at any time by the Entertainment Commission if the Entertainment Commission determines after a noticed public hearing that any of the following conditions exist:
- (1) The building, structure, equipment or location of the proposed place of entertainment does not comply with or fails to meet all of the health, zoning, fire and life safety requirements or standards of all the laws of the State of California, ABC, or ordinances of the City of Modesto applicable to such business operation; or
 - (2) The establishment has been operated in a manner that has harmed the public health, safety or welfare by significantly increasing pedestrian traffic, the incidence of disorderly conduct, or the level of noise in the area in which the premises are located, and the permittee has failed, after being requested by City staff or the Permit Administrator to do so, to take reasonable steps to alleviate these conditions, such as, but not limited to, providing additional off-street parking, security, soundproofing, restroom facilities, or refuse containers; or
 - (3) The proprietor or person or persons in charge thereof have while holding an Entertainment Establishment or Special Event Permit, violated, permitted the violation, or failed to take reasonable steps, after being requested by City staff or the Permit Administrator to do so, to halt violations on the premises or in connection with the operation of the establishment of any following laws of the State of California: Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 290, 314, 315, 316, 318, 330, 337a, 647(a) or (b); Business and Professions Code Sections 23300, 25602, 25631, 25657, 25658; Health and Safety Code Sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11359, 11360, 11378, 11379, 11378.5, 11379.5; or
 - (4) The proprietor or persons in charge thereof have violated or permitted the violation of any other provision of this Article or of the permit, on the premises or in connection with the operation of the establishment; or

- (5) The Entertainment has been conducted in an illegal or disorderly manner or has been conducted in such a manner as to constitute an unreasonable burden on the reasonable use and enjoyment of neighboring properties and businesses; or
 - (6) The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact in the application; or
 - (7) The permittee has failed to pay any fee or charge required under this Article; or
 - (8) The permittee has permanently ceased operation of the business, or the permittee has changed the name of the business or establishment without notifying the City.
- (b) In the event a permit is revoked, the proprietor or person in charge of the establishment whose permit was revoked shall be barred from submitting a new application for a period of one hundred twenty (120) days.
- (c) The Entertainment Commission may not consider any request for emergency medical or ambulance services to treat a permittee's patron(s) as a basis for suspending a permit pursuant to subdivision (a).

4-1.418. DENIAL, SUSPENSION, MODIFICATION, REVOCATION AND CONDITIONS – APPEALS.

Any applicant or permittee aggrieved by the decision of the Entertainment Commission or Permit Administrator, in denying, suspending, modifying or revoking a permit or imposing conditions on the permit, may appeal the decision to the City Council in accordance with Chapter 4 of Title 1 of this Code. The appeal shall be made by filing a written notice thereof with the City Clerk not later than ten (10) calendar days after notice of the decision of the Entertainment Commission, is personally served upon or mailed to the permittee. The City Council shall hold a hearing on the appeal and its decision thereon shall be final. In the alternative, the City Council may refer the matter to a hearing examiner pursuant to Chapter 4 of Title 1 of this Code, in which case the hearing examiner's decision shall be final. In the case of a suspension, modification or revocation, unless otherwise ordered, the permittee may continue to conduct entertainment during the pendency of any appeal.

4-1.419. SUSPENSION, MODIFICATION OR REVOCATION OF PERMIT.

- (a) After notice and an opportunity for a hearing to the permittee as provided in this section, the Entertainment Commission may suspend, modify or revoke any permit issued pursuant to the provisions of this Article for any of the following reasons:
- (1) The entertainment has been conducted in a manner contrary to the findings for the issuance of a permit set forth in Section 4-1.413;
 - (2) The permittee has failed to comply with one or more conditions of the permit;
 - (3) The entertainment has created sound levels that violate the Modesto Municipal Code;
 - (4) The permittee or his/her employees, agents, or representatives have violated or are violating federal, state or local laws, rules or regulations in connection with the entertainment;
 - (5) The entertainment has been conducted in an illegal or disorderly manner or has been conducted in such a manner as to constitute an unreasonable burden on the reasonable use and enjoyment of neighboring properties;
 - (6) The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact in the application;
 - (7) The entertainment has created or is creating a public nuisance;
 - (8) The permittee or any other responsible person has violated any provision of this Article; or
 - (9) The modification has been requested by the permittee and the Entertainment Commission finds the modification is consistent with the provisions of the Modesto Municipal Code and will not constitute a public nuisance or an unreasonable burden upon city resources or the surrounding neighborhood.
- (b) In the event the Permit Administrator proposes to suspend, modify or revoke a permit, written notice of the day of the hearing shall be personally delivered or sent by certified mail to the permittee at least fourteen (14) calendar days prior to the date of the hearing. The notice shall contain:

- (1) A brief statement of the specific grounds for such suspension, modification or revocation;
 - (2) A statement that the permittee may appear and present evidence defending against the proposed suspension, modification or revocation at a public hearing as scheduled by the Permit Administrator;
 - (3) A statement that the failure to appeal the notice of suspension, modification or revocation will constitute a waiver of all right to an appeal hearing, and the suspension, modification or revocation will be final.
- (c) The hearing shall be conducted by the Entertainment Commission. The permittee may have the assistance of counsel and shall have the right to present evidence.
- (d) Written notice of the decision of the Entertainment Commission shall be given to the permittee within fourteen (14) calendar days following the hearing by personal delivery thereof or deposit of such notice in the U.S. Mail, postage prepaid.

4-1.420. VIOLATIONS; MISDEMEANOR.

It shall be unlawful and a misdemeanor for any person to manage, operate or conduct any establishment or event where an entertainment establishment or special event permit is required without first obtaining such required permit, or to operate the establishment in violation of any state, local, federal law, any condition under which the permit was issued, or any of the rules and regulations in this Article.

4-1.421. TRANSFER OF PERMIT.

No permit shall be transferable except with the written consent of the Entertainment Commission. An application for such a transfer shall be in writing and shall be accompanied by the same filing fee as for an initial application. The written application for such transfer shall contain the same information as requested herein for an initial application for such a permit.

4-1.422. TIME LIMIT FOR OBTAINING PERMIT FOLLOWING ADOPTION.

All premises required to obtain an Entertainment Establishment permit pursuant to this Article must obtain a permit within twelve (12) months of the effective date of this ordinance; failure so to do shall make continued operation of said place of entertainment a violation of Section 4-1.406 hereof.

4-1.423. DISSEMINATION OF INFORMATION.

The Entertainment Commission may print and deliver a copy of this article and the rules and regulations promulgated to each applicant, who will acknowledge by signature that he/she has read and will abide by such rules and regulations. Copies will be made available by the Entertainment Commission to any person who so requests.

4-1.424. APPLICATION OF ARTICLE.

This article shall apply to the issuance, denial, renewal, suspension, modification or revocation of any permit required by Section 4-1.406.

4-1.425. EXTENDED OPERATING HOURS.

An applicant for a permit may request, and the Entertainment Commission may approve, extended operating hours that will be applicable to the permitted entertainment establishment. The extended operating hours approved by the Entertainment Commission, and any conditions relating thereto, shall be specifically stated in the permit.

4-1.426. DISPLAY OF PERMITS.

The permit issued pursuant to this Article shall at all times be displayed in a conspicuous place in the entertainment establishment for which it was issued and shall be immediately produced upon the request of any police or code enforcement officer.

4-1.427. DURATION OF PERMIT.

- (a) Except as provided below, a permit issued pursuant to this article shall be valid for two (2) years from the date it was issued subject to any conditions or restrictions existing at the time it was issued with the exception of Special Event Permits.
- (b) A permit issued pursuant to this Article for a special event shall be valid for the term stated in the permit.

4-1.428. RENEWAL OF PERMITS.

- (a) A permittee shall apply for permit renewal by submitting to the Permit Administrator before the expiration of any permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the City Council.
- (b) If a timely and complete application for renewal is filed, the permit's expiration shall be stayed until a decision on the renewal application is issued by the Entertainment Commission.
- (c) The Entertainment Commission shall either approve or deny the renewal of a permit within forty-five (45) calendar days of receipt of the complete application. The Entertainment Commission may extend the time for consideration of the application for up to an additional fifteen (15) calendar days with the written consent of the applicant. The failure of the Entertainment Commission to timely act shall constitute a conditional approval of the renewal of the permit.
- (d) The Entertainment Commission may approve the renewal of a permit if it finds that no circumstances existed during the term of the permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal that is inconsistent with any finding required for approval of a new permit for the applicant or location as specified in Section 4-1.413 or would justify the suspension, modification or revocation of the permit as specified in Section 4-1.417 or 4-1.419. Notwithstanding the above, the Entertainment Commission may add, delete or modify the permit conditions as a condition of permit renewal, using the criteria set forth in Section 4-1.413.

4-1.429. FORFEITURE OF FEE.

On revocation of the permit, no part of the permit fee shall be returned, but said permit fee shall be forfeited to the City of Modesto.

4-1.430. ADMINISTRATIVE ENFORCEMENT, PENALTIES FOR VIOLATION; APPEAL TO ENTERTAINMENT COMMISSION.

In addition to any other remedies available in law or equity, if a violation of the Article is prosecuted administratively, the mandatory minimum penalty for the first administrative citation shall be five hundred dollars (\$500.00) for each

condition or law violation cited; for the second citation in a twelve (12) month period the mandatory minimum penalty shall be one thousand dollars (\$1,000.00) for each condition or law violation cited, for the third citation in a twelve (12) month period, the mandatory minimum penalty shall be one thousand five hundred dollars (\$1,500.00) for each condition cited or law violation. The fourth offense may result in revocation of the permit after a hearing of the Entertainment Commission.

Any person who has been issued an administrative citation or penalty may appeal that issuance to the Entertainment Commission. The appeal and hearing procedures shall be held in accordance with the provisions set forth in Chapter 4 of Title 1 of this Code.

4-1.431. EFFECTIVE DATE OF PERMIT.

Unless an earlier expiration date is specified in the terms of the permit itself, a dance permit issued on or before the effective date of this section shall be valid for up to one (1) year from the effective date of this section and shall terminate thereafter. Notwithstanding any other provision of this Article, all entertainment related permits issued on or before the effective date of this section shall be subject to suspension, modification or revocation pursuant to Section 4-1.417 or 4-1.419.

4-1.432. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The City of Modesto hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof.

SECTION 2. 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.

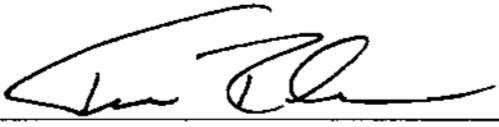
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 24th day of June, 2008, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

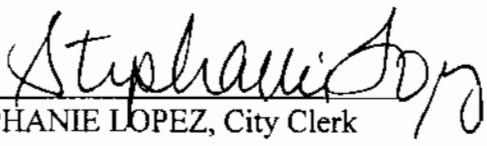
AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

FINAL ADOPTION CLAUSE

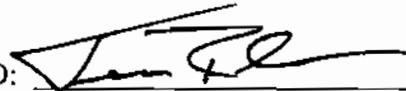
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 1st day of July, 2008, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: August 1, 2008