



**CITY OF MODESTO**  
**COMMITTEE REPORT**

**COMMITTEE**  
**MEETING DATE:**  
September 5, 2007

August 20, 2007

**TO:** **Safety and Communities Committee**  
Will O'Bryant, Chair  
Brad Hawn, Vice Chair  
Bob Dunbar

**FROM:** Roy W. Wasden, Chief of Police

**SUBJECT:** Informational Update Report on the Downtown Entertainment District (D.E.D.)

**CONTACT:** Lt. Ron Cloward, [Clowardr@modestopd.com](mailto:Clowardr@modestopd.com), and CSO Leslie Rodriguez, [Rodriguezl@modestopd.com](mailto:Rodriguezl@modestopd.com), 572-9679.

**RECOMMENDED COMMITTEE ACTION:**

Consider receipt and review of this informational presentation regarding City of Modesto Police efforts in the Downtown Entertainment District.

**BACKGROUND:**

The City of Modesto recognizes that a variety of entertainment venues in the City provide a rich and diverse cultural experience for individuals, families and visitors to the City of Modesto. Many cities with large entertainment venues have ordinances that regulate public safety issues. With reduced General Fund revenues, increased overtime costs to provide sufficient public safety services, and the increased growth of nightlife, the Modesto Police Department is seeking to develop a plan for the downtown area.

**Draft Entertainment Ordinance – Modifying Dance Ordinance:**

A draft Entertainment Ordinance is attached as a starting point for a group or committee to meet and develop a plan for the future of the Downtown Entertainment District. This committee would also seek modifications to the current Dance Ordinance.

**REASONS FOR RECOMMENDATION:**

The Modesto Police Department is looking at avenues to encourage and develop a vibrant downtown with diverse options of entertainment for the entire community to enjoy. The goals of this plan would be to maintain a strong sense of public safety without creating a burden to the city's General Fund.

**EXISTING POLICY / RELATIONSHIP TO STRATEGIC PLAN:**

This action is directly related to the following *Strategic Plan* goals:

H.II.K.1.k. Identify critical problem areas and develop short and long term solutions/priorities to ensure community safety.

**POLICY ALTERNATIVES:**

Committee could elect not to move forward with any action at this time.

**FISCAL IMPACTS:**

None.

**INTERDEPARTMENTAL COORDINATION:**

None.

**PUBLIC PARTICIPATION:**

Public comment will be afforded during the Safety and Communities presentation.

This presentation has also been provided to members of the DED (Downtown Entertainment District), who as a group of stakeholders could serve on a review committee, along with members of the Modesto Fire Department, and City Attorney's office.

**ENVIRONMENTAL REVIEW:**

This is not a project. Further environmental review is not required.

**STEPS FOLLOWING APPROVAL:**

The Police Department will select a group of stakeholders to serve on a committee to review the proposed changes and modifications.

Prepared By:

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Karen Rabb, Administrative Analyst, [rabbk@modestopd.com](mailto:rabbk@modestopd.com) 572-9523

Approved By:

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Roy W. Wasden, Chief of Police

Reviewed By:

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M. Wayne Padilla, Finance Director

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Susana Alcalá Wood, City Attorney

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George W. Britton, City Manager

Attachments: Council Resolution

cc: Roy W. Wasden, Chief of Police  
Michael Harden, Assistant Chief of Police  
Gene Balentine, Police Captain  
Joel Broumas, Police Captain  
Michael Zahr, Police Captain  
Ron Cloward, Lieutenant  
Leslie Rodriguez, CSO

## ENTERTAINMENT ORDINANCE

The Council of the City of Modesto recognizes that a variety of entertainment venues in the City provides a rich and diverse cultural experience for the residents of the City and visitors to the City. The Council also recognizes that many non-alcoholic entertainment establishments provide a safe place for families and young adults to gather.

The Council hereby finds that the operation of entertainment establishments presents an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with the attendant adverse health, safety and welfare impacts on the surrounding business and residential community.

Therefore, it is the purpose of this chapter to regulate the operation of entertainment establishments for public health, safety and welfare. All Permittees will be held responsible for controlling patron conduct in and around these establishments. In addition, each Permittee shall make adequate provisions for security and crowd control, protecting the City's youth and its citizenry from criminal activity and minimizing disturbances as a result of the operation of the entertainment establishment.

The 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.

### Definitions.

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For purposes of this chapter:

“ABC license” means the license issued by the California Department of Alcoholic Beverage Control.

“Admission charge” means any charge for the right or privilege to enter any place of entertainment including a minimum service charge, an event charge, a cover charge, a charge for the use of seats and tables, or any other similar charge. It also includes the purchase or presentation of a ticket or token directly or indirectly required as a condition for entrance. It does not include tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing entertainment.

“Chief of Police” includes the Chief of Police of the City of Modesto or his or her designee.

“City Manager” includes the City Manager of the City of Modesto or his or her designee.

“Dance and dancing” means movement of the human body, accompanied by music or rhythm.

“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, including, but not limited to:

- A. Presentations by single or multiple performers, such as hypnotist, mime, comedian, musical instrument, song or dance act, play, concert, any type of contest, sporting event, exhibition, rodeo, demonstration of talent; show, radio, music recording machine, juke box, or television.
- B. The presentation of recorded music played on equipment, which is operated by an agent or contractor of the establishment, commonly known as a “DJ” or “disc jockey.”

“Permittee” means a person, persons, or business entity that has been issued a permit as provided in this chapter.

“Responsible person” means the Permittee, owner, proprietor, promoter, manager, assistant manager or other person exercising control over the operation of an entertainment establishment or special event, whether or not that person is a named Permittee.

“Special event” means entertainment conducted on private and/or public property where the premises or location where the entertainment is to be conducted is not the subject of an existing entertainment permit issued pursuant to this Chapter. A daily entertainment permit is required for any special event.

“Theater” means any commercial 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.

### **Permit Fee.**

The Council of the City of Modesto may, by resolution adopt, from time to time, an annual entertainment establishment permit fee and a daily entertainment permit fee.

### **Entertainment Permit Required – Compliance with Other Laws.**

- A. It is unlawful and a misdemeanor for any person to manage, organize, conduct, operate or to participate in the management, organization, or operation of, or provide or permit any entertainment that is open to the public without first obtaining an entertainment establishment permit or a daily entertainment permit issued pursuant to this Chapter.

- B. The issuance of a permit shall not eliminate compliance with all other Local, State and Federal rules, regulations and/or laws.

### **Application for Permits.**

Application for an entertainment establishment permit shall be filed with the Chief of Police, on the form or forms prescribed, not more than sixty (60) calendar days nor less than fifteen (15) calendar days prior to the date for which the permit is requested. An application shall not be deemed filed unless accompanied by proof of payment of any fee adopted by the Council of the City of Modesto.

An Entertainment Establishment Permit is not renewable and must be applied for on an annual basis. The term of the permit shall be one (calendar) year or the remaining term of the calendar year in which, the Permittee's application was filed. An existing Permittee shall file an application for a new permit not more than 60 days nor less than 30 days prior to the last day of the calendar year, December 31<sup>st</sup>. The prescribed permit fee must accompany the application.

All Entertainment Establishment permits will automatically expire December 31<sup>st</sup> of each calendar year.

### **Requirements for Permits.**

Applicants for a permit under this Chapter shall provide at least the following information:

- (a) The name and residence address of the applicant or applicants; and if the applicant is a corporation, partnership, association, firm or other entity, the names and addresses of the officers, directors, partners or principals thereof;
- (b) The particular location for which the permit is desired, or at which any public entertainment is to be held;
- (c) The name of the owner of the location or premises in or at which said entertainment is held;
- (d) The name of the person who shall be, responsible for and in attendance at any special event and establishment permitted pursuant to this Chapter;
- (e) The date and time of the special event for which a daily entertainment permit is requested. A daily entertainment permit shall not exceed a 24-hour period. An Entertainment Establishment Permit shall not exceed a 12-month period.
- (f) A statement that the applicant is the sole party, or the applicants are the sole parties, either directly or indirectly interested in the entertainment establishment

permit or a daily entertainment permit and that no other person or entity is or will be in any manner interested therein, directly or indirectly, during the term of the permit;

(g) A covenant and promise by the applicant to comply with the provisions of this Chapter;

(h) 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.

### **Investigation of Application.**

The Chief of Police will investigate each application for a permit under this Chapter and may thereafter grant or deny said permit. The Chief of Police will determine and state the conditions, if any, to be imposed on any permit granted. Application for which a permit is denied will be returned to the applicant with a statement of the reason or reasons for denial.

### **Conditions of Permit.**

The Chief of Police may impose on any permit issued hereunder any reasonable conditions relating to public health, safety and welfare, including but not limited to specification of numbers and ages of attendees, occupancy, noise levels, hours of operation, sanitary standards and facilities, lighting requirements, alcoholic beverages, insurance and security requirements.

### **Rules and Regulations.**

It shall be unlawful and a misdemeanor to manage, operate or conduct any event where an entertainment establishment permit or a daily entertainment permit is required or in violation of any state, local, federal law, any condition under which the permit was issued, or any of the following rules and regulations:

(a) Display of Permit. Every Permittee under this Chapter shall display said permit with attachment of any prescribed conditions in a conspicuous place at the premises identified in the permit, and Permittee shall show such permit whenever requested by any peace officer upon said premises.

(b) Admission of Police Officers. Any on duty member of the Modesto Police Department or other law enforcement agency shall be admitted free of charge to any establishment, location or event for purposes related to law enforcement or crime prevention.

(c) Hours of entertainment. Entertainment shall cease between the hours of 12:00 a.m. (midnight) and 6:00 a.m., unless waived by the Chief of Police.

(d) Unpermitted Conduct. No conduct of a violent, obscene, disorderly or unlawful nature shall be permitted at any public business in the City. No slot machine, wheel of chance, gambling device or paraphernalia shall be permitted upon the premises at any time.

(e) Dance and dancing- No dance or dancing is permitted at an entertainment establishment or special event for which a permit is required unless the Permittee also holds a valid dance hall or daily dance permit pursuant to MMC Section 4-1.401.

(f) No Readmission Without Charge. Any fee charged for admission to a public event where an entertainment permit is required shall entitle persons admitted as long as they remain within the venue. Persons who leave a public event or facility that holds a public entertainment permit shall not be readmitted without the purchase of another admission ticket.

(g) Telephone Service. A sufficient number of telephones shall be available for use by persons attending any event for which a permit has been issued under this Chapter.

(h) Presence of Permittee during entertainment. Permittees under this Chapter or a responsible person designated on the application by a Permittee shall be present on or in the immediate vicinity of the event during the entire duration of the period for which any entertainment permit is issued under this Chapter.

(i) Additional Rules, Conditions and Regulations. The Chief of Police may promulgate, and may from time to time amend rules and regulations for the conduct and operation of public entertainment facilities; and such rules and regulations as adopted or amended are hereby incorporated herein by reference as if fully set forth herein.

#### **Chief of Police Authority Where there is Immediate Threat to Public Safety.**

A. The Chief of Police may require a Permittee or responsible person in charge 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.

B. As it relates to this ordinance, it is unlawful for any person to fail to comply with any directive issued by the Chief of Police or his or her designee.

### **Term of Permit.**

Unless sooner revoked or suspended, a permit issued under this article shall be valid for the following periods:

- (a) An Entertainment Establishment Permit shall be valid for a period not to exceed one calendar year. The expiration date will be shown on the face of the permit.
- (b) A Daily Entertainment Permit is a one-day permit required for any special event not to exceed 24 hours from the date and times specified. The expiration date and time will be shown on the face of the permit.

### **Revocation of Permit**

An entertainment permit may be revoked or suspended by the Chief of Police of the City of Modesto upon five (5) days' written notice to the holder thereof, for violation of any of the provisions of this Chapter, or of any condition imposed upon any permit, or of any rule or regulation promulgated hereunder, or of any state or local law. No person whose permit has been revoked shall be granted or issued a new permit, nor shall any new permit be granted or issued to any person who was or is an agent, employee or representative of the person whose permit was revoked unless the following conditions are satisfied:

- (a) Twelve (12) months or more have elapsed since the former Permittee was notified of the intended revocation;
- (b) The former Permittee has, to the satisfaction of the Chief of Police, corrected all conditions and violations upon which the revocation was based or has provided to the Chief of Police acceptable plans for procedures reasonably likely to prevent future violations should the permit be reissued;
- (c) Such other conditions as the Chief of Police may reasonably require.

### **Enforcement Authority.**

The Modesto Police Department is authorized to administer and enforce the provisions of this Chapter. The City Attorney and the Police Chief and/or their designees may exercise any enforcement powers provided by law.

### **Enforcement Remedies.**

In addition to any other remedies available by law, including criminal prosecution, the City of Modesto may seek administrative penalties, response costs, and any other cost associated with enforcement of Sections \_\_\_\_\_ to \_\_\_\_\_, through all remedies or procedures provided by statute, ordinance, or law. Sections \_\_\_\_\_ and \_\_\_\_\_ shall not limit the authority of peace officers to make arrest for any criminal offense arising out of conduct regulated by Sections \_\_\_\_\_ and \_\_\_\_\_.

If a violation of Sections \_\_\_\_\_ and/or Section \_\_\_\_\_ 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) 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 4<sup>th</sup> offense may result in revocation of the permit.

### **Appeals.**

Any person aggrieved by any action taken by any City official pursuant to this article may appeal to the Council of the City of Modesto in accordance with the provisions of Chapter 4 of Title 1 of this Code.

Failure to appeal shall constitute a failure to exhaust administrative remedies.

### **Dissemination of Information.**

The Chief of Police may print and deliver a copy of this article and the rules and regulations promulgated there under 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 Police Department to any person who so requests.

### **Exemption from Permit Requirements**

The following types of entertainment and events are exempt from permit requirements of this Chapter. 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.

- A. Entertainment sponsored by any agency of the City of Modesto, the County of Stanislaus, the various boards of education, or by any other political subdivision of the State of California;
- B. Entertainment sponsored by any nonprofit public benefit organization, such as Girl Scouts, Boy Scouts, Little League or Boys and Girls Club, whose primary objective is the sponsoring and control of youth activities and child welfare. The following requirements must be met:

1. No person eighteen (18) years of age or older may be admitted as a guest, unless such person is a bona fide student at, or member of, the sponsoring agency or organization;
2. No alcoholic beverages may be served, consumed or permitted on the premises;
3. Chaperones from the sponsoring agency are present on the premises at the rate of two adults, who are at least twenty-five (25) years of age or older, for every twenty five (25) guests;
4. The event must finish by midnight, 12:00 a.m. and the premises and the adjoining parking lots must be promptly vacated by all the guests.

C. Entertainment provided for members and their guests at a private club having an established membership when admission is not open to the public. For purposes of this section, private club means corporations or associations operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, in which membership is by application and regular dues are charged, and the advantages of which club belong to members, and the operation of which is not primarily for monetary gain;

D. Entertainment provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no admission charge;

E. Entertainment conducted in connection with a regularly established theme park;

F. Parades;

G. Street performers such as musicians, singers or mimes;

H. 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 Section 501(c)(3), when all proceeds, if any, arising from such entertainment are used exclusively for the benevolent purposes of such religious organization, club, society or association;

I. Performances by the students at educational institutions as defined by the Education Code where such performances are part of an educational or instructional curriculum or program;

J. Theaters, unless subtletted for a public event that is deemed outside of its regular use;

K. Motion picture theaters not providing live entertainment;

L. Dance lessons, theatrical and performing arts lessons and student recitals;

M. Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;

N. Fund-raisers for a political cause;

O. Entertainment conducted in any hotel or motel having in excess of one hundred (100) rentable rooms or suites;

- P. 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;
  2. “Amusement arcades,” regulated under Chapter 4-1.100. 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 chapter;
  3. “Bingo,” regulated under Chapter 4-1.1001;
  4. “Public Dances,” regulated under Chapter 4-1.401;
- Q. The normal and customary fitness services provided by an athletic club or fitness center.

**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