

# **FINAL D R A F T (14)**

**February 8, 2008**

ORDINANCE NO. \_\_\_\_-C.S.

## **AN ORDINANCE AMENDING ARTICLE 4 OF CHAPTER 1 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 Chapter 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.

### **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) "Admission Charge" means any charge for the right or privilege to enter any place of entertainment, including a minimum service charge, a cover charge or a

charge made for the use of seats and tables, reserved or otherwise. 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.

- (c) “Chief of Police” means the Chief of Police of the City of Modesto or his or her designee.
- (d) “City” means the City of Modesto.
- (e) “City Manager” means the City Manager of the City of Modesto or his or her designee.
- (f) “Dance and Dancing” means movement of the human body, accompanied by music or rhythm.
- (g) “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 ordinance, 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.
- (h) “Entertainment Commission” and “Commission” mean 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 Chapter, Articles \_\_\_\_\_ of the Modesto Municipal Code, or other applicable law.
- (i) “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 Place of Entertainment 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 Section.

- (j) “Operator” means any person operating a place of entertainment 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.
- (k) “Permit Administrators” means the Permit Administrators who serve as staff to the Modesto Entertainment Commission, as appointed by the City Manager.
- (l) “Permittee” means a person, persons, or business entity that has been issued a permit as provided in this chapter.
- (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) “Place of Entertainment” means every premises to which patrons or members are admitted which serves food, beverages, or food and beverages, including, but not limited to, alcoholic beverages for consumption on the premises and wherein entertainment as defined in Subsection (g) is furnished or occurs upon the premises.
- (o) “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 whatever, 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 cafe, or any agent, employee, representative or concessionaire of such person or entity. “Public Dance” does not include on stage live performances where patrons are not dancing.

(p) “Public Dance Hall” 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 cafe’.

(q) “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 code 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.

(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 days;
- (2) The entertainment is not a recurring or regularly scheduled event or celebration.

If a business that currently holds an Entertainment 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 members.
- (b) Appointment of Commissioners. Appointment of the members of the Commission shall be made by the Council upon recommendation by the City Council Safety and Communities Committee. The Committee members shall be subject to removal by resolution of the Council if adopted by at least four 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: the commissioners shall have initial terms equal to the amount of time remaining on the Councilmember's term who appointed them. 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 initial appointees assumes office. Thereafter, all appointments and reappointments shall be for a term of four years.
- (d) Chairperson. The Commission shall elect annually a chairperson who will serve for a term of one 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 permits, and special event permits, and rule upon and issue, deny, condition, suspend, revoke or transfer these permits in accordance with applicable laws and regulations set forth in this Code. The Commission may authorize the Permit Administrators, or both, to rule upon applications and grant, 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 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 permits and special event permits consistent with the applicable law and regulations.
- (c) Suspend, revoke or withdraw entertainment permits and special events in accordance with the law and regulations governing such permits.
- (d) Conduct an appeal hearing of fines or penalties and may affirm, modify, or suspend the imposition of such fines and penalties.
- (e) Coordinate with all relevant City departments for the conduct of any inspection or investigation necessary or appropriate for the full and fair consideration of applications for the issuance, renewal of entertainment 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 Section \_\_\_\_\_ and the laws governing entertainment-related permits, and making recommendations related thereto. The Commission shall submit the report to the City Council within one year of effective date of this Chapter, and not less than once every three years thereafter.
- (h) Review and act upon such other matters as coming within the jurisdiction of the Entertainment Commission.

#### **4-1.404. PERMIT ADMINISTRATORS/STAFF TO THE ENTERTAINMENT COMMISSION**

The City Manager shall designate a City Department/City staff to serve as Permit Administrator for the Entertainment Commission, who shall be responsible for 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, Recreation 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 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 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 conditional upon the applicant receiving the other required permits.

#### **4-1.407. FILING.**

Every person desiring a 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 a 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 operation tax and any other license or permit fee imposed by this code 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. Except as otherwise provided herein, an application for a permit pursuant to the provisions of this Article shall 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 proposed business address of the applicant. 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 officer or manager or director or member of applicant, 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-mentioned 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 for which the permit is requested and a brief statement of the nature and extent of such authority and control.
- (e) Such information pertinent to the operation of the proposed activity, including information as to management, authority control, financial agreements, and lease arrangements, that is reasonably related to the factual determinations this ordinance empowers the Entertainment Commission to make in reviewing and acting upon permit applications as the Entertainment Commission may require of an applicant in addition to the other requirements of this Section. The foregoing examples are an explanation of and not in limitation of the information which the Entertainment Commission may require.
- (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 person 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, and (v) the amount of parking, both on-site and off-site, to be provided. Any changes to the Operations plan must be submitted to the Permit Administrator.”
- (g) 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 herein.
- (h) 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.
- (i) 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.

- (j) And 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 Entertainment Commission.

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

- (a) Upon receipt of an application for an Entertainment 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) 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 of 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 place of entertainment. 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 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 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 or any responsible person or principal of the applicant has a history of committing, permitting or failing to prevent significant violations of the city 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 in the application.

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

- (a) All applications for permits shall be filed with the Permit Administrator on such forms as he or she may prescribe, and shall contain the following:
  - (1) The name and permanent address of the applicant and all other persons having a financial interest in the operation of the entertainment, business or premises where the entertainment is to be located;
  - (2) 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;

- (3) The proposed opening date and hours of operation of the entertainment establishment;
  - (4) For special or limited duration events, the date or dates, hours and location of the proposed entertainment;
  - (5) The proposed security arrangements for the control of patrons;
  - (6) The name or names of the person or persons having management or supervision authority over the proposed entertainment, or any business or premises wherein the entertainment is proposed to be located;
  - (7) Whether or not the applicant or any other responsible person(s) have been convicted of a misdemeanor or felony offense within the past five years, the nature of such offense(s), and the sentence(s) received therefore;
  - (8) Written consent for the proposed entertainment on the premises from the owner of the property on which the entertainment is to be conducted; and
  - (9) Such other information as the Entertainment Commission shall deem necessary for the proper processing and review of the application.
- (b) The applicant and all responsible persons shall submit to fingerprinting by the Chief of Police.
- (c) Upon receipt of a complete Entertainment 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 entertainment 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.
- (d) Except as provided below, the Entertainment Commission shall either approve or deny the entertainment permit 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 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 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 24 hours of receipt and maintain said notice as posted for fourteen (14) 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 argument. 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 shall 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) 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 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 or ordinances of the City of Modesto applicable to such business operation; or

- (2) The building, structure, equipment or location of the proposed place of entertainment cannot adequately accommodate the type and volume of vehicle and pedestrian traffic anticipated; or
  - (3) The building, structure, equipment or location of the proposed place of entertainment lack adequate safeguards to prevent emissions of noise, glare, dust and 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 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 significant violations of the city 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 material 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 Chief of Police 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 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.
  - (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, or 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 chapter 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 seek appeal to the City Council. Any person 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 1 of this 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.

- (a) Entertainment provided for invited guests at a private event, such as a wedding reception, banquet, worship services, celebration where there is no admission charge, 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;
  - (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;
- (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 billiard or pool parlor shall not, by virtue of this provision, be exempt from the permit requirement of this chapter.
- (j) Miniature Golf. However, if entertainment, other than the playing of miniature golf, is conducted on the premises of any mixture golf establishment, such miniature golf establishment shall not, but virtue of this provision, be exempt from the permit requirement of this chapter.
- (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 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. CHIEF OF POLICE OR FIRE CHIEF AUTHORITY WHERE THERE IS IMMEDIATE THREAT TO PUBLIC SAFETY.**

- (a) Nothing herein shall prevent or interfere with the authority of the Chief of Police 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 Chief of Police under authority of Section 5.108.140(A).

**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 violated prior to receiving an Entertainment permit, have violated while holding an Entertainment permit, 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.
- (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 and twenty (120) days.
- (c) The Entertainment Commission may not consider any request for emergency medical or ambulance services to treat a permittee's patrons 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 1.24. 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 1.24, 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 chapter 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 city 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 ordinance; or

- (9) The modification has been requested by the permittee and the Entertainment Commission finds the modification is consistent with the provisions of this 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 proposed suspension, modification or revocation. The notice shall contain:
  - (1) A brief statement on 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 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.

#### **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 a Entertainment Establishment permit and license 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 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 Entertainment Commission to any person who so requests.

**4-1.424. APPLICATION OF ARTICLE.**

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

**4-1.425. EXTENDED OPERATING HOURS.**

- (a) 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 chapter 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 chapter shall be valid for two 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 chapter 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 the 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 this Code 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 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 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 one year from the effective date of this section and shall terminate thereafter. Notwithstanding any other provision of this chapter, all entertainment 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 Code 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.