

CHARTER

of the

CITY OF MODESTO

CALIFORNIA

Submitted to and ratified by the qualified voters of the City of
Modesto at a Special Charter Election consolidated with
State of California General Election,
November 6, 1962

Approved by Assembly Concurrent Resolution No. 4 of the
Legislature of the State of California adopted in Assembly
on January 8, 1963, and in Senate January 10, 1963

Filed with the Secretary of State January 14, 1963

Effective date of Charter, January 14, 1963

Filed with Recorder of Stanislaus County February 4, 1963

(As amended by elections April 23, 1963, April 20, 1971,

November 5, 1974, November 2, 1976, March 8, 1977,

November 4, 1980, June 2, 1987, November 7, 1989,

November 6, 1990, November 7, 1995, November 3, 1998,

November 2, 1999, November 4, 2003, February 5, 2008,

November 2, 2010, June 7, 2016, and November 6, 2018)

THE CHARTER OF THE CITY OF MODESTO

Summary of Contents

Article

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

THE CHARTER OF THE CITY OF MODESTO

We, the people of the City of Modesto, State of California, do ordain and establish this Charter as the organic law of said City under the Constitution of said State.

ARTICLE I. - INCORPORATION AND SUCCESSION

SECTION 100. - NAME OF THE CITY.

The municipal corporation now existing and known as the City of Modesto shall remain and continue a body politic and corporate in name and in fact, by the name of the City of Modesto.

SECTION 101. - BOUNDARIES.

The boundaries of the City of Modesto shall continue as now established until changed in the manner authorized by law.

SECTION 102. - RIGHTS AND LIABILITIES.

The City of Modesto shall remain vested with, and continue to have, hold, and enjoy, all property, rights of property and rights of action of every nature and description now pertaining to this municipality, and is hereby declared to be the successor of the same. It shall be subject to all the liabilities that now exist against this municipality.

SECTION 103. - ORDINANCES.

All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superseded by proper authority.

SECTION 104. - CONTINUANCE OF CONTRACTS AND PUBLIC IMPROVEMENTS.

All contracts entered into by the City, or for its benefit prior to the effective date of this Charter, shall continue in full force and effect. Public improvements for which proceedings have been instituted under laws existing at the time this Charter takes effect, in the discretion of the City Council, may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws or may be continued or perfected under this Charter.

SECTION 105. PENDING ACTIONS AND PROCEEDINGS.

No action or proceeding, civil or criminal, pending at the time when this Charter takes effect, brought by or against the City or any officer, office, department or agency thereof, shall be affected or abated by the adoption of this Charter or by anything herein contained, but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any officer, office, department or agency a party thereto, may be assigned or transferred by or under this Charter to another officer, office department or agency, but in that event the same may be prosecuted or defended by the head of the office, department or agency to which such functions, powers and duties have been assigned or transferred by or under this Charter.

SECTION 106. CONTINUANCE OF PRESENT OFFICERS AND EMPLOYEES.

The members of the City Council in office at the time of the approval of this Charter by the Legislature shall continue to hold office and discharge their duties for the balance of the term for which they were elected, or until their successors are qualified and elected. All appointive officials, officers and employees of the City now in office or employed at the time of the approval of this Charter by the Legislature, shall continue to hold their office or employment until they are reappointed or their successors are appointed in their place in accordance with

the provisions of this Charter.

SECTION 107. EMERGENCY POWERS.

Notwithstanding any general or special provision of this Charter, the Council, in order to ensure continuity of government operations in periods of emergency resulting from disasters of whatever nature, shall have the power and immediate duty:

- (a) To provide for prompt and temporary succession to the powers and duties of all City officers, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and
- (b) To adopt such other measures as may be necessary and proper for ensuring the continuity of City operations, including but not limited to the financing thereof. In the exercise of the powers hereby conferred, the Council in all respects shall conform to the requirements of this Charter except to the extent that in the judgment of the Council so to do would be impractical or would admit of an undue delay.

ARTICLE II. - POWERS OF THE CITY

SECTION 200. GENERAL POWERS.

The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution of the State of California.

The City shall have the power to expend such sum as the Council shall deem proper not to exceed five per cent (5%) of the property tax levy in any one fiscal year for music, publicity and promotion.

The enumeration in this Charter of any particular power shall not be held to be exclusive of, or any limitation upon, this general grant of power.

SECTION 201. PROCEDURES.

The City shall have the power and may act pursuant to any procedure established by any law of the State, unless a different procedure is established by this Charter, or by ordinance.

ARTICLE III. - ELECTIONS

SECTION 300. REGULAR MUNICIPAL ELECTIONS.

Regular Municipal Elections for the election of officers, other than the elective office of Mayor, and for such other purposes as the Council may prescribe shall be held biennially on the first Tuesday after the first Monday in November of each even-numbered year, to coincide with the statewide general election.

Regular municipal elections for the elective office of Mayor shall coincide with the date of the statewide primary election in even-numbered years. If, at said regular municipal election for the Office of Mayor, held on the date of the statewide primary election, no candidate for the elective office of Mayor for the City of Modesto receives a majority of the valid votes cast for said office, a run-off election shall be held for said office on the first Tuesday after the first Monday in November of that year to coincide with the regular municipal election of the elective offices of the other members of Council. At said run-off election, the two (2) candidates for the elective office of Mayor receiving the highest number of votes at the prior municipal election shall have their names placed on the ballot for election to said office.

(As amended November 2, 2010, November 6, 2018, and November 8, 2022)

SECTION 301. SPECIAL MUNICIPAL ELECTIONS.

All other municipal elections that may be held by authority of this Charter, or of general law, or by ordinance, shall be known as special municipal elections.

SECTION 302. PROCEDURE FOR HOLDING ELECTIONS.

Unless otherwise provided by ordinances hereafter enacted, all elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in general law cities, insofar as the same are not in conflict with this Charter.

SECTION 303. THE INITIATIVE, REFERENDUM AND RECALL.

Except insofar as is otherwise provided by ordinances hereinafter enacted, the provisions of the Election Code of the State of California, as the same now exists or may hereafter be amended, governing the initiative, the referendum and the recall of municipal officers shall apply to the use thereof in the City insofar as the same are not in conflict with this Charter.

ARTICLE IV. - FORM OF GOVERNMENT

SECTION 400. COUNCIL-MANAGER FORM OF GOVERNMENT.

The municipal government provided by this Charter shall be known as the "Council-Manager" form of government.

ARTICLE V. - THE ELECTIVE OFFICERS

SECTION 500. - ENUMERATION.

The elective officers of the City of Modesto shall be a Mayor and six Councilmembers.

The Council shall consist of the Mayor and six Councilmembers, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council.

(As amended November 4, 1980, November 7, 1989, and February 5, 2008)

SECTION 501. - METHOD OF ELECTION.

- (a) **Mayor.** The Mayor shall be elected at the regular municipal election on a general ticket from the City at large, as set forth under Section 300 of this Charter.
- (b) **District Councilmembers.** The Six Councilmembers shall be elected by district as described in this section. A candidate for, and councilmember of, each district must live in that district to be eligible to run for or hold the office of councilmember for that district. Only voters who live in a district shall be eligible to vote in the election for councilmember of that district.
 - (1) **Six Districts.** The City of Modesto is divided into six districts for purposes of electing Councilmembers to the Council.
 - (2) **Districting Commission; Duties.** There shall be established a Citizen's Districting Commission, hereinafter "Commission," whose function shall be to recommend to the Council the districts from which Councilmembers shall be elected. The first such Commission shall be appointed by the Council no later than 60 days from the effective date of this Charter provision. The Commission shall meet and recommend to the Council a districting plan establishing six councilmember election districts in a timely manner for use in the November 2009 and November 2011 municipal elections. Thereafter, a new Commission shall be appointed by the Council and then meet and recommend to the Council a plan for redistricting of the six councilmember election districts within nine months of receipt by the City of the final Federal Decennial Census

information. The Council shall appropriate adequate funds for the work of the Commission.

(3) **Appointment of Commission.** The Commission shall consist of nine qualified electors residing within the City and shall be appointed by the City Council pursuant to the provisions below:

(A) Strong consideration shall be given to composing the Commission of:

- (i) a retired Stanislaus County judge as chairperson;
- (ii) one member from a bona fide local taxpayer's association with tax-exempt status under the relevant provisions of the Internal Revenue Code;
- (iii) one member from a bona fide local nonpartisan political organization, with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, dedicated to encouraging informed and active participation in government;
- (iv) one member from a bona fide local civil rights organization with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code;
- (v) one member from a former Civil Grand Jury who has served in that role within the previous five years;
- (vi) additional members who have demonstrated civic involvement and a capacity to serve in an honest, independent, and impartial fashion, while upholding public confidence in the integrity of the redistricting process;

(B) The Commission shall reflect the demographic and geographic diversity of the City.

(C) No member of the Commission shall be a relative by blood or marriage within the second degree of the Mayor, a member of the Council, any Charter officer, or any department head or deputy department head.

(D) No member of the Commission shall be an employee of the City nor any bargaining unit for employees of the City, nor be a person who receives compensation from the City or from bargaining units of the City in any manner, including retirement benefits.

(E) No member of the Commission shall be a lobbyist or other person with business before the City that represents an economic interest in excess of the limit for material financial effect as established by local ordinance for the time periods established by local ordinance.

(F) A member of the Commission shall be ineligible for election to the City Council in

any district whose boundaries were drawn by the Commission in which he or she serves.

(G) In all other respects, the members of the Commission shall be chosen pursuant to the provisions of this Charter.

(H) Members of the Commission shall serve without compensation.

(4) **Criteria for Districting.** To ensure fair and effective representation for all citizens of the City, the Commission, in recommending a districting or redistricting plan, and the Council, in approving or rejecting a districting or redistricting plan, shall consider the following criteria for the districts to the extent practicable and permissible under federal and state law:

(A) district boundaries should be geographically compact and contiguous;

(B) district boundaries should follow visible natural and man-made features;

(C) district boundaries should respect communities of interest. A community of interest is defined as a geographic area comprised of residents who share similar interests including, but not limited to, social, cultural, ethnic, geographic or economic interests, or formal government or quasi-governmental relationships, but not including relationships with political parties, incumbents, or candidates;

(D) district boundaries should be drawn without regard for advantage or disadvantage to incumbents or challengers;

(E) district boundaries should be drawn without regard for advantage or disadvantage to any political party.

(5) **Procedure for Districting.** The Commission and Council shall abide by the following procedure in any districting process:

(A) one or more, as necessary, independent consultants experienced and competent in the skills necessary for the districting work shall be utilized to assist the Commission in developing any of the Districting Plans detailed in this Section;

(B) the six districts shall be numbered for identification and other purposes as District One, District Two, District Three, District Four, District Five and District Six;

(C) the Commission shall hold at least one public hearing prior to adopting its Draft Districting Plan;

(D) the Draft Districting Plan shall be made available for at least seven days prior to the commencement of public hearings to take public testimony and comment on

the Draft Districting Plan;

- (E) the Commission shall hold at least one public hearing between the release of its Draft Districting Plan and the adoption of a Recommended Districting Plan by the Commission;
- (F) the Commission shall provide timely public access to all data used in the district boundary drawing process and to all testimony, letters, exhibits and proposed plans received by the Commission;
- (G) The Commission shall adopt a Recommended Districting Plan and submit it to the Council.

(6) **Consideration by City Council; Final Districting Plan.** After submittal of the Recommended Districting Plan to the Council:

- (A) the Council shall hold at least one public hearing on the Recommended Districting Plan of the Commission before any adoption of a Final Districting Plan;
- (B) The Recommended Districting Plan approved by the Commission shall be available to the public for at least 20 days prior to any vote by the Council to approve or disapprove the Plan.
- (C) The Council may not alter the Recommended Districting Plan submitted to it by the Commission. Rather, the Council shall either approve or disapprove such a Recommended Districting Plan in its entirety. If the Council approves the Recommended Districting Plan, it shall become the Final Districting Plan and shall be implemented. If the Council disapproves the Recommended Districting Plan, the Council shall submit in writing to the Commission the reasons for such disapproval, including any deviation by the Commission from the criteria for districting detailed in this Section. The Commission shall consider any reasons for such disapproval submitted to it by the Council and may consider alterations to the Recommended Districting Plan in response to such reasons. After such consideration, the Commission shall submit its Final Districting Plan to the Council for implementation.

(7) **Subject to Referendum.** Any Final Districting Plan under this Section shall be subject to the referendum provisions of the Charter.

(d) **The Transition from At-Large to District Elections.** The City Clerk under former provisions of this Charter has previously designated each office held by an at-large councilmember with a descriptive designation commonly referred to as Chair One, Chair Two, Chair Three,

Chair Four, Chair Five, and Chair Six. Under the City's election system, Chair Two, Chair Four, and Chair Five are subject to election in the 2009 municipal election and Chair One, Chair Three, and Chair Six are subject to election in the 2011 municipal election. A period of transition from At-Large to District elections will occur from the time of adoption of the first districting plan to the time that the first district elections are held. For this period of transition, each councilmember currently holding a chair will be designated as the councilmember representing the district with the same numerical designation in the districting plan whether or not that councilmember lives in the district. For example, upon adoption of the first districting plan, the councilmember occupying Chair One will be designated the councilmember representing District One whether or not that councilmember lives in District One. Each of the councilmembers occupying office at the time of the effective date of this Charter revision shall be so designated. Thereafter, the first district elections for Districts Two, Four and Five shall occur during the municipal election in 2009 and the first district elections for District One, Three, and Six shall occur during the municipal election in 2011. Notwithstanding the provisions of Section 700 of the Charter, an incumbent councilmember at the time of the effective date of this provision may run for a Council seat other than the seat which that member currently holds if the councilmember is otherwise eligible to run in that seat, all subject to the limitations of terms of office in Section 503 of this Charter.

(As amended November 4, 1980, November 7, 1989, February 5, 2008 and November 8, 2022)

SECTION 502. - COUNCIL VACANCIES.

Except as set forth in the next sentence, the provisions of Section 1770 of the Government Code of the State of California as they now exist or may hereafter be amended shall govern the existence of a vacancy.

In addition, a vacancy on the Council shall also exist if any member, including the Mayor, is absent for any reason from twelve consecutive regular meetings. At any time prior to the twelfth such consecutive absence, the Council, in its discretion, may increase the number of absences causing a vacancy from 12 to 16.

(As amended November 7, 1995)

SECTION 503. - LIMITATION OF TERMS OF OFFICE.

No person elected to the office of Councilmember or Mayor for two consecutive terms shall again be eligible to hold that same office until one full intervening term of four years has

elapsed. The offices of Mayor and Councilmember shall be considered separate offices for the purpose of applying this provision so that service of two full terms in one office shall not act as a bar to service of two full terms in the other. If a person serves a partial term in excess of 26 (26) months, it shall be considered a full term for the purpose of this provision. This limitation applies prospectively to terms to which persons have been elected commencing with the 2003 general municipal election.

(As amended November 4, 2003)

ARTICLE VI. - THE MAYOR

SECTION 600. - TERM OF OFFICE.

The Mayor shall hold office for a term of four (4) years, from and after the first Tuesday following the election of members of the Council in November, regardless of whether or not a run-off election for the office of Mayor occurs. If a tie vote makes it impossible to determine which of two (2) or more candidates has been elected, said tie shall be settled by the drawing of lots, the procedure for which shall be determined by the Council. The Mayor shall have the right to vote on all matters coming before the Council.

(As amended November 7, 1989, November 6, 2018 and November 8, 2022)

SECTION 601. - POWERS AND DUTIES OF MAYOR.

The Mayor shall have the following powers and duties:

- (a) The Mayor shall be recognized as the official head of the City for all political, representative and ceremonial purposes and by the Governor for military purposes;
- (b) The Mayor may review with the City Manager, City Attorney and City Clerk prior to each Council meeting the items on the Council's agenda and to add matters thereto;
- (c) The Mayor may make recommendations to the City Manager on matters of policy and programs;
- (d) The Mayor may direct the Charter Officers to prepare and provide information to the Council on matters of policy and programs which require Council decision;
- (e) The Mayor may request budgetary and any other information from the Charter Officers that the Mayor determines is necessary for the conduct of the Mayor's duties;

- (f) The Mayor, together with the Council, annually shall conduct a written performance evaluation of each Charter Officer which shall include, without limitation, an evaluation of the Charter Officer's performance in implementing the Council's Statement of Policy for that Charter Officer developed pursuant to Section 725 of this Charter.
- (g) The Mayor may appoint, with the advice and consent of the Council, a Chairman, a Vice-Chairman, one regular member and one alternate member to each standing, special and ad hoc committee of the Council;
- (h) The Mayor may appoint, with the advice and consent of the Council, such advisory boards, commissions and ad hoc committees as may be necessary or desirable to advise and assist in the work of the Council;
- (i) The Mayor may appoint such other advisory boards and ad hoc committees as may be necessary or desirable to advise and assist in the work of the Mayor; provided, however, that the members of such advisory boards or ad hoc committees shall not receive any compensation;
- (j) The Mayor may recommend adjustments to the City budget and to propose the modification or curtailment of any city service. If the Mayor recommends any increases in the City budget, the Mayor shall recommend the method of financing such expenditures. If the Mayor proposes the modification or curtailment of any city service, the Mayor shall provide specific recommendations and the reasons for such proposal;
- (k) The Mayor shall prepare and deliver the Mayor's Proposed Budget Priorities and Direction and the Mayor's Budget Message pursuant to Section 1302.1 of the Charter and the Mayor's Final Budget Modifications pursuant to Section 1303 of the Charter;
- (l) The Mayor may select and hire staff to the office of Mayor and the City Council as may be necessary or desirable to advise and assist in the work of the Mayor and City Council; provided, however, that the Mayor shall not appoint to any position any business associate or any person related to him or her or to the City Manager or to any member of the Council by blood or marriage within the second degree. If staff is provided to the Council under this section, such staff shall be provided on an equal basis to each member of the Council. All such appointees shall serve at the pleasure of the Mayor in the Unclassified Service; and shall serve under such terms and conditions, salaries and benefits as are similar to other employees in Modesto's service. In the event an employee of the City who holds a Classified Service position is appointed to a position in the Unclassified Service under this Section, he or she may return to a position in the Classified Service. Such return to the Classified Service shall be without loss of any rights or privileges that currently

pertain to the Classified Service;

- (m) When a vacancy occurs, the Mayor shall nominate at least two candidates for Council consideration for appointment to the position of City Manager. The Mayor may express to the Council a preference among final candidates;
- (n) After consultation with the Council, the Mayor may comment in writing upon the independent, written performance evaluation conducted annually by the City Manager of each head of a city department which is under the administration of the City Manager;
- (o) The Mayor may attend and participate in executive meetings of the City Manager and heads of City departments which are under the administration of the City Manager;
- (p) In time of public danger or emergency, the Mayor may, with the consent of the Council, or pending a meeting of the Council, direct the administration of the City Government through the City Manager;
- (q) The Mayor shall be charged with the duty of making recommendations to the Council on all major matters of policy and program which require Council decision. The Mayor shall have the primary, but not exclusive, responsibility for interpreting the policies, programs and needs of the City government to the community;
- (r) The Mayor may also, on the Mayor's own account, as may each individual Councilmember, inform the community on any matters of policy or program which the Mayor believes the welfare of the community makes necessary;
- (s) It shall be the duty of the Mayor to represent the Council in its relationships with civic groups within the City, and by direction of the Council, the Mayor shall represent the City in its relationships with other governmental agencies on matters of policy and program.
- (t) The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. The Mayor shall have no power to veto any ordinance or resolution adopted by the Council;
- (u) The Mayor shall have authority to preserve order at all Council meetings and to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council, and to determine the order of business under the rules of the Council;
- (v) The Mayor shall exercise such other powers and perform such other duties as may be consistent with the Mayor's office or as may be granted to the Mayor by the Council not inconsistent with this Charter.

Nothing in this section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as chief administrative officer and head of the administrative branch of the City government as prescribed in other sections of this Charter.

(As amended April 16, 1963, November 7, 1989, February 5, 2008 and November 8, 2022)

SECTION 602. - ADDITIONAL DUTIES.

The Mayor shall exercise such other powers and perform such other duties as may be prescribed by law or ordinance or by resolution of the Council, except as limited by this Charter.

SECTION 603. - VICE MAYOR.

At the first Council meeting in January of each year, or sooner if required, the City Council shall elect one of its members, other than the Mayor, to serve as Vice Mayor during the ensuing calendar year. The member of the council so elected shall serve as Vice Mayor until a successor is elected as provided above.

The Vice Mayor shall act as Mayor during the absence or inability of the Mayor to act. In the case of the temporary absence or disability of both the Mayor and the Vice Mayor, the Council shall designate one of its members to act as Mayor Pro Tempore.

(As amended November 4, 1980, and November 2, 1999)

ARTICLE VII. - THE COUNCIL

SECTION 700. - COUNCILMEMBERS. TERM OF OFFICE.

Except as otherwise provided in this Charter, the members of the Council shall hold office for a term of four years from and after the first Tuesday following their election. The members of the Council in office at the time this Charter takes effect shall continue in office until the expiration of their terms or until their successors are elected and qualified. To accommodate the City's transition to even-numbered year elections, Councilmembers elected in the November 2015 and November 2017 elections shall have their terms extended by one year; meaning they will serve a term of five years and their Council seats will be up for election in November 2020 and November 2022, respectively.

If a tie vote makes it impossible to determine which of two or more candidates has been elected, said tie shall be settled by the drawing of lots, the procedure for which shall be

determined by the Council. Each member of the Council shall have the right to vote on all matters coming before the Council.

No candidate shall file for more than one elective office; and no incumbent member of the Council shall run for a seat other than that which the member holds, except that any incumbent member of the Council may run for the seat of Mayor, and an incumbent Mayor may run for the seat of Mayor or for any other seat on the Council, all subject to the limitations of terms of office in Section 503 of this Charter.

(As amended November 4, 1980, November 7, 1989, and February 5, 2008, and November 6, 2018)

SECTION 701. - ELIGIBILITY.

No person shall be eligible to be nominated for or to hold office as a member of the Council or as Mayor unless the person is and shall have been for at least 30 days preceding the person's nomination or appointment a resident and registered elector of the City of Modesto or of territory annexed thereto.

(As amended November 4, 1980, and November 7, 1989)

SECTION 702. - VACANCIES.

If a vacancy shall occur in the office of Mayor or Councilmember, the Council shall forthwith appoint a person to fill such vacancy. Said appointee shall possess such qualifications for eligibility as are set forth in Section 701 of this article and shall hold office until a successor is duly elected and qualified. Such successor shall be chosen at the next regular municipal election, or as otherwise may be required by recall proceedings instituted involving the office of Mayor or a Councilmember.

In the event that the Council shall fail to fill a vacancy by appointment within 60 days after such office shall have become vacant, it shall forthwith cause an election to be held to fill such vacancy.

(As amended November 4, 1980, November 7, 1989 and November 8, 2022)

SECTION 703. - COMPENSATION FOR ELECTED OFFICIALS.

- (a) **Compensation and Reimbursement.** The Mayor and each member of the Council shall be paid as compensation for his or her services as a member of the Council for each calendar month during which he or she is a member of the Council a monthly salary together with appropriate benefits which shall be established by ordinance only after the Citizen's Salary

Setting Commission has made a written recommendation for compensation pursuant to the strict limits of the section, such written recommendation has been published for review pursuant to the requirements of this section, and the mandated public hearings required by this section have been held on the recommendation.

The Mayor and members of the Council shall also receive reimbursement for expenses incurred while performing official duties of their office only so long as evidence of such expenses incurred is presented to the City in the manner prescribed for all other employees of the City.

No compensation or reimbursement shall be established for any member of the Council, including the Mayor, except as provided in this Section.

(b) **Citizen's Salary Setting Commission.** There shall be established a Citizen's Salary Setting Commission, hereinafter "Commission," whose function shall be to recommend the compensation it deems appropriate for the Mayor and members of the Council. This Commission shall meet between March 1st and April 30th of every even-numbered year.

The Citizen's Salary Setting Commission shall consist of five qualified electors residing within the City and shall be appointed by the City Council pursuant to the provisions below:

(A) Strong consideration shall be given to composing the Commission of:

- (i) a retired Stanislaus County judge as chairperson;
- (ii) one member from a bona fide local taxpayer's association with tax exempt status under the relevant provisions of the Internal Revenue Code;
- (iii) one member from a bona fide local nonpartisan political organization, with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, dedicated to encouraging informed and active participation in government;
- (iv) one member from, a former Civil Grand Jury who has served in that role within in the previous five years;
- (v) additional members who have demonstrated civic involvement and a capacity to serve in an honest, independent, and impartial fashion.

(B) No member of the Commission shall be a relative by blood or marriage within the third degree of the Mayor, a member of the Council, any Charter officer, or any department head or deputy department head.

(C) No member of the Commission shall be an employee of the City nor any bargaining unit for employees of the City, nor be a person who receives compensation from the City or from bargaining units of the City in any manner, including retirement benefits.

- (D) No member of the Commission shall be a lobbyist or other person with business before the City that represents an economic interest in excess of the limit for material financial effect as established by local ordinance for the time periods established by local ordinance.
- (E) In all other respects, the members of the Commission shall be chosen pursuant to the provisions of this Charter.
- (F) Members of the Commission shall serve without compensation.

Except as provided herein below, the regular term of office of each member of the Commission shall be four years. The initial five members of the Commission shall be appointed during the month of March 2008. Two of the members so appointed shall be appointed for a term expiring on December 31, 2010. Three of the members, including the initial chairperson, so appointed shall be appointed for a term expiring on December 31, 2012. Commencing in December 2010, new appointments shall be made during the month of December of each even-numbered year to fill the offices of the members whose terms are expiring at the end of such even-numbered years. Such appointments shall be for regular terms of four years commencing on the first day of January of the following odd-numbered year and expiring on the 30-first day of December of the second even-numbered year thereafter.

No Commission member may serve for more than two terms. A Commission member may be removed from office at any time for misconduct, inefficiency or willful neglect in the performance of the duties of his or her office providing the Council first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Council in his or her own defense. No tax dollars shall be expended on behalf of a Commission member for such defense. If a vacancy occurs before the expiration of a member's term, the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member.

- (c) **Salary Limitations and Penalties.** The salary of the Mayor shall not be more than 50 percent (50%) of the amount of the salary of a Judge of the Superior Court of Stanislaus County.

The salary of a Councilmember shall not be more than 50 percent (50%) of the median family income for the Modesto Metropolitan Statistical Area as reported by the United States Census Bureau. The salary of each Councilmember shall be the same.

Any appropriate benefits established under this provision may not include retirement or pension benefits of any sort.

No recommendation shall be made by the Commission except upon the affirmative vote of three members of the Commission.

No recommendations may be made in odd-numbered years. The recommendation of the Commission will be made to the Council by April 30th of every even-numbered year to be effective for a two-year period commencing not before July 1 of that even numbered year. Failure of the Commission to make a recommendation in any even numbered year within the prescribed time shall be deemed to be a recommendation that no changes be made to existing compensation levels.

Any monthly salary shall be reduced by one-fourth for each regular meeting of the Council not attended by a councilmember each month, unless absent on official duty with the consent of the Council.

(d) **Process to Set Compensation.** Each recommendation by the Commission, together with the reasons for the recommendation, shall be made in writing by the Commission.

Before any such recommendation is provided to the Council, a draft recommendation shall be made available to the public and the Commission shall hold at least two public hearings on the matter before it adopts its final recommendation.

When such final recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.

Upon receiving the final recommendation from the Commission, the Council may adopt the compensation as recommended by the Commission or may adopt compensation in some lower amount, but in no case may adopt compensation in some higher amount. The Council may only adopt all such compensation by ordinance and after a public hearing of which legal notice is published in a newspaper of general circulation within the City at least 20 days prior to said hearing. Salaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section. The compensation being paid to Councilmembers as of the effective date of this Section shall continue until any subsequent compensation is established pursuant to the requirements of this Section.

(e) Subject to Referendum.

Any final decision by the Council on compensation under this Section shall be subject to the referendum provisions of the Charter.

(As amended April 29, 1971, November 4, 1980, and February 5, 2008)

SECTION 704. - COUNCILMEMBER TO HOLD NO OTHER OFFICE.

No member of the Council shall hold any other municipal office or hold any office or employment the compensation of which is paid out of the municipal moneys, nor be elected or appointed to any office created or the compensation of which is increased by the Council while the person is a member thereof, until one year after the expiration of the term for which the member was elected.

(As amended November 7, 1989)

SECTION 705. - ADMINISTERING OATHS. SUBPOENAS.

Each member of the Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the Council. The Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify (upon other than constitutional grounds), shall be deemed contempt and shall be punishable as provided by the general laws of this State.

SECTION 706. - GOVERNING BODY.

All powers herein granted to and vested in the City of Modesto shall, except as herein otherwise provided, be exercised by a Council to be designated the Council of the City of Modesto. Said Council shall be the governing body of the City and, subject to the express limitations of this Charter, shall be vested with all powers of legislation in municipal affairs adequate to a complete system of local government consistent with the Constitution of the State.

SECTION 707. - MEETINGS OF THE COUNCIL.

The Council shall provide for the time, place and manner of holding its meetings by ordinance, not inconsistent with the provisions of this Section. Copies of such ordinances shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Except as is otherwise provided by the laws of this State, all meetings of the Council shall be open to the public, and all persons shall be permitted to attend any meeting thereof. The Council shall hold at least one regular meeting each month.

SECTION 708. - SPECIAL MEETINGS.

A special meeting may be ordered at any time by the Mayor whenever in the Mayor's opinion

the public business may require it, or upon the written request of any four members of the Council. Whenever a special meeting shall be called, the City Clerk shall cause written notice of such meeting to be given to each member of the Council and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or must be deposited in the United States mail, postage prepaid, at least 24 hours before the time of such meeting as specified in the notice. The notice and order shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the Council.

Written notice to each member of the Council may be dispensed with as to any member of the Council who, at or prior to the time the meeting convenes, files with the City Clerk a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member of the Council who is actually present at the meeting at the time it convenes.

(As amended November 7, 1989)

SECTION 709. - QUORUM.

A majority of the Council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and postpone the consideration of pending business.

SECTION 710. - RULES OF PROCEEDINGS.

The Council shall determine its own rules of procedure, may punish its members for disorderly conduct and compel their attendance at the Council meetings.

SECTION 711. - ORDINANCES AND RESOLUTIONS. METHOD OF ACTION.

Legislative action shall be taken by the Council only by means of an ordinance or resolution.

SECTION 712. - AYES AND NOES.

The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Council. Upon the request of any member, the ayes and noes shall be taken and recorded on any vote. All members, when present, must vote.

SECTION 713. - MAJORITY VOTE OF COUNCIL.

No ordinance or resolution shall be passed or become effective without receiving the affirmative votes of at least four members of the Council.

SECTION 714. - TITLE.

Every ordinance shall be preceded by a brief title which shall indicate the subject and purport thereof.

SECTION 715. - ENACTING CLAUSE OF ORDINANCES.

The ordaining clause of all ordinances adopted by the Council shall be substantially as follows: "The Council of the City of Modesto does ordain as follows:"; and the ordaining clause of all ordinances adopted by the people shall be, "The People of the City of Modesto do ordain as follows:".

SECTION 716. - REQUIREMENTS OF ORDINANCES. EMERGENCY ORDINANCES.

With the sole exception of ordinances which take effect upon adoption referred to in this Article, no ordinance shall be passed by the Council on the day of its introduction nor within five days thereafter nor at any other time than at a regular or adjourned regular meeting, nor until its publication at least once in full in the official newspaper of the City of Modesto at least two days before its adoption. As an alternative method of publication, the Council may order copies of any ordinance to be posted at least two days prior to its adoption in at least three prominent and distinct locations in the City together with a single publication in such official newspaper of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of such ordinance are posted. In case of an amendment being made to an ordinance before the final adoption of the ordinance, it must in like manner be published in full as amended at least one day before its adoption as amended. The correction of typographical or clerical errors shall not constitute an amendment within the meaning of the foregoing sentence.

Emergency Ordinances. Any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing a statement of reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes.

(As amended November 4, 1980)

SECTION 717. - ORDINANCES. WHEN REQUIRED.

Each legislative act of the Council establishing a fine or penalty, imposing a new or additional tax, or granting a franchise, or when so provided by this Charter, shall be by ordinance.

SECTION 718. - RECONSIDERATION.

When any ordinance is put upon its final passage and fails to pass, and a motion is made to reconsider, the vote upon such motion shall not be taken except at a meeting of the Council, held not less than one week after the meeting at which such motion was made.

SECTION 719. - SIGNING AND ATTESTING.

All ordinances shall be signed by the Mayor and attested by the City Clerk.

SECTION 720. - REVISION AND AMENDMENT.

No ordinance shall be revised, reenacted or amended by reference to its title only; but the ordinance to be revised or reenacted, or the section or subsection thereof to be amended, or the new section or subsection to be added thereto, shall be set forth and adopted in the method provided in this section for the adoption of ordinances.

SECTION 721. - REPEAL.

No ordinance or any part thereof shall be repealed except by an ordinance adopted in the manner provided in this Charter.

SECTION 722. - ORDINANCES. EFFECTIVE DATE.

No ordinance adopted by the Council shall become effective until 30 days from and after the date of its adoption, except the following which shall take effect upon adoption:

- (a) An ordinance calling or otherwise relating to an election;
- (b) An improvement proceeding ordinance adopted under some law or procedural ordinance;
- (c) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing the rate of taxation, or levying the annual tax upon property;
- (d) An emergency ordinance adopted in the manner provided for in this Article;
- (e) An ordinance annexing areas to the City; or
- (f) An ordinance providing for a tax levy or appropriation for the usual current expenses of the City.

SECTION 723. - RECORD OF CITY ORDINANCES.

A true and correct copy of all ordinances shall be kept and certified to by the City Clerk in a book marked "City Ordinances." Such record copy, with such certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the City Clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of an ordinance in the usual way.

SECTION 724. - CODIFICATION OF ORDINANCES.

Any or all ordinances of the City which have been enacted and published in the manner required at the time of their adoption, and which have not been repealed, may be compiled, consolidated, revised, indexed and arranged as a comprehensive ordinance code, and such code may be adopted by reference with the same effect as an ordinance by the passage of an ordinance for such purpose. Such code need not be published in the manner required for other ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the City Clerk prior to the adoption thereof. Ordinances codified shall be replaced as of the effective date of the code. Subsequent amendments to sections of the code shall be enacted in the same manner as herein required for the amendment of ordinances generally.

Detailed regulations pertaining to any subject such as the construction of buildings, plumbing,

wiring or other subjects which require extensive regulations, when arranged as a comprehensive code, may likewise be adopted by reference in the manner provided in this section.

SECTION 725. - STATEMENT OF POLICY FOR CHARTER OFFICERS AND CITY DEPARTMENTS; COUNCIL REVIEW OF ANNUAL EVALUATIONS.

The Council shall adopt a written Statement of Policy for each Charter Officer and for each City department which is under the administration of the City Manager. Said Statement of Policy shall set forth the broad goals, objectives and aspirations to be accomplished by that department.

For Charter Officers, each Charter Officer shall provide to the Council a draft written Statement of Policy for his or her office for consideration, and, if deemed necessary by the Council, revision and amendment, prior to adoption by the Council. For each City department which is under the administration of the City Manager, the City Manager shall designate one or more persons in each such department to provide to the City Manager, for transmittal to the Council, a draft written Statement of Policy for each department for consideration, and, if deemed necessary by the Council, revision and amendment, prior to adoption by the Council.

Such Statements of Policy shall be reviewed and, if necessary, amended, in the first quarter of every even-numbered calendar year and when the position of a Charter Officer or the head of a City department which is under the administration of the City Manager becomes vacant.

When such review and amendment is conducted due to a vacancy in position, the Mayor and Councilmembers shall adopt a set of questions which are intended to elicit responses from each prospective appointee concerning the goals, objectives and aspirations in the Statement of Policy.

Prior to appointing any head of a City department, the City Manager shall submit to the Mayor and Councilmembers, for their review, the responses to the Mayor and Councilmembers' questions submitted by the finalists for appointment to the vacant position. This section shall not apply to the appointment of any "acting" department head to serve in an interim capacity.

The City Manager shall share and review with the Council the annual independent, written performance evaluations of each head of a city department which is under the administration of the City Manager.

Nothing in this section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as chief administrative officer and head of the

administrative branch of the City government as prescribed in other sections of this Charter.

(Added February 5, 2008)

ARTICLE VIII. - THE CITY MANAGER

SECTION 800. - CITY MANAGER.

There shall be a City Manager who shall be the chief executive officer and head of the Administrative Branch of the City government. The City Manager shall be chosen on the basis of the person's executive and administrative qualifications with special reference to the person's actual experience in, or the person's knowledge of accepted practices with respect to the duties of the office as hereinafter set forth. No member of the Council shall be eligible for appointment to the office of City Manager during the term for which the member shall have been elected or appointed, nor within one year thereafter.

When a vacancy occurs, the Mayor shall nominate at least two candidates for Council consideration for appointment to the position of City Manager. The Mayor may express to the Council a preference among final candidates. The Council shall appoint the City Manager for an indefinite term and may remove the City Manager by a majority vote of its members; provided, however, that the City Manager shall not be removed from office during or within a period of 90 days next succeeding the election of a member of the Council. The purpose of this provision is to allow any newly elected member of the Council to observe the actions and ability of the City Manager in the performance of powers and duties of this office.

(As amended November 7, 1989, February 5, 2008 and November 8, 2022)

SECTION 801. - POWERS AND DUTIES.

The City Manager shall be the chief administrative officer and head of the administrative branch of the City government. The City Manager shall be responsible to the Council for the proper administration of all affairs of the City and to that end, subject to the personnel provisions of this Charter, the City Manager shall have power and shall be required to:

- (a) Appoint and, when necessary for the good of the service, discipline and remove all officers and employees of the City except as otherwise provided by this Charter, and except as the City Manager may authorize the head of any department or office to appoint or remove subordinates in such department or office. The City Manager may also authorize the head of any department, including deputy directors, police captains and fire battalion chiefs, or

other city employees as designated by ordinance, to recommend and impose discipline in accordance with this Charter.

- (b) Prepare the draft budget annually and submit it to the Mayor and Council, prepare the proposed budget annually and submit it to the Mayor and Council and be responsible for its administration after its adoption by the Council, prepare all other necessary budget documents, and prepare and submit to the Mayor and Council the Capital and Operating Mid-Year Budget Report.
- (c) Prepare and submit to the Council within 90 days of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year.
- (d) Review procedures relating to the assessment, levy and collection of ad valorem property taxes and make recommendations regarding the same to the Council if deemed appropriate.
- (e) Establish a centralized purchasing system for all City offices, departments and agencies.
- (f) Establish and enforce specifications for supplies, materials and equipment required by the City.
- (g) Cause all supplies purchased by the City to be inspected and a determination made that the same comply with specifications.
- (h) Prepare rules and regulations governing the contracting for, purchasing, storing, inventory, distribution or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the Council for its adoption by ordinance. Preference shall be given to the purchase of supplies, materials and equipment from local merchants, quality and price being equal.
- (i) Enforce the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City.
- (j) Keep the Council advised of the financial conditions and future needs of the City and make such recommendations on any matter as the City Manager may deem desirable.
- (k) Make and execute contracts on behalf of the City involving budgeted or appropriated expenditures which do not exceed the amount specified by ordinance of the City Council.
- (l) Appoint advisory boards, without compensation, to assist the City Manager in the performance of the City Manager's duty, if the City Manager deems it necessary.
- (m) Interchange employees between or among departments if the City Manager deems it proper so to do.

- (n) Immediately upon taking office, and annually thereafter, inventory and place a value on all real estate, buildings, furniture and fixtures, supplies and movable property of every kind and nature belonging to the City; and to require each officer or department head to inventory the same or any portion thereof. One copy of such inventory shall be filed with the Council and one with the auditor.
- (o) Be responsible for the custody and control of all City property, the custody and control of which has not otherwise been provided for by this Charter.
- (p) Perform such other duties as may be prescribed by this Charter or required of the City Manager by the Council not inconsistent with this Charter.
- (q) Sign all contracts, deeds and other documents on behalf of the City when authorized to do so by the Council or by this Charter.
- (r) The City Manager shall have the authority to transfer equipment and supplies between departments, and with the approval of the Council, sell obsolete, and unused or surplus personal property of the City.
- (s) The City Manager shall be accorded a seat at the Council table and shall be entitled to participate in the deliberations of the Council, but shall not have a vote.
- (t) The Council shall have the right to instruct the City Manager in matters of policy and the City Manager shall be responsible for implementing such Council policy. Any action, determination or omission of the City Manager shall be subject to review by the Council, but no such action, determination or omission shall be overruled or modified by a vote of less than four-sevenths of the members of such Council.
- (u) The City Manager, pursuant to Section 725 of the Charter, shall direct creation of draft written statements of Policy for each City department which is under the administration of the City Manager.
- (v) The City Manager annually shall conduct an independent, written performance evaluation of each head of a city department which is under the administration of the City Manager. Such performance evaluation shall include, without limitation, an evaluation of the department head's performance in implementing the Council's Statement of Policy for that department. The City Manager shall provide such performance evaluations to the Council for their review pursuant to Section 725 of the Charter. After such Council review, the Mayor may comment on the performance evaluation pursuant to Section 601(m) of the Charter.

(As amended April 20, 1971, November 4, 1980, November 7, 1989, and February 5, 2008)

ARTICLE IX. - OFFICERS AND EMPLOYEES

SECTION 900. - OFFICERS AND EMPLOYEES. GENERAL.

The officers of the City of Modesto shall consist of a Mayor, the Council, a City Manager, a City Attorney, a City Clerk, a City Auditor and such other or subordinate officers, assistants, deputies and employees as the Council may deem necessary to provide by ordinance or resolution.

The City Attorney, the City Clerk and the City Auditor shall be appointed by and may be removed by the affirmative votes of four members of the Council; provided, however, that neither the City Attorney, the City Clerk nor the City Auditor shall be removed from office during or within a period of 90 days next succeeding the election of a member of the Council. The purpose of this provision is to allow any newly elected member of the Council to observe the actions and abilities of these officers in the performance of the powers and duties of the respective offices.

The City Manager shall be appointed and removed as provided by Section 800 of this Charter. Except as otherwise provided in this section, all other officers and department heads of the City shall be appointed by the City Manager and shall serve at the pleasure of the City Manager.

The City Auditor shall have such powers and be required to perform such duties, consistent with the provisions of this Charter, as may be required by the Council.

The City Manager, the City Attorney, the City Clerk, and the City Auditor may be referred to collectively in this Charter as "Charter Officers."

(As amended November 4, 1980, and February 5, 2008)

SECTION 901. - OFFICE OF THE CITY CLERK.

The office of the City Clerk is hereby established. It shall be the duty of the City Clerk to:

- (a) Attend all meetings of the Council and be responsible for the recording and maintaining of a record of all the actions of the Council;
- (b) Keep all ordinances and resolutions of the Council in such manner that the information contained therein will be readily accessible and open to the public; the City Clerk shall attach to the original copy of each ordinance a certificate which will state the date that the ordinance was adopted, and as to an ordinance requiring publication, that the same has been published in accordance with the Charter;
- (c) Keep all records of the Council and of the City Clerk's office in such manner that the

information contained therein will be readily accessible and open to the public until such time as any of the records may be destroyed, or reproduced and the original thereof destroyed, in accordance with State law;

- (d) Be the custodian of the seal of the City;
- (e) Administer oaths or affirmations, take affidavits and depositions pertaining to the affairs and business of the City and certify copies of the official records;
- (f) Have charge of all City elections;
- (g) Be responsible for the publication of all official advertising of the City; and
- (h) Perform such other duties consistent with this Charter as may be required of the City Clerk by the Council.

(As amended November 7, 1989)

SECTION 902. - OFFICE OF THE CITY ATTORNEY.

The Office of the City Attorney is hereby established. The City Attorney shall be an attorney-at-law, and shall be licensed to practice the profession in the State of California. In addition, the City Attorney should have had at least five years' experience in the practice of law prior to appointment. The City Attorney shall have the power and duty to:

- (a) Represent and appear for the City, its Council, boards and commissions in all actions or proceedings in which they are concerned or are a party; and represent and appear for a City officer or employee, or a former City officer or employee, in all actions or proceedings in which such officer or employee is a party-defendant due to the performance of the person's official duties, provided such representation and appearance, in the opinion of the City Attorney will not conflict with the City Attorney's duties to the City and will not affect the interests of the City;
- (b) Advise the Council and all City officers in all matters of law pertaining to their offices;
- (c) Attend all meetings of the Council, except when excused or disabled, and give such advice or opinion on the legality of all matters under consideration by the Council or by any of the boards, commissions or officers of the City;
- (d) Prepare ordinances, formal resolutions, contracts and other legal instruments as shall be required or as may be deemed necessary by the City Attorney for the proper conduct of the business of the City, and approve the form of such contracts and the form of all bonds given to the City;

- (e) Upon direction of the Council prosecute on behalf of the people all criminal cases for violation of City ordinances;
- (f) Perform such other legal duties as may be required by the Council.

The Council may retain or employ other attorneys to take charge of any litigation or legal matter or to assist the City Attorney therein.

(As amended November 7, 1989)

SECTION 902.1. - OFFICE OF THE CITY AUDITOR.

The Office of the City Auditor is hereby established. The City Council shall appoint the City Auditor.

- (a) Qualifications. The City Auditor shall possess adequate professional proficiency for the job, demonstrated by relevant certifications such as Certified Internal Auditor (CIA), Certified Public Accountant (CPA), or Chartered Accountant (CA), or have an advanced degree and at least five (5) years of experience in government auditing, evaluation, or analysis.
- (b) Appointment. Within thirty (30) days of a vacancy, the Mayor shall initiate the recruitment process by recommending the selection of a recruitment firm or other recruitment process, and the Council shall thereafter appoint a City Auditor as soon as practicable. The Council shall appoint the City Auditor for an indefinite term.
- (c) The City Auditor shall have the following powers and duties:
 - (1) The Auditor shall have authority to conduct financial and performance audits of all departments, offices, boards, activities, agencies and programs of the City in order to independently and objectively determine whether:
 - i. Activities and programs being implemented have been authorized by government Charter or Code, state law or applicable federal law or regulations and are being conducted and funds expended in compliance with applicable laws;
 - ii. The department, office, or agency is acquiring, managing, protecting, and using its resources, including public funds, personnel, property, equipment, and space, economically, efficiently, equitably, and effectively and in a manner consistent with the objectives intended by the City Council or enabling legislation;
 - iii. The entity, programs, activities, functions, or policies are effective, including the identification of any causes of inefficiencies or uneconomical practices;
 - iv. The desired result or benefits as intended by the City Council are being achieved;
 - v. Financial and other reports are being provided that disclose fairly, accurately, and fully

all information required by law, to ascertain the nature and scope of programs and activities, and to establish a proper basis for evaluating the programs and activities including the collection of, accounting for, and depositing of, revenues and other resources;

- vi. Management has established adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls; and
 - vii. Indications of fraud, abuse or illegal acts are valid and need further investigation
- (2) Conduct special audits and investigations, as requested by the Council. "Special audits and investigations" mean assignments of limited scope, intended to determine:
- i. The accuracy of information provided to the Council.
 - ii. The costs and consequences of recommendations made to the Council.
- (d) Standards. Audits shall be conducted in accordance with recognized government auditing standards.
- (e) Funding. Sufficient funds shall be proposed and approved to carry out the responsibilities specified herein. The Office of the City Auditor's budget shall be submitted to Council in accordance with the City's annual budget process.
- (f) Staffing. The City Auditor may appoint and prescribe the duties of the professional, technical, and clerical employees employed in the Office of the City Auditor; provided, however, that the City Auditor shall not appoint to any position any business associate or any person related to him or her or to the City Manager or to any member of the Council by blood or marriage within the second degree. All such appointees shall serve at the pleasure of the City Auditor in the Unclassified Service; and shall serve under such terms and conditions, salaries and benefits as are similar to other employees in the City's service. In the event an employee of the City, who holds a Classified Service position, is appointed to a position in the Unclassified Service under this Section, he or she may return to a position in the Classified Service. Such return to the Classified Service shall be without loss of any rights or privileges that currently pertain to the Classified Service.

Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any such officer or employee whom the City Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such officers and employees. Nor may any person coerce or attempt to coerce the City Auditor relative to the City Auditor's work.

- (g) Access. The City Auditor shall have, unless prohibited by law, access to, and authority to examine any and all documents including but not limited to books, accounts, internal

memoranda, writings and tapes, reports, vouchers, correspondence files and other records, bank accounts, money and other property of any City department, office or agency, whether created by the Charter or otherwise, with the exception of the office of any elected official. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information.

- (h) Audit Schedule. At the beginning of each fiscal year, the Auditor shall submit a one (1) to five (5) year audit schedule to the Audit Committee and Council for review and comment. The schedule shall include the proposed plan, and the rationale for the selections, for auditing departments, offices, boards, activities, subcontractors, and agencies for the period. This schedule may be amended after review with the Audit Committee and Council, but the Auditor shall have final authority to select the audits planned.
- (i) Reports. Each audit will result in a report, written or in some other retrievable form. The report shall contain relevant background information and findings, and recommendations. The Auditor shall prepare and submit to the Audit Committee, at their regularly scheduled public meetings, quarterly reports or updates of the City Auditor's activities and findings, together with any recommendations requiring immediate action to improve the administration of the City.
- (j) Report of Irregularities. If, during an audit, the Auditor becomes aware of abuse or illegal acts or indications of such acts that could affect the City, the Auditor shall report the irregularities to the Audit Committee or appropriate law enforcement authority, as appropriate.

(Added February 5, 2008 and November 8, 2022)

SECTION 902.2. - AUDIT COMMITTEE.

- (a) Purpose and Duties. The purpose of the Audit Committee is to advise the City Council on items related to the work of the City Auditor and the City's financial statement audits. Among other duties, the Audit Committee shall:
 - (1) Review the Auditor's audit plan annually and submit annually to the City Council;
 - (2) Provide suggestions and comments for the annual audit plan;
 - (3) Review and consult with the Auditor on quarterly reports or updates of the City Auditor's activities and findings;
 - (4) Report irregularities raised by the Auditor to the City Council;
 - (5) Ensure that audit reports are transmitted to the legislative body and to the public;
 - (6) Monitor follow-up on reported findings to assure corrective action is taken by

management;

- (7) Report to the legislative body on problems or problem areas at such times as deemed appropriate;
- (8) Provide input on, and participate in, the selection of the firm conducting the annual financial statement audits; and
- (9) Review and forward to the City Council materials related to the City's annual financial statement audit conducted pursuant to Section 1306 of this Charter.

(b) Audit Committee Composition:

- (1) The Audit Committee shall be comprised of the Mayor, two (2) members of the City Council, and two (2) members of the public who are residents of the City of Modesto and shall possess a minimum of two (2) years of experience in financial or performance auditing. Strong consideration shall be given to residents who are Certified Public Accountants.
- (2) No public member of the Committee shall be a relative by blood or marriage to the third degree of the mayor, member of the Council, any Charter Officer, or any department head or deputy department head.
- (3) No public member of the Committee shall be an employee of the City nor any bargaining unit for employees of the City, nor a person who receives compensation from the City or from bargaining units of the City in any manner, including retirement benefits.
- (4) No public member of the Committee shall be a lobbyist or other person with business before the City that represents an economic interest in excess of the limit for material financial effect established by local ordinance for the time periods established by local ordinance.
- (5) Public members of the Committee shall serve without compensation.

(Added November 8, 2022)

SECTION 903. - DUTIES OF OFFICERS AND EMPLOYEES.

After obtaining and considering the recommendations of the City Manager, the Council shall provide by ordinance or resolution, not inconsistent with this Charter, for the powers and duties of all officers and employees of the City.

Where the positions are not incompatible, the Council may combine in one person the powers and duties of two or more offices created or provided for in the Charter. Notwithstanding this provision, the offices of the City Manager, City Clerk, City Attorney and City Auditor shall not be combined except in cases of emergency, and in no event shall such combination exceed a

period of three months.

No office provided herein to be filled by appointment by the City Manager may be combined with an office provided herein to be filled by appointment by the Council.

Notwithstanding the foregoing, the Council may transfer or consolidate functions of the City government to or with appropriate functions of the State or County government or may make use of such functions of the State or County government, and in case of any such transfer or consolidation, the provisions of this Charter providing for the function of the City government so transferred or consolidated shall be deemed suspended during the continuance of such transfer or consolidation, to the extent that such suspension is made necessary or convenient and is set forth in the ordinance or resolution establishing such transfer or consolidation. Any such transfer or consolidation may be repealed in like manner.

(As amended February 5, 2008)

SECTION 904. - COMPENSATION OF OFFICERS AND EMPLOYEES.

The compensation of all City officers and employees, except as otherwise provided in this Charter, shall be by salary to be fixed by ordinance or resolution. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation, aside from the salary or compensation as fixed by the Council, but all fees received by an officer or employee in connection with said person's official duties shall be paid into the City Treasury.

(As amended November 7, 1989)

SECTION 905. - OATH OF OFFICE.

Every officer of the City, before entering upon the duties of the person's office, shall take the oath of office as provided for in the Constitution of this State, and shall file the same with the City Clerk.

(As amended November 7, 1989)

SECTION 906. - OFFICIAL BONDS.

The Council shall fix by ordinance the amounts and terms of the official bonds of all officials or employees who are required by ordinance to give such bonds. All bonds shall be approved as to form by the City Attorney and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

There shall be no personal liability upon, or any right to recover against, a superior officer, or a superior officer's bond, for any wrongful act or omission of a subordinate, unless such superior officer was a party to or conspired in such wrongful act or omission.

(As amended November 7, 1989)

SECTION 907. - FINANCIAL INTEREST PROHIBITED.

The provisions of Article 4, Chapter 1, Division 4, Title I of the Government Code of the State of California, as the same now exist or hereafter may be amended, relating to prohibitions applicable to specified officers, are hereby adopted by reference and shall apply to the City of Modesto.

SECTION 908. - NEPOTISM.

No person shall be appointed to a salaried position with the City of Modesto who is a relative by blood or marriage within the second degree of the Mayor, a member of the Council, the City Manager or the officer of the City exercising the appointive power.

(As amended November 4, 1980)

SECTION 909. - POLITICAL AND RELIGIOUS TESTS.

Except as otherwise provided by the general laws of this State heretofore or hereafter enacted, no appointment to any position under the City government shall be made or be withheld by reason of any religious or political opinions or affiliations or political services; and no appointment to or selection for or removal from any office or employment and no transfer, promotion, reduction, reward or punishment shall be in any manner affected by such opinions, affiliations or service.

ARTICLE X. - EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

SECTION 1000. - ASSIGNMENT OF POWERS. ORGANIZATION.

After obtaining and considering the recommendations of the City Manager, the Council shall provide by ordinance, not inconsistent with this Charter, for the organization, functions, conduct and operation of the several offices and departments of the City, and may provide for the creation of additional departments, divisions, offices and agencies, and for their consolidation, alteration or abolition.

It may further provide by ordinance or resolution for the assignment and reassignment of divisions, offices and agencies to departments, and for the number, titles, qualifications, powers, duties and compensation of all officers and employees.

ARTICLE XI. - APPOINTIVE BOARDS AND COMMISSIONS

SECTION 1100. - IN GENERAL.

There shall be the boards and commissions enumerated in this article, which shall have the powers and duties as provided herein. Except as otherwise provided in this article, the number of members to comprise any board or commission shall be determined by ordinance. No member of any board or commission shall hold any paid office or employment in the City government. Except as otherwise provided in this article, in order to be eligible for appointment or to hold office as a member of any board or commission, a person shall be a registered elector of the City. In addition to the boards and commissions enumerated in this article, the Council may create by ordinance such boards or commissions as in its judgment are required and may grant to them such powers and duties as are consistent with the provisions of this Charter.

SECTION 1101. - APPROPRIATIONS.

The Council shall include in the annual budget such appropriations of funds as in its opinion shall be sufficient for the efficient and proper functioning of such boards and commissions.

SECTION 1102. - APPOINTMENTS. TERMS.

The members of each of such boards or commissions shall be appointed by the Council. They shall be subject to removal, by resolution of the Council adopted by at least four affirmative votes. The members thereof shall serve for a term of four years and until their respective successors are appointed and qualified.

The members first appointed to such boards and commissions shall so classify themselves by lot that each succeeding January 1 the term of one of their number shall expire. If the total number of members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the grouping of terms to such an extent as is necessary in order that the term of at least one member shall expire on each succeeding January 1, and that the number of terms expiring in any year does not exceed by more than one the number expiring in any other year.

SECTION 1103. - EXISTING BOARDS.

The members of the boards and commissions holding office when this Charter takes effect shall continue to hold office thereafter until their respective terms of office shall expire and until their successors shall be appointed and qualified. The successors of such members shall be appointed for terms of such duration, not exceeding four years, as will carry into effect the plan for staggered terms prescribed in the preceding section [1102].

SECTION 1104. - MEETINGS. CHAIRPERSONS.

As soon as practicable following the first day of January of each year, each of such boards and commissions shall organize by electing one of its members to serve as chairperson at the pleasure of such board or commission. Whenever a special meeting of any board or commission shall be called, the secretary shall cause written notice of such meeting to be given to each member of such board or commission and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or must be deposited in the United States mail, postage prepaid, at least 24 hours before the time of such meeting as specified in the notice. The notice and order shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by said boards or commissions.

Written notice to each member of any board or commission may be dispensed with as to any member of any board or commission who, at or prior to the time the meeting convenes, files with the Secretary of such board or commission a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member of any

board or commission who is actually present at the meeting at the time it convenes.

The affirmative or negative vote of a majority of the entire membership of such board or commission shall be necessary for it to take action.

Unless otherwise provided by the Council, or by this Charter, the City Manager shall provide a secretary for the recording of the minutes of each of such boards and commissions who shall keep a record of its proceedings and transactions.

(As amended November 7, 1989 and November 8, 2022)

SECTION 1105. - COMPENSATION. VACANCIES.

The members of boards and commissions shall serve without compensation for their services as such, but may receive reimbursement for necessary traveling and other expenses incurred in the performance of their official duties.

Any vacancies in any board or commission, from whatever cause arising, shall be filled by appointment by the Council. Upon a vacancy occurring, leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term. If a member of a board or commission is absent from three regular meetings of such board or commission, consecutively, unless by permission of such board or commission, expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector of the City, the member's office shall become vacant and shall be so declared by the Council.

(As amended November 7, 1989)

SECTION 1106. - OATHS. AFFIRMATIONS.

Each member of any such board or commission shall have the power to administer oaths and affirmations in any investigation or proceeding pending before such board or commission.

SECTION 1107. - PLANNING COMMISSION.

There shall be a Planning Commission. The Planning Commission shall have the power and duty to:

- (a) Recommend to the Council, after a public hearing thereon, the adoption, amendment or repeal of a General Plan or any part thereof for the physical development of the City; and
- (b) Exercise such functions with respect to land subdivisions, planning and zoning as may be

prescribed by ordinance or resolution.

SECTION 1108. - BOARD OF PERSONNEL APPEALS.

There shall be a Board of Personnel Appeals consisting of three (3) members. The Board of Personnel Appeals shall have the power and duty to:

- (a) Select a hearing officer to hear the appeals of any person in the classified service relative to any suspension, demotion or dismissal, so long as a separate and distinct procedure has not been delineated by a valid and existing Memorandum of Understanding.
- (b) Act in an advisory capacity to the City Manager on such personnel matters as may be referred to it by the City Manager.

The Board of Personnel Appeals and its duties and obligations hereunder shall not be operative, or in effect, during the period in which the California Public Employment Relations Board (PERB), or similar state agency or department, exercises the essential functions and duties prescribed for the Board of Personnel Appeals as contemplated herein.

(As amended November 4, 1980 and November 8, 2022)

Editor's note— As amended by the General Municipal Election Ballot on November 8, 2022, Section 1108, was amended to include the former Section 1109, Board of Personnel Appeals, Powers and Duties to read as herein set out. Former Section 1109 derived from amendments enacted March 8, 1977, November 4, 1980, and November 7, 1989.

SECTION 1110. - CULTURE COMMISSION.

There shall be a Culture Commission with a membership established by the City Council. The Commission shall have the power and duty to:

- (a) Act in an advisory capacity to the Council and the City Manager in all matters pertaining to art, literature, music and other cultural activities;
- (b) Formulate and recommend annually to the Council a program relating to art, literature, and music and other cultural activities;
- (c) Promote the preservation of historic sites, landmarks, documents, paintings and other objects associated with the history of the City and its area, and develop educational interest in all such historical matters;
- (d) Act in an advisory capacity to the Council, City Manager and Director of any Museum or Cultural Center that may be established by the Council.

(As amended November 5, 1974, November 4, 1980 and November 8, 2022)

SECTION 1111. - HUMAN RELATIONS COMMISSION.

There shall be a Human Relations Commission consisting of seven members, five of whom shall be registered electors of the City, and two of whom shall live outside the City but shall be registered electors of Stanislaus County. The Commission shall have the power and duty to:

- (a) Act in an advisory capacity to the City Council in matters pertaining to human relations and behavior;
- (b) Formulate and recommend annually to the Council a program for furthering human relations in the community;
- (c) Perform such other duties with respect to human relations and behavior as the City Council may prescribe by ordinance or resolution.
- (d) The City Council may, by resolution, assign another City commission with a similar function to carry out the power and duties of the Human Relations Commission.

(Added November 4, 1980 and November 8, 2022)

ARTICLE XII. - PERSONNEL SYSTEM

SECTION 1200. - PERSONNEL SYSTEM. MERIT PRINCIPLE.

Appointments and promotions in the Classified Service of the City shall be made according to merit and fitness and from eligible lists to be established in accordance with personnel rules and regulations adopted in the manner provided in this Charter.

SECTION 1201. - UNCLASSIFIED AND CLASSIFIED SERVICE.

The administrative service of the City shall be divided into Unclassified and Classified Service.

- (a) The Unclassified Service shall comprise the following officers and positions:
 - (1) All elected officers.
 - (2) City Manager, any Deputy City Manager, City Attorney, any Assistant City Attorney, any Deputy City Attorneys, City Clerk, City Auditor, and all heads of departments and deputy directors.
 - (3) All members of boards and commissions.

(4) Persons employed as unskilled laborers.

(5) Persons employed to render professional, scientific, technical or expert services of any occasional or exceptional character.

(6) Temporary and part-time employees paid on an hourly or per diem basis.

(7) Persons employed under Section 601(l) of this Charter.

(b) The Classified Service shall comprise all positions not specifically included by this section in the Unclassified Service.

(As amended February 5, 2008)

SECTION 1202. - RULES AND REGULATIONS.

The Personnel System provided by this article shall be implemented by such rules and regulations governing the administration thereof as are adopted by the Council upon the recommendation of the City Manager.

SECTION 1203. - POLITICAL ACTIVITIES PROHIBITED.

No employee of the City shall, during the hours the employee is working for the City, take an active part in any municipal or other political campaign, nor seek or accept contributions for or against any candidate or issue therein, nor seek or accept signatures to any petition for or against any such candidate or issue. Nothing in this section shall be construed to prevent any such employee from seeking election or appointment to public office.

(As amended November 4, 1980)

SECTION 1204. - CONTRACT FOR PERFORMANCE OF ADMINISTRATIVE FUNCTIONS.

The Council may contract with the governing body of a city, or county within this State, or with a State department or other public or private agency for the preparation or conducting of competitive examinations for positions in the City service or for the performance of any other personnel administration service.

SECTION 1205. - HEARING OFFICERS.

An appeal of any person in the Classified Service relative to any suspension, demotion or dismissal, where the right of appeal is granted by the Personnel System of the City of Modesto, shall be heard by a hearing officer, who shall be selected by the Board of Personnel Appeals.

The findings and recommendations of a hearing officer shall be made to the City Manager, who shall make the final determination relative to any suspension, demotion or dismissal. An alternative procedure for hearing and final determination of appeals may be delineated by a valid and binding Memorandum of Understanding or other instrument for nonrepresented employees.

Hearing officers shall have the power to administer oaths and affirmations in any appeals pending before them. Hearing officers shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before them. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify (upon other than constitutional grounds), shall be deemed contempt and shall be punishable as provided by the general laws of this State.

(Added November 4, 1980, amended November 6, 1990)

SECTION 1206. - IMPARTIAL ARBITRATION FOR POLICE AND FIRE DEPARTMENT EMPLOYEE DISPUTES.

- (a) Impartial Arbitration—Declaration of Policy. It is hereby declared to be the policy of the City of Modesto that strikes by police officers and firefighters are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.
- (b) Prohibition Against Strikes. No City of Modesto police officer or firefighter shall wilfully engage in a strike against the City. Any such employee against whom the City brings charges of failing to report for work as part of a strike shall be subject to dismissal from his or her employment in the event the charges are sustained upon conclusion of the proceedings that are required by law for the imposition of disciplinary action upon said employee.
- (c) Obligation to Negotiate in Good Faith. The City, through its duly authorized representatives, shall negotiate in good faith with recognized employee organizations which represent sworn members of the City of Modesto Police Department or the City of Modesto Fire Department on all matters relating to the wages, hours and other terms and conditions of City employment, including the establishment of procedures for the resolution of grievances concerning the interpretation or application of any negotiated agreement. Unless and until agreement is reached through negotiations between the City and a recognized employee organization for the police department or fire department bargaining unit, or a determination is made through the arbitration procedure hereafter

provided, no existing benefits or conditions of employment for said police department or fire department employees shall be eliminated or changed.

- (d) Impasse Resolution Procedures. All disputes or controversies pertaining to wages, hours or terms and conditions of employment which remain unresolved after good faith negotiations between the City and the recognized police department or fire department employee organization involved in the dispute shall be submitted to a three-member Board of Arbitrators upon the declaration of an impasse by the City or by the recognized employee organization.

Representatives designated by the City and representatives of the recognized employee organization involved in the dispute shall each appoint one arbitrator to the Board of Arbitrators within three days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the Arbitration Board shall be selected by agreement between the two arbitrators selected by the City and the employee organization, and shall serve as the neutral arbitrator and Chairperson of the Board. In the event that the arbitrators selected by the City and the employee organization cannot agree upon the selection of the third arbitrator within ten days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Mediation and Conciliation Service to provide a list of seven persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the City and the employee organization cannot agree within three days after receipt of such list on one of the seven to act as third arbitrator, they shall alternately strike names from the list of nominees until one name remains and that person shall then become the third arbitrator and chairperson of the Arbitration Board.

Any arbitration proceeding convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure. The Arbitration Board shall hold public hearings, receive evidence from the parties and cause a transcript of the proceedings to be prepared. The Arbitration Board, in the exercise of its discretion, may meet privately with the parties and mediate or mede-arb issues in dispute. The Arbitration Board may also adopt such other procedures that are designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the costs of the arbitration process.

At the conclusion of the arbitration hearings, the Arbitration Board shall direct each of the parties to submit, within such time limit as the Arbitration Board may establish, a last offer of settlement on each of the issues in dispute. The Arbitration Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of

wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.

After reaching a decision, the Arbitration Board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the Arbitration Board shall not be publicly disclosed and shall not be binding until ten days after it is delivered to the parties. During that ten day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the Arbitration Board. At the conclusion of the ten day period, which may be extended by mutual agreement between the parties, the decision of the Arbitration Board, incorporating any amendments or modifications agreed to by the parties, shall be publicly disclosed and shall be binding upon the parties. The City and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the final Arbitration Board award (incorporating any amendments or modifications agreed to by the parties as provided above).

The expenses of any arbitration convened pursuant to this article, including the fee for the services of the Chairperson of the Arbitration Board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(Added November 3, 1998)

ARTICLE XIII. - FISCAL ADMINISTRATION

SECTION 1300. - THE FISCAL YEAR.

The fiscal year of the City shall commence upon the first day of July of each year, or at such other time as may be fixed by ordinance.

SECTION 1301. - TAX SYSTEM.

The Council shall by ordinance provide a system for the assessment, levy and collection of City taxes upon property.

SECTION 1302. - ANNUAL BUDGET.

(As amended November 4, 1980, November 7, 1989, repealed February 5, 2008)

SECTION 1302.1. - SUBMISSION OF ECONOMIC FORECASTS; MAYOR'S BUDGET MESSAGE.

The City Manager shall, on or before December 15 of each year, submit to the Mayor and to the Council a five year economic forecast of expenditures and revenues for each City department, office or agency.

On or before January 10, the members of the Council may submit individual written budget priorities to the Mayor for consideration.

The Mayor shall, after consideration of any received written budget priorities, prepare and deliver to the Council the Mayor's Proposed Budget Priorities and Direction for both the City's Capital Budget and for the City's Operating Budget.

The Mayor shall, on or before February 15 of each year prepare and deliver to the Council the Mayor's Budget Message which shall include:

- (a) A statement of the fiscal priorities which the City should adopt for the ensuing fiscal year; and
- (b) Which City services, departments, offices or agencies the Mayor proposes to be expanded or reduced.

The Council shall hold a public hearing to consider the Final Mayor's Budget Message and to make any additions or revisions the Council deems advisable.

Upon close of the public hearing, the Council shall approve the Mayor's Budget Message as presented, or as revised.

The City Manager shall, on or before March 15 of each year, prepare and deliver to the Mayor and Council, a Capital and Operating Mid-Year Budget Report for each City department, office, or agency.

(Added February 5, 2008 and November 8, 2022)

SECTION 1302.2. - ANNUAL BUDGET.

By April 30 of each year, the City Manager shall send to the Council a draft budget consisting of a careful estimate, in writing, of the amounts of expenditures required for the business and proper conduct of the various departments, offices, boards and commissions of the City, over which the City Manager has control during the next ensuing year. Said estimate shall be in such

detail as the Council shall specify. The City Manager shall also include in the draft budget at said time and submit to the Council an estimate of the amount of income from fines, licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation.

In addition to complying with the requirements of this section, the draft budget shall accurately reflect the recommendations and priorities specified in the Final Mayor's Budget Message as adopted by the Council.

The report of the City Manager accompanying the draft budget shall specify the budget allocations which implement each component included within the Final Mayor's Budget Message as adopted by the Council.

(Added February 5, 2008)

SECTION 1303. - MAYOR'S FINAL BUDGET MODIFICATIONS; PUBLIC HEARING ON THE PROPOSED BUDGET.

At least 45 days prior to the new fiscal year, the Mayor shall prepare and deliver to the Council the Mayor's Final Budget Modifications on the draft budget.

Following the receipt of the Mayor's Final Budget Modifications, the Council shall consider and review the draft budget as submitted by the City Manager together with the Mayor's Final Budget Modifications and may make such revisions as the Council may deem advisable. The document resulting from this process shall be deemed the "Proposed Budget."

Thereafter, the Council shall determine the time for holding of a public hearing upon the "Proposed Budget", and shall cause a notice thereof to be published not less than ten days prior to said hearing by at least one insertion in a newspaper of general circulation within the City.

Copies of the Proposed Budget to be considered at the public hearing shall be available for inspection by the public at the office of the City Clerk at least ten days prior to said hearing.

At the time so advertised or at any time such public hearing from time to time be adjourned, the Council shall hold a public hearing on the proposed budget at which interested persons desiring to be heard shall be given such opportunity.

(As amended February 5, 2008 and November 8, 2022)

SECTION 1304. - ADOPTION OF THE BUDGET.

After the conclusion of the public hearing, the Council shall further consider the proposed budget and make any revisions thereof that it may deem advisable; and thereafter it shall adopt

the budget with revisions, if any. Such revisions may add or increase programs or amounts or may delete or decrease programs or amounts except expenditures required by law or for debt service, provided that no revision to the budget shall increase proposed expenditures to an amount greater than the total estimated income plus unencumbered available reserves and estimated unencumbered balances of funds carried over from the preceding fiscal year.

Upon final adoption, the budget shall be in effect for the ensuing fiscal year.

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the various departments or activities therein described. All appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered unless they shall have been designated in the budget as continuing appropriations. At any meeting after the adoption of the budget, the Council may amend or supplement the budget by resolution.

(As amended November 4, 1980, and February 5, 2008)

SECTION 1305. - TAX LIMIT.

(a) **Additional Taxes.** There shall be levied and collected at the time and in the same manner as other property taxes for municipal purposes are levied and collected, as additional taxes, if no other provisions for the payment thereof is made:

- (1) A tax sufficient to meet all obligations of the City for principal and interest of all bonds or judgments due and unpaid or to become due during the ensuing fiscal year which constitute the general obligations of the City;
- (2) A tax sufficient to meet all obligations of the City to the State Employees' Retirement System for retirement of the City employees, if any, due and unpaid or to become due during the ensuing fiscal year.

(b) **Special Levies.** Special levies in addition to the above may be made annually in amounts not to exceed the limits hereinafter enumerated in this section, respectively, on each 100 dollars (\$100.00) of the assessed value of the taxable property in the City:

- (1) For the support and maintenance of free public libraries and reading rooms, 20 cents (\$0.20).

The proceeds of any such special levy shall be used solely for the respective purposes for which it is levied.

(As amended November 7, 1989)

SECTION 1306. - INDEPENDENT AUDIT.

The Council shall employ, at the beginning of each fiscal year, an independent certified public accountant who, at such time or times as may be specified by the Council, at least annually, shall examine the books, records, inventories, and reports of all officers and employees who receive, handle or disburse public funds and all such other officers and employees and departments as the Council may direct.

As soon as practicable after the end of the fiscal year, a final audit and report shall be submitted by such accountant to the Council, one copy thereof to be distributed to each member, one to the City Auditor, one to the City Manager and one to the City Attorney respectively, and three additional copies to be placed on file in the office of the City Clerk, where they shall be available for inspection by the general public.

SECTION 1307. - PUBLIC WORK TO BE DONE BY CONTRACT.

Every project involving an expenditure of City moneys of more than the amount which the City

Council shall establish by ordinance, for the construction or improvement of public buildings, works, drains, sewers, utilities, parks, playgrounds, and streets (exclusive of projects for resurfacing, maintenance and repair of streets, or any park or parks playground project otherwise subject to the public bidding requirements of this section that involves any donated labor and/or material) shall be let by contract to the lowest responsible bidder after notice by publication in any or all methods permitted under state law, including in the official newspaper by one or more insertions, the first of which shall be at least seven (7) days before the time for opening bids.

All bids shall be accompanied by either a certified or cashier's check, or a bidder's bond executed by a corporate surety authorized to engage in such business in California, made payable to the City. Such security shall be in an amount not less than that specified in the notice inviting bids or in the specifications referred to therein, or if no amount be so specified then in an amount not less than ten percent of the aggregate amount of the bid. If the successful bidder neglects or refuses to enter into the contract, within the time specified in the notice inviting bids or specifications referred to therein, the amount the person's bidder's security shall be declared forfeited to the City and shall be collected and paid into its general fund and all bonds so forfeited shall be prosecuted and the amount thereof collected and paid into such fund.

The Council may reject any and all bids presented and may readvertise in its discretion.

The Council after rejecting bids, or if no bids are received, may declare and determine that, in its opinion, based on estimates approved by the City Manager the work in question may be performed better or more economically by the City with its own employees and after the adoption of a resolution to this effect by at least five affirmative votes of the Council may proceed to have said work done in the manner stated, without further observance of the provisions of this section. Such contracts likewise may be let without advertising for bids, if such work shall be deemed by the City Council to be of urgent necessity for the preservation of life, health or property and shall be authorized by resolution passed by at least five affirmative votes of the Council and containing a declaration of the facts constituting such urgency.

Nothing in this section shall be construed to apply to the acquisition or purchase of electricity, electric power or electric energy by the City for any use or purpose.

(As amended November 7, 1989, November 2, 1999 and November 8, 2022)

SECTION 1308. - COLLUSION WITH BIDDER.

Any officer of the City, or of any department thereof, who shall aid or assist a bidder in securing

a contract to furnish labor, materials or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall wilfully mislead any bidder in regard to the character of the materials or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of materials or supplies than has been actually received shall be deemed guilty of malfeasance and shall be removed from office.

SECTION 1309. - COLLUSION BY BIDDER.

If at any time it shall be found that the person to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties for the purpose of preventing any other bid being made, then the contract so awarded shall be null and void, and the Council shall advertise for a new contract for said works, or provide for such public work to be done by the City.

SECTION 1310. - DEMANDS AGAINST THE CITY.

Moneys shall be drawn from the City Treasury only in the manner prescribed by ordinance of the Council.

SECTION 1311. - CONTRACTS FOR OFFICIAL ADVERTISING.

The Council shall let annually contracts for the official advertising for the ensuing fiscal year. Official advertising contracts may be let to digital or print platforms, as permitted under state law. The Council shall let the contracts for such official advertising to the lowest responsible bidder; provided, that the Council may reject any or all bids and advertise for new bids.

In the event the official advertising contract is to be let to a newspaper, if there is more than one (1) newspaper of general circulation published and circulated in the City, the Council shall advertise for one (1) day, setting forth distinctly and specifically the work contemplated to be done, and asking for sealed proposals therefor. The proposals shall specify the type and spacing to be used at the rates named in the bids. Any contracts let to a newspaper shall be to one publishing a newspaper in the City which is a newspaper of general circulation and has been in existence at the time of the awarding of the contract at least one year.

(As amended November 8, 2022)

SECTION 1312. - FILING OF CLAIMS.

Except as otherwise provided by the provisions of State law applicable to chartered cities, claims against the City shall be filed as prescribed by ordinance.

SECTION 1313. - PURCHASE OF SUPPLIES AND EQUIPMENT.

The Council shall, annually review by June 30, adopt policies and procedures governing bidding regulations and purchases of supplies, services, and equipment by the City. Said policies and procedures may include provisions authorizing joint purchasing with other local governmental agencies. Purchases of supplies, services, and equipment by the City shall be made in accordance with such policies and procedures.

(As amended November 8, 2022)

ARTICLE XIV. - FRANCHISES

SECTION 1400. - FRANCHISES TO OPERATE.

No person, firm or corporation shall exercise any franchise, right or privilege mentioned in this article in the City except insofar as the person or it may be entitled to do so by direct authority of the Constitution of the State of California or of the United States, unless the person or it shall have obtained a grant therefor in accordance with the provisions of this Charter and in accordance with the procedure prescribed by ordinance. Nothing contained in the article shall be construed to invalidate any lawful franchise heretofore granted nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

(As amended November 7, 1989)

SECTION 1401. - AUTHORITY TO GRANT FRANCHISES.

The Council is empowered to grant by ordinance a franchise to any person, firm or corporation, whether operating under an existing franchise or not, to furnish the City and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage or any other public utility or service, or to use the public streets, ways, alleys and places, as the same may now or may hereafter exist, in connection therewith.

SECTION 1402. - FRANCHISE TERMS, CONDITIONS AND PROCEDURES.

The Council shall, by ordinance, prescribe the terms and conditions under which franchises will be granted, subject to the provisions of this Charter, and the procedure for granting franchises; provided, however, that such procedural ordinance or ordinances shall make provisions for the giving of notice of franchise applications, for protests against the granting of such franchises and for public hearings on such applications.

The Council, in granting franchises, shall prescribe the terms and conditions of such franchises in accordance with the applicable provisions of this Charter and any ordinance adopted pursuant thereto, and may in such franchise impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of said Council are in the public interest or as the people, by initiative, indicate they desire to have so imposed.

SECTION 1403. - METHOD OF GRANTING FRANCHISE.

The Council may grant a franchise without calling for bids or may, at its discretion, advertise for bids for the sale of a franchise upon a basis, not in conflict with the provisions of this Article, to be set out in the advertisement for bids and notice of sale.

SECTION 1404. - TERM OF FRANCHISE.

Every franchise shall be either a fixed term not to exceed 20 years, or for an indeterminate period. If for a fixed term, the franchise shall state the terms for which it is granted; if indeterminate, it shall set forth the terms and conditions under which it may be terminated.

SECTION 1405. - PURCHASE OR CONDEMNATION BY CITY.

No franchise grant shall in any way or to any extent impair or affect the right of the City now or hereafter conferred upon it by law to acquire the property of the grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right to eminent domain with respect to any public utility.

SECTION 1406. - MINIMUM COMPENSATION.

No new franchise or the renewal of an existing franchise shall be granted without reserving to the City just and adequate compensation.

SECTION 1407. - ARTICLE NOT APPLICABLE TO CERTAIN CASES.

Nothing in this article shall be construed as applying to or requiring the operators of refrigeration or storage utilities or the carriers of freight or passengers not operating over a fixed route, or other public utilities or services not specifically described in this article, to obtain a franchise to operate within the City unless required so to do by the ordinances of the City of Modesto.

SECTION 1408. - EXERCISING RIGHT WITHOUT FRANCHISE.

The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise shall be a misdemeanor, and each such day that such condition continues shall constitute a separate violation.

ARTICLE XV. - SCHOOL SYSTEM

SECTION 1500. - BOARD OF EDUCATION.

The control, management and administration of the public schools of the City of Modesto, and the territory that is now or may hereafter be annexed thereto for school purposes, in accordance with the Constitution and general laws of the State of California, are hereby vested in a Board of Education. In all matters not specifically provided for in this article, the Board shall be governed by the provisions of the general law relating to such matters and shall be vested with all the powers and charged with all the duties provided by the laws of the State for city boards of education. The Board of Education shall be the governing body of the Modesto City School District of Stanislaus County and the Modesto High School District of Stanislaus County.

The Board of Education shall consist of seven members who may receive compensation pursuant to the applicable provisions of the Education Code of the State of California. The Board of Education shall select a method of election for its members, by resolution, including but not limited to trustee or at large, in accordance with Chapter 1, Part 4, Division 1, Title 1 of the California Education Code, or any succeeding statute. The members of the Board of Education shall hold office for a period of four years from and after the California Statewide Election on the first Tuesday after the first Monday in November of each even numbered year at which they are elected and continuing until their successors are elected and have qualified. Each Board of Education member term commencing in 2015 shall be extended one year to December 2020 and each member term commencing in 2017 shall be extended one year to December 2022.

No person shall be eligible to be nominated for or to hold office as a member of the Board of

Education unless the person is and shall have been for at least 30 days preceding the person's nomination or appointment a resident and registered elector of the school district or districts which are under the jurisdiction of the Board of Education.

(As amended April 20, 1971, November 2, 1976, November 4, 1980, November 5, 1985, November 7, 1989, June 7, 2016, and November 6, 2018)

ARTICLE XVI. - MISCELLANEOUS

SECTION 1600. - EFFECTIVE DATE OF CHARTER.

The provisions of this Charter shall become effective immediately when the concurrent resolution of the Legislature approving this Charter is filed with the Secretary of State.

SECTION 1601. - VALIDITY OF CHARTER. SEVERABILITY.

If any provision of this Charter or the application thereof to any person or circumstances is held invalid, the remainder of the Charter and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 1602. - VIOLATION OF CHARTER AND ORDINANCES.

The violation of, or the failure to comply with, any provision of this Charter or of any City ordinance or of any provision of any code adopted by reference by the Modesto Municipal Code, shall be unlawful. Except as otherwise provided, such violation or failure to comply shall be deemed a misdemeanor, unless the City Attorney shall elect to charge the offense as an infraction, so long as any such election shall not adversely affect the citizen appeal process existing under this Charter.

Any such violation may be prosecuted by the authorities of the City in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities. The maximum penalty for a misdemeanor upon conviction for the violation of, or failure to comply with, any provision of this Charter, or of any ordinance of the City, or of any provisions of any law adopted by reference by this code, shall be a fine not exceeding 1,000 dollars (\$1,000.00) or imprisonment for a term not exceeding one year or both such fine and imprisonment. The maximum penalty for any infraction upon conviction shall be by a fine of 500 dollars (\$500.00), and there shall be no imprisonment.

(As amended November 2, 1976, and November 7, 1989)

SECTION 1603. - DEFINITIONS.

Unless the provisions or the context otherwise require, as used in this Charter:

- (a) "Shall" is mandatory and "may" is permissive;
- (b) "City" is the City of Modesto, and "department," "board," "commission," "agency," "officer" or "employee," is a department, board, commission, agency, officer or employee, as the case may be of the City of Modesto;
- (c) "Council" is the Council of the City of Modesto;
- (d) A "member of the Council" means any one of the seven members of the Council, including the Mayor;
- (e) A "Councilman" means any one of the members of the Council other than the Mayor, and whenever used in this Charter shall be deemed to mean "Councilmember";
- (f) "County" is the County of Stanislaus;
- (g) "State" is the State of California;
- (h) "Newspaper of general circulation within the City" is as defined by Section 6000 of the Government Code of the State of California;

(i) "Public utility or service" as used in this Charter means the supply by the City to its inhabitants, or any portion thereof, with water, light, heat, power, transportation service or telephone, telegraph or wireless communication service, except that said term shall not include furnishing of sewer or sewage disposal services, drainage service, airport services or taxicab services; and

(j) "Election" is the day of the election.

(As amended November 4, 1980)

SECTION 1604. - REVIEW OF CHARTER.

The Council shall cause this Charter to be reviewed at least every ten years commencing with the year 1980.

(Added April 20, 1971)