

**ORDINANCE C.S. 1106**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS AUTHORIZING THE COUNTY TO MAKE CERTAIN REMITTANCES TO THE COUNTY AUDITOR-CONTROLLER IN ACCORDANCE WITH HEALTH AND SAFETY CODE SECTION 34194, AND TO TAKE ALL OTHER ACTIONS REQUIRED IN ORDER TO CONTINUE REDEVELOPMENT ACTIVITIES IN THE COUNTY OF STANISLAUS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS**

**WHEREAS**, the Board of Supervisors of the County of Stanislaus (“County”) approved and adopted the Redevelopment Plan for Stanislaus County Redevelopment Project No. 1, on June 25, 1991 (“Redevelopment Plan”), covering certain properties within the County (the “Project Areas”); and

**WHEREAS**, the Redevelopment Agency of the County of Stanislaus (“Agency”) is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*) (“CRL”); and

**WHEREAS**, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

**WHEREAS**, as part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed, companion bills Assembly Bill x1 26 (“AB 26”) and Assembly Bill x1 27 (“AB 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

**WHEREAS**, AB 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

**WHEREAS**, AB 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code and agreeing to remit specified annual amounts to the County Auditor-Controller; and

**WHEREAS**, AB 27 authorizes the County to enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the County, in an amount not to exceed the annual remittance required that year pursuant to AB 27, for the purpose of financing activities related to accomplishing the Agency’s goals within the redevelopment area; and

**WHEREAS**, AB 27 provides that, in order to enable the Agency to be included in the Alternative Voluntary Redevelopment Program, the County must notify the County Auditor-Controller, the State Controller, and the State Department of Finance, on or before November 1, 2011, that the County will comply with the provisions of Part 1.9; and

**WHEREAS**, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et. al. v. Ana Matosantos, et. al.*, Case No. 5194861), challenging the validity of AB 26 and AB 27 on behalf of cities, counties, and redevelopment agencies, and requesting a stay of enforcement; and

**WHEREAS**, on August 11, 2011, the California Supreme Court (“Court”) issued a partial stay of the effectiveness of AB 26 and AB 27, until the Court can rule on the validity of the two bills, which stay was further modified by the Court on August 17, 2011 (collectively, the “stay”); and

**WHEREAS**, the County has adopted Resolution No. 2011-534 a non-binding resolution declaring its intent to adopt an Ordinance to allow the County to participate in the Alternative Voluntary Redevelopment Program; and

**WHEREAS**, the effect of the stay on the November 1, 2011, deadline for electing to participate in the Alternative Voluntary Redevelopment Program is unclear, and therefore, notwithstanding the pending litigation and the stay, the County wishes to adopt this Ordinance, in the event AB 26 and AB 27 are upheld and/or the stay is lifted;

**WHEREAS**, to the extent the Court has stayed the effectiveness of the payment obligation under AB 26 and AB 27, the County is not obligated to make any community remittance for the duration of the stay; and

**WHEREAS**, in the event the Court revises or lifts its stay, or finds AB 26 and AB 27 to be valid, this election shall be effective without further action by the County; and

**WHEREAS**, in the event that the Court finds AB 26 and AB 27 to be valid, or the Court otherwise revises or lifts the stay, the County, under the threat of dissolution pursuant to AB 26, shall make the Fiscal Year 2011-2012 community remittance, as well as the subsequent annual community remittances as set forth in the CRL; and

**WHEREAS**, should the payment of any community remittance be required before the Court determines the validity of AB 26 and AB 27, such remittances shall be made under protest and without prejudice to the County’s right to recover such amounts and interest thereon should the Court later determine that AB 26 and AB 27 are invalid; and

**WHEREAS**, the County reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 26 and AB 27; and

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS DOES ORDAIN AS FOLLOWS:**

**Section 1. Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

**Section 2. Participation in the Alternative Voluntary Redevelopment Program.** In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the Board of Supervisors hereby determines that the County shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 27. Except as set forth in Section 4, below, the Board of Supervisors hereby determines that the County shall make the community remittances set forth in Health and Safety Code section 34194 *et seq.*

**Section 3. Reservation of Rights.** Neither the adoption of this Ordinance, nor the acknowledgment of or references to any provisions of AB 26 or AB 27, nor the County's payment of any remittances contemplated by Part 1.9, shall be deemed to be, nor are they intended as, an acknowledgment of the validity of AB 26 and AB 27, nor the County's payment of any remittances contemplated by Part 1.9. The County reserves all rights of the County and the Agency to challenge the validity of any or all provisions of AB 26 or AB 27 in any administrative or judicial proceeding and to repeal this Ordinance, without prejudice to the County's right to recover any amounts remitted under Part 1.9. In addition, the County reserves all rights of the County and the Agency to pursue any and all appeals and any available legal or equitable remedy provided or available by law to correct any erroneous decision regarding the amount of any remittance that may be required to be paid by the County under Part 1.9 or other applicable statutes or regulations.

**Section 4. Effect of Stay or Determination of Invalidity.** County shall not make any community remittance until the Court either lifts the stay of the enforcement of AB 26 and AB 27, or determines that AB 26 and AB 27 are valid. Any community remittance paid prior to a final determination of the Court shall be made under protest and without prejudice to the County's right to recover such amount and interest thereon in the event that there is a final determination that AB 26 and AB 27 are invalid. If there is a final determination that AB 26 and AB 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

**Section 5. Authorization of Implementation.** The Board of Supervisors hereby authorizes and directs the Chief Executive Officer (or his/her designee) to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Stanislaus County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the County's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, entering into any remittance funding agreement with the Agency (in a form approved by County Counsel), and making any remittance payments, as set forth in AB 27.

**Section 6. Additional Understandings and Intent.** It is the understanding and intent of the Board of Supervisors that the County will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the County in amounts not to exceed the annual community remittance. The County does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the annual community remittance payments.

**Section 7. CEQA.** The Board of Supervisors finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that it is not a “project” subject to CEQA review; the community remittances authorized hereunder are a government funding mechanism and fiscal activity for potential future projects and programs, and do not commit funds to any specific project or program that may result in a potentially significant environmental impact. The Board of Supervisors, therefore, directs that a Notice of Exemption be filed with the County Clerk in accordance with CEQA Guidelines.

**Section 8. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings are based are located at the County’s Clerk of the Board office located at 1010 10<sup>th</sup> Street, Modesto, CA. The custodian for these records is The County’s Clerk of the Board.

**Section 9. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is, for any reason held to be unconstitutional, invalid, or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining provisions or applications of this Ordinance or any part hereof. The Board of Supervisors hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion hereof. To this end, the provisions of this Ordinance are declared to be severable.

**Section 10. Certification; Publication.** The County’s Clerk of the Board shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the County of Stanislaus, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the County Clerk in accordance with Government Code § 36933.

**Section 11. Effective Date.** This Ordinance shall be deemed “enacted” within the meaning of Part 1.9 upon the Board’s adoption of this Ordinance. Subject to the immediately preceding sentence, this Ordinance shall take effect and be in force thirty (30) days from its adoption. If there is a final judicial determination that AB 26 and/or AB 27 are invalid for any reason, this Ordinance shall be deemed to be null and void and of no further force and effect.

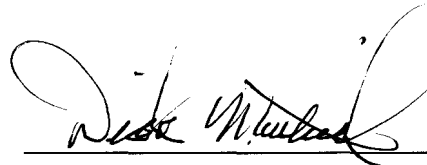
**PASSED AND ADOPTED** on motion of Supervisor Chiesa, seconded by Supervisor DeMartini and approved by the following vote at a regular meeting of the Board of Supervisors on the 20th day of September, 2011:

AYES: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

NAYS: None

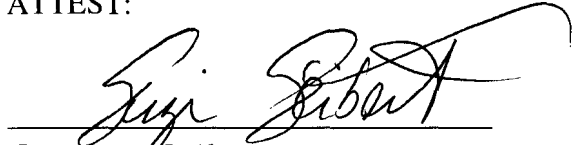
ABSENT: None

ABSTAIN: None



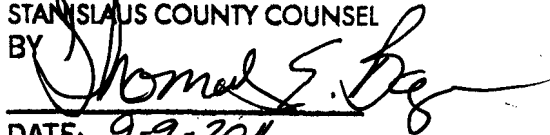
Dick Monteith, Chairman of the Board

ATTEST:

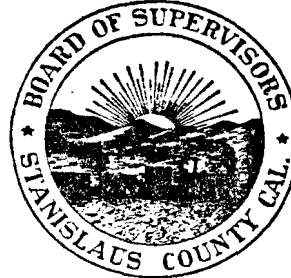


Susan E. Seibert, Deputy Clerk of the Board

APPROVED AS TO FORM:  
STANISLAUS COUNTY COUNSEL  
BY



DATE: 9-9-2011



STANISLAUS COUNTY ORDINANCE C.S. 1106

Upon motion of Supervisor Chiesa, seconded by Supervisor DeMartini, Ordinance C.S. 1106 was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this 20th day of September 2011, by the following called vote:

AYES: SUPERVISORS: O'Brien, Chiesa, Withrow, DeMartini and Chairman Monteith  
NOES: None  
ABSENT: None  
ABSTAINING: None

Ordinance C.S. 1106 authorizes the County to make certain remittances to the County Auditor-Controller in accordance with Health and Safety Code Section 34194, and to take all other actions required in order to continue redevelopment activities in the County of Stanislaus, subject to certain conditions and reservations. Conditions and reservations include that the County will enter into an agreement with the Stanislaus County Redevelopment Agency to pay the State of California an "annual community remittance" as authorized pursuant to Section 34194.2, and whereby the Agency will transfer annual portions of its tax increment to the County in amounts not to exceed the annual community remittance to the State of California. The County does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the annual community remittance payments.

A full copy of the ordinance is available for review at the Clerk of the Board's Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Monica Nino in the Chief Executive Office, at (209) 525-6333 or at 1010 10th Street, Suite 6800, Modesto, CA 95354.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: September 20, 2011

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk  
of the Board of Supervisors  
of the County of Stanislaus,  
State of California

BY:

  
Elizabeth A. King, Assistant Clerk

**DECLARATION OF PUBLICATION  
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS  
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Sep 24, 2011

**STANISLAUS COUNTY  
ORDINANCE C.S. 1106**

Upon motion of Supervisor Chiesa, seconded by Supervisor DeMartini, Ordinance C.S. 1106 was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this 20th day of September 2011, by the following called vote: AYES: SUPERVISORS: O'Brien, Chiesa, Withrow, DeMartini and Chairman Monteith; NOES: None; ABSENT: None; ABSTAINING: None.

Ordinance C.S. 1106 authorizes the County to make certain remittances to the County Auditor-Controller in accordance with Health and Safety Code Section 34194, and to take all other actions required in order to continue redevelopment activities in the County of Stanislaus, subject to certain conditions and reservations. Conditions and reservations include that the County will enter into an agreement with the Stanislaus County Redevelopment Agency to pay the State of California an "annual community remittance" as authorized pursuant to Section 34194.2, and whereby the Agency will transfer annual portions of its tax increment to the County in amounts not to exceed the annual community remittance to the State of California. The County does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the annual community remittance payments.

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Pub Dates Sept. 24, 2011

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I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

**MODESTO, California** on

September 29th, 2011

(By Electronic Facsimile Signature)

*Marie Hickman*