

## ORDINANCE NO. 2011-03

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**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMOORE, CALIFORNIA, DETERMINING IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE LEMOORE REDEVELOPMENT AGENCY**

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**WHEREAS**, the City Council of the City of Lemoore (“City”) approved and adopted the Redevelopment Plan for the Redevelopment Project (“Redevelopment Plan”) covering certain properties within the City (the “Project Area”); and

**WHEREAS**, the Redevelopment Agency of the City of Lemoore (“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 Section 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**, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

**WHEREAS**, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills AB 1X 26 and AB 1X 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**, specifically, AB 1X 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 1X 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community 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

**WHEREAS**, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

**WHEREAS**, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be two million, eight hundred and seventy-nine thousand, nine hundred and fifty-three dollars (\$2,879,953), as well as the subsequent annual community remittances as set forth in the CRL; and

**WHEREAS**, the City reserves the right to appeal the California Director of Finance’s determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194; and

**WHEREAS**, City understands and believes that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and redevelopment agencies; and

**WHEREAS**, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City’s right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise invalid; and

**WHEREAS**, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

**WHEREAS**, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LEMOORE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

Section 1. **Recitals.** The Recitals set forth above are true and correct and made a part of this Ordinance.

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 City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

Section 3. **Payment Under Protest.** Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health and Safety Code Section 34194 *et seq.* under protest.

Section 4. **Effect of Stay or Determination of Invalidity.** City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise invalid. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. **Implementation.** The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Kings County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.

Section 6. **Additional Understandings and Intent.** It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City 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 City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. **CEQA.** The City Council 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," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Kings 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 City Clerk's office located at 119 Fox Street, Lemoore, CA. The custodian for these records is City Clerk Nanci C.O. Lima, MMC.

Section 9. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 10. **Certification; Publication.** The City Clerk 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 City of Lemoore, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code Section 36933. Any summary of this Ordinance must be approved by the City Attorney before its publication.

Section 11. **Findings.** The adoption of this Urgency Ordinance is necessary for the immediate protection of the public peace, health, and safety. In accordance with California Government Code Section 36937 and in order to protect the public peace, health, and safety, the City Council of the City of Lemoore finds and determines as follows:

(a) AB 1X 26 prohibits redevelopment agencies from taking numerous actions, until the City Council adopts an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, which action include, but are not limited to, incurring any new monetary or legal obligations, or expanding any existing monetary or legal obligations, entering into agreements with any person for any purpose, or amending or modifying any existing agreements, and taking any action with respect to a redevelopment plan;

(b) Prior to the enactment of an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, the Agency will be unable to continue efforts to eliminate and prevent blight (including remediation of buildings and structures which are unhealthy or unsafe to occupy or properties with hazardous waste), stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure;

(c) Blighting conditions in the Project Area constitute substantial threats to public peace, health and safety, and are so prevalent they cannot be eliminated without Agency action, including but not limited to, the use of Agency funds and authorization of redevelopment projects and programs;

(d) During the current economic crisis, the Agency must have the ability to act and continue the efforts set forth in (b) above. The Agency must have all tools available in order to eliminate and prevent blighting conditions, including implementation of the Agency's economic development programs and projects that include, but are not limited to, the following:

South Industrial Park Plan  
Railroad Crossing Upgrades  
Brownfield Determination Study  
Brownfield Clean-up  
ADA Accessibility Upgrades/Curb Cuts  
Façade Improvement Loan/Grant Program  
Façade Improvement Grant Match (CDBG)  
Downtown Light Improvements  
Public Infrastructure  
Public Signage  
Storm Drainage Improvements - Lem Ind'l Pk  
Venture Place Construction (Lot 14 Road)  
Pedersen Park  
Agency Property Maintenance  
Bond Proceeds Projects

(e) The Agency is actively engaged in efforts to rehabilitate housing units, to provide assistance for property improvements and to provide safe and affordable housing. Adoption of this Urgency Ordinance will permit the Agency to continue these efforts immediately.

Section 12. **Effective Date.** The City Council hereby declares, on the basis of the findings set forth above, that an emergency exists and that this Ordinance is necessary to preserve the public peace, health and safety. Accordingly, this Ordinance is adopted as an emergency ordinance and shall take effect and be in force immediately upon its adoption.

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The foregoing Urgency Ordinance was introduced at a Regular Meeting of the City Council of the City of Lemoore held on July 19, 2011, and was passed and adopted at that meeting, by not less than a 4/5 vote of the City Council, as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Willard J. Rodarmel, Mayor

ATTEST:

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Nanci C.O. Lima, MMC  
City Clerk