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FOUNDATION OF NORTHERN
CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PACIFIC MEDIA WORKERS GUILD;
ANGEL JOSE FLORES; JULISSA RUIZ
RAMIREZ; ALYSSA LEIVA;

Plaintiffs,

vs.

CITY OF MODESTO, BRANDON
GILLESPIE, in his official capacity as Modesto
Chief of Police,

Defendants.

CASE NO. 2:26-CV-01623-JAM-CKD

**DECLARATION OF DYLAN
VERNER-CRIST IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION
WITH EXHIBITS A-L**

Judge: Hon. John A. Mendez
Courtroom: 6, 14th Floor
Date: June 30th, 2026
Time: 1:00 p.m.

1 I, Dylan Verner-Crist, declare:

2 1. I have personal knowledge of the facts set forth in this declaration, and if called to
3 testify as a witness thereto, could do so competently under oath.

4 2. I am the Senior Lead Investigator at the American Civil Liberties Union
5 Foundation of Northern California (“ACLU”). In my role, I conduct factual investigations of
6 potential civil rights violations.

7 3. I obtained the documents that are the subject of Plaintiffs’ Request for Judicial
8 Notice (“RJN”) relating to meetings of the Modesto City Council directly from the
9 City’s official public website, which publishes public records related to the City Council’s
10 agendas, meeting minutes, agenda reports, and related meeting materials. Those records
11 are publicly available at the City’s Agenda, Minutes and Video
12 webpage: <https://www.modestogov.com/745/Agendas-Minutes-Videos>. The documents attached
13 as exhibits to Plaintiffs’ RJN are true and correct copies of the records as they appeared on the
14 City’s website when accessed and downloaded.

15 4. The City of Modesto’s official public website links to an official YouTube
16 channel maintained by the City for the publication of video recordings of City Council
17 meetings. I obtained the video recordings that are the subject of Plaintiffs’ RJN directly from the
18 City’s YouTube page available at: <https://www.youtube.com/@TheCityofModesto/videos>. Those
19 recordings are true and correct recordings of the City Council meetings made publicly available
20 by the City through its official YouTube channel.

21 5. For the convenience of the Court, certified transcripts of the recorded meetings
22 that are the subject of Plaintiffs’ RJN were prepared by a certified court reporter, who transcribed
23 the publicly available video recordings of the specific City Council meetings identified in
24 Plaintiffs’ RJN. Those transcripts are true and correct transcriptions of the proceedings reflected
25 in the corresponding video recordings of the City Council meetings.

26 6. Attached hereto as **Exhibit A** is a true and correct copy of a California Public
27 Records Act (“CPRA”) request that my office sent to the Modesto Police Department (“MPD”)

on June 27, 2025 seeking records relating to the enforcement of Modesto's Protest Restrictions Ordinance set forth at Municipal Code § 4-23.02 ("Ordinance").

7. Attached hereto as **Exhibit B** is a true and correct copy of email correspondence between MPD officers and other City officials regarding the installation of a camera trailer in the 10th Street Plaza ahead of the planned June 14, 2025 ICE Out protest. This email correspondence was produced in response to the June 27, 2025 CPRA request.

8. Attached hereto as **Exhibit C** is a true and correct copy of email correspondence between MPD officials regarding a Modesto Bee request for the names of people arrested during the June 14, 2025 ICE Out protest. This email correspondence was produced in response to the June 27, 2025 CPRA Request.

9. Attached hereto as **Exhibit D** is a true and correct copy of a California Public Records Act ("CPRA") request that my office sent to the City of Modesto on July 10, 2025 seeking records relating to the passage and implementation of the Ordinance.

10. Attached hereto as **Exhibit E** is a true and correct copy of correspondence between MPD Chief Brandon Gillespie and the Modesto City Council. This correspondence was produced in response to the July 10, 2025 CPRA request.

11. Attached hereto as **Exhibit F** is a true and correct copy of a Modesto Community Police Review Board presentation regarding the Ordinance. This presentation was produced in response to the July 10, 2025 CPRA request.

12. Attached hereto as **Exhibit G** are true and correct copies of photos that I took on May 1, 2026 showing MPD surveillance cameras at the 10th Street Plaza, Five Points intersection, Graceada Park, and Enslin Park in the City of Modesto.

13. Attached hereto as **Exhibit H** are true and correct copies of photos that I took on May 1, 2026 showing posted notices regarding the Ordinance at the 10th Street Plaza, Five Points intersection, Graceada Park, and Enslin Park in the City of Modesto. As the photos show, the posted notices were often directly next to MPD surveillance cameras. The metal posted notices displayed an outdated version of the Ordinance. The plastic posted notices provide a QR

code to Modesto's Code of Ordinances, which (as of May 1, 2026) also linked to an outdated version of the Ordinance.

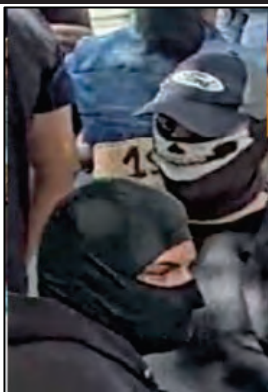
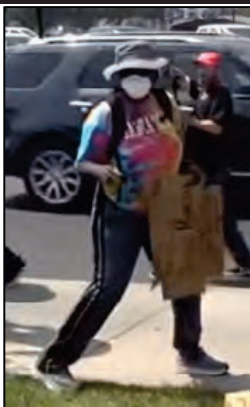
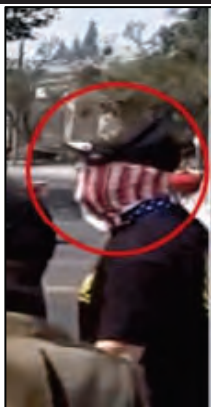
14. Attached hereto as **Exhibit I** is a true and correct copy of an advisement posted by MPD on their Facebook page on October 18, 2025 concerning enforcement of the Ordinance at the October 18, 2025 No Kings protest.

15. Attached hereto as **Exhibit J** is a true and correct copy of an advisement posted by MPD on their Facebook page on March 28, 2026 concerning enforcement of the Ordinance at that day's No Kings protest.

16. Attached hereto as **Exhibit K** is a true and correct copy of a March 13, 2026 Facebook post by MPD concerning Automated License Plate Reader data sharing.

17. Attached hereto as **Exhibit L** and provided below is a true and correct copy of a demonstrative table that I made showing the types of facial coverings and safety gear that are allowed and prohibited under the Ordinance. I made this table using images featured in the November 25, 2025 City of Modesto Council Agenda Report and a video-recorded presentation to the City Council on December 2, 2025, which I obtained at the links detailed in paragraphs three and four above, and which are subject to Plaintiffs' RJN. The photos of the frog and ninja costumes I found and are available at <https://tinyurl.com/5n87bpk4/> and <https://tinyurl.com/25sjsrdt>, respectively.

ALLOWED	SUBJECT TO ARREST AND JAIL TIME
	
<i>Council Presentation (timestamp 1:15:45)</i>	<i>Agenda Report Index – Exhibit 3</i>

ALLOWED	SUBJECT TO ARREST AND JAIL TIME
 2022-08-27 10:00:00 AXON BODY 3 <i>Agenda Report Index – Exhibit 18</i>	 2022-08-28 10:00:00 AXON BODY 3 <i>Agenda Report Index – Exhibit 9</i>
 <i>Agenda Report Index – Exhibit 21</i>	 <i>Agenda Report Index – Exhibit 4</i>
 <i>Agenda Report Index – Exhibit 11</i>	 <i>Agenda Report Index – Exhibit 11</i>
 <i>Frog Costume</i>	 <i>Agenda Report Index – Exhibit 16</i>

ALLOWED	SUBJECT TO ARREST AND JAIL TIME
	
<i>Ninja Costume</i>	<i>Agenda Report Index – Exhibit 4</i>

18. Attached hereto as **Exhibit M** and provided below is a true and correct copy of a demonstrative table that I made showing the types of facial coverings and safety gear that are allowed and prohibited under the Ordinance. I made this table using exhibits attached to two journalists' declarations filed concurrently with Plaintiffs' Motion for Preliminary Injunction and an image of a Darth Vader costume that is publicly available at: <https://tinyurl.com/mr262zay>. See Fitzgerald Decl., Ex. D; Green Decl., Ex. G.

ALLOWED	BANNED	BANNED
		
<i>Darth Vader Costume</i>	<i>Press in Helmet with Gas Mask</i>	<i>Press in Helmet with Vest</i>

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Los Angeles, California this 12th day of May, 2026.


Dylan Verner-Crist

EXHIBIT A



June 27, 2025

VIA ELECTRONIC MAIL ONLY

Chief Brandon Gillespie
Modesto Police Department
600 10th Street
Modesto, CA 95354
reportrequest@modestopd.com
MPDChief@modestogov.com

RE: Public Records Act Request Regarding Enforcement of Modesto's Protest Restrictions Ordinance

Dear Chief Gillespie:

I write to seek records regarding the Modesto Police Department's enforcement of the City of Modesto's Protest Restrictions Ordinance, which is codified at Title 4, Chapter 23 of the Modesto Municipal Code. Pursuant to the California Public Records Act ("CPRA")¹ and the California Constitution,² I request the following records in the possession or control of the Modesto Police Department ("MPD"):

1. All policies, procedures, training materials, directives, and similar policy memoranda regarding the enforcement of the Protest Restrictions Ordinance.
2. All citations/notices to appear issued by MPD for violations of the Protest Restrictions Ordinance.
3. All incident reports regarding arrests or detentions of individuals for violating the Protest Restrictions Ordinance.
4. All body-worn camera footage and accompanying audio for any arrests or detentions made pursuant to the Protest Restrictions Ordinance.
5. All MPD operational plans and directives regarding crowd control and related enforcement activities for protests held in Modesto in June 2025.

¹ Gov't Code §§ 7920 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

6. For the period May 1, 2025 to present, all communications³ made by or sent to MPD personnel regarding protests in June 2025. This includes, but is not limited to, communications with other Modesto departments regarding such protests, and all communications regarding the use and/or installation of surveillance technology.

In responding to this Request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁴ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁵ This Request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, or other electronic records within MPD’s possession or control. Even if a record was created by a member of another government agency or a member of the public, it still must be produced so long as it is (or was) “used” or “retained” by MPD.⁶

As permitted by the CPRA, this Request sets forth the specific categories of information that we are seeking, rather than asks for documents by name.⁷ It is your obligation to conduct record searches based on the criteria identified herein.⁸ But should you come to believe that the present Request is overly broad, you are required to (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.⁹

The CPRA requires that you respond to this Request in ten days.¹⁰ If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must be in writing, must specify the legal authority on which you rely, and must identify both the name and title of the person(s) responsible for the determination not to disclose.¹¹ Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-

³ In this request, “communications” means all electronic mail, letters, phone messages, text messages, memoranda, recordings of meetings, meeting transcripts, meeting minutes, and all messages sent via messaging platforms (such as Teams, Cisco Jabber, Slack, et cetera).

⁴ Gov’t Code § 7920.530(a).

⁵ *Id.* § 7920.545.

⁶ *Id.* § 7920.530; *see California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); *see also Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

⁷ Gov’t Code § 7922.530(a).

⁸ *See id.* §§ 7922.525-7922.545, 7922.600-7922.605.

⁹ *Id.* § 7922.600(a).

¹⁰ *Id.* § 7922.535(a).

¹¹ *Id.* § 7922; *see also id.* § 7922.540.

exempt portion of that record.¹² Please note that the CPRA “endows” MPD with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹³

Because the ACLU is a non-profit entity and this Request pertains to a matter of public concern, I request a fee waiver. None of the information obtained will be sold or distributed for profit. I also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver. If, however, you are unwilling to waive costs and anticipate that costs will exceed \$50, or that the time needed to copy the records will delay their release, please contact me that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible, and—if necessary—on a rolling basis, to dvernercris@aclunc.org or 39 Drumm Street, San Francisco, CA 94111.

Lastly, please produce complete documents, including exhibits and attachments. If only a portion of a document is directly responsive to this request, please produce the entire document.

Thank you in advance for your assistance with this Request. I look forward to receiving your response within ten days. And once again, if you require any clarification of this Request, please let me know.

Best,



Dylan Verner-Crist
Investigator (Lead)
ACLU Foundation of Northern California
dvernercris@aclunc.org
916-252-7930

¹² *Id.* § 7922.525(b), 7922.535(a).

¹³ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); *see also Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

EXHIBIT B

Date : 6/18/2025 12:56:32 PM
From : "Adam Foster" fostera@modestopd.com
To : "Nathan Andersen" nandersen@modestogov.com, "Joanne Farish" jfarish@modestogov.com, "Doug Ridenour Jr" RidenourDM@Modestopd.com
Cc : "Michael Hicks" HicksM@Modestopd.com, "Jordan Moffett" moffettj@modestopd.com
Subject : Re: Question
Attachment : image001.png;Outlook-4yqdhdn0.png;

Nathan,

We got a notice yesterday and are planning on removing it prior to your load-in time. Apologies for the inconvenience.

Adam Foster

Modesto Police Department (Air Support Unit / Camera Team)
[600 10th Street](#)
[Modesto, CA 95354](#)
(W) 209-422-8376



From: Nathan Andersen <ndandersen@modestogov.com>
Sent: Wednesday, June 18, 2025 12:51 PM
To: Joanne Farish <jfarish@modestogov.com>; Adam Foster <fostera@modestopd.com>; Doug Ridenour Jr <RidenourDM@Modestopd.com>
Subject: FW: Question

Hello Gentlemen,

The new camera trailer looks great, but unfortunately we need it moved because we have a motorcycle show loading in Friday and some of it will need to load through that space at Kst and 10th where the cameras trailer is set up. I assume it was put there for the protest last weekend, do you need it in place there still? We have load-in on Friday, show is Saturday, so there would be load-out Saturday evening/night as well.

Nathan Andersen
Production Technician & Safety Coordinator
City of Modesto, Modesto Centre Plaza
(209) 652-5949
ndandersen@modestogov.com

From: Joanne Farish
Sent: Tuesday, June 17, 2025 12:09 PM
To: Munazza Hussain <hussainm@modestopd.com>
Subject: Question

Good afternoon,

I know you're not the person to reach out to but maybe you can point me in the right direction. There is a mobile camera stationed on our front access to the park plaza where 10th st dead ends into K St. That area is used for events to load in equipment. We have an event loading in on Friday and the event day is Saturday. They will be needing access to this entrance both days who can I speak to about getting it moved?

Thanks,

Joanne Farish
Events Coordinator
Modesto Centre Plaza / City of Modesto
(209) 577-6445



EXHIBIT C

Date : 6/16/2025 12:53:51 PM
From : "Sharon Bear" BearS@Modestopd.com
To : "Brandon Gillespie" GillespieB@Modestopd.com
Cc : "Ivan Valencia" Valenciai@Modestopd.com, "Christopher Adams" AdamsC@Modestopd.com
Subject : RE: Request from Bee regarding No King Arrests

Do you want it to be like this: Charges - restrictions on use of specified items during public assembly and obstructing an officer in the performance of their duties?

Should I just say they were in possession of items that are restricted during public assembly?

Or, I could just list the MMC.

Sharon Bear

Public Safety Information Officer
Modesto Police Department
600 10th Street
Modesto, CA 95354
Desk:Â (209) 342-6107
Cell:Â (209) 652-0514
Bears@modestopd.com

From: Brandon Gillespie <GillespieB@Modestopd.com>
Sent: Monday, June 16, 2025 11:59 AM
To: Sharon Bear <BearS@Modestopd.com>
Cc: Ivan Valencia <Valenciai@Modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>
Subject: Re: Request from Bee regarding No King Arrests

I would change the descriptions for the mask violations to- restrictions on use of specified items during public assembly.

On Jun 16, 2025, at 11:31AM, Sharon Bear
<[BearS@modestopd.com](mailto: BearS@modestopd.com)> wrote:

Here is the info:

The following arrests were made during Saturday's protest in Modesto:

- Angel Flores, 42, of Modesto – charged with wearing a mask for unlawful purposes and obstructing an officer in the performance of their duties.

- Lucas Foster, 22, of Modesto – charged with wearing a mask for unlawful purposes.
- Stephen Allen, 50, of Modesto – charged with obstructing officers and disorderly conduct.
- Elijah Coleman, 26, of Turlock – charged with wearing a mask for unlawful purposes.
- Duane Johnson, 22, of Modesto – charged with wearing a mask for unlawful purposes.
- Isaac Martin, 20, of Modesto – charged with wearing a mask for unlawful purposes.

Thanks,

Sharon Bear

Public Safety Information Officer
Modesto Police Department
600 10th Street
Modesto, CA 95354
Desk:Â (209) 342-6107
Cell:Â (209) 652-0514
Bears@modestopd.com

From: Ivan Valencia <Valenciai@Modestopd.com>
Sent: Monday, June 16, 2025 9:50 AM
To: Sharon Bear <BearS@Modestopd.com>; Brandon Gillespie <GillespieB@Modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>
Subject: RE: Request from Bee regarding No King Arrests

Can you compile a list and share with us first please.

From: Sharon Bear <BearS@Modestopd.com>
Sent: Monday, June 16, 2025 9:49 AM
To: Brandon Gillespie <GillespieB@Modestopd.com>; Ivan Valencia <Valenciai@Modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>
Subject: Request from Bee regarding No King Arrests

Good morning,
The Modesto Bee is asking for the names of those arrested at the protest along with their charges. Any issues with me providing that to them?
Thanks,

Sharon Bear

Public Safety Information Officer

Modesto Police Department
600 10th Street
Modesto, CA 95354
Desk:Â (209) 342-6107
Cell:Â (209) 652-0514
Bears@modestopd.com

EXHIBIT D



Northern
California

VIA EMAIL ONLY

July 10, 2025

Diane Nayares-Perez, City Clerk
City of Modesto
1010 10th Street
Modesto, CA 95354
dnayaresperez@modestogov.com
council@modestogov.com

RE: Public Records Act Request - Modesto Ordinance Concerning Restrictions on Public Assembly

Dear Ms. Nayares-Perez:

Pursuant to the California Public Records Act (“CPRA”)¹ and the California Constitution,² I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal”) to request records from the City of Modesto (“City”) regarding the City’s Municipal Code Title 4, Chapter 23, Section 4-23.02, concerning restrictions on use of specified items during public assembly.

Please provide copies of the following records in the possession or control of the City, its departments, and staff:

Records Requested

1. All records of communications, such as voicemails, emails, text messages, and memoranda, including but not limited to communications between City Councilmembers, between any City Councilmember and any City staff, and between any City Councilmember and any member of the public, related to:
 - a. The proposal, drafting, adoption, revision(s), and/or amendment(s) of (i) Ord. No. 3701-C.S.; (ii) Ord. No. 3702-C.S.; (iii) Ord. No. 3735-C.S.; **or** (iv) Ord. No. 3736-C.S. (collectively, the “Ordinances”);

¹ Gov’t Code § 7920 *et seq.*

² Cal. Const., art. I, § 3(b)(2).



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- b. The “Straight Pride event” scheduled for on or around August 24, 2019 and any other public assemblies motivating the proposal, drafting, adoption, revision(s), and/or amendment(s) of any of the Ordinances;
2. All records of prior drafts of the Ordinances, including but not limited to any edits and comments made on those drafts; and
3. All City Council meeting records concerning any of the Ordinances, including all recordings, agendas, staff memoranda, public comments, legislative findings, and minutes.

In responding to this Request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”³ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁴ This Request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, or other electronic records within the City’s possession or control. Even if a record was created by a member of another government agency or a member of the public, it still must be produced so long as it is (or was) “used” or “retained” by the City.⁵

As permitted by the CPRA, this Request sets forth the specific categories of information that we are seeking, rather than asks for documents by name.⁶ It is your obligation to conduct record searches based on the criteria identified herein.⁷ But should you come to believe that the present Request is overly broad, you are required to (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.⁸

The CPRA requires that you respond to this Request in **ten days**.⁹ If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must be in writing, must specify the legal authority on which you rely, and must identify both the name and title of the person(s)

³ Gov’t Code § 7920.530(a).

⁴ *Id.* § 7920.545.

⁵ *Id.* § 7920.530; see *California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); see also *Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

⁶ Gov’t Code § 7922.530(a).

⁷ See *id.* §§ 7922.525–7922.545, 7922.600–7922.605.

⁸ *Id.* § 7922.600(a).

⁹ *Id.* § 7922.535(a).



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California

responsible for the determination not to disclose.¹⁰ Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹¹ Please note that the CPRA “endows” the City with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹²

Because the ACLU NorCal is a non-profit organization and this Request pertains to a matter of public concern, we request a fee waiver. None of the information obtained will be sold or distributed for profit. I also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver. If, however, you are unwilling to waive costs and anticipate that costs will exceed \$50, or that the time needed to copy the records will delay their release, please contact me that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible, and—if necessary—on a rolling basis, to snathu@aclunc.org or 39 Drumm Street, San Francisco, CA 94111.

Lastly, please produce complete documents, including exhibits and attachments. If only a portion of a document is directly responsive to this request, please produce the entire document.

Thank you in advance for your assistance with this Request. I look forward to receiving your response within ten days. And once again, if you require any clarification of this Request, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shaila".

Shaila Nathu
Democracy, Speech, & Technology, Staff Attorney
American Civil Liberties Union Foundation of Northern California
snathu@aclunc.org

¹⁰ *Id.* § 7922; *see also id.* § 7922.540.

¹¹ *Id.* § 7922.525(b), 7922.535(a).

¹² *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); *see also Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

EXHIBIT E

Date : 6/17/2025 10:29:40 PM
From : "Brandon Gillespie" GillespieB@Modestopd.com
To : "COUNCIL" COUNCIL@modestogov.com, "Joe Lopez"
joelopez@modestogov.com, "Jose M. Sanchez"
jose.sanchez@redwoodpubliclaw.com
Cc : "Team1" Team1@modestogov.com, "Sharon Bear"
BearS@Modestopd.com, "Bob Meredith" MeredithB@modestopd.com,
"Christopher Adams" AdamsC@Modestopd.com, "Ivan Valencia"
Valenciai@Modestopd.com, "Jessica Smart" SmartJ@modestopd.com,
"Robert Reyna" ReynaR@Modestopd.com, "Brian Binkley"
BinkleyB@modestopd.com, "Daniel Starr" StarrD@modestopd.com
Subject : RE: Monitoring of Regional and Local Protest Activity
Attachment : Masked Group of three.jpg;Grey Sweatshirt2 mask-
pole.png;Brown Tactical Gear1.png;CVBIPOCC Post.png;image001.png;

Good evening,

This afternoon, MPD was made aware that CVBIPOCC is planning a press conference tomorrow (Wednesday) at 5:00 p.m. in front of City Hall. The group is protesting the arrests of six individuals during Saturday's demonstration and is encouraging attendees to participate in the CPRB meeting to demand: the dismissal of charges, the repeal of Modesto Municipal Code §4-23.02(13), an independent investigation into MPD's actions, and an end to what they describe as political repression.

Of the seven individuals arrested on Saturday, five were in violation of the municipal code prohibiting the use of face coverings to conceal identity. Prior to any enforcement action, officers issued clear PA announcements in both English and Spanish outlining the ordinance and consequences for noncompliance. Two of the individuals were also personally warned before being taken into custody. Despite these efforts, they refused to comply and were arrested. Attached are photos of some of these individuals prior to their arrest.

It's important to reiterate that peaceful protest is not defined solely by the absence of violence—it also requires adherence to the law. Unfortunately, CVBIPOCC distributed literature encouraging attendees to conceal their identities, a recommendation that runs counter our local ordinance and poses clear safety concerns.

In light of concerns raised by downtown business owners, prior experiences with protest agitators, and recent violent protests in Los Angeles, MPD employed an early and strategic enforcement approach. This included targeted arrests of those openly refusing to comply with the law, to prevent escalation and protect the rights and safety of peaceful demonstrators. I believe this strategy was effective in preserving the overall safety of the event and maintaining order.

I would also like to extend my appreciation to the organizers of the Graceada Park protest, who set a positive example by overtly promoting lawful conduct and leading a large, peaceful demonstration that remained largely in compliance with local ordinances.

Please don't hesitate to reach out with any questions ahead of tomorrow's meeting.

Brandon Gillespie

Police Chief

Modesto Police Department

600 10th Street

Modesto, CA 95354

From: Brandon Gillespie <GillespieB@Modestopd.com>

Sent: Saturday, June 14, 2025 8:08 PM

To: COUNCIL <COUNCIL@modestogov.com>; Joe Lopez <joelopez@modestogov.com>; Jose M. Sanchez <jose.sanchez@redwoodpubliclaw.com>

Cc: Team1 <Team1@modestogov.com>; Sharon Bear <BearS@Modestopd.com>; Bob Meredith <MeredithB@modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>; Ivan Valencia <Valenciai@Modestopd.com>; Jessica Smart <SmartJ@modestopd.com>; Robert Reyna <ReynaR@Modestopd.com>; Brian Binkley <BinkleyB@modestopd.com>; Daniel Starr <StarrD@modestopd.com>

Subject: RE: Monitoring of Regional and Local Protest Activity

Good evening Mayor and Council,

I wanted to provide you with a final update regarding the protest activity that occurred today in our City. All events have now concluded, and our department has returned to normal staffing levels.

The day included three separate events: a 10:00 a.m. protest organized by CVBPOC, the larger “No Kings” protest at 12:00 p.m., and the Juneteenth Celebration hosted by the King Kennedy Center. Below is a brief summary of each:

10:00 a.m. Protest (CVBPOC):

This event drew approximately 150 attendees. While organizers arrived early and initially indicated compliance with city regulations, one began using a prohibited bullhorn and was subsequently issued a citation. As the protest grew, two individuals arrived carrying flags with wooden poles, wearing full face coverings (not medical masks), and one with a tactical vest—items prohibited under our municipal code. Despite repeated verbal warnings and public address announcements in both English and Spanish, they refused to comply. In total, five individuals were arrested, either at the scene, during the march to Graceada Park, or at the park itself, for violating city ordinances. These arrests were made early and intentionally to remove agitators who showed clear intent to not follow the law and potentially disrupt an otherwise lawful and peaceful gathering. This allowed for a safer environment for compliant attendees to exercise their rights.

It is also worth noting that during one of these arrests, Steven Allen, an individual known for frequently disruptive behavior during public comment at Council meetings, attempted to impede a patrol vehicle from leaving with an arrestee. He was arrested and booked into jail for delaying/interfering with a police officer.

12:00 p.m. No Kings Protest:

This event saw a significantly larger turnout, with crowd estimates ranging between 2,000–3,000 participants. The protest remained peaceful throughout. Organizers did an outstanding job directing attendees to stay on sidewalks, avoid blocking intersections, and remain calm and orderly. Despite the large crowd and heavy vehicle presence, enforcement actions were minimal. Officers issued 18 citations (primarily for unsafe

behavior such as dangerously hanging out of car windows), and five vehicles were towed —two for reckless driving.

We are extremely appreciative of the efforts by both the organizers and attendees for ensuring this was a safe and peaceful event.

Juneteenth Celebration at Graceada Park:

No incidents or issues were reported during this event.

Additional Note on CPRB Communication:

On Wednesday evening, I sent an internal email to members of the Community Police Review Board (CPRB) to provide awareness of the upcoming protests and offer talking points in case they were contacted by the public. While the email did not contain any confidential or sensitive information, it was disappointing to see that a screenshot of the message was shared publicly on the StanislausWatch Instagram page. I plan to address this with the board.

Summary of Enforcement Actions for the Day:

- 6 individuals booked into jail
- 1 misdemeanor citation issued
- 18 traffic citations issued
- 5 vehicles towed

While it was a busy day for our personnel, it was encouraging to see that the vast majority of participants peacefully exercised their constitutional rights to assemble and protest. I'm proud of our department's measured response and coordination throughout the day.

Please don't hesitate to reach out if you have any questions or would like further detail.

Brandon Gillespie

Police Chief

Modesto Police Department

600 10th Street

Modesto, CA 95354

From: Brandon Gillespie <GillespieB@Modestopd.com>

Sent: Friday, June 13, 2025 8:20 PM

To: COUNCIL <COUNCIL@modestogov.com>; Joe Lopez <joelopez@modestogov.com>; Jose M. Sanchez <jose.sanchez@redwoodpubliclaw.com>

Cc: Team1 <Team1@modestogov.com>; Sharon Bear <BearS@Modestopd.com>; Bob Meredith <MeredithB@modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>; Ivan Valencia <Valenciai@Modestopd.com>; Jessica Smart <SmartJ@modestopd.com>; Robert Reyna <ReynaR@Modestopd.com>

Subject: RE: Monitoring of Regional and Local Protest Activity

Good evening Mayor and Council,

I wanted to update you on the latest information we have regarding protest events in the city tomorrow.

10am

Ice Out Mass Mobilization Protest- 10th Street Plaza

- Hosted by CVBPOCC
- Over 2,200 social media likes
- CVBPOCC doesn't usually draw a big crowd but due to the recent anti-ICE protests in the state this could draw a larger crowd than normal

10am-11am

- Oakdale/Orangeburg- Anti-Trump Protest
- Hosted by Modesto Events to Retain Democracy- No problems anticipated (They do the weekly protests)
- This group usually has 25-50 people and are peaceful

11:45 AM-2PM

No King- National Day of Defiance Schedule

- One of the host organizers is reporting to have received 700 RSVP's to attend the event
- Although this could be a very large protest, organizations are advocating for it to be a peaceful protest
- 11:45- Safety Briefing at Graceada Park
- 12:00 PM-Rally Begins with speakers
- 12:30 PM- Protest March to 5 points
- 1:30 PM- Rejoin Juneteenth Celebration at Graceada Park
- 1:45 PM-Speaker Naramsen Goriel will speak about Indivisible Stanislaus

In addition to the planned protests, the King Kennedy Center will be hosting a Juneteenth Celebration at Graceada Park from 1:00 p.m. to 6:00 p.m. We have been in contact with the event organizers, who are aware that a separate protest will be taking place nearby. At this time, we do not anticipate any issues related to the celebration.

Current intelligence has not identified any organized counter-protest groups or known agitators expected to attend Saturday's events. That said, the Modesto Police Department is fully prepared to respond to any developments if necessary. Our goal is to ensure a peaceful day in which individuals can safely exercise their constitutional rights.

Feel free to reach out to me with any questions.

Brandon Gillespie

Police Chief

Modesto Police Department

600 10th Street

Modesto, CA 95354

From: Brandon Gillespie

Sent: Wednesday, June 11, 2025 11:41 AM

To: COUNCIL <COUNCIL@modestogov.com>; Joe Lopez <joelopez@modestogov.com>; Jose M. Sanchez <jose.sanchez@redwoodpubliclaw.com>

Cc: Team1 <Team1@modestogov.com>; Sharon Bear <BearS@Modestopd.com>; Bob Meredith <MeredithB@modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>; Ivan Valencia <Valenciai@Modestopd.com>; Jessica Smart <SmartJ@modestopd.com>; Robert Reyna <ReynaR@Modestopd.com>

Subject: RE: Monitoring of Regional and Local Protest Activity

Good morning,

I wanted to provide you with a timely update regarding protest activity that may occur locally this weekend. We are aware of a recent social media post by CVBIPOCC (attached) advertising an anti-ICE protest in Modesto scheduled for this Saturday. The Modesto Police Department is actively monitoring the post, assessing its traction, and tracking potential attendance. At this time, there is no indication of a large-scale demonstration, but we are prepared to respond appropriately to any needs that may arise.

As with all demonstrations, MPD remains committed to protecting the constitutional rights of individuals to peacefully protest and assemble. However, we will not tolerate any criminal behavior, including the obstruction of public roadways, acts of vandalism, or other violations of the law. Our goal remains to ensure the safety of all community members while maintaining public order.

We have also noted a recent increase in emails and calls to both the Police Department and City Council expressing anti-ICE sentiments and demands. Based on current trends, we expect this outreach to continue in the days ahead.

For those who may choose to engage with constituents on this topic, I wanted to offer the following talking points for reference:

1. The Modesto Police Department fully complies with California Senate Bill 54 (the California Values Act). We do not engage in general immigration enforcement actions or operations.
2. MPD only assists federal immigration officials in the apprehension of individuals involved in serious or violent criminal activity, as specifically permitted under SB 54.
3. Should protests or rallies occur locally, we will safeguard the community's right to peacefully assemble and express their views—while also enforcing laws that ensure public safety and order.

Please don't hesitate to reach out with any questions. I will continue to keep you informed of any notable updates.



Brandon Gillespie
Police Chief
Modesto Police Department
600 10th Street
Modesto, CA 95354

From: Brandon Gillespie
Sent: Tuesday, June 10, 2025 9:43 AM
To: COUNCIL <COUNCIL@modestogov.com>; Joe Lopez <joelopez@modestogov.com>; Jose M. Sanchez <jose.sanchez@redwoodpubliclaw.com>
Cc: Team1 <Team1@modestogov.com>; Sharon Bear <BearS@Modestopd.com>; Bob Meredith <MeredithB@modestopd.com>; Christopher Adams <AdamsC@Modestopd.com>; Ivan Valencia <ValenciaI@Modestopd.com>; Jessica Smart <SmartJ@modestopd.com>; Robert Reyna <ReynaR@Modestopd.com>

Subject: Monitoring of Regional and Local Protest Activity

Good morning Mayor and Council,

I wanted to provide a brief update regarding recent protest activity across the state related to anti-ICE demonstrations.

The Modesto Police Department is aware of and actively tracking the ongoing anti-ICE protests occurring in Los Angeles. While these demonstrations have not reached the same scale in other cities, we have also noted smaller related protests emerging in San Francisco and Sacramento over the past few days. At this time, there are no scheduled protests of this nature in Modesto, but we continue to closely monitor the situation for any developments.

Additionally, we are aware of a nationwide protest event titled “No Kings” scheduled for this Saturday. Social media postings have indicated a potential local gathering at Graceada Park in connection with this event. Based on current information, we expect the protest to remain peaceful. However, we will continue to monitor social media and other intelligence sources to detect any shift in tone or scope, particularly in light of the broader anti-ICE movement.

We will keep you informed should any significant updates arise.

Please feel free to reach out with any questions.

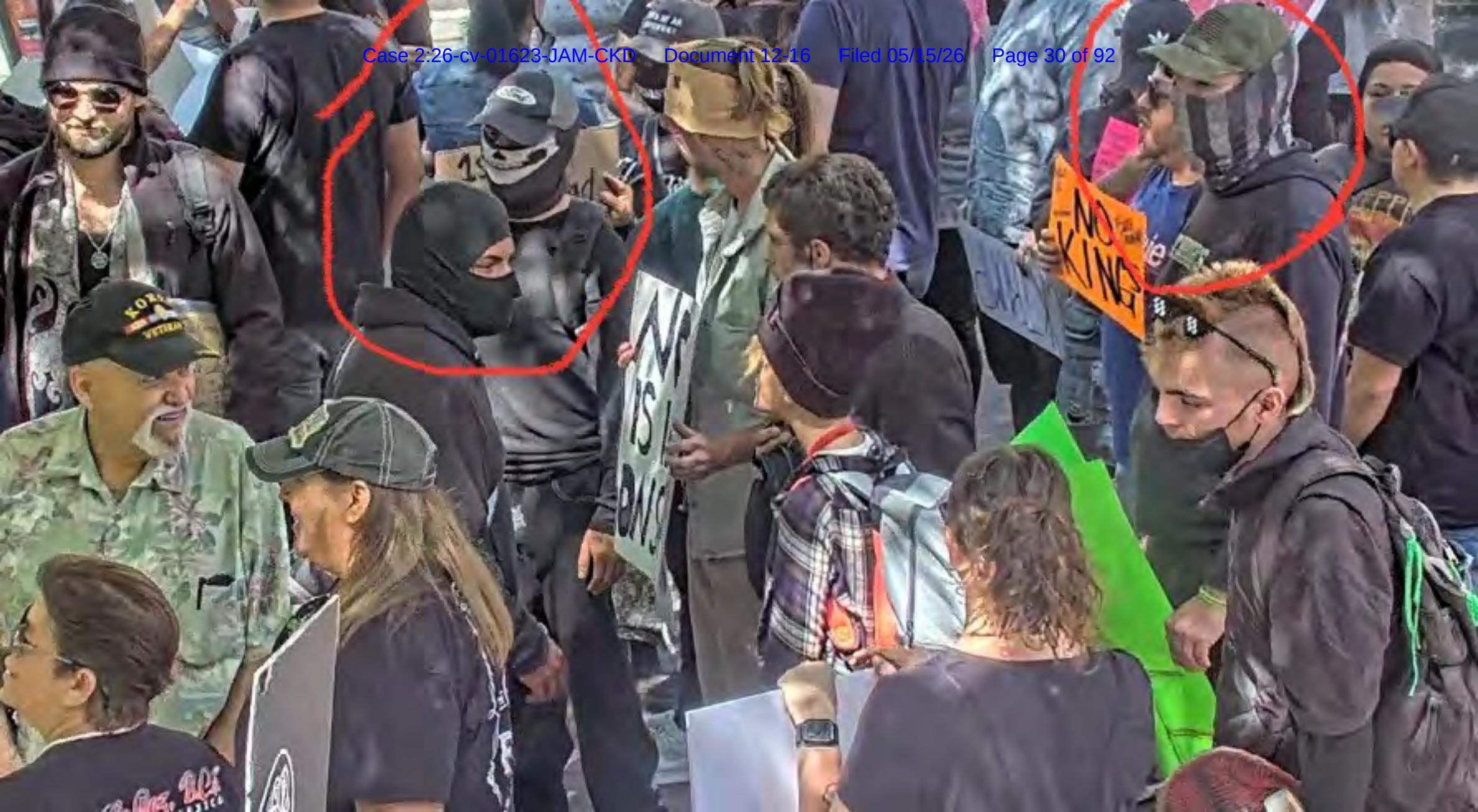
Brandon Gillespie

Police Chief

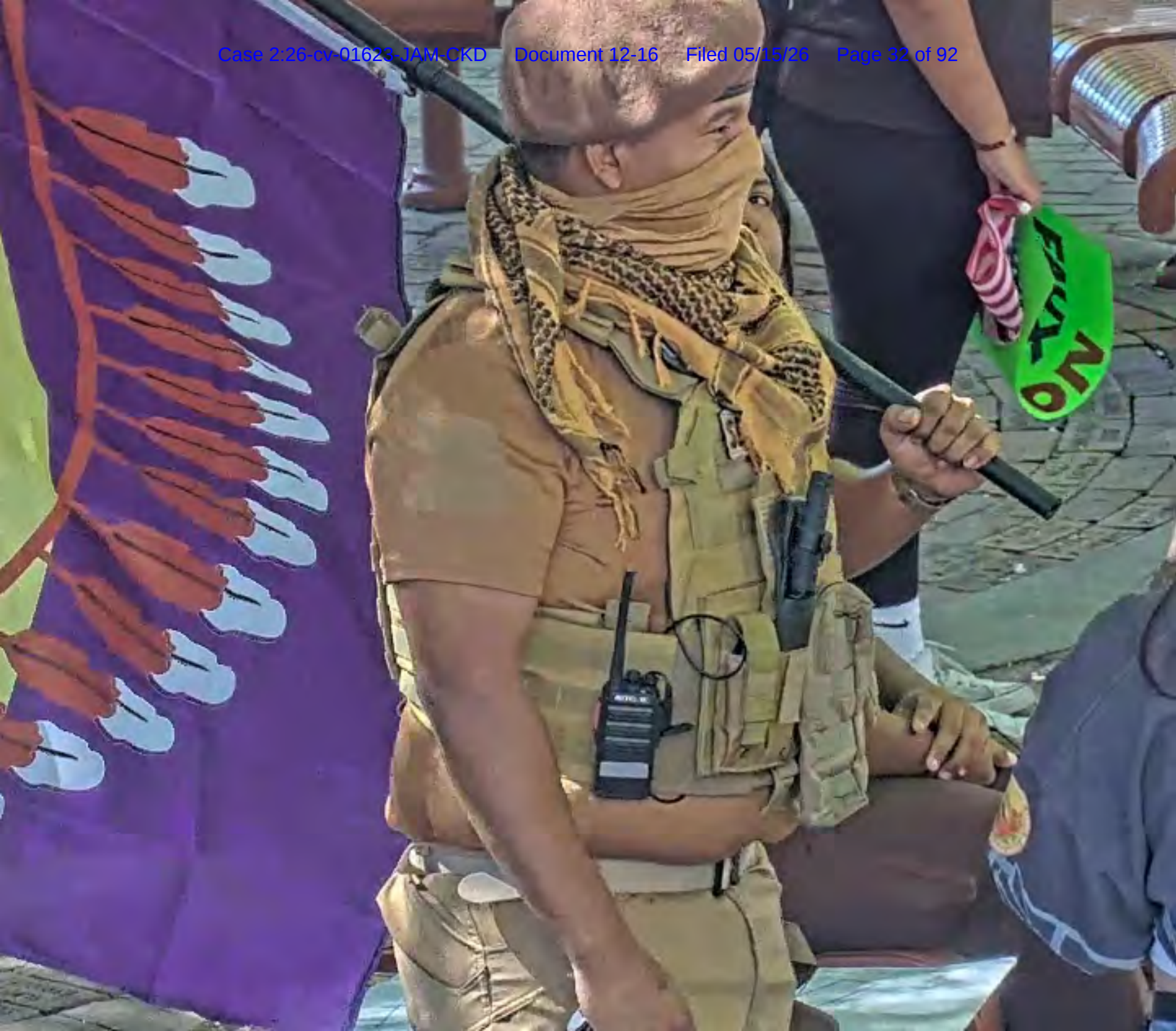
Modesto Police Department

600 10th Street

Modesto, CA 95354







CENTRAL VALLEY CALL TO ACTION: PACK THE POLICE REVIEW BOARD ROOM!

On Saturday June 14th, six protesters were targeted and unjustly arrested by Modesto police at a peaceful anti-deportation protest that began in downtown. Join us for our press conference and attend this Wednesday's community police review board meeting to protest the discriminatory and repressive actions taken by MPD against our community members.

Press Conference

Wednesday, June 18th @ 5:00pm

Modesto City Hall

1010 10th Street, Modesto, CA

Community Police Review Board Meeting

Same date @ 5:30pm

Chambers Conference Room, Basement Level

Same location

10:18

1623-JAM-CKD

Document 12-16

Filed 05/15/26



cvbipocc 2h
Voces Libres...

Follow

...



MASS MOBILIZATION

**FROM LA
TO
MODESTO:
ICE OUT!**

**JUNE 14 - 10:00 AM
10TH ST PLAZA
@CVBIPOCC**

@cvbipocc

Send message...



EXHIBIT F

Date : 9/16/2025 3:27:31 PM

From : "Latricia Beasley-Day" latricia@faithinthevalley.org

To : "Wendy Byrd (NAACP)" wendybyrd@ymail.com, "Brad Hawn" brad.hawn@chgstructural.com, "nico solorio" nicosolo92@yahoo.com

Cc : "Simerdip Bhangoo" sbhangoo@modestogov.com

Subject : Final powerpoint

Attachment : CPRB 2025 Ordinance PP.pptx;

External Email: Please use caution when clicking links and/or opening attachments.

1/5/2026

Ad-Hoc Committee Report on Ordinance 4- 23.02

PRESENTED BY THE COMMUNITY POLICE REVIEW BOARD MEMBERS

WENDY BYRD, BRAD HAWN, NICO SOLORIO, LATRICIA BEASLEY-DAY

SEPTEMBER 17, 2025

Packet of Materials

- ▶ Assignment
- ▶ Ordinance 4-23.02
- ▶ Civil Liberties Definitions
- ▶ Comparisons
- ▶ Letters From the Public
- ▶ Ad-hoc Sample Survey
- ▶ Key Findings
- ▶ Conclusions
- ▶ Recommendations

Assignment

- ▶ Research, analyze and inform the Community Police Review Board (CPRB) of our findings.
- ▶ Our goal is to assist the CPRB Board in making a recommendation to the City Manager regarding Ordinance 4-23.02

The Ordinance

Modesto Municipal Code 4-23.02

Civil Liberties

Freedom of Speech

- ▶ Protected by the First Amendment.
- ▶ Covers spoken words, signs, chants, music, and symbolic acts.
- ▶ Includes unpopular or critical views of government.

Freedom of Assembly

- ▶ Right to gather peacefully in protest.
- ▶ Time, place, and manner restrictions are permitted.
Ordinance # 3701-C.S.; chapter 23
- ▶ Restrictions must be applied content-neutrally

Freedom of Association

- ▶ Right to organize and join advocacy groups.
- ▶ Protects protesters from retaliation for group membership.

Protection Against Government Retaliation

- ▶ Government cannot punish lawful protest activity.
- ▶ Arrests or surveillance based on viewpoint are unlawful.

Equal Protection (14th Amendment)

- ▶ Protesters must be treated equally under the law.
- ▶ Targeting groups or movements is unconstitutional.

Due Process

- ▶ Protesters must be told why they are arrested.
- ▶ Right to legal representation and fair process.
- ▶ Laws restricting protest must not be vague or overbroad.

California Penal Code 185

- ▶ Makes it illegal to wear a mask to evade detection after a crime.
- ▶ Does not criminalize peaceful protest or anonymous expression.
- ▶ Local ordinance duplicates protections already in state law.

Time, Place, and Manner

- ▶ Valid rules must be applied equally to all messages.
- ▶ Cannot favor or disfavor certain viewpoints or groups.

Legal Limits on Protest Rights

- ▶ Speech inciting imminent violence is not protected.
- ▶ Violence or property destruction is not protected.
- ▶ Blocking traffic without a permit can be restricted.
- ▶ Trespassing on private property is not protected.
- ▶ Time, place, and manner rules apply if content-neutral.

Content-Neutral Conditions

- ▶ Restrictions cannot depend on message or subject matter.
- ▶ City must show a significant interest, such as public safety.
- ▶ Must leave open alternative channels for expression.

California Cities With Mask Ordinances

CA has 482 incorporated cities; over 39.5 million population

Oakland population: 443,554

Mask Ordinance Municipal Code 9.08.070 Title 9, Chapter 9.08

Modesto population: 220,592

Mask Ordinance Municipal Code 4-23.02

Lomita population: 20,662

Municipal Code Reference Chapter 1 Sec. 4-1.15

National Context

- ▶ Georgia and Virginia still enforce anti-mask laws.
- ▶ New York State and Washington, D.C. repealed theirs in 2020.
- ▶ North Carolina rolled back a recent expansion after backlash.
- ▶ Los Angeles, CA does not have a mask ordinance
- ▶ ***Trend: broad anti-mask laws are legally vulnerable.***

Letters From The Public

- ▶ American Civil Liberties Union (ACLU)
- ▶ First Amendment Coalition
- ▶ Modesto Stanislaus NAACP
- ▶ The Central Valley Black, Indigenous, People of Color Coalition and Allies
- ▶ Phil Trompetter

Community Engagement Survey

The ad-hoc committee has developed a sample survey to obtain community input.

The City of Modesto has expressed an interest in partnering with the CPRB on adding to and administering the survey.

Further discussions are underway.

Mask Ordinance

- ▶ **1. First Amendment Concerns** – chilling effect on free speech and assembly: Courts recognize that masks can be used for expressive purposes. If a law broadly bans masks, it risk deterring people from attending protest altogether.

- ▶ **2. Freedom of Speech** - Symbolic acts such as mask or face coverings with artistic or graphic expressions could be argued as a freedom of speech.

Mask Ordinance(Cont'd)

- ▶ **3. Overbreadth Doctrine:** If an ordinance criminalizes wearing any mask or face covering at a protest (**even peaceful ones**), it may be struck down as overly broad since it punishes a substantial amount of constitutionally protected activity along with any unprotected conduct.

- ▶ **4. Equal Protection & Selective Enforcement:** If police officers themselves wear tactical gear while prohibiting protesters from doing so, it could show unequal treatment. Selective enforcement, especially targeting certain groups, raises Fourteenth Amendment concerns

Mask Ordinance (Cont'd)

- ▶ **5. Discriminatory Intent or Impact:** if evidence shows the ordinance disproportionately enforced against specific racial, ethnic, or political groups, it could be challenged as unconstitutional under equal protection principles.

- ▶ **6. Vagueness and Due Process:** If an ordinance does not clearly define what qualifies as a “mask” or “face covering”, or if it leaves too much discretion to law enforcement, it risks being struck down as void for vagueness. Vague laws can lead to arbitrary enforcement violating due process.

Conclusion

The current ordinance is in need of revision. With political violence on the rise and more protests expected, public safety must be understood as a shared responsibility. The relationship between law enforcement and the community is reciprocal—each depends on the other. While the ordinance highlights important challenges, it also creates an opportunity to reimagine how law enforcement and the community can collaborate to strengthen public safety in ways tailored to our community's unique needs.

Committee Recommendations to the CPRB

- ▶ **Repeal the mask ordinance provision** and refer remaining sections to the City's Legal Counsel for review and potential amendments.
- ▶ **Authorize the use of megaphones by event organizers** to ensure effective communication with participants during protests.
- ▶ **Human capital (people) and relationships** are the most effective tool in identifying and catching suspects with ill intent. Train organizers and volunteers on crowd sourcing public safety with additional eyes and ears to report suspicious activities.

Closing

This is our moment to learn from the past, grow with wisdom, adapt with courage, unite in purpose, and move forward together toward a stronger future.

Thank you for your attention

EXHIBIT G



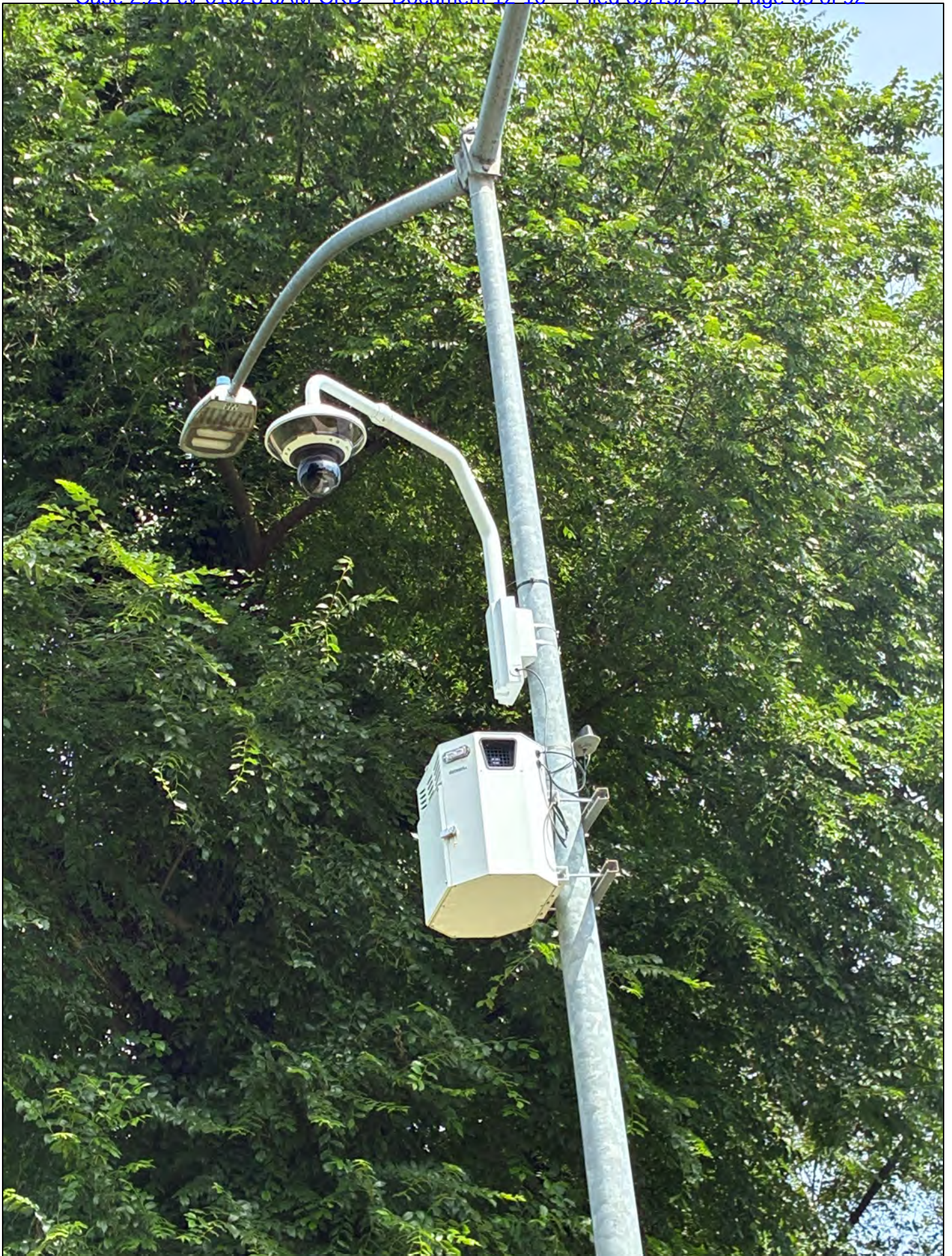












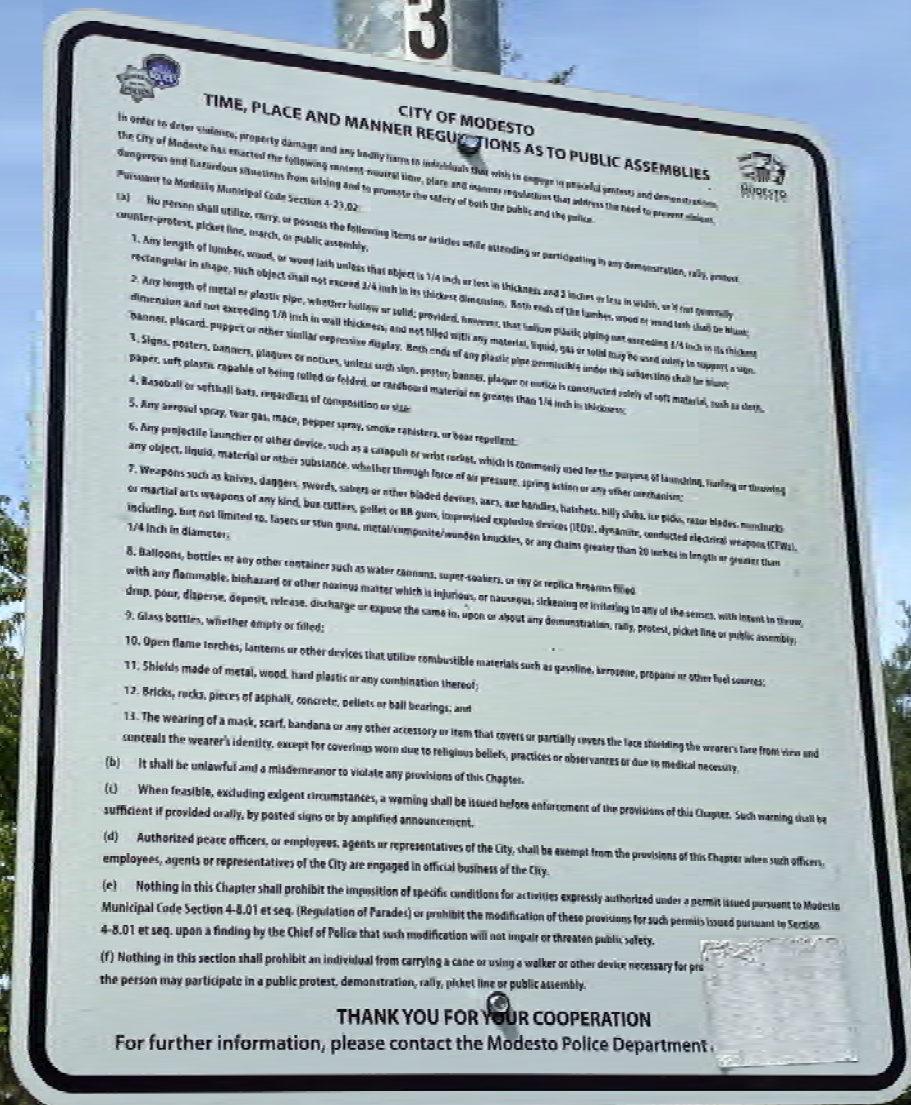


EXHIBIT H

[illegible][illegible]

THANK YOU FOR YOUR COOPERATION
For further information please contact the Modesto Police Department at (530) 872-5600
For other languages and additional assistance laws please visit the CIP pages





[illegible]

THANK YOU FOR YOUR COOPERATION
For further information please contact the Modena Police Department at (209) 572-3500
For other languages and additional applicable laws please scan the QR codes





CITY OF MODESTO



TIME, PLACE AND MANNER REGULATIONS AS TO PUBLIC ASSEMBLIES



SCAN FOR DETAILS

THANK YOU FOR YOUR COOPERATION

For further information, please contact the Modesto Police Department at
(209) 572-9500



CITY OF MODESTO



TIME, PLACE AND MANNER REGULATIONS AS TO PUBLIC ASSEMBLIES



SCAN FOR DETAILS

THANK YOU FOR YOUR COOPERATION

For further information, please contact the Modesto Police Department at
(209) 572-9500





CITY OF MODESTO TIME, PLACE AND MANNER REGULATIONS AS TO PUBLIC ASSEMBLY



In order to deter violence, property damage and any bodily harm to individuals that wish to engage in peaceful protests and demonstrations, the City of Modesto has enacted the following content-neutral time, place and manner regulations that address the need to prevent violent, dangerous and hazardous situations from arising and to promote the safety of both the public and police. Pursuant to Modesto Municipal Code Section 4-23.02:

- (a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:
- (1) Any length of lumber, wood, or wood lath unless that object is one-quarter (1/4) inch or less in thickness and two (2) inches or less in width, or if not generally rectangular in shape, such object shall not exceed three-quarter (3/4) inch in its thickest dimension. Both ends of the lumber, wood or wood lath shall be blunt;
 - (2) Any length of metal or plastic pipe, whether hollow or solid; provided, however, that hollow plastic piping not exceeding three quarter (3/4) inch in its thickest dimension and not exceeding one-eighth (1/8) inch in wall thickness, and not filled with any material, liquid, gas or solid may be used solely to support a sign, banner, placard, puppet or other similar expressive display. Both ends of any plastic pipe permissible under this subsection shall be blunt;
 - (3) Signs, posters, banners, plaques or notices, unless such sign, poster, banner, plaque or notice is constructed solely of soft material, such as cloth, paper, soft plastic capable of being rolled or folded, or cardboard material no greater than one-quarter (1/4) inch in thickness;
 - (4) Baseball or softball bats, regardless of composition or size;
 - (5) Any aerosol spray, tear gas, mace, pepper spray, smoke canisters, or bear repellent;
 - (6) Any projectile launcher or other device, such as a catapult or wrist rocket, which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, whether through force of air pressure, spring action or any other mechanism;
 - (7) Weapons such as knives, daggers, swords, sabers or other bladed devices, axes, axe handles, hatchets, billy clubs, ice picks, razor blades, nunchucks or martial arts weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs), including, but not limited to, Tasers or stun guns, metal/composite/wooden knuckles, or any chain greater than twenty (20) inches in length or greater than one-quarter (1/4) inch in diameter;
 - (8) Balloons, bottles or any other container such as water cannons, super-soakers, or toy or replica firearms filled with any flammable, biohazard or other noxious matter which is injurious, or nauseous, sickening or irritating to any of the senses, with intent to throw, drop, pour, disperse, deposit, release, discharge or expose the same in, upon or about any demonstration, rally, protest, picket line or public assembly;
 - (9) Glass bottles or metal containers, whether empty or filled;
 - (10) Open flame torches, lanterns or other devices that utilize combustible materials such as gasoline, kerosene, propane or other fuel sources;
 - (11) Shields made of metal, wood, hard plastic or any combination thereof;
 - (12) Bricks, rocks, pieces of asphalt, concrete, pellets or ball bearings; and
 - (13) The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer's face from view and conceals the wearer's identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.
 - (14) Any gas masks or similar breathing devices;
 - (15) Any impact resistant helmet, including, but not limited to: motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets;
 - (16) Any laser pointing devices
 - (17) Any umbrellas in the absence of rain. During rainy weather an umbrella shall not exceed sixteen (16) inches in its longest dimension when fully collapsed and shall have a blunt end;
 - (18) Any professionally manufactured or personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant, stab-resistant, or impact resistant, including, but not limited to: riot control gear, sports equipment, bullet-resistant vests, flak jackets, or stab-resistant vests; and
 - (19) Load-bearing or similar "tactical" vests designed to carry weapons, tactical equipment, or armor plates, commonly used by law enforcement or military institutions.
- (b) It shall be unlawful and a misdemeanor to violate any provisions of this chapter.
- (c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.
- (d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.
- (e) Nothing in this chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 et seq. (Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 et seq. upon a finding by the Chief of Police that such modification will not impair or threaten public safety.
- (f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.
- (Ord. No. 3701-C.S., § 2, effective 8-13-19; Ord. No. 3702-C.S., § 2, effective 10-3-19; Ord. No. 3735-C.S., § 2, effective 8-10-21; Ord. No. 3736-C.S., § 2, effective 10-7-21)

THANK YOU FOR YOUR COOPERATION

For further information please contact the Modesto Police Department at (209) 572-9500
For other languages and additional applicable laws please scan the QR codes





EXHIBIT I



Modesto Police Department - Follow

October 18

Community Reminder: Municipal Codes in Effect

We're aware of demonstrations planned for today in Modesto and want to remind everyone that while we support the community's right to peacefully express their views, Modesto's Municipal Codes remain in effect to help ensure safety and order for all.

Please be aware, the following Modesto Municipal Codes are in effect and will be enforced.

Chapter 23 - RESTRICTIONS ON USE OF SPECIFIED ITEMS DURING PUBLIC ASSEMBLY
4-23.01 - Purpose.

(a) To ensure the peaceful expression of free speech, the City of Modesto has adopted the following provisions to limit the use of certain objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or assemblies on public property in order to safeguard against violence for the citizenry of Modesto.
(b) The City of Modesto adopts these content-neutral, time, place and manner regulations to ensure for the safety and welfare of all individuals. These regulations allow for the peaceful expression of differing ideas and views while reducing the risk of violent conflict by prohibiting the use or possession of weapons, or objects that may be weaponized during demonstrations, rallies, protests, counter-protests, picket lines, marches, or public assemblies.

(Ord. No. 3701-C.S., § 2, effective 8-13-19; Ord. No. 3702-C.S., § 2, effective 10-3-19)
4-23.02 - Restrictions.

(a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:

(1) Any length of lumber, wood, or wood lath unless that object is one-quarter (1/4) inch or less in thickness and two (2) inches or less in width, or if not generally rectangular in shape, such object shall not exceed three-quarter (3/4) inch in its thickest dimension. Both ends of the lumber, wood or wood lath shall be blunt;

(2) Any length of metal or plastic pipe, whether hollow or solid; provided, however, that hollow plastic piping not exceeding three quarter (3/4) inch in its thickest dimension and not exceeding one-eighth (1/8) inch in wall thickness, and not filled with any material, liquid, gas or solid may be used solely to support a sign, banner, placard, puppet or other similar expressive display. Both ends of any plastic pipe permissible under this subsection shall be blunt;

(3) Signs, posters, banners, plaques or notices, unless such sign, poster, banner, plaque or notice is constructed solely of soft material, such as cloth, paper, soft plastic capable of being rolled or folded, or cardboard material no greater than one-quarter (1/4) inch in thickness;

(4) Baseball or softball bats, regardless of composition or size;

(5) Any aerosol spray, tear gas, mace, pepper spray, smoke canisters, or bear repellent;

(6) Any projectile launcher or other device, such as a catapult or wrist rocket, which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, whether through force of air pressure, spring action or any other mechanism;

(7) Weapons such as knives, daggers, swords, sabers or other bladed devices, axes, axe handles, hatchets, billy clubs, ice picks, razor blades, nun chucks or martial arts weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs), including, but not limited to, Tasers or stun guns, metal/composite/wooden knuckles, or any chain greater than twenty (20) inches in length or greater than one-quarter (1/4) inch in diameter;

(8) Balloons, bottles or any other container such as water cannons, super-soakers, or toy or replica firearms filled with any flammable, biohazard or other noxious matter which is injurious, or nauseous, sickening or irritating to any of the senses, with intent to throw, drop, pour, disperse, deposit, release, discharge or expose the same in, upon or about any demonstration, rally, protest, picket line or public assembly;

(9) Glass bottles or metal containers, whether empty or filled;

(10) Open flame torches, lanterns or other devices that utilize combustible materials such as gasoline, kerosene, propane or other fuel sources;

(11) Shields made of metal, wood, hard plastic or any combination thereof;

(12) Bricks, rocks, pieces of asphalt, concrete, pellets or ball bearings; and

(13) The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer's face from view and conceals the wearer's identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.

(14) Any gas masks or similar breathing devices;

(15) Any impact resistant helmet, including, but not limited to: motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets;

(16) Any laser pointing devices;

(17) Any umbrellas in the absence of rain. During rainy weather an umbrella shall not exceed sixteen inches in its longest dimension when fully collapsed and shall have a blunt end;

(18) Any professionally manufactured or personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant, stab-resistant, or impact resistant, including, but not limited to: riot control gear, sports equipment, bullet-resistant vests, flak jackets, or stab-resistant vests; and

(19) Load-bearing or similar "tactical" vests designed to carry weapons, tactical equipment, or armor plates, commonly used by law enforcement or military institutions.

(b) It shall be unlawful and a misdemeanor to violate any provisions of this chapter.

(c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.

(d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.

(e) Nothing in this chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 et seq.

(Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 et seq. upon a finding by the Chief of Police that such modification will not impair or threaten public safety.

(f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.

(Ord. No. 3701-C.S., § 2, effective 8-13-19; Ord. No. 3702-C.S., § 2, effective 10-3-19; Ord. No. 3735-C.S., § 2, effective 8-10-21; Ord. No. 3736-C.S., § 2, effective 10-7-21)

Thank you,

MPD

EXHIBIT J



Modesto Police Department ✓

March 28 at 8:56 AM · 🌐

...

The Modesto Police Department is aware of a planned protest taking place in our city this weekend. We fully respect the right of individuals to peacefully assemble and express their views.

Our priority is to ensure that everyone who chooses to participate, as well as those living and working nearby, can do so safely. We would like to remind participants to follow all applicable laws and City of Modesto Municipal Codes which outline items that are prohibited within the city during demonstrations.

We ask everyone to demonstrate responsibly and remain respectful of others.

Thank you for doing your part to keep Modesto safe and peaceful.

To view the Modesto Municipal Codes go to:

https://library.municode.com/.../codes/code_of_ordinances



COMMUNITY INFORMATION

👍😄❤️ 279

248 comments 14 shares

👍 Like

💬 Comment

➦ Share

[View more comments](#)

EXHIBIT K



Modesto Police Department
March 13 · 🌐

Community Notice Regarding Automated License Plate Reader (ALPR) Data Sharing

The Modesto Police Department recently identified an issue related to the configuration of data-sharing connections within our Automated License Plate Reader (ALPR) system. During a detailed review conducted as part of preparing a Public Records Act response, we found that several federal agency connections remained active despite prior efforts to align the system with current legal requirements.

Under California Civil Code § 1798.90.55, ALPR data sharing is limited to California public agencies. Upon identifying the issue, we promptly disabled and removed the affected connections.

The agencies included:

- U.S. Forest Service
- U.S. Park Police
- IRS Criminal Investigations
- San Diego Sector Border Patrol
- MCL Barstow CID
- Department of Veterans Affairs
- U.S. Marshals Service

Following this review, we have taken additional steps to ensure full compliance moving forward. We have since:

- Discontinued the identified sharing connections
- Conducted multiple verification reviews to confirm that no out-of-state or federal sharing remains active
- Implemented mandatory monthly documented compliance audits
- Strengthened policy language to clearly define legal sharing limitations
- Elevated administrative oversight of the ALPR program

ALPR technology remains an important investigative tool. It assists in recovering stolen vehicles, locating missing persons, identifying vehicles connected to violent crimes, and supporting time-sensitive and ongoing investigations.

MPD remains committed to ensuring this technology is used strictly within the boundaries of California law.

In the interest of transparency, we are sharing this information with our community. Our updated ALPR policy is publicly available on our website. We will continue to review our systems and practices to ensure they align with both legal requirements and community expectations.

— Modesto Police Department



COMMUNITY INFORMATION

 185

 Comment

 Share

58 comments 23 shares

EXHIBIT L

ALLOWED	SUBJECT TO ARREST AND JAIL TIME
 <i>Council Presentation (timestamp 1:15:45)</i>	 <i>Agenda Report Index – Exhibit 3</i>
 <i>Agenda Report Index – Exhibit 18</i>	 <i>Agenda Report Index – Exhibit 9</i>
 <i>Agenda Report Index – Exhibit 21</i>	 <i>Agenda Report Index – Exhibit 4</i>

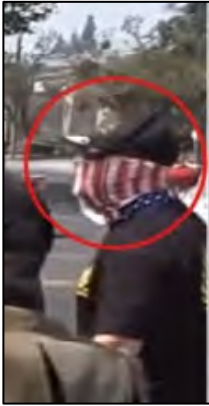
ALLOWED	SUBJECT TO ARREST AND JAIL TIME
 <i>Agenda Report Index – Exhibit 11</i>	 <i>Agenda Report Index – Exhibit 11</i>
 <i>Frog Costume</i>	 <i>Agenda Report Index – Exhibit 16</i>
 <i>Ninja Costume</i>	 <i>Agenda Report Index – Exhibit 4</i>

EXHIBIT M

ALLOWED



Darth Vader Costume

BANNED



Press in Helmet with Gas Mask

BANNED



Press in Helmet with Vest

CHESSIE THACHER (SBN 296767)
cthacher@aclunc.org
ANGELICA SALCEDA (SBN 296152)
asalceda@aclunc.org
SHAILA NATHU (SBN 314203)
snathu@aclunc.org
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PACIFIC MEDIA WORKERS GUILD; ANGEL
JOSE FLORES; JULISSA RUIZ RAMIREZ;
ALYSSA LEIVA;

Plaintiffs,

vs.

CITY OF MODESTO, BRANDON
GILLESPIE, in his official capacity as Modesto
Chief of Police,

Defendants.

CASE NO. 2:26-CV-01623-JAM-CKD

**DECLARATION OF CHESSIE
THACHER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION
WITH EXHIBITS A-D**

Judge: Hon. John A. Mendez
Courtroom: 6, 14th Floor
Date: June 30th, 2026
Time: 1:00 p.m.

1 I, Chessie Thacher, declare:

2 1. I have personal knowledge of the facts set forth in this declaration, and if called to
3 testify as a witness thereto, could do so competently under oath.

4 2. I am a Senior Supervising Attorney at the American Civil Liberties Union
5 Foundation of Northern California (“ACLU”) and represent Plaintiffs Pacific Media Workers’
6 Guild, Angel Jose Flores, Julissa Ruiz Ramirez, and Alyssa Leiva (collectively, “Plaintiffs”) in
7 the above-named action.

8 3. Attached to this declaration as **Exhibit A** is a true and correct copy of a letter,
9 dated July 18, 2025, by the ACLU to the Modesto City Clerk and Councilmembers concerning
10 Municipal Code Title 4, Chapter 23, Restrictions on Use of Specified Items During Public
11 Assemblies (“the Ordinance”).

12 4. Attached to this declaration as **Exhibit B** is a true and correct copy of a letter,
13 dated August 15, 2025, by the ACLU and the First Amendment Coalition (“FAC”) to the
14 Modesto Community Police Review Board (“CPRB”) urging consideration of the Ordinance.

15 5. Attached to this declaration as **Exhibit C** is a true and correct copy of a letter,
16 dated October 9, 2025, by the ACLU and FAC to the Modesto City Clerk and Councilmembers
17 urging consideration of the Ordinance.

18 6. Attached to this declaration as **Exhibit D** is a true and correct copy of a letter,
19 dated December 2, 2025, by the ACLU and FAC to the Modesto City Clerk and
20 Councilmembers urging consideration of the revisions proposed to amend the Ordinance.

21 7. Plaintiffs initiated this action on March 25, 2026 in the Superior Court for the
22 County of Stanislaus. Plaintiffs thereafter effected personal service of the complaint and the
23 other initiating case papers on Defendant City of Modesto (“the City” or “Modesto”) on March
24 26. Defendant Brandon Gillespie, who is sued in his official capacity as Modesto Chief of
25 Police, was served with the same papers on March 27.

26 8. As a courtesy, on March 27, I emailed counsel for the City electronic copies of
27 the complaint and sought to open a new line of communication about the Ordinance and this
28

1 case. I addressed my email to Jose Sanchez, the Modesto City Attorney, and Deborah Fox, an
2 attorney at Meyers Nave with whom I had previously corresponded about the Ordinance. Ms.
3 Fox acknowledged receipt of my email, but advised that her firm had not yet been retained as
4 counsel for Modesto in this matter.

5 9. The City Council's first meeting after the initiation of this lawsuit took place on
6 April 7. The agenda minutes for that meeting reflect that the City Council approved a resolution
7 to amend its Legal Services Agreement with Meyers Nave, which amended the Agreement's
8 scope of work to include litigation and trial counsel support and increased the Agreement
9 amount by \$250,000 for a total Agreement amount not to exceed \$349,500. The Minutes for this
10 meeting can be accessed on the Modesto City Council webpage linked here:

11 <https://tinyurl.com/yvf7jj36>.

12 10. On April 10, Ms. Fox emailed me to advise that Meyers Nave had been retained
13 to defend Defendants in this litigation. Ms. Fox also informed me that Defendants anticipated
14 removing the matter to federal court. Ms. Fox thereafter confirmed that Defendants intended to
15 file the Notice of Removal on or before April 27.

16 11. Defendants filed their Notice of Removal on April 24. The case was assigned to
17 this Court on April 30.

18 12. On May 1, I emailed Ms. Fox to meet and confer about the case. I let her know
19 that Plaintiffs intended to file a Motion for Preliminary Injunction, a Motion for a Declarant to
20 Proceed Pseudonymously, and a Motion for Partial Remand of Plaintiffs' Sixth Cause of Action
21 brought under California's Taxpayer Statute at California Code of Procedure § 526a. I also
22 stated that Plaintiffs intended to notice the hearing for June 16. Because Ms. Fox had a conflict
23 with the proposed preliminary hearing date, Plaintiffs agreed to seek a hearing for the next
24 available date on the Court's calendar, which was June 30.

25 13. Between May 1 and May 13, Ms. Fox and I engaged in substantive meet and
26 confer discussions. This Motion now follows given the need for judicial intervention to protect
27
28

1 the constitutional and statutory rights of Plaintiffs and other members of the public during
2 protests, demonstrations, and other public assemblies taking place in Modesto.

3 I declare under penalty of perjury that the foregoing is true and correct, and that this
4 declaration was executed on May 13, in San Francisco, California.

5 Date: May 13, 2026

Respectfully Submitted,

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7 

8

Chessie Thacher (SBN 296767)

9 *Attorneys for Plaintiffs*
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EXHIBIT A



July 18, 2025

Diane Nayares-Perez
Modesto City Clerk
1010 10th Street
Modesto, CA 95354
dnayaresperez@modestogov.com

VIA EMAIL

RE: Concerns About Anti-Mask Measures in Modesto City Ordinance 4-23.02

Dear City Clerk and Councilmembers:

We write on behalf of the American Civil Liberties Union of Northern California to express concern over Modesto City Ordinance 4-23.02 (“the Ordinance”), which is attached for reference. The Ordinance prohibits people from possessing or wearing at **any** public assembly numerous lawful items like bike helmets, metal water bottles, and—most problematically—face masks. The Ordinance’s general restrictions are so vague and overbroad that they violate due process and undercut the legitimate exercise of free speech protected by both federal and state law. And more specifically, the Ordinance’s anti-masking provision runs afoul of the right to privacy enshrined in California’s Constitution at Article I, section 1, as well as contravenes legal protections for those with disabilities and other health issues. Beyond these blatant facial defects, recent events in Modesto on June 14 indicate that Modesto law enforcement officers are enforcing the anti-masking provision in a disparate and viewpoint-discriminatory manner, which presents yet additional constitutional problems.

We elaborate on some of these issues below to help explain the basis of our concerns. In light of the law and facts presented here, we ask that you agendize discussion on the Ordinance at an upcoming City Council meeting, vote to repeal or amend it, and then consider alternate provisions that comply with federal and state law. We also respectfully urge that no prosecutions proceed against anyone arrested for allegedly violating the Ordinance on June 14. Failure to take action on the Ordinance will subject Modesto to the significant threat of litigation.

The Ordinance Criminalizes Lawful Conduct

On its face, the Ordinance makes it a misdemeanor for any person to “utilize, carry, or possess” nineteen enumerated categories of items at “any demonstration, rally, protest, counter-protest, picket line, march, or public assembly.” 4-23.02(a)-(b). Many of these prohibited items are regular, everyday things commonly present at protests and assemblies throughout the nation

and do not pose any particular or heightened risks. For example, among the prohibited items are: “[s]igns, posters, [and] banners” that are no greater than one-quarter inch thick; impact-resistant “sports equipment” and protective vests; breathing devices; bike and motorcycle helmets; glass or metal water bottles; “umbrellas in the absence of rain;” and, most problematically, masks and other face coverings. 4-23.02(a). Specifically, the Ordinance prohibits: “The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer’s face from view and conceals the wearer’s identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.” 4-23.02(a)(13).¹

The Ordinance is Both Overbroad and Unduly Vague in Violation of Due Process

A law is unconstitutionally overbroad if it “reaches a substantial amount of constitutionally protected conduct.” *Kolender v. Lawson*, 461 U.S. 352, 359 n.8 (1983) (citation and quotation marks omitted). It is unconstitutionally vague if “it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.” *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999). The Ordinance suffers from both infirmities.

Here, the Ordinance sweeps in a host of innocuous and protected conduct. Taken literally, the Ordinance would criminalize a baseball catcher who runs into a celebratory crowd wearing his helmet and uniform after winning a game, a teen who rides her bike to a march and clips her bike helmet and water bottle to her backpack during the procession, and a healthy elderly couple who attends an outdoor event performance wearing masks because it has been their practice to mask outside the home from the pandemic to present. With respect to this last hypothetical, and as is discussed further below, the Ordinance is woefully vague as to whether the couple’s rationale would qualify as a “medical necessity.” And to provide one more example of the Ordinance’s problematic overbreadth and vagueness interplay, consider its prohibition on “[a]ny umbrellas in the absence of rain.” 4-23.02(a)(17). The provision is overbroad because it criminalizes the functional uses of umbrellas, like providing shade on a sunny day, and vague because it provides no clear standard for when rain is deemed “absent.”

These overbreadth and vagueness concerns are even more acute given their implications for members of the press, who often face chaotic and dangerous conditions while covering protests—conditions that, at times, are created by the police. In particular, as a federal court recently recognized, officers tear-gassed reporters and shot them with so-called “less-lethal munitions” while they covered recent protests in Los Angeles. *See Los Angeles Press Club v. City of Los Angeles*, Case No. 25-cv-05423, Doc. No. 44, Order Granting Temporary Restraining Order (C.D. Cal. Jul. 10, 2025) (citation omitted).² In fact, these risks are so great that American journalism organizations now recommend that reporters always carry breathing devices and wear

¹ The Ordinance does not define the term “public assembly,” and thus these prohibitions can be construed to apply at any time to any gathering of people in public spaces.

² For reference, the Temporary Restraining Order is available at <https://firstamendmentcoalition.org/wp-content/uploads/2025/07/2025-07-10-Order-Granting-TRO.pdf>.

impact-resistant helmets, masks, and flak vests when reporting from a protest.³ And yet, the Ordinance prohibits each and every one of these important pieces of safety gear.

The Prohibition on Anonymity Silences Protestors' Speech and Invades Their Privacy

In addition to the foregoing issues, the anti-masking provision set forth at section (a)(13) of the Ordinance raises free speech and privacy problems. The provision prevents protesters from maintaining their anonymity while engaging in **lawful, peaceful** protest. This restriction violates longstanding U.S. Supreme Court precedent, which recognizes that anonymity is “indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958).

California courts are in accord with the need to protect anonymous speech. In 1978, for example, the California Court of Appeal reasoned that there are times when “anonymity is essential to the exercise of constitutional rights.” *Ghafari v. Municipal Court*, 87 Cal. App. 3d 255, 260 (1978). Applying this reasoning, the *Ghafari* Court struck down a mask ban very similar to Modesto’s. *Ghafari* remains good law nearly 50 years later and is binding on the Stanislaus County Superior Court should litigation proceed on the Ordinance. *See Auto Equity Sales, Inc. v. Superior Ct. of Santa Clara Cnty.*, 57 Cal. 2d 450, 455 (1962) (“Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state.”).

Preventing people from protesting without revealing their identities has a stark chilling effect. Those who seek to challenge policies that harm vulnerable communities or unpopular opinions because they are especially likely to be targeted for reprisal. Even absent a risk of harassment, “[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341-42 (1995). “Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.” *Talley v. California*, 362 U.S. 60, 64 (1960).⁴

Prohibiting people from being able to peacefully, lawfully, **and** anonymously protest also invades those persons’ affirmative constitutional right to privacy under Article I, section 1, of the California Constitution. As the California Supreme Court observed, voters across the state adopted

³ See, e.g., Los Angeles Press Club, Tips for Safely Covering Protests (Feb. 7, 2022), <https://lapressclub.org/tips-for-safely-covering-protests-updated-2022/>; Committee to Protect Journalists, Physical and Digital Safety: Civil Disorder (Jul. 20, 2021), <https://cpj.org/2018/09/physical-safety-civil-disorder/>.

⁴ The public’s concerns over surveillance and privacy invasions on June 14 seem to have been particularly well-founded considering Police Chief Brandon Gillespie’s admission that Modesto police did employ a “real-time crime center” with surveillance cameras in parks and downtown to monitor the protests. See Julietta Bisharyan, *Modesto Police Chief Defends Arrests During Protests Amid Mask Ordinance*, MODESTO BEE (Jul. 17, 2025), <https://www.modbee.com/news/local/article310895280.html>.

this constitutional protection to defend against “the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society.” *White v. Davis*, 13 Cal. 3d 757, 774 (1975). The *White* Court, quoting statements from the election materials in support of Article I, section 1, continued: “The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion and our freedom to associate with the people we choose.” *Id.*⁵

The Ordinance’s Anti-Masking Provision Invites Disproportionate Enforcement and Viewpoint Discrimination

Laws that are overbroad and vague, like the Ordinance, are particularly problematic when they implicate First Amendment rights because they chill speech and expression, and enable arbitrary, “unbridled discretion” and discriminatory enforcement practices. *Kaahumanu v. Hawaii*, 682 F.3d 789, 802 (9th Cir. 2012); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). Among the worst of these sins is the chance that the Ordinance will be enforced in a viewpoint discriminatory manner, which is a forbidden and “egregious form of content discrimination” that prohibits speech based on the views of the speaker. *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 828-29 (1995).

The Ordinance’s anti-masking provision falls squarely within this constitutional concern. Its exceptions for “religious beliefs, practices or observances” and “medical necessity” are vague and unworkable. It is unclear, for example, how law enforcement officers are supposed to assess such justifications for wearing a mask. In fact, under this Ordinance, police seem compelled to intuit a person’s subjective reasons for masking. But law enforcement officers are rarely equipped to independently determine subjective intent—and they may not legally interrogate people about their religious practices, their disabilities, and/or health-related reasons for wearing a mask. Alternatively, anyone wearing a mask for any reason could be subject to Police Chief Brandon Gillespie’s proffered approach of arrest first, then let a judge or jury determine the sincerity of one’s religious beliefs or the necessity of one’s medical condition.⁶ Practically speaking, it is difficult to overstate the waste of time and resources, much of it at the taxpayer’s expense, such

⁵ Protestors have good reason to believe that they could suffer harm, doxxing, and additional privacy invasions if their identities are exposed. *See* Nicholas Fandos, *In an Online World, a New Generation of Protesters Chooses Anonymity*, N.Y. TIMES (May 2, 2024), <https://www.nytimes.com/2024/05/02/nyregion/college-campus-protests-anonymity.html>. In light of the message of the ICE Out protest, protestors might also credibly fear becoming a target of ICE themselves were they to protest without a mask on. And when unmasking poses credible threats to personal safety—and particularly when public hostility chills speech and expression—courts have struck down similar statutes. *See Ghafari*, 87 Cal. App. 3d at 259 (recognizing that protestors had “good reason” to fear that “if their identity became known . . . retaliatory measures of an unpleasant nature may be taken against them”); *Aryan v. Mackey*, 462 F. Supp. 90, 91 (N.D. Tex. 1978) (same); *Am. Knights of Ku Klux Klan v. City of Goshen*, 50 F. Supp. 2d 835, 841 (N.D. Ind. 1999) (holding unconstitutional a mask ban where there was “cogent evidence of . . . retaliation that [KKK] members suffered as a result of disclosure of their identity”).

⁶ At the July 16, 2025 Community Police Review Board meeting, which considered the events of the June 14 protests, the Police Chief said: “I’m not the one who decides. They’ll have to convince a judge or a jury that, ultimately, that they were wearing [a mask] for one of the essential reasons.” *See* Bisharyan, *supra* n.4.

misdeemeanor trials would entail—not to mention the significant disruption to the lives of peaceful protesters exercising their right to free speech.

The exception for “religious beliefs, practices or observances” is particularly vulnerable to abuse due to ignorance or prejudice, in the absence of explicit policies governing how law enforcement officers engage with people wearing religious garments. The First Amendment of the United States Constitution and Article I of the California Constitution both forbid the government from prohibiting the free exercise of religion, but any policy that prohibits masking in public would have a disproportionate impact on people whose core religious beliefs require them to mask. This is true, for example, for some Muslim women who wear Niqabs or Burqas in public.

More generally, Modesto’s mask ban gives police a reason to stop, surveil, and scrutinize groups of vulnerable people. People of color have consistently been over-policed and subjected to greater suspicion and scrutiny, as evidenced by the racial disparities pervasive in policing practices.⁷ Indeed, this disproportionate and viewpoint-discriminatory enforcement materialized on June 14. On that day, two protests took place: the ICE Out rally organized by the Central Valley Black Indigenous People of Color Coalition, and the No Kings protest organized in part by Indivisible Stanislaus.⁸ Protestors at both rallies wore masks. Yet law enforcement arrested and cited under the Ordinance only protestors from the ICE Out rally—which was attended predominantly by people of color. For the arrestees with whom we have spoken, officers did not inquire about any person’s reasons for wearing a mask, whether on account of religious beliefs, medical necessity, or otherwise. By comparison, we are aware of no arrests for violations of the anti-masking provision at the No Kings protest, which promoted a different viewpoint and was reportedly attended in greater numbers by white participants. This incident exemplifies the constitutional dangers inherent in the Ordinance. Again, when a law lacks clear standards, it delegates unchecked discretion to law enforcement, increasing the likelihood that enforcement will reflect existing societal biases rather than neutral application.

The Anti-Masking Provision Undermines Public Health and Discriminates on the Basis of Disability

Prohibiting people from wearing masks in public or at demonstrations has a potent chilling effect on the free speech rights of immunocompromised individuals and people who have disabilities, including underlying health conditions that make them susceptible to severe illness like COVID-19. Even though the Ordinance contains an exception for “medical necessity,” this carve-out is undefined and fails to provide protection to those wearing masks for the safety of others instead of themselves. Individuals may not feel, or be, safe in large crowds if they are unable to mask, so a prohibition on masking at protests forces them to choose between their free speech

⁷ See California Department of Justice, California Racial and Identity Profiling Advisory Board Releases Report on 2023 Police Stop Data (Dec. 31, 2024), <https://oag.ca.gov/news/press-releases/california-racial-and-identity-profiling-advisory-board-releases-report-2023>.

⁸ Julietta Bisharyan, *‘No Kings’ Rally Draws Thousands to Modesto in Protest of Donald Trump*, MODESTO BEE (Jun. 18, 2025), <https://www.modbee.com/news/local/article308569555.html>.

rights and their or their loved ones' health and safety.

The Ordinance also risks violating the Americans with Disabilities Act ("ADA") by preventing individuals with medical issues from engaging in a crucial aspect of public life and participating in practices that form the cornerstone of democracy. The ADA prohibits government entities from discriminating against individuals with disabilities and from cutting off their participation in government programs or activities. 42 U.S.C.A. § 12132. These ADA protections extend to "anything a public entity does," including enacting and enforcing discriminatory law enforcement measures. *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (citations and internal quotation marks omitted).

People should not have to risk their health in order to attend a protest. Being forced to make such a choice effectively denies them the "right of peaceable assembly" that "lie[s] at the foundation of a government based upon the consent of an informed citizenry." *Bates v. City of Little Rock*, 361 U.S. 516, 522-23 (1960).

California Law Already Prohibits Wearing a Mask While Committing Unlawful Acts and Modesto's Anti-Masking Provision is Thus Preempted

We understand that Modesto may be concerned that people wearing a mask at a protest could feel a sense of impunity and therefore act recklessly or unlawfully. This speculative concern cannot justify the complete abridgement of the entire community's right to engage in anonymous speech and peaceful protest. Simply put, and as the *Ghafari* Court held, a "blanket prohibition" on the use of masks during protests "restricts the legitimate exercise of First Amendment freedoms" and "sweeps too broadly" to withstand constitutional scrutiny. *Ghafari*, 87 Cal. App. 3d at 261-62. Such a prohibition serves "no legitimate law enforcement function and is unconstitutionally overbroad." *Id.* at 262.

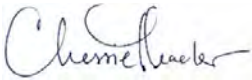
Moreover, Modesto already has a law at its disposal to prevent people from masking their identities while committing unlawful acts. Penal Code section 185 makes it a misdemeanor "for any person to wear any mask, false whiskers, or any personal disguise" for the purpose of "[e]vading or escaping discovery, recognition, or identification in the commission of any public offense," or "[c]oncealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense." This law, coupled with the many other more narrowly tailored laws aimed at unprotected conduct and breaches of the peace, should provide the city with "the legal armamentarium to deal effectively" with any disturbances. *Ghafari*, 87 Cal. App. 3d at 262.

And given that California prohibits local governments from legislating in a field fully occupied by state law, the existence of Penal Code section 185 leads to yet another fatal conclusion about Modesto's Ordinance: it is preempted. See Cal. Const., art XI, §§ 5, 7; Gov. Code § 37100. Because the Ordinance prohibits wearing a mask in public without regard to criminal intent or activity, it conflicts with section 185 and cannot survive. See *Am. Fin. Servs. Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1251-52 (2005) (striking down ordinance as preempted because it invaded an area "fully occupied by general law").

Conclusion

For all of the foregoing reasons, we urge you to agendize discussion on the Ordinance at a City Council meeting in the near future, vote to repeal or amend it, and then consider alternate provisions that comply with federal and state law. We also respectfully ask that no prosecutions proceed against anyone arrested for allegedly violating the Ordinance on June 14 given the substantial legal uncertainties involved. If the concerns about the Ordinance are not addressed, the ACLU may be compelled to initiate legal action against the city.

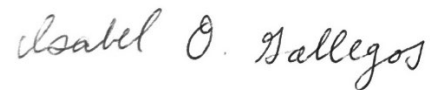
Sincerely,



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Shaila Nathu
Staff Attorney
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Isabel O. Gallegos
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cc: The Honorable Sue Zwahlen, Modesto Mayor (mayor@modestogov.com)
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Councilmember Jeremiah Williams (jwilliams@modestogov.com)
Councilmember David Wright (dawright@modestogov.com)
Jose M. Sanchez, Modesto City Attorney (jnunes@modestogov.com)
Jeff Laugero, Stanislaus County District Attorney (jeffrey.laugero@standa.org)

- (a) No person shall utilize, carry, or possess the following items or articles while attending or participating in any demonstration, rally, protest, counter-protest, picket line, march, or public assembly:
- (1) Any length of lumber, wood, or wood lath unless that object is one-quarter ($\frac{1}{4}$) inch or less in thickness and two (2) inches or less in width, or if not generally rectangular in shape, such object shall not exceed three-quarter ($\frac{3}{4}$) inch in its thickest dimension. Both ends of the lumber, wood or wood lath shall be blunt;
 - (2) Any length of metal or plastic pipe, whether hollow or solid; provided, however, that hollow plastic piping not exceeding three quarter ($\frac{3}{4}$) inch in its thickest dimension and not exceeding one-eighth ($\frac{1}{8}$) inch in wall thickness, and not filled with any material, liquid, gas or solid may be used solely to support a sign, banner, placard, puppet or other similar expressive display. Both ends of any plastic pipe permissible under this subsection shall be blunt;
 - (3) Signs, posters, banners, plaques or notices, unless such sign, poster, banner, plaque or notice is constructed solely of soft material, such as cloth, paper, soft plastic capable of being rolled or folded, or cardboard material no greater than one-quarter ($\frac{1}{4}$) inch in thickness;
 - (4) Baseball or softball bats, regardless of composition or size;
 - (5) Any aerosol spray, tear gas, mace, pepper spray, smoke canisters, or bear repellant;
 - (6) Any projectile launcher or other device, such as a catapult or wrist rocket, which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, whether through force of air pressure, spring action or any other mechanism;
 - (7) Weapons such as knives, daggers, swords, sabers or other bladed devices, axes, axe handles, hatchets, billy clubs, ice picks, razor blades, nunchucks or martial arts weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs), including, but not limited to, Tasers or stun guns, metal/composite/wooden knuckles, or any chain greater than twenty (20) inches in length or greater than one-quarter ($\frac{1}{4}$) inch in diameter;
 - (8) Balloons, bottles or any other container such as water cannons, super-soakers, or toy or replica firearms filled with any flammable, biohazard or other noxious matter which is injurious, or nauseous, sickening or irritating to any of the senses, with intent to throw, drop, pour, disperse, deposit, release, discharge or expose the same in, upon or about any demonstration, rally, protest, picket line or public assembly;
 - (9) Glass bottles or metal containers, whether empty or filled;
 - (10) Open flame torches, lanterns or other devices that utilize combustible materials such as gasoline, kerosene, propane or other fuel sources;

- (11) Shields made of metal, wood, hard plastic or any combination thereof;
- (12) Bricks, rocks, pieces of asphalt, concrete, pellets or ball bearings; and
- (13) The wearing of a mask, scarf, bandana or any other accessory or item that covers or partially covers the face shielding the wearer's face from view and conceals the wearer's identity, except for coverings worn due to religious beliefs, practices or observances or due to medical necessity.
- (14) Any gas masks or similar breathing devices;
- (15) Any impact resistant helmet, including, but not limited to: motorcycle helmets, bicycle helmets, sports helmets, or ballistic helmets;
- (16) Any laser pointing devices;
- (17) Any umbrellas in the absence of rain. During rainy weather an umbrella shall not exceed sixteen (16) inches in its longest dimension when fully collapsed and shall have a blunt end;
- (18) Any professionally manufactured or personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant, stab-resistant, or impact resistant, including, but not limited to: riot control gear, sports equipment, bullet-resistant vests, flak jackets, or stab-resistant vests; and
- (19) Load-bearing or similar "tactical" vests designed to carry weapons, tactical equipment, or armor plates, commonly used by law enforcement or military institutions.
- (b) It shall be unlawful and a misdemeanor to violate any provisions of this chapter.
- (c) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of the provisions of this chapter. Such warning shall be sufficient if provided orally, by posted signs or by amplified announcement.
- (d) Authorized peace officers, or employees, agents or representatives of the City, shall be exempt from the provisions of this chapter when such officers, employees, agents or representatives of the City are engaged in official business of the City.
- (e) Nothing in this chapter shall prohibit the imposition of specific conditions for activities expressly authorized under a permit issued pursuant to Modesto Municipal Code Section 4-8.01 et seq. (Regulation of Parades) or prohibit the modification of these provisions for such permits issued pursuant to Section 4-8.01 et seq. upon a finding by the Chief of Police that such modification will not impair or threaten public safety.
- (f) Nothing in this section shall prohibit an individual from carrying a cane or using a walker or other device necessary for providing mobility or access so that the person may participate in a public protest, demonstration, rally, picket line or public assembly.

EXHIBIT B



August 15, 2025

MODESTO COMMUNITY POLICE REVIEW BOARD

1010 10th Street Place
Modesto, CA 95354

VIA ELECTRONIC MAIL:

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Nico Solorio: nsolorio@modestocprb.com
Trish Christensen: Tchristensen@modestocprb.com
Wendy Byrd: Wbyrd@modestocprb.com

Re: Support for Repealing Modesto Anti-Mask Measure City Ordinance 4-23.02

Dear Members of the Community Police Review Board:

We write on behalf of the ACLU of Northern California and the First Amendment Coalition regarding Modesto City Ordinance 4-23.02 ("the Ordinance"). We understand that the CPRB has undertaken a review of the Ordinance in light of recent arrests of people accused of violating the anti-mask provisions. We strongly urge you to recommend that the City Council take all necessary steps to vote to repeal or substantially amend the Ordinance without further delay. We further urge you to recommend that, should any amendments be proposed, the City Council agenda these proposed revisions for public debate at a Council meeting so that Councilmembers can come to understand why certain provisions in the existing Ordinance are not only unclear and unworkable, but also discriminatory in violation of controlling law.

To assist with your consideration of these issues, we have enclosed the letters that our organizations previously submitted to the Modesto City Council detailing our concerns that the ordinance is so vague and overbroad that it violates due process and undercuts the legitimate exercise of free speech protected by both the federal and state constitutions. We also highlighted the specific concerns of journalists, who could face arrest for the mere act of wearing the kind of personal protective gear that is commonly recommended for safe newsgathering.

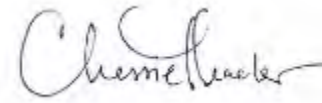
As recent events indicate, Modesto police are enforcing these problematic provisions of the municipal code, underscoring the need for swift action. While we welcome the news that the City Attorney will not prosecute the people arrested on June 14 on charges of violating the anti-mask provision, no one should face the threat of arrest for exercising their right to protest — or right to document a protest — while wearing a face covering or possessing any of the many other prohibited items commonly present during a protest. Indeed, such a threat of prosecution for engaging in these constitutionally-protected acts creates a chilling effect contrary to law.

Letter to Civilian Police Review Board
Page 2

If we can be of any assistance, please let us know. Thank you for your careful consideration of these important issues.

Sincerely,

ACLU FOUNDATION OF
NORTHERN CALIFORNIA

A handwritten signature in blue ink, appearing to read "Chessie Thaccher".

Chessie Thaccher
Senior Staff Attorney

FIRST AMENDMENT COALITION

A handwritten signature in blue ink, appearing to read "Ginny LaRoe".

Ginny LaRoe
Advocacy Director

cc: Simi Bhangoo, Secretary of the Board, sbhangoo@modestogov.com

EXHIBIT C



October 9, 2025

Diane Nayares-Perez
Modesto City Clerk
1010 10th Street
Modesto, CA 95354
dnayaresperez@modestogov.com

VIA EMAIL

RE: Concerns About Modesto City Ordinance 4-23.02

Dear City Clerk and Councilmembers:

We write on behalf of the American Civil Liberties Union of Northern California and the First Amendment Coalition to follow up on the concerns we raised regarding Modesto City Ordinance 4-23.02 (the “Ordinance”) in our letters to the City Council dated July 18 and 21, 2025 and to the City’s Community Police Review Board (“CPRB”) dated August 15, 2025.¹ Since submitting these letters, we have continued to follow this issue as it has undergone review by the CPRB and in the public eye. We ask that you now (1) provide a written response by **October 23** as to the status of the Council’s deliberations on the Ordinance and (2) agendize public discussion of the Ordinance’s repeal or amendment at the soonest practicable date and no later than **November 4**. The Ordinance poses an ongoing threat to constitutional freedoms, especially in light of upcoming national protests. Failure to take these actions in a timely manner will risk exposing the City to legal liability, including the high costs and fees of any lawsuit.

In our July 18 correspondence, we highlighted several of the Ordinance’s legal problems. First, the Ordinance criminalizes lawful conduct by prohibiting people from possessing or wearing at *any* public assembly numerous common items like bike helmets, metal water bottles, and—especially of concern for members of the press—safety gear considered to be essential when reporting on protests. Second, and even more problematically, it bans individuals from wearing face masks with limited, but largely unworkable, exceptions. Third, the Ordinance communicates all of these overbroad restrictions using language so vague that it violates due process and undercuts the legitimate exercise of free speech protected by both federal and state law. Fourth, it runs afoul of the right to privacy enshrined in California’s Constitution at Article I, section 1. And fifth, it contravenes legal protections for those with disabilities and other health issues. We also noted that Modesto law enforcement officers had apparently enforced the anti-

¹ The July 18, July 21, and August 15 letters are attached hereto as **Exhibits A, B, and C** respectively.

masking provision in a disparate and viewpoint-discriminatory manner at protests on June 14, 2025.

While it appears that City Council discussed the July 18 letter in closed session on September 23, 2025, discussion of the Ordinance's repeal or amendment has not been placed on an open session agenda despite robust public comment urging action. And while we welcomed the news that the City Attorney will not pursue charges against those arrested on June 14 for allegedly violating the anti-mask provision, the threat of arrest and prosecution for exercising one's right to protest—or right to document a protest—remains.²

We understand that the CPRB voted to recommend repeal of the Ordinance's anti-mask provision at its September 17, 2025 meeting. We ask that the City Council adopt this recommendation as soon as possible and also review with the City Manager and legal counsel the Ordinance's other problematic sections.

At its September 17 meeting, the CPRB also voted to add questions to a survey conducted by the City Council to gather community input on the Ordinance. While such a survey may offer additional insight as to the Ordinance's scope and impact, the survey cannot cure the legal deficiencies that we have identified in our letters. The survey's development and administration should therefore not delay open discussion and action.

Despite outreach from leading First Amendment legal organizations, sustained engagement by your constituents, and an unequivocal recommendation from the CPRB, you have yet to engage with the Ordinance in a public meeting. We thus call on the City Council to agendize discussion of the Ordinance's repeal or amendment as soon as possible. Failure to do so may compel us to initiate legal action against the City in order to protect residents' constitutional rights. Such litigation would impose a significant burden on the City. And our success in a lawsuit would—pursuant to Code of Civil Procedure section 1021.5—potentially subject the City to liability for not only its attorneys' fees and costs, but for ours as well. Because we believe Modesto's resources would much better serve the community if not spent defending an unconstitutional law, we urge you to take the concerns raised herein seriously.

Sincerely,



Chessie Thacher
Senior Staff Attorney
ACLU Foundation of Northern California
cthacher@aclunc.org



David Loy
Legal Director
First Amendment Coalition
dloy@firstamendmentcoalition.org

² See *City Elects to Move Forward: Continues to Encourage Awareness and Adherence to Local Laws* (Aug. 11, 2015), <https://www.modestogov.com/DocumentCenter/View/24201/Press-Release-City-Elects-to-Move-Forward>.



Shaila Nathu
Staff Attorney
ACLU Foundation of Northern California
snathu@aclunc.org

cc: The Honorable Sue Zwahlen, Modesto Mayor (mayor@modestogov.com)
Councilmember Rosa Escutia-Braaton (rescutiabraaton@modestogov.com)
Councilmember Eric E. Alvarez (ealvarez@modestogov.com)
Councilmember Chris Ricci (cricci@modestogov.com)
Councilmember Nick Bavaro, Modesto Vice Mayor (nbavaro@modestogov.com)
Councilmember Jeremiah Williams (jwilliams@modestogov.com)
Councilmember David Wright (dawright@modestogov.com)
Jose M. Sanchez, Modesto City Attorney (jnunes@modestogov.com)

EXHIBIT D



December 2, 2025

Via Electronic Mail

Diane Nayares-Perez
Modesto City Clerk
1010 10th Street
Modesto, CA 95354
dnayaresperez@modestogov.com

RE: Concerns About Proposed Revisions to Modesto City Ordinance 4-23.02

Dear City Clerk and Councilmembers:

The American Civil Liberties Union of Northern California (“ACLU”) and the First Amendment Coalition (“FAC”) write concerning proposed revisions to Municipal Code Title 4, Chapter 23, Restrictions on Use of Specified Items During Public Assemblies (“the Ordinance”) scheduled to be heard at the December 2 City Council Meeting. Because we received news of the proposed changes on Friday afternoon of the Thanksgiving holiday break, when our offices were closed, we have had just one full business day to review the proposed revisions. Our comments here are thus preliminary and not complete.

To be blunt: the proposed revisions make the ordinance more unconstitutional, not less. The revisions do nothing to address certain key ambiguities in the Ordinance and instead lead to absurd results due to the revision’s differential treatment of speech based on content. They also leave other members of the public, and especially journalists, vulnerable to safety concerns, thereby posing a threat to constitutional freedoms and safe newsgathering. Moreover, in attempting to justify the Ordinance’s ban on masks, the City misconstrues the right to engage in anonymous speech while protesting, the public’s legitimate concerns about government surveillance and doxxing, and the historical record of protests in Modesto.

Ambiguity and Absurd Results. In our prior letters, the ACLU and FAC explained aspects of why the Ordinance is troublingly vague, and why such ambiguity can lead to both a chilling impact on free speech as well as a pattern of disparate and discriminatory enforcement. These concerns remain and are even amplified in light of the proposed revisions. The revisions create content-based categories of speech, where some expressive acts are treated differently than other expressive acts—a condition that the First Amendment abhors. (*See Police Dep’t of Chicago v. Mosley* (1972) 408 U.S. 92, 95-96.) This differential treatment leads to absurd results. For example, the revisions permit a protester to wear a “costume” that obscures their entire face. But

if that same protester showed up wearing just a bandana covering only half their face, they would be subject to a misdemeanor punishable up to six months in jail. Similarly, it would be permissible for a protester to show up in a “softshell bicycle/sports helmet” (whatever that may be), but it would be a criminal misdemeanor for that same person to show up in a “hardshell” bicycle helmet or sports helmet (whatever those may be). And to offer one more example, it is unclear how the revisions would apply to a person who wished to wear a keffiyeh scarf around their face to express a message of support for Palestine—is this an “expressive function of a costume” or a violation of the Ordinance?

Safety Concerns for Members of the Public and Journalists. Concerns about the overbreadth and vagueness of the Ordinance as revised are acute given what both we and you acknowledge: protests can be chaotic. This is especially true for journalists, who—in California—have a statutory right under Penal Code section 409.7 to be present in public areas following police dispersal orders. Reporters, photographers, and other media workers do vitally important work of keeping communities informed about protests and any law enforcement response. It is vital that they be free from arrest for the mere act of using industry-standard personal protective gear while they perform their constitutionally protected duties.¹ And yet the proposed revisions make no allowance for this concern. Nor do the revisions take into account what we previously pointed out and which federal courts readily recognize: often it is law enforcement who engage in a pattern and practice of excessive force when policing protests. (*See, e.g., Los Angeles Press Club v. City of Los Angeles*, Case No. 2:25-CV-05423-HDV-E (C.D. Cal. Sept. 10, 2025) 2025 WL 2640421, at *1-5; *Chicago Headline Club v. Noem*, Case No. 25-CV-12173 (Nov. 20, 2025) 2025 WL 3240782, at *86.)

Anonymous Speech and Fears of Both Government Surveillance and Doxxing. As set forth in our letters, protesters have the right to engage anonymously in peaceful lawful assembly and expressive acts. The legislative findings fundamentally misunderstand how this right applies. The City points to the willingness of some advocates to appear unmasked at council meetings opposing the Ordinance as evidence that those advocates have forfeited their right to anonymity when protesting. Not so. The right applies with much more granularity. It operates to shield a person who is peacefully protesting from consequence depending on the nature of the protest and speech involved. (*See Talley v. California* (1960) 362 U.S. 60, 64 [“Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not all.”].) The City’s brush-off also misreads the current political moment. The ubiquity of government surveillance cameras and personal phones with recording devices and cameras actually bolsters why one would want to remain anonymous for fear of government retaliation or even doxxing and harassment by private actors. In fact, it is difficult to overstate how real this fear might be for families with mixed immigration status who might want to protest against the current administration’s immigration actions but are afraid to do so unmasked given the risks to themselves or their loved ones.

¹ Committee to Protect Journalists, *A Guide to Personal Protective Equipment*, [ppe-glossary_cpj-final.pdf](https://www.cptj.org/wp-content/uploads/2020/07/ppe-glossary_cpj-final.pdf)

The City's Proffered Evidence to Justify the Mask Ban is Contradictory or Unhelpful. The City adopted its ban on masks in 2019. But it mysteriously attempts to justify the need for the ban by pointing to 22 pictures of protesters all wearing masks *after* this adoption. All but one of these pictures is from protests that took place between 2020 and 2022, which is when masking was most prevalent given the COVID pandemic. The one picture from outside this date range captures the ICE Out protest on June 14, 2025. These pictures prove that the mask ban was either ineffectual at preventing people from wearing masks in public or that the ban was never enforced. Even more perplexing: the City has maintained in responses to the ACLU's public record requests and the Civilian Police Review Board that it never arrested anyone pursuant to the mask ban set forth in the Ordinance until June 14, 2025.

For these reasons and for the reasons expressed in our prior letters, the proposed revisions do not save the Ordinance from constitutional attack, and we ask that the Council reconsider tonight's action or face a potential legal challenge.

Sincerely,

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David Loy, Legal Director
Ginny LaRoe, Advocacy Director
First Amendment Coalition
dloy@firstamendmentcoalition.org
glaroe@firstamendmentcoalition.org

cc:

The Honorable Sue Zwahlen, Modesto Mayor (mayor@modestogov.com)
Councilmember Rosa Escutia-Braaton (rescutiabraaton@modestogov.com)
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Deborah Fox, Counsel (dfox@meyersnave.com)