City of
FRESNO REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 1F
COUNCIL MEETING 2/11/10
APPROVED BY

February 2010

FROM: LARRY WESTERLUND, Councilmember, District Four LW

SUBJECT: CONSIDER THE ADOPTION OF A MEDIAN ISLAND SAFETY ORDINANCE

RECOMMENDATIONS

Request the Council approve the attached Median Island Safety Ordinance in order to ensure the health and safety of individuals who currently occupy the median islands and motorists who must navigate around individuals who are present on the median islands;

EXECUTIVE SUMMARY

The City of Fresno has a huge and growing problem with individuals occupying median islands at sometimes nearly all-major street intersections within the City. There are a wide variety of groups occupying medians on any given day ranging from local school club fundraisers, to local charitable organizations, to private individuals. The loitering in the median islands for whatever reasons is dangerous to those in the medians and to motorists attempting to navigate city streets. Medians islands are not designed for pedestrian occupation. Furthermore, loitering in the median islands is a significant legal liability risk to the city and thus the taxpayer.

Currently there is no California state law or local ordinance that regulates activities on city median islands.

In 2009, the Council considered an outright ban on all activity in the median islands. That ban failed.

This ordinance, while not an outright ban of all activity in the median islands, would regulate the time, place and manner for when organizations or individuals would be able to occupy a median island for limited periods of time through the use of a city permit program.

The permit program would allow organizations and individuals to apply for a special permit to allow the use of a single median or multiple medians for a maximum of one time every six months.

The permit program would require applicants to abide by certain rules and conditions while on the designated median island, pay an administrative fee, show proof of insurance (both could be waived upon application and proof of hardship) and sign a general liability waiver and release. Please see the attached power point presentation for details.

Finally, failure to obtain and have in your possession a median island permit while loitering on a median island would allow the police department to compel individuals to leave the median island and cite any organizations or individuals failing to comply.

Presented to City Council
Date 2/4/10
Disposition Bill Number B-2 into as amended, & laid over

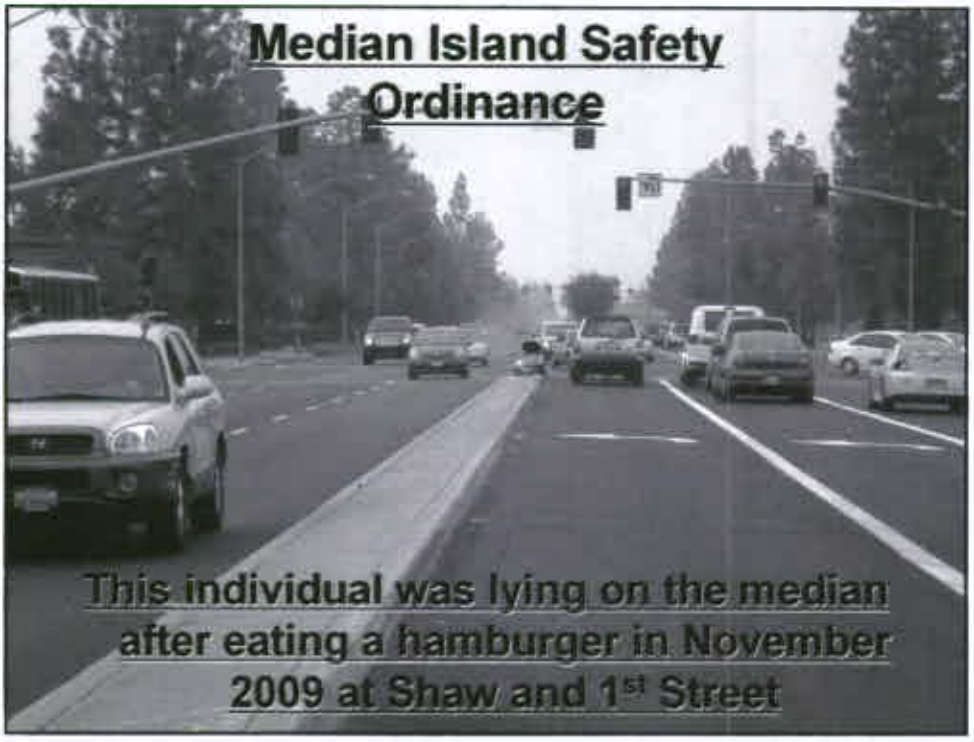
Other cities around California have similar programs. Others, like Visalia in December 2009, have completely prohibited activity in the medians. The new rules have been very successful.

The bottom line is loitering on median islands are not what median islands are designed for and are simply dangerous.

Nothing in the ordinance would prohibit individuals or organizations from occupying corners at city street intersections in a lawful manner. Street corners are designed for pedestrian traffic. Drivers understand and generally know what to expect for pedestrians on street corners.

Median Island Safety Ordinance
January 2010
Larry Westerlund

Median Island Safety Ordinance
• We have a real problem with peoples' lives in danger


Median Island Safety Ordinance
This individual was lying on the median after eating a hamburger in November 2009 at Shaw and 1st Street

Median Island Safety Ordinance
This is what in looked like from the inside left turn lane.

Median Island Safety
Ordinance
Waiting for the left turn signal.

Median Island Safety
Ordinance
Southbound traffic making a
double left, cannot see the man!

Median Island Safety Ordinance
Someone is going to get killed!

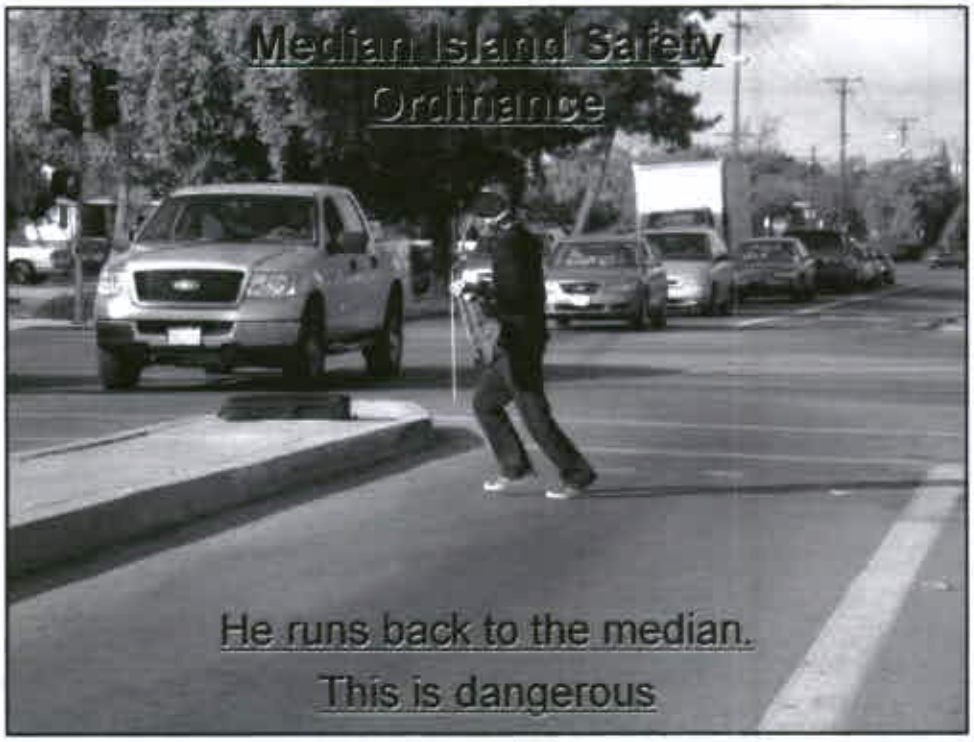
Median Island Safety Ordinance
We have problem that we need to fix!

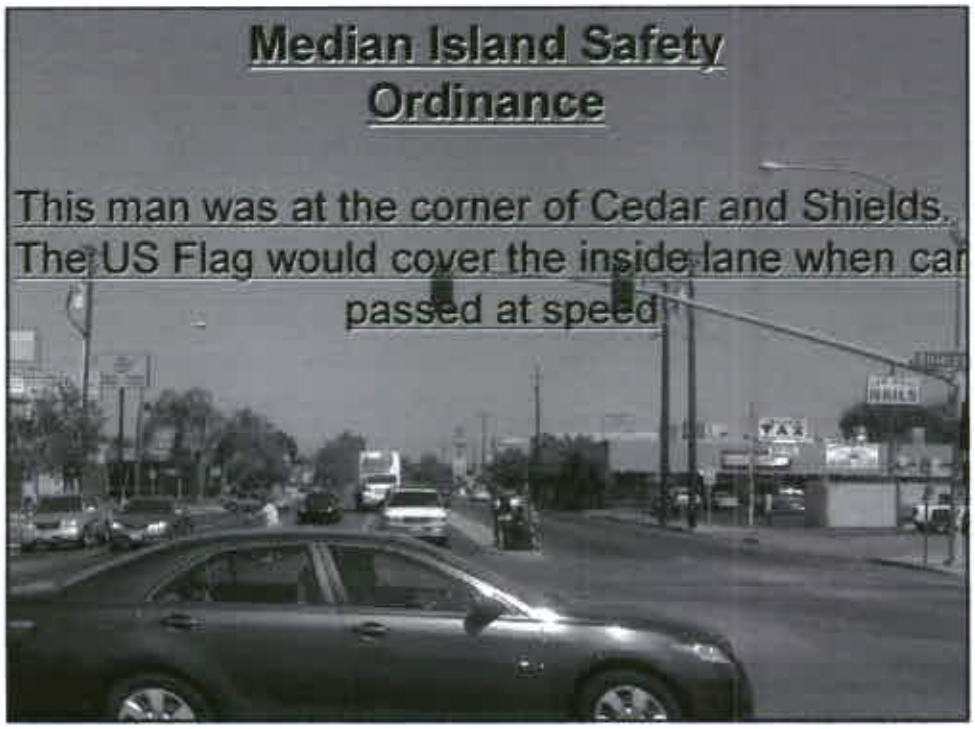
Median Island Safety Ordinance
While a portion of the problem relates to homeless people, a great deal of median island activity does not relate to the homeless

Median Island Safety Ordinance
This student was seeking donations on the corner of 1st Street and Barstow

Median Island Safety Ordinance
He is playing his violin for donations

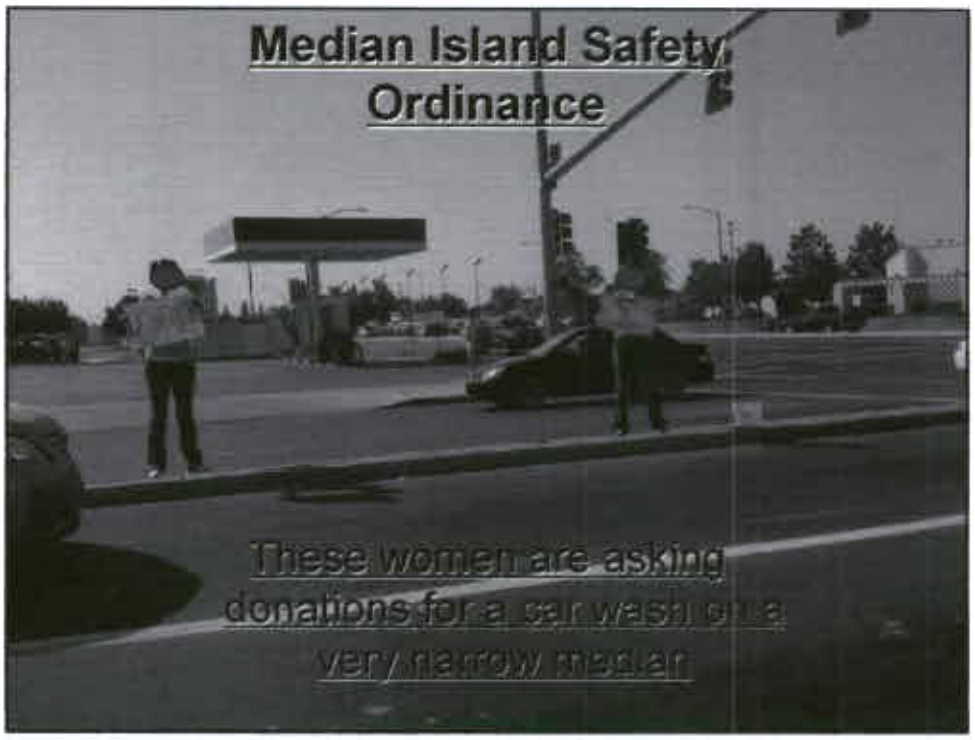
Median Island Safety Ordinance
He runs into the street to get a donation.
Please note the traffic light is green.
5MM


Median Island Safety
Ordinance
He runs back to the median.
This is dangerous


Median Island Safety
Ordinance
This man was at the corner of Cedar and Shields.
The US Flag would cover the inside lane when car
passed at speed

Median Island Safety
Ordinance
Besides the US Flag, the man used a wheelchair
and a stuffed dog wearing a helmet

Median Island Safety
Ordinance
All of the material on the median is an
obstruction to safe traffic flow


Median Island Safety Ordinance
These women are asking donations for a car wash on a very narrow median

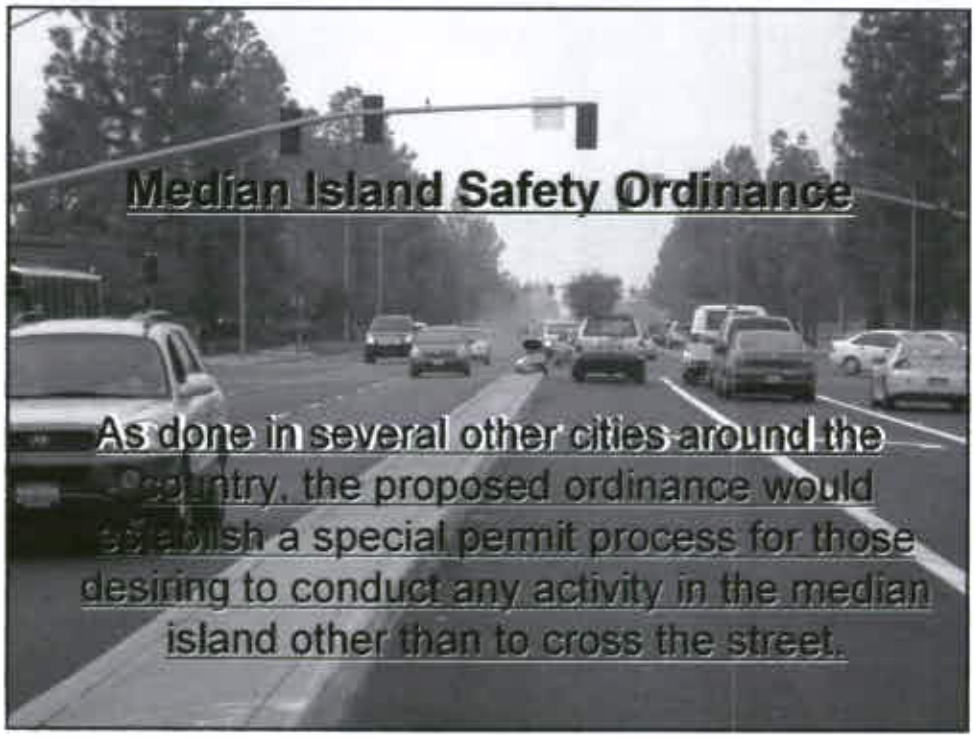
Median Island Safety Ordinance
These kids where not paying attention to the traffic at all

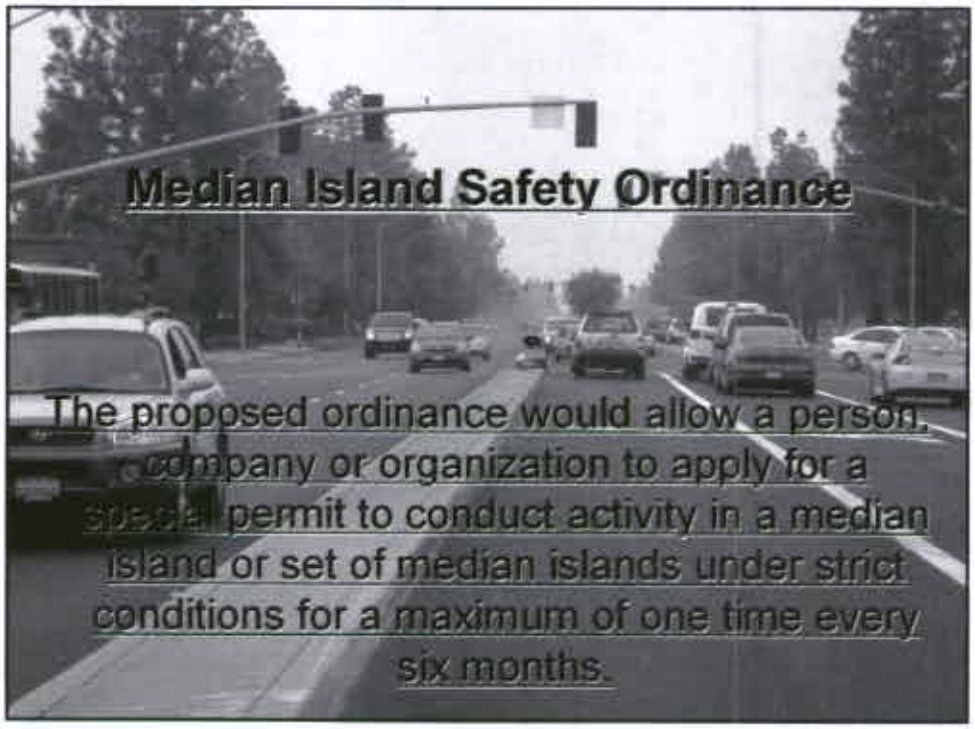
Median Island Safety
Ordinance
One kid is hanging off the median

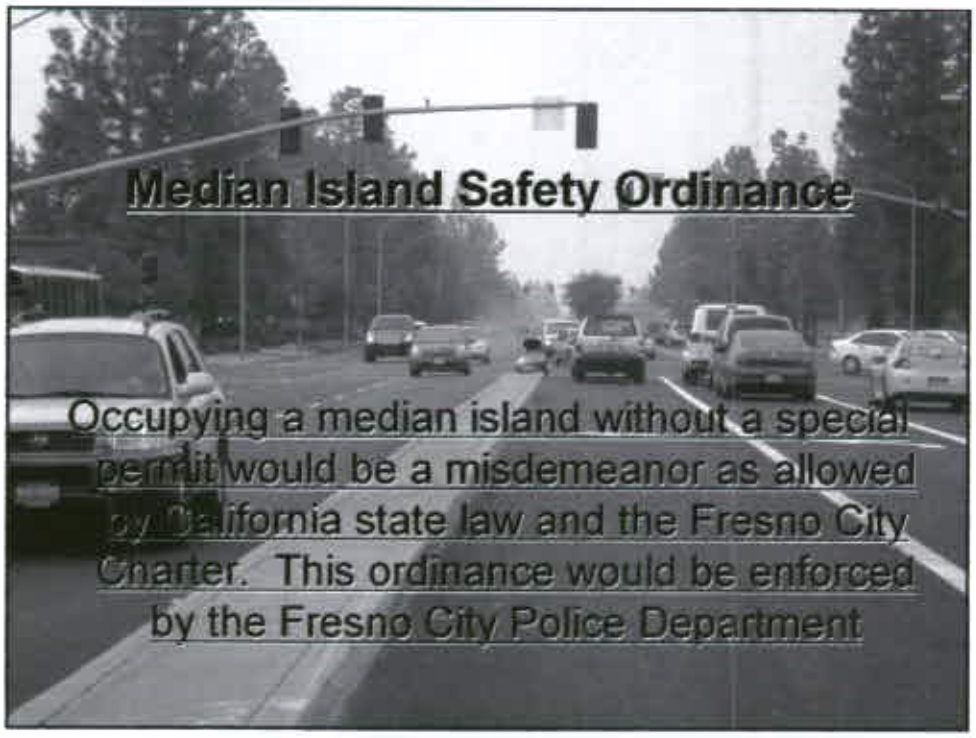
Median Island Safety
Ordinance

Median Island Safety Ordinance
Older intersections have signal light heads that can be obstructed with people loitering on the median

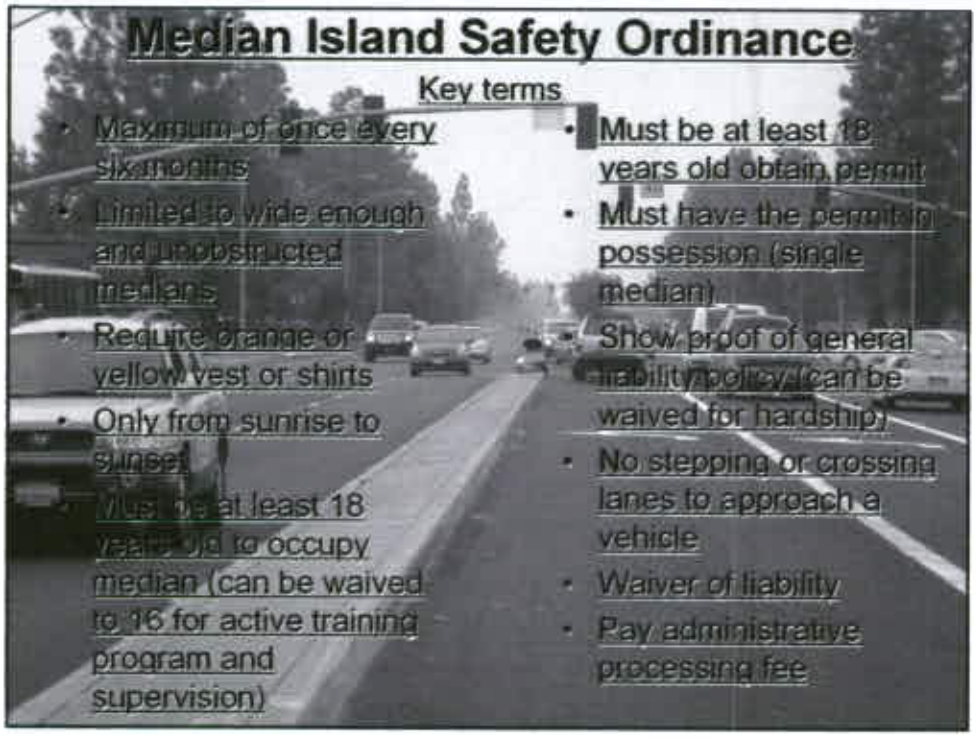
Median Island Safety Ordinance
Would regulate time, place and manner of when persons can loiter on a median island for the sole purpose of making it safer for the citizens of Fresno; both for drivers and those who desire to conduct some limited activity in a median island.


Median Island Safety Ordinance
As done in several other cities around the country, the proposed ordinance would establish a special permit process for those desiring to conduct any activity in the median island other than to cross the street.


Median Island Safety Ordinance
The proposed ordinance would allow a person, company or organization to apply for a special permit to conduct activity in a median island or set of median islands under strict conditions for a maximum of one time every six months.


Median Island Safety Ordinance
Occupying a median island without a special permit would be a misdemeanor as allowed by California state law and the Fresno City Charter. This ordinance would be enforced by the Fresno City Police Department

Median Island Safety Ordinance
The ordinance would allow for two types of special permits:
1. City-wide or multiple intersections
or
2. Single median island


Median Island Safety Ordinance
Key terms
Maximum of once every six months
Limited to wide enough and unobstructed medians
Require orange or yellow vest or shirts
Only from sunrise to sunset
Must be at least 18 years old to occupy median (can be waived to 16 for active training program and supervision)
Must be at least 18 years old obtain permit
Must have the permit in possession (single median)
Show proof of general liability policy (can be waived for hardship)
No stepping or crossing lanes to approach a vehicle
Waiver of liability
Pay administrative processing fee

Median Island Safety Ordinance
Questions?

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 25 TO CHAPTER 14, REGARDING SAFETY ON MEDIAN ISLANDS AND STREETS

WHEREAS, the City Council desires to address the safety of persons loitering on median islands and the secondary effects of disruption, delay, and congestion of traffic; and

WHEREAS, the City Council has considered evidence presented to it concerning the safety of individuals standing on median islands who have directed their activities at persons traveling in vehicles on City streets and the secondary effects of those activities on moving vehicles or those persons who were in moving vehicles; and

WHEREAS, the City Council also takes official note of the experiences of other cities in California and elsewhere that median island activities directed at occupants of moving vehicles and vehicles stopped at traffic lights presents public safety hazards and that such activity also leads to traffic congestion and increased risk of accidents where such solicitation occurs; and

WHEREAS, the City Council finds that evidence before it demonstrates that such activity presents safety hazards to the persons on the median islands, traffic congestion, interference with passage on public streets, and other safety impacts which result from the conduct occurring on or near the median islands and not from the content or viewpoint of any such speech activity in which any of them may be engaged; and

WHEREAS, the City Council declares that its intent in enacting the ordinance is not to interfere with the exercise of first amendment rights of those who seek to enter into business transactions, obtain employment or seek solicitation of charitable or other contributions, but only

to minimize the safety hazards of those in the median islands as well as the drivers of vehicles in a particular place and manner which minimizes those safety hazards; and

WHEREAS, the City Council finds and declares that the ordinance leaves open significant and reasonably available channels of communication to those who wish to communicate their desire to obtain employment, contributions or business, and to those who wish to make contributions, purchase goods and services, and hire those who are available for employment, and occupants of lawfully parked vehicles, distribution of flyers and similar materials to other pedestrians and occupants of lawfully parked vehicles; and

WHEREAS, the City Council wishes to ensure that its median island safety ordinance on its face reflects the actual intent of the Council and the manner of its enforcement, and is consistent with existing law; and

WHEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Article 25 is added to Chapter 14 of the Fresno Municipal Code to read as follows:

ARTICLE 25

MEDIAN ISLAND SAFETY

Section	14-2501.	Prohibition of Loitering on Median without a Permit.
	14-2502.	Permit Application.
	14-2503.	City-Approved Median Islands.
	14-2504.	Types of Permits.
	14-2505.	Liability Insurance.
	14-2506.	Hold Harmless.
	14-2507.	Safety Wear.
	14-2508.	Age of Permittee.
	14-2509.	Possession of Permit.
	14-2510.	Signs or Other Objects Prohibited.
	14-2511.	Stepping Off Median.
	14-2512.	Vehicles.
	14-2513.	Clean Up of Median.

14-2514. Federal, State and Local Laws.
14-2515. Written Acknowledgement.
14-2516. Number of Permits.
14-2517. Permit Time Period.
14-2518. Transferability.
14-2519. Exceptions.
14.2520. Definitions.
14.2521. Appeals.
14.2522. Violation.
14.2523. Review.

SECTION 14-2501. PROHIBITION OF LOITERING ON MEDIAN WITHOUT A PERMIT. It shall be unlawful for any person to loiter on a median island without a City issued permit.

SECTION 14-2502. PERMIT APPLICATION. The permit shall be obtained by filling out a City application. Said application shall be obtained at the City of Fresno Public Works Department. The fee for the permit shall be as established by Council resolution and contained in the City Master Fee Schedule. A permittee shall have the opportunity to request a waiver of fees for the permit. The Public Works Department, in its sole discretion shall determine whether to grant or deny the waiver request based upon the criteria listed on the Fee Waiver Request document.

SECTION 14-2503. CITY-APPROVED MEDIAN ISLANDS. The Traffic Division of the City of Fresno shall create and provide a document listing the location of median islands in the City on which a permittee may conduct its permitted activities. The list shall be made available to the public at the City Public Works Department.

SECTION 14-2504. TYPES OF PERMITS.

There shall be two types of permits:

(a) Specific Median Island Permit - A permit that would allow an permittee to occupy a specific, City approved median island.

(b) Multiple Median Island Permit- A permit that would allow a permittee to occupy any City approved median island.

SECTION 14-2505. LIABILITY INSURANCE.

(a) No permit shall be issued under this section unless the permittee obtains and maintains, at no cost to the City, a personal injury and property damage liability insurance policy, with coverage not less than as required by the City Risk Manager.

(b) A permittee shall have the opportunity to request a waiver of the requirements in this section. The City, in its sole discretion, shall determine whether to grant or deny the waiver request based upon undue hardship as set forth in the criteria listed on the Liability Insurance Waiver Request Form.

SECTION 14-2506. HOLD HARMLESS. A permittee under this article shall, and by acceptance of his permit does, to the furthest extent allowed by law, hereby agree to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers, as provided in a written statement set forth in the permit form, as approved by the City Risk Manager.

SECTION 14-2507. SAFETY WEAR. All permittees shall wear orange colored safety clothing. Such clothing shall include, but not be limited to, orange colored or reflective vests and/or shirts.

SECTION 14-2508. AGE OF PERMITTEE.

(a) All permit applicants shall be no younger than 18 years of age. The City shall require proof of age by the permit applicant providing a valid birth

certificate, valid California Drivers License or other California State Issued Identification Card containing the permit applicant's birth date.

(b) In the case of a Multiple Median Island permittee, persons no younger than 16 years of age may request and be permitted to act in the approved median islands if they have been given instruction in safety procedures by the permittee and are directly monitored by the adult permittee or authorized representative. For organizational permittees, all persons to be covered under the permit shall be listed in the application, with proof of age provided by the organization for each person.

SECTION 14-2509. POSSESSION OF PERMIT. All specific median island permittees shall be required to carry and display the permit while on the median island. Any such person must show the permit to any City employee upon request.

SECTION 14-2510. SIGNS OR OTHER OBJECTS PROHIBITED. No permittee shall be allowed to bring any signs, materials or other objects on the median island that will obstruct any signal light or extend into a traffic lane or obscure any traffic sign on the median. No animal shall be allowed on the median island, other than a service animal. No person, sign, material, animal or other object on the median island shall obstruct any signal light or extend into a traffic lane or other traffic sign.

SECTION 14-2511. STEPPING OFF MEDIAN. No person shall step off the median island to exchange any object with a vehicle occupant.

SECTION 14-2512. VEHICLES. No person shall exchange any object with an occupant of a moving vehicle.

SECTION 14-2513. CLEAN UP OF MEDIAN. All permittees shall be required to clean up and remove all litter, junk or any other material before they leave the median island. Any person or organization violating this section shall be required to reimburse the City for any costs related to the clean up and removal of any items left on the median.

SECTION 14-2514. FEDERAL, STATE AND LOCAL LAWS. All permittees shall be required to follow all applicable Federal, State and Local laws while on the median.

SECTION 14-2515. WRITTEN ACKNOWLEDGEMENT. All permittees shall be required at the time of application, to sign an acknowledgement and agreement to abide by all the rules and regulations listed in this Chapter.

SECTION 14-2516. NUMBER OF PERMITS. A Specific Median Island Permit or Multiple Median Island Permit shall not be issued to an individual or organization more than once every six (6) months.

SECTION 14-2517. PERMIT TIME PERIOD. A permit issued under this section shall only be valid from sunrise to sunset of the date listed on the Permit. The Permit is revocable due to unsafe conditions, such as poor visibility, including weather, fog or as determined by a Fresno Police Officer.

SECTION 14-2518. TRANSFERABILITY. Permits issued under this section shall be non-transferable.

SECTION 14-2519. EXCEPTIONS.

(a) This Article shall not apply to freeway oriented solicitation prohibited by California Vehicle Code section 22520.5.

(b) The permit procedure for charitable solicitations by public safety personnel shall be as set forth in California Business and Professions Code section 17510.25.

(c) This Article shall not apply to those persons occupying a median while conducting activities related to maintenance, surveying, construction, landscape maintenance, landscape improvements, responding to an emergency, or as otherwise permitted by law.

SECTION 14-2520. DEFINITIONS. For the purposes of this section, the following definitions shall apply:

(a) "Median" shall mean a paved or planted area separating a street, or highway, into two (2) or more lanes or directions of travel. City-Approved median islands as provided in Section 14-2503, shall be not less than four (4) feet wide.

(b) "Permittee" means any person or organization applying for, or issued a median island solicitation permit under this section, or any employee, agent, representative or other person who shall be occupying a median island for that person or organization.

(c) In this Chapter, "Loitering" means standing or lingering in a median island without a permit, or exception as provided in Section 14-2519, other than to safely and lawfully cross the street,

SECTION 14-2521. APPEALS. An applicant that has been denied the issuance of a permit may appeal that decision. The procedure for all appeals regarding denial of a permit shall be as established under Chapter 1, Article 4 of the Fresno Municipal Code.

SECTION 14-2522. VIOLATION.

(a) A violation of this chapter is a misdemeanor, punishable upon conviction by imprisonment in the county jail for a term not to exceed six (6) months, or by a fine not to exceed two hundred fifty dollars ($250) for the first offense, five hundred dollars ($500) for the second offense within six months of the first offense, and one thousand dollars ($1,000) for the third or subsequent offense within six months of the first offense, or by both fine and imprisonment.

(b) In addition, the City Attorney shall also have the power to seek injunctive relief for any violation of this Article.

(c) In addition to any administrative penalty assessed for a violation of this article, any person or organization found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, calculated to recover the total costs incurred by the City in enforcing this Article.

SECTION 14-2523. REVIEW. This Ordinance shall be reviewed by the Council within one (1) year of the effective date of the Ordinance.

SECTION 2. SEVERABILITY. The Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

///

///

///

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the sixtieth day after its final passage.

* * * * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the ___ day of _____, 2010.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2010

Mayor Approval/No Return: _____, 2010

Mayor Veto: _____, 2010

Council Override Vote: _____, 2010

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Michael D. Flores, Deputy

MDF:ns [52285ns/ord]- 2/4/10