

Agenda Item: File ID16-549

Date: 5/12/16

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FRESNO CITY COUNCIL



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Supplemental Information Packet

Agenda Related Items –File ID16-549

Contents of Supplement: Memo from City Attorney Dated May 10, 2016

Item(s)

BILL NO. B-14 - (Intro. 2/28/2016) (For adoption) - Amending Article 7 of Chapter 10 of the Fresno Municipal Code relating to Management of Real Property.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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DOUGLAS T. SLOAN
City Attorney

May 10, 2016

MEMORANDUM – Not attorney client privileged

TO: Council, Mayor, City Manager

RE: Management of Real Property Ordinance

On the Council Agenda for May 12th is a proposed amendment to the Management of Real Property Ordinance (MORPO). We understand there are some concerns with the ordinance or the proposed changes.

MORPO was first approved in 1998. The ordinance seeks primarily to address public nuisance behaviors on private property, and holds accountable both owners and occupants (tenants, lessees, or invitees) for the nuisance behavior. The existing section 10-706 "Dual Responsibility" section states:

(a) Every person or entity owning, possessing, or having charge or control of real property within the City is required to manage that property and control the environment thereon in a manner so as not to violate the provisions of this article, and the owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding the property.

(b) Every occupant, lessee, or holder of any possessory interest in real property is required:

(1) To comply with all laws applicable to the property.

(2) To supervise anyone utilizing, using, or occupying the property, with or without the consent of the owner, consistent with this article.

(3) To maintain the property in a manner so as not to violate the provisions of this article. (Added Ord. 98-73, § 1, eff. 10-24-98).

The proposed changes include:

1. In addition to owners and tenants being responsible, home owners associations and property managers are also responsible. This is included to address circumstances such as condominium complexes that are largely not owner occupied, and where nuisances may be occurring both within the units and in the common areas. Also, rather than provide all owners and tenants *shall* be jointly responsible, the new provision states they *may* be held jointly responsible, in the discretion of the hearing officer or court. This allows the hearing officer or judge to find responsibility where it properly lies, depending upon the facts.

2. It clarifies the minimum fine is \$1,000, rather than "up to" \$1,000, and the upper fines can be between \$10,000 and \$50,000, rather than simply \$50,000. This is consistent with fine treatment in other areas of the Code.

3. Circumstances that can trigger violation of the ordinance include excessive police calls for service. The existing ordinance includes violent crimes as those that are counted in the excessive determination. This is modified to include other non-violent crimes. This does not mean the City would be using this provision to pursue these actual crimes, but merely that these types of crimes are counted among the number of police calls for service in the determination.

4. In determining whether the number of police calls are excessive, properties are compared to similar properties in the policing district. This is expanded to capture properties within a two mile radius, to be more meaningful should a property be near the border of a policing district.

There has been expressed concern the ordinance could be used to improperly pursue tenants when either the responsibility is with the owner, third parties beyond the tenant's control (for example, domestic violence), or when other remedies may be more precise or appropriate even as against the tenant.

City officials and the public can be assured this office, either directly or in counseling City staff in the implementation of the ordinance, would never permit the ordinance to be abused to prosecute tenants when nuisance behaviors are occurring that are beyond their control, or when responsibility lies with the owner. That is not the intent of the ordinance or the policy of this office. The ordinance is intended to protect the peace, health, safety, and property values of residential and commercial neighborhoods. The ordinance is typically used when there are numerous nuisances occurring, criminal activity, usually combined with building code violations as well, and the primary responsibility usually lies with the owner, either for not making repairs as needed or for allowing tenants to continually be a nuisance to the neighborhood by committing serial violations. It never has and would never be used to unfairly target innocent individual tenants.

All actions pursuant to the ordinance would be subject to public scrutiny and accountability. If ever a citizen believes the ordinance is being unfairly utilized, that can be reported and we as City officials can be responsive. However, it is our observation the ordinance has been used here solely to benefit neighborhoods and citizens are pleased with the outcomes. This is one tool in the toolbox that enhances the City's opportunities to improve neighborhood conditions. This office will provide a report to Council on an annual basis of how MORPO has been used and the outcomes of the cases, as well as forwarding and addressing any citizen complaints or concerns.

Respectfully submitted,


DOUGLAS J. SLOAN
City Attorney

c: Francine M. Kanne, Chief Assistant
Katie Doerr, Chief Assistant

DTS:ns [71382ns/dts]