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Agenda Item: ID16-593 (1-K)

Date: 5/19/16

2016 MAY 18 AM 11 38

CITY CLERK, FRESNO, CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID16-593 (1-K)

Contents of Supplement: Letter from American Civil Liberties Union (ACLU)

Item(s)

BILL NO.B-14 – (Re-Introduced as amended on 5/12/2016) (For adoption) – Amending Article 7 of Chapter 10 of the Fresno Municipal Code relating to Management of Real Property.

Supplemental Information:

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CITY CLERK, FRESNO CA

May 18, 2016

VIA ELECTRONIC MAIL

Fresno City Council
2600 Fresno St
Fresno, CA 93721

Dear Councilmembers,

We appreciate your recent proposed changes to Chapter 10, Article 7, §§10-701 – 10-716 of the Fresno Municipal Code. While these amendments are a step in the right direction, we remain concerned that they have not fully addressed all of the problems with the original proposal. We are therefore writing to seek clarification on two points.

I. The proposed revisions may still hurt victims of domestic violence.

The proposed Ordinance still punishes “juvenile or domestic disturbances, excluding domestic violence calls for service.” §10-708(g)(5). Although we appreciate that it now excludes “domestic violence calls for service,” the scope of this exclusion is not entirely clear.

First, the ordinance does not define “domestic violence.” California law broadly defines “domestic violence” as “abuse perpetrated against” a broad range of persons. Family Code §6211.¹ We assume that the proposed ordinance incorporates this same definition and hope that you will make that clear.

¹ This provision reads in full:

“Domestic violence” is abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
 - (b) A cohabitant or former cohabitant, as defined in Section 6209.
 - (c) A person with whom the respondent is having or has had a dating or engagement relationship.
 - (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
 - (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
 - (f) Any other person related by consanguinity or affinity within the second degree.
- Cal. Fam. Code § 6211.



Second, the scope of the term “calls for service” is not clear. If, for example, somebody calls the police to complain that people are arguing or fighting nearby but does not know that it is a domestic violence situation, does that qualify as a “domestic violence call for service?” Again, we would assume that the answer is yes, but it is not entirely clear from the text of the ordinance. Unfortunately, one in four women will experience domestic violence in their lifetime, and creating additional barriers will only proliferate these numbers. *See Patricia Tjaden & Nancy Thoennes, U.S. Dep’t of Just., NCJ 181867, Extent, Nature, and Consequences of Intimate Partner Violence*, at iii (2000), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/181867.htm>. The Ordinance should not contribute to a more hostile environment for victims nor make victims or third parties question whether calling the police will subject them or their neighbors to civil liability.

II. The proposed revisions do not clarify what is a proper justification for criminal acts.

The Ordinance punishes frequent response by the Fresno Police Department to a residence or nearby areas “as a result of any person or persons causing any combination of ... calls” for “violent or non-violent criminal acts, charged or not charged.” §10-708(g)(2). This would appear to apply even when the police responded, investigated the situation, and determined that the calls were not justified because no crime had occurred. Occupants should not face punishment for false or unjustified complaints about them. We assume that the ordinance is not intended to operate this way, and we hope that you will clarify this, perhaps by amending this section to specific “justified calls.”

Conclusion

As mentioned, we do appreciate the steps to clarify other serious concerns with the Ordinance. These changes would allow the Ordinance to better serve a purpose of protecting residents most vulnerable to discriminatory enforcement. We urge the City to address these concerns before voting on a final revised Ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "Abre' Conner".

Abre' Conner
Staff Attorney
ACLU of Northern California

CC: All Members of City Council
Yvonne Spence, City Clerk
Ashley Swearingin, Mayor
Bruce Rudd, City Manager
Doug Sloan, City Attorney