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Agenda Item: ID16-464 (2-1)

Date: 4/21/16

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Supplemental Information Packet

Agenda Related Item(s) – ID16-464 (2-1)

Contents of Supplement: Amended Ordinance

Item(s)

Attached please find a Supplement to File ID16-464 (2-1). The title of the item is as follows:

BILL - (For introduction) - Amending Article 7 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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BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING ARTICLE 7 OF THE FRESNO MUNICIPAL CODE, RELATING TO MANAGEMENT OF REAL PROPERTY.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 7 of the Fresno Municipal Code is amended to read:

SECTION 10-701. TITLE. This article shall be known as the "Management of Real Property Ordinance."

SECTION 10-702. FINDINGS.

(a) Just as the physical conditions of structures and properties within the City can constitute public nuisances, so can too the behavior of persons on properties within the City constitute public nuisances. The abatement of behavioral nuisances is as important to the City in its fight against blight, decay, deterioration and crime as is the abatement of other nuisances created by physical conditions.

(b) The owners of real properties within the City are [primarily] responsible for monitoring their properties and for taking appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance creating behaviors, or the combination of conditions. Many nuisances can be avoided with active property management. Lack of proper management of real property can create an environment which is conducive to behaviors which become a

nuisance with repetition and lack of abatement and corrective measures. If a property owner does not fulfill [the owner's] ~~his or her~~ responsibilities, it is necessary for the safety, health and welfare of the neighborhoods, and the City as a whole, that the City be able to undertake abatement action.

(c) Because of the profound impact and affect behavioral nuisances have on the community, individuals and crime, the Council, in adopting this ordinance finds the civil penalties imposed for a violation of this ordinance are justified and necessary to protect the health, property, and integrity of this community.

(d) Nothing in this ordinance exempts property owners from compliance with state or federal laws, including, but not limited to, laws on housing, eviction, retaliatory conduct, discriminatory conduct, or invasion of privacy, nor with City laws relating to housing or relocation.

SECTION 10-703. PURPOSE.

(a) The purpose of this article is:

(1) To set forth and enforce minimum standards relating to the management of activities conducted or conditions on real property to protect the public health, safety and welfare, ~~and~~; [; and]

(2) To put in place remedies which will permit the City to take effective, efficient administrative or other legal action against property owners [and other responsible parties] who permit or suffer nuisance creating behaviors or conditions to occur on their properties on a continuing basis, in order to compel such owners to

abate the nuisance creating behaviors or conditions and control the environment, both physical and behavioral, on such real properties.

(b) The provisions of this article are complimentary, cumulative, supplementary, and additional to any other legal remedies available, whether found in this code, state or federal laws, regulations, or case law.

(c) It is not the intent nor purpose of this article to subject owners or [property] managers to any legal liability resulting from a tenant's actions away from the owner's or [property] manager's own property, unless it can be shown that the problem tenant is also creating a nuisance or committing a crime on the owner's or [property] manager's property.

SECTION 10-704. DEFINITIONS.

(a) "Administrative expenses" shall include, but not be limited to:

(1) The cost of any hearings before the Hearing Officer;

(2) Personnel costs, both direct and indirect, including attorney's fees;

(3) The costs incurred in documenting the nuisance, including the actual expenses and costs of the City in conducting inspections and in the preparation of notices, administrative citations and orders.

(b) "Director" shall mean the Police Chief and/or the Director of the ~~Planning and Development Department~~ [Development and Resource Management Department], and any of their designees.

(c) “Enforcement officer” means any person authorized by the Director pursuant to Section 9-907 [10-707] to enforce violations of this article.

(d) “Habitual” shall mean patterns or occurrences evidenced by frequent repetition or regularity, or that evidence a mode of practice or usage.

(e) “Hearing officer” shall mean any person designated under the provisions of the code to preside over the administrative hearings in accordance with the provisions of Chapter 1, Article 4, of the Fresno Municipal Code.

(f) “Industry Representative” may be a representative from any one of the following organizations: California Apartment Association-Greater Fresno Division; Institute of Real Estate Management, the Fresno Chamber of Commerce or such other local group as selected by a recipient of an administrative citation.

[(g) “Occupant” shall mean any person or entity in actual possession of or inhabiting real property.]

(g[h]) “Owner” and “property owner” shall mean the owner or owners of record of the subject real property as shown on the latest equalized assessment role of Fresno County or as otherwise actually known to the Director.

[(i)] “Property manager” shall mean a third party hired or retained by an owner or tenant to engage in the operation, control, or oversight of real property.]

(h[j]) “Real property” shall mean any lot or parcel of land for which the owner has legal ownership or exercises custody or control thereof.

(j[k]) “Responsible parties” under this section shall include owners; tenants; occupants; property managers; and home owners’ associations, in the case of condominium developments.]

(i[l]) ~~“Tenant” or “occupant” shall have the same meaning as set forth in Chapter 1, Article 2, Section 1-201(y) of the Fresno Municipal Code and may be used interchangeably.~~ “Tenant” shall mean any person or entity having the legal right to possess real property under a written, verbal, or implied lease or sublease.]

SECTION 10-705. SCOPE. This article shall apply generally to all real property throughout the City of Fresno wherein any of the nuisances hereinafter specified are found to exist.

SECTION 10-706. [JOINT]DUAL RESPONSIBILITY.

(a) Every [responsible party] ~~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 [every responsible party] ~~the owner remain~~ [shall be jointly and severally] liable

for violations thereof regardless of any contract or agreement [among them or] with any third party regarding the property.

(b) Every [responsible party] ~~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.

SECTION 10-707. AUTHORITY. The Director shall have the responsibility to administer and enforce the provisions of this article. The Director shall have the authority to designate employees as enforcement officers in conformance with this article to assist in the enforcement responsibilities, including the issuance of administrative citations pursuant to Section ~~9-909~~, [1-308] et seq. of this article.

SECTION 10-708. UNLAWFUL NUISANCES. It is hereby declared a public nuisance and a violation of this article for [a responsible party] ~~the owner, whether through the owner or owners' agent, lessee, sublessor, sublessee, or occupant~~ of any [real property] ~~premises~~ in the City to permit, with actual or constructive knowledge, any of the following activities to habitually occur on the real property of the owner:

(a) The illegal sale, use or possession of controlled substances or other illegal drugs and substances.

(b) The gathering, or coming and going, of people who have an intent to engage in any criminal activity on the premises including, but not limited to, the purchase or use [of] controlled substances[, or the evasion of arrest or capture by law enforcement,] on the premises.

(c) The occurrence of prostitution.

(d) Unlawful activities of ~~a criminal street gang (as defined in Penal Code Section 186.22)~~ one or more validated gang members. “Validated gang member” as used in this subsection means a person who is known to law enforcement, using Fresno Police Department’s “10 Criteria for Gang Validation,” to be a member of a “criminal street gang” as that term is defined in California Penal Code section 186.22, subdivision (f).]

(e) The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood, or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing on the property or in the area. The standards set forth in Fresno Municipal Code Chapter 10, Article 1 shall be utilized in determining whether a violation of this subsection exists.

(f) The unlawful discharging of a firearm or brandishing of a weapon by any person.

(g) The frequent response by the Fresno Police Department to the real property or the adjacent area [including public property or common areas of an apartment complex or condominium development] (but not the real property of another) as a result of any person or persons causing any combination of the following calls as indicated in the City of Fresno Police Department Incident Code Identifier:

(1) Animal disturbances, including but not limited to competitive fighting between animals.

(2) Violent [or non-violent] criminal acts, charged or not, including, but not limited to rapes, assaults, battery, homicides, ~~and/or~~ shootings, [identity theft, fraud, possession of stolen property, burglary, and theft].

(3) Illegal consumption of intoxicants in public view.

(4) Gaming activities.

(5) Juvenile [or domestic] disturbances.

[(6) Verbal disturbances that are plainly audible at distances of 50 feet or more.]

(7) Possession, use, manufacturing, cultivation, sale or purchase of controlled substances.]

“Frequent” as used in this subsection means such response is occurring more than 1.50 times than the average number of such responses for property of a similar size ~~in~~[and] character in the same

"policing district" established by the p[P]olice e[C]hief [or two mile radius, if similar property is located beyond a policing district boundary].

(h) The presence of graffiti or other defacing words, letters, or drawings, trash and debris on the property for a 48 hour period.

(i) The presence of abandoned vehicles or improperly stored inoperative, wrecked, or dismantled vehicles on the property, except as permitted in Article 6, Chapter 10.

(j) Violations of Article 3, Chapter 11 (Housing Regulations)[,] Article 4, Chapter 11 (Dangerous Building Ordinance), Article 5, Chapter 10 (Fire Prevention Ordinance) or Article 6, Chapter 10 (Public Nuisance [Abatement] Ordinance) of the Fresno Municipal Code, occurring on any one or more properties of the same owner within the City of Fresno.

[(k) The illegal sale, use, or possession of firearms.

(l) The harboring, boarding, or concealing of a person for which there exists an outstanding warrant for arrest.

(m) The illegal subletting and/or subdividing of dwelling units in violation of building codes and occupancy standards.]

SECTION 10-709. NOTICE TO [RESPONSIBLE PARTIES]~~PROPERTY OWNER~~. The Director shall, within a reasonable period of time from the date of occurrence of any activity listed in Section 10-708, notify the [known responsible parties] ~~property owner~~ of the unlawful activity. Said notice shall include the location of the property, the name of the person(s) conducting the unlawful activity (if known and appropriate), a description of the illegal activity, suggested

remedies and a warning of the enforcement of this article if the activity described is not abated within the time prescribed in the notice. The notice shall be served on the owner of the property, via regular mail, at the address listed on the latest tax assessment ~~role~~ [roll and known address(es) of additional responsible parties; additionally, the owner shall be required to immediately provide a copy of the notice to all other responsible parties of the property].

SECTION 10-710. VIOLATION. Any violation of this article may be enforced by any of the following procedures:

(a) Institution of legal action by the City Attorney.

(b) By issuance of administrative citations with civil penalties in lieu of criminal prosecution (but not prohibiting civil injunctive action) as follows:

(1) First violation, ~~up to~~ One Thousand Dollars (\$1,000), plus any abatement, actual, administrative and enforcement costs and administrative expenses incurred;

(2) On a second violation of this article within a rolling 12 month period, ~~up to~~ Ten Thousand Dollars (\$10,000), plus any abatement, actual, administrative and enforcement costs and administrative expenses incurred;

(3) On a third or subsequent violation of this article within a rolling 12 month period, ~~up to~~ [between Ten Thousand Dollars (\$10,000) and] Fifty Thousand Dollars (\$50,000), plus any

abatement, actual, administrative and enforcement costs and administrative expenses incurred.

SECTION 10-711. PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE CITATIONS.

(a) Administrative citations shall be issued consistent with the procedures set forth in Section 1-308 of the Fresno Municipal Code.

(b) If an appeal is filed pursuant to Section 1-308(f), in addition to the procedures for hearing set forth in Chapter 1, Article 4, of the Fresno Municipal Code, an "Industry Representative" selected by the appellant, shall have the opportunity to serve as an advisor to the hearing officer. The hearing officer shall consider the information provided by such advisor regarding industry standards of practice, as well as the reasonableness of any remedy.

SECTION 10-712. COSTS AND EXPENSES INCURRED. In addition to any administrative penalty assessed for a violation of this article, any [responsible party]~~property owner~~ found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, as well as an administrative expense[s] as defined in Section 10-704, calculated to recover the total costs incurred by the City in enforcing this article.

SECTION 10-713. COLLECTION OF PENALTIES. The City may collect abatement, actual, administrative and enforcement costs, as well as penalties and administrative expenses under the provisions of Chapter 1, Article 5 of this Code.

SECTION 10-714. USE OF FEES, FINES AND PENALTIES. All costs and penalties received by the City pursuant to this article shall be used exclusively for administration and enforcement of this article and Articles 3 and 4 of Chapter 11 of the Fresno Municipal Code.

SECTION 10-715. RELOCATION COSTS. The owner shall be required to reimburse the City for any costs or expenses associated or incurred with the relocation of tenants resulting from the enforcement of this Article.

SECTION 10-716. SEVERABILITY. If any section, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this article. The Council hereby declares that it would have passed this ordinance and adopted this article and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

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

I, YVONNE SPENCE, 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 _____, 2016.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2016
Mayor Approval/No Return: _____, 2016
Mayor Veto: _____, 2016
Council Override Vote: _____, 2016

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Seth Mehrten [Date]
Deputy City Attorney

SM:jd [70984jd:ns/sm] 4/18/16