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Agenda Item: ID#16-1353 (4-B)

Date: 11/17/16

CITY CLERK, FRESNO CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#16-1353 (4-B)

Contents of Supplement:

1. Revised Resolution
2. PowerPoint Presentation

Item(s)

RESOLUTION - Regarding the Anti-Slum Enforcement Team and Landlord-Tenant Ombudsman Program

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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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, REGARDING THE ANTI-SLUM
ENFORCEMENT TEAM AND LANDLORD-TENANT
OMBUDSMAN PROGRAM

WHEREAS, the City has an interest in ensuring residents have access to safe and habitable housing; and

WHEREAS, the City requires compliance from landlords who are failing to maintain their residential properties and have created significant health and safety hazards; and

WHEREAS, frequently administrative citations have been insufficient to gain legal compliance, which is the primary goal of Code Enforcement; and

WHEREAS, since 2014, the City has been actively considering and implementing measures to remedy blight and provide improvements in housing, including changes in the Vacant Building Ordinance and Management of Real Property Ordinance, among other Code Enforcement amendments; and

WHEREAS, in the Fiscal Year 2017 budget, the City funded two additional Code Enforcement inspectors, two additional attorneys, a legal assistant, and a legal secretary, whose sole function is to work closely with staff in the Code Enforcement division of DARM to focus efforts on the most egregious violators of state and local codes related to safe and habitable rental housing; and

WHEREAS, the City wishes to dedicate necessary management, inspectors, and legal team solely to fulfilling the mission of this Resolution, and they shall be known as the Anti-Slum Enforcement Team (ASET); and

1 of 13

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution No. _____

WHEREAS, the City does not have sufficient resources to address and remedy all code violations in the City; therefore, it will be the policy of the City to pursue the worst violators and pursue the maximum fines, reimbursements, attorney fees, and other remedies such as receiverships, so a strong message is sent to all other owners of substandard properties that they are deterred from allowing violations to occur and should bring their properties into compliance before it is necessary for the City to prosecute their violations, costing the owners far more than if they had voluntarily complied; and

WHEREAS, ASET shall be dedicated to battling urban blight and improving the lives of City residents by encouraging voluntary code compliance and initiating legal proceedings focusing on the worst violators of housing health and safety laws; and

WHEREAS, ASET will seek to obtain compliance through intensive and focused Code Enforcement, including expedited and thorough civil litigation and potentially criminal prosecution of the worst offenders, but not burdening property owners who are complying with the law and providing safe and habitable housing; and

WHEREAS, in an effort to respond to the demands of the community and provide a safe, healthy inventory of rental housing to the residents of the City, the Council wishes to form the office of Landlord-Tenant Ombudsman (LTO); and

WHEREAS, the purpose of the LTO is to provide a reliable, neutral and user-friendly system whereby complaints can be made with the goal of quick resolution of substandard living conditions; and

WHEREAS, the LTO will enable City staff to know exactly where substandard units exist, rather than directing massive and expensive amounts of City resources to properties with no track record of problems; and

WHEREAS, the LTO will provide a direct and rapid path to actually correcting violations of state health and safety housing codes existing in the City's housing stock; and

WHEREAS, the LTO shall supplement, not supplant, existing Code Enforcement resources; and

WHEREAS, the LTO model relies on tenant participation, and is effectively an opt-in program that will improve communication by providing unbiased support to both landlords and tenants; and

WHEREAS, the City and community groups will publicize the LTO in an effort to let tenants know there is an alternative to suffering in substandard housing; and

WHEREAS, by this Resolution the City wishes to memorialize the mission and practices of ASET and the LTO; and

WHEREAS, the City wishes to make its battle against substandard housing a priority by devoting the resources necessary to make a significant positive impact on the community.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. ASET shall be a unit working directly under the Code Enforcement Manager in DARM, and shall consist of, at minimum, six Code Enforcement inspection officers (Housing Program Supervisor and five Sr.

Community Revitalization Specialists), three attorneys (Deputy City Attorney III and two Deputy City Attorney II), a legal assistant, and a legal secretary, with participation from other City staff, including building officials, police, and fire; the employees of the City Attorney's Office shall continue to report to the designated supervisor in the City Attorney's Office.

2. The mission of ASET shall be to increase the stock of habitable rental housing by pursuing violators to obtain code compliance, and initiating legal proceedings against the worst violators of applicable health and safety laws. ASET shall pursue violations of the California Health and Safety Code and Fresno Municipal Code sections 11-101 through 11-510, but may also pursue nuisance violations if they are in addition to health and safety violations and incidental to the goal of increasing the stock of habitable housing in the City. This paragraph does not limit the prosecution of additional state and local law where the City Attorney's Office has the authority and discretion.
3. ASET's targeted violators shall be identified with input from Code Enforcement officers, police, fire, Council offices, the Administration, and resident complaints. An assessment of any proposed target will include the following criteria:
 - a. the immediacy and severity of the threats to public health and safety;
and
 - b. the exterior condition of the property; and

- c. the proven ineffectiveness of other Code Enforcement measures; and
 - d. reports from public safety officials concerning the numbers of calls for police and fire service, as described in the Management of Real Property Ordinance (calls for service exceeding 1.5 times the average for similar properties in the area); and
 - e. the history of violations at both the property at issue as well as other properties of the same owner within or near the City; and
 - f. analysis of the feasibility of obtaining compliance through the legal process, versus administrative process or direct abatement.
4. Once a property has been identified as a potential target, ASET will perform an initial assessment. ASET will meet and determine what course of action to pursue, including number and types of inspections, meeting with public safety officials, and speaking to occupants of the property.
5. Once a property is selected as a target, the assigned Code Enforcement officer(s) will conduct an initial inspection with an ASET attorney; at least one ASET Code Enforcement officer will be assigned to the case from inception to resolution.
6. For purposes of this Resolution, all condominium rental units that are under a common ownership in one complex shall be treated as a rental complex. Treatment of common areas in a condominium complex shall be pursuant to the Management of Real Property Ordinance.

7. The attorney will ensure evidence will be admissible and sufficient in a legal proceeding. A legal assistant will obtain a title report and asset search on the property owner.
8. Following inspections, ASET may issue a notice and order or citation(s) to the property owner or other responsible parties. A notice shall provide a reasonable time to make repairs or cure health and safety violations, not to exceed an initial thirty days. Extensions may be granted by the City Manager for good cause. Citations may be immediately issued, pursuant to the FMC and state law, for violations involving imminent threats to health and safety.
9. After re-inspection and finding all repairs have not been completed or health and safety violations cured, the City Manager, with approval of the City Attorney, will decide whether to file a civil or criminal action (although the City Attorney retains sole prosecutorial discretion for any criminal filings), or to cite for penalties and costs through an administrative hearing. For the most significant violations, the City Attorney may refer the matter to Council to discuss in closed session.
10. If significant violations are found, ASET shall investigate the status of other properties in the City held by the same owner, and determine if violations exist at the other properties; if so, an action may be brought to collectively address multiple properties of the same owner.

11. If the property is determined not to be a candidate for action by ASET, it may be assigned to the Code Enforcement department to conduct an inspection and handle through traditional Code Enforcement channels.
12. For violations found in rental units, the owner shall be held legally responsible, unless the owner can prove a tenant or occupant caused damage, other than ordinary wear and tear, to the unit or otherwise is the cause of the violation after the unit was rented to the tenant; in such a case, ASET may pursue violations caused by the tenant or occupant.
13. For any properties targeted by ASET, no City employee is authorized to grant extensions of time to comply without concurrence of the City Manager and City Attorney.
14. The City Attorney and City Manager shall provide quarterly reports to the Council in public Council meetings concerning the status of ASET, results obtained, and any additional resources necessary to accomplish ASET's mission.
15. The City Attorney shall ensure weekly status reports are posted to the City Attorney's Office website, including specific information about the status of each property considered a target following initial inspection.
16. The office of LTO is hereby created.
17. The LTO shall report directly to the City Manager.
18. The LTO shall be staffed with one Ombudsman (Community Outreach Specialist), and shall be housed with ASET in office space within City Hall that can be easily accessed by the public.

19. The LTO shall maintain a web page on the City's website explaining the services offered, how it works, and a fillable form to request a call back from an ombudsman.
20. The LTO shall prepare and provide written materials to be given to tenants at time of lease signing explaining the services offered by the office of the LTO, and the rights and responsibilities of landlords and tenants. It shall be mandatory for landlords to provide these materials to tenants at the time of lease signing. These materials shall be translated by the City and shall be available in English, Spanish, Hmong, and Lao, and shall also be available online.
21. The LTO shall participate, as much as possible, in neighborhood watch meetings, community fairs, street fairs, community meetings, town hall meetings, block parties, school fairs, etc., in an effort to conduct public outreach explaining the service offered.
22. The function of the LTO shall be as follows:
 - a. A tenant submits a complaint to the LTO via telephone or online about an unsafe situation in a rental unit; and
 - b. The LTO obtains a detailed complaint from the tenant; and
 - c. The LTO contacts the landlord with a report of the conditions and obtains a guarantee the repairs will be timely made; and
 - d. The Landlord has two working days to correct the complaint and make repairs. In cases where a specialized replacement part is on back-order, for example, for an aging heating unit, extra time may be given

- as long as the landlord takes steps to immediately mitigate any threats to health and safety, for example, cold, water leak, etc., and a written plan is provided to the LTO delineating when the work will be completed. Less specialized repairs, such as a blocked toilet, broken window, exposed wiring, etc., must be completed within two days; and
- e. The LTO calls the tenant and landlord to confirm with each that work was completed adequately and upon receiving confirmation, the case is closed; and
 - f. If repairs are not completed adequately, the case is immediately referred to the City Manager. The City Manager will determine if the case will be handled by ASET or transferred to Code Enforcement to begin traditional mitigation procedures and/or penalties; and
 - g. Any complaints of landlord retaliation will be immediately referred to the City Attorney for investigation.
23. The LTO will work in conjunction with Code Enforcement, ASET, and the Police Department when substandard properties are detected.
24. The LTO shall keep detailed records of the number of complaints received, the addresses of the properties, the types of complaints, and a log of every contact with residents and landlords. The LTO shall prepare and provide weekly written reports to the ASET Supervisor in an effort to accurately track complaints and identify properties with chronic problems. The LTO will also keep records of complaints that don't rise to the level of state health and safety code violations, for example, holes in the wall,

ripped or dirty carpet. The LTO and ASET Supervisor shall present a quarterly report for review by Council.

25. The LTO shall be specifically and legally prohibited from:
 - a. Becoming involved in or advising parties in financial disputes such as rent or deposit disputes between landlord and tenant; and
 - b. Becoming involved in or advising parties in legal disputes of any kind; and
 - c. Becoming involved in or advising parties in disputes between tenants, such as barking dogs, loud music, cars parked illegally, etc.; and
 - d. Becoming involved or advising parties in legal matters related to eviction proceedings; and
 - e. Taking complaints related to non-immediate threats to health and safety of rental units, such as illegal dumping, tree trimming, Americans with Disability Act compliance, etc. Callers shall be referred to the City's One-call Center; and
 - f. Taking complaints from persons other than the lease signee; and
 - g. Being compelled to testify in civil cases; and
 - h. Referring to or recommending tenants seek legal representation; and
 - i. Referring either party to any particular contractor to complete needed repairs.
26. The City hereby commits to devote the following resources to ASET and the LTO and directs the City Attorney's Office and Administration to take all actions necessary to comply:

a. Staffing:

- i. Create and fund three additional, and reassign two, senior Code Enforcement officers, to be known as the "Substandard Housing Code Enforcement Officers," for a total of five, as well as one additional Supervisor, to be assigned exclusively to ASET, either certified by California Association of Code Enforcement Officers (CACEO) or enrolled for CACEO certification; and
- ii. Create and fund one additional attorney, and reassign two attorneys to be assigned exclusively to ASET, along with support staff; and
- iii. All members of ASET shall be assigned to work exclusively on the matters provided for in this Resolution; and
- iv. Staff the LTO with one Ombudsman.

b. Resources:

- i. Necessary investigative technology and training in its use, including, by way of example, access to the software database CE/Building & Safety/Zoning, as well as ISO Search/LexisNexis to conduct asset searches; and
- ii. Provide additional work space, furnishings, and computer related resources, as necessary; and
- iii. Provide funding to obtain real estate documents including title reports and asset searches; and
- iv. Provide funding for law clerk assistance as needed; and

v. Provide funding for interpreters as needed.

c. Training and Membership:

i. Provide funding for CACEO training and certification for Code Enforcement officers; and

ii. Provide funding for Police Officer Standards and Training for Code Enforcement officers regarding evidence gathering, criminal procedure, and testimony; and

iii. Provide a training fund for attorneys.

27. This Resolution shall take effect immediately upon its 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 resolution 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: _____
Katie Doerr [Date]
Chief Assistant City Attorney

KBD:ns [72981ns/kbd]