

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 21 AND ARTICLE 22 TO CHAPTER 10 OF THE FRESNO MUNICIPAL CODE, PROHIBITING IMPEDING ON SIDEWALKS WITHIN 500 FEET FROM SENSITIVE AREAS INCLUDING SCHOOLS, CHILDCARE FACILITIES, PUBLIC PARKS, PUBLIC LIBRARIES, WARMING AND COOLING CENTERS, AND CITY-PERMITTED SHELTERS FOR THE UNHOUSED

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

SECTION 1. Article 21 is hereby added to Chapter 10 of the Fresno Municipal Code to read:

ARTICLE 21

PUBLIC WELFARE

Section 10-2101. SITTING. LYING, OR SLEEPING OR STORING, USING MAINTAINING OR PLACING PERSONAL PROPERTY IN THE PUBLIC RIGHT-OF-WAY

(a) No person shall obstruct a street, sidewalk, or other public right-of-way:

(1) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property in a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L, No. 101-336, 104 Stat. 328 (1990), as amended from time to time;

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Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: AMK

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(2) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 10 feet of any operational or utilizable driveway or loading dock;

(3) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 5 feet of any operational or utilizable building entrance or exit;

(4) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 2 feet of any fire hydrant, fire plug, or other fire department connection;

(5) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within the public right-of-way in a manner that obstructs or unreasonably interferes with the use of the right-of-way for any activity for which the City has issued a permit.

(b) No person shall obstruct any portion of any street or other public right-of-way to use by motor vehicles, or any portion of a bike lane, bike path, or other public right-of-way open to use by bicycles, by sitting, lying or sleeping, or by storing, using, maintaining, or placing personal property, anywhere within the street, bike lane, bike path, or other public right-of-way, as specified.

(c) Except as limited by Subsection (d), no person shall:

(1) sit, lie, sleep, or store, use, maintain, or place personal property, in or upon any street, sidewalk, or other public right-of-way within the distance stated on the posted signage (up to a maximum of 500 feet) of a property designated as a sensitive use. For a property to be designated as a “sensitive use,” the property must be a School, Childcare Facilities, Public Park, Public Library, Warming and Cooling Centers, and City-Permitted Shelters for the Unhoused;

(2) sit, lie, sleep, or store, use, maintain, or place personal property, in or upon any street, sidewalk, or other public right-of-way within the distance stated on the posted signage (up to a maximum of 500 feet) of an overpass, underpass, freeway ramp, tunnel, bridge, pedestrian bridge, or active railway, where the City Council determines, in the designating resolution, that the public health, safety, or welfare is served by the prohibition, including, without limitation, by finding that sleeping or lodging within stated proximity to the designated area is unhealthy, unsafe, or incompatible with safe passage.

(3) sit, lie, sleep, or store, use, maintain, or place personal property, in or upon any street, sidewalk, or other public right-of-way within the distance stated on the posted signage (up to a maximum of 500 feet) of a designated facility, that provides shelter, safe

sleeping, or safe parking to homeless persons, or that serves as a homeless services navigation center;

(4) sit, lie, sleep, or store, use, maintain, or place personal property, in or upon any street, sidewalk, or other public right-of-way that has been posted with signage prohibiting sitting, lying, sleeping, or storing, using, maintaining, or placing personal property. In order to designate a section of street, sidewalk, or other public right-of-way as prohibited under this subdivision, the City Council shall determine, in a designating resolution and based on specific documentation, that the circumstances of continued sitting, sleeping, lying or storing personal property, or otherwise obstructing the public right-of-way at the location poses a particular and ongoing threat to public health or safety.

(d) No person shall be found to be in violation of any prohibition set forth in Subsection (c) unless and until (1) the City Council has taken action by resolution to designate specified areas for enforcement against sitting, lying, sleeping, or storing, using, maintaining, or placing personal property, or otherwise obstructing the public right-of-way; (ii) the City has posted signage at the designated area or areas set forth in the resolution, with such signage including reference to any required findings adopted in the resolution and giving notice of the date after which no sitting, lying, sleeping, or storing, using, maintaining, or placing personal property, or

otherwise obstructing the public right-of-way will be allowed; and (iii) at least 14 calendar days have passed from the date on which the signage is posted at the designate area or areas.

(e) No person shall sit, lie, sleep, or store, use, maintain or place personal property, in or upon any street, sidewalk, or other public property within 500 feet of a School or Day Care Center. A violation of this subsection is governed by Section 10-2101(f) of this code.

(f) Violations of this section involving a person who willfully resists, delays, or obstructs a City employee from enforcing this section or who willfully refuses to comply after being requested to do so by an authorized City employee shall be subject to the penalties pursuant to Chapter 1, Article 3 of this Code. All other violations shall be enforceable only as infractions pursuant to Sections 1-308, et seq. Appeal of an administrative citation may be made pursuant to Sections 1-308 et seq.

(g) The City shall adhere to State law as it pertains to mobile and sidewalk vendors.

SECTION 2. Article 22 of Chapter 10 is hereby added to the Fresno Municipal Code to read:

ARTICLE 22

PUBLIC HAZARDS

- Section 10-2201. Storage of Personal Property.
- 10-2202. Definitions.
- 10-2203. Regulation and Impoundment of Stored Personal Property.
- Discard of Certain Store Personal Property.
- 10-2204. Notice.

- 10-2205. Storage and Disposal.
- 10-2206. Repossession.
- 10-2207. Power of the City Manager to Make Rules and Regulations.

SECTION 10-2201. – STORAGE OF PERSONAL PROPERTY.

The City enacts this section to balance the needs of the residents and public at large to access clean and sanitary public areas consistent with the intended uses for the public areas with the needs of the individuals, who have no other alternatives for the storage of personal property, to retain access to a limited amount of personal property in public areas. This section attempts to balance the needs of all of the City's residents.

SECTION 10-2202. – DEFINITIONS

The definitions contained in this subsection shall govern the construction, meaning, and application of words and phrases used in this article.

(a) "Alley" means any Highway having a Roadway not exceeding 25 feet in width which is primarily for access to the rear or side entrances of abutting property.

(b) "Bikeway" means all facilities that provide primarily for, and promote, bicycle travel.

(c) "City Employee" means any full or part-time employee of the City of Fresno, or a contractor retained by the City for the purpose of implementing this Section.

(d) "Essential Personal Property" means any and all Personal Property that cumulatively is less than two cubic feet in volume, which, by

way of example, is the amount of property capable of being carried within a backpack.

(e) "Excess Personal Property" means any and all Personal Property that cumulatively exceeds the amount of property that could fit in a 60-gallon container with the lid closed.

(f) "Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

(g) "Parkway" means the area of the Street between the back of the curb and the Sidewalk that typically is planted and landscaped.

(h) "Person" means any individual.

(i) "Personal Property" means any tangible property, and includes, but is not limited to, goods, materials, merchandise, Tents, tarpaulins, bedding, sleeping bags, hammocks, sheds, structures, mattresses, couches, chairs, other furniture, appliances, and personal items such as household items, luggage, backpacks, clothing, documents, and medication.

(j) "Public Area" or "Public Areas" means all property that is owned, managed or maintained by the City, and shall include, but not be limited to, any Street, medial strip, space, ground, building or structure.

(k) "Roadway" means that portion of a Highway improved, designed or ordinarily used for vehicular travel.

(l) "Sidewalk" means that portion of a Highway, other than the Roadway, set apart by curbs, barriers, markings or other delineation, for pedestrian travel.

(m) "Storage Facility" means any facility, whether operated by a public, non-profit or private provider, which allows and has capacity for voluntary storage, free of charge, for a homeless person to store Personal Property up to the equivalent of the amount of property that would fit into a single 60-gallon container with the lid closed.

(n) "Store", "Stored", "Storing" or "Storage" means to put Personal Property aside or accumulate for use when needed, to put for safekeeping, and/or to place or leave in a Public Area. Moving Personal Property to another location in a Public Area or returning Personal Property to the same block on a daily or regular basis shall be considered Storing and shall not be considered to be removing the Personal Property from a Public Area. This definition shall not include any Personal Property that, pursuant to statute, ordinance, permit, regulation or other authorization by the City or state, is Stored with the permission of the City or state on real property that is owned or controlled by the City.

(o) "Street" includes every Highway, avenue, lane, Alley, court, place, square, Sidewalk, Parkway, curbs, Bikeway or other public way in this City which has been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

(p) "Tent" means a collapsible shelter made of fabric such as nylon or canvas or a tarp stretched and sustained by supports, which is not open on all sides, and which hinders an unobstructed view behind or into the area surrounded by the fabric. In order to qualify as a Tent for purposes of this subsection, a Tent, when deconstructed, must be able to fit within a 60-gallon container with the lid closed.

(q) "Unattended" means no Person is present with the Personal Property who asserts or claims ownership over the Personal Property. Conversely, property is considered "Attended" if a Person is present with the Personal Property and the Person claims ownership over the Personal Property.

SECTION 10-2203. REGULATION AND IMPOUNDMENT OF STORED PERSONAL PROPERTY; DISCARD OF CERTAIN STORED PERSONAL PROPERTY.

(a) No person shall Store any Unattended Personal Property in a Public Area. With pre-removal notice as specified in Section 10-2204(a), the City may impound any unattended Personal Property in a Public Area, regardless of volume. Post-removal notice shall be provided as set forth in Section 10-2204(b), below.

(b) No Person shall Store any Attended Excess Personal Property in a Public Area. With pre-removal notice as specified in Section 10-2204(a), the City may impound any Attended Excess Personal Property

Stored in a Public Area. Post-removal notice shall be provided as set forth in Subsection 10-2204(b).

(c) No Person shall Store any Personal Property in a Public Area in such a manner as to obstruct City operations, including a Street or Sidewalk maintenance or cleaning. Without prior notice, the City may temporarily move Personal Property, whether Attended or Unattended, which is obstructing City operations in a Public Area, including a Street or Sidewalk maintenance or cleaning, during the time necessary to conduct the City operations. The City may also impound Personal Property that is obstructing City operations in a Public Area, pursuant to Sections 10-2203(a) or 10-2203(b).

(d) No Person shall Store any Personal Property in a Public Area in such a manner that it does not allow for passage as provided by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time. Without prior notice, the City may move and may immediately impound any Personal Property, whether Attended or Unattended, Stored in a Public Area in such manger that it does not allow for the passage as required by the ADA. Post-removal notice shall be provided as set forth in Section 10-2204(b). A violation of this section is governed by Section 10-2101(f) of this Code.

(e) No Person shall Store any Personal Property, whether Attended or Unattended, within:

(1) 10 feet of any operational or utilizable driveway or loading dock;

(2) 5 feet of any operational or utilizable building entrance or exit; or

(3) 2 feet of any fire hydrant, fire plug, or other fire department connection.

Without prior notice, the City may move or may immediately impound any Personal Property, whether Attended or Unattended, Store in a Public Area in violation of this section. Post-removal notice shall be provided as set forth in Section 10-2101(f) of this Code.

(f) No Person shall Store any Personal Property in a Public Area that has a clearly posted closure time any Personal Property after the posted closure time. Without prior notice, the City may remove and impound Personal Property, whether Attended or Unattended, Stored in a Public Area that has a clearly posted closure time, provided the Personal Property is removed and impounded after the posted closure time. Post-removal notice shall be provided as set forth in Section 10-2204(b).

(g) No Person shall Store any Personal Property in a Public Area if the Personal Property, whether Attended or Unattended constitutes an immediate threat to the health or safety of the public. Without prior notice, the City may remove and may discard any Personal Property Stored in a

Public Area if the Personal Property poses an immediate threat to the health or safety of the public.

(h) No Person shall Store any Personal Property in a Public Area if the Personal Property, whether Attended or Unattended, constitutes evidence of a crime or contraband. Without prior notice, the City may remove and discard any Personal Property that constitutes evidence of a crime or contraband, as permissible by law.

(i) No Person shall Store any Personal Property, whether Attended or Unattended, in such a manner that obstructs or interferes with any activity in a Public Area for which the City has issued a permit. Without prior notice, the City may move any Personal Property Stored in a Public Area in violation of this section. With pre-removal notice as specified in Section 10-2204(a), the City may impound any Personal Property Stored in violation of this section. Post-removal notice shall be provided as set forth in Section 10-2204(b). A violation of this section is governed by Section 10-2101(f) of this Code.

(j) No Person shall Store any Personal Property, whether Attended or Unattended, in such a manner as to obstruct any portion of a street or other public right-of-way open to use by motor vehicles, a designated bike lane or bike path, or other public right-of-way open exclusively to use by bicycles. Without prior notice, the City may move and may immediately impound any Personal Property, whether Attended or

Unattended, in violation of this section. Post-removal notice shall be provided as set forth in Section 10-2204(b). A violation of this section is governed by Section 10-2101(f) of this Code.

(k) No Person shall Store any Personal Property, whether Attended or Unattended, in violation of Section 10-2101(c) of this Code. The City may move and may immediately impound any Personal Property, whether Attended or Unattended, in violation of this section. Pre-removal notice and post-removal will be provided by erecting signage providing notice that Storage of Personal is a violation of 10-2100, which may result in removal or impoundment of the Personal Property. The signage must also provide information on retrieval of the Personal Property and provide notice that the Personal Property may be discarded, if not claimed within 90 days. A violation of this section is governed by Section 10-2101(f) of this Code.

(l) No Person shall Store any Personal Property, whether Attended or Unattended, in violation of Section 10-2101(e) of this Code. With pre-removal notice as specified in Section 10-2204(a) or posted signage, the City may impound any Personal Property, whether Attended or Unattended, in violation of this section. If the City has not posed signage, a post-removal notice shall be provided as set forth in Section 10-2204(b). A violation of this section is governed by Section 10-2101(f) of this Code.

SECTION 10-2204. NOTICE.

(a) Pre-Removal Notice. Pre-removal notice shall be deemed provided if a written notice is provided to the Person who is Storing or claims ownership of the Personal Property or is posted conspicuously on or near the Personal Property and the actual removal commences no more than 72 hours after the pre-removal notice is posted. The written notice shall contain the following:

(1) A general description of the Personal Property to be removed.

(2) The location from which the Personal Property will be removed.

(3) The date and time the notice was posted.

(4) A statement that the Personal Property has be stored in violation of Section 10-2203.

(5) A statement that the Personal Property may be impounded if not removed from Public Areas within 24 hours.

(6) A statement that moving Personal Property to another location in a Public Area shall not be considered removal of Personal Property from a Public Area.

(7) The address where the removed Public Property will be located, including a telephone number and the internet website of the City through which a Person may receive information as to

impounded Personal Property as well as information as to voluntary storage location(s).

(8) A statement that impounded Personal Property may be discarded if not claimed within 90 days after impoundment.

(b) Post-Removal Notice. Upon removal of Stored Personal Property, written notice shall be conspicuously posted in the area from which the Personal Property was removed. The written notice shall contain the following:

(1) A general description of the Personal Property removed.

(2) The date and approximate time the Personal Property was removed.

(3) A statement that the Personal Property has been stored in violation of Section 10-2203.

(4) The address where the removed Personal Property will be located including a telephone number and internet website of the City through which a Person may receive information as to impound Personal Property.

(5) A statement that impounded Personal Property may be discarded if not claimed within 90 days after impoundment.

SECTION 10-2205. STORAGE AND DISPOSAL.

(a) Except as specified herein, the City shall move Personal Property to a place of storage.

(b) Except as specified herein, the City shall store impounded Personal Property for 90 days, after which time, if not claimed, may be discarded. The City shall not be required to undertake any search for, or return, any impounded Personal Property store for longer than 90 days.

(c) The City shall maintain a record of the date any impounded Personal Property was discarded.

SECTION 10-2206. REPOSSESSION.

The owner of impounded Personal Property may repossess the Personal Property prior to its disposal upon submitting satisfactory proof of ownership. A person may establish proof of ownership by, among other methods, describing the location from and date when the Personal Property was impounded from a Public Area, and providing a reasonably specific and detailed description of the Personal Property. Valid, governmental-issued identification is not required to claim impounded Personal Property.

SECTION 10-2207. POWER OF THE CITY MANAGER TO MAKE RULES AND REGULATIONS.

The City Manager is hereby charged with serving as the Designated Administrative Agency for the purpose of this ordinance. The Designated Administrative Agency shall promulgate rules, protocols, and procedures for the implementation and enforcement of this ordinance, consistent with the provisions herein.

SECTION 3. 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, TODD STERMER, 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 _____ 2023.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2023
Mayor Approval/No Return: _____, 2023
Mayor Veto: _____, 2023
Council Override Vote: _____, 2023

TODD STERMER
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Angela M. Karst Date
Deputy City Attorney