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Agenda Item: ID#17-741 (1-O)

Date: 5/18/17

CITY CLERK, FRESNO, CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#17-741 (1-O)

Contents of Supplement: **Corrected Ordinance**

Item(s)

***BILL NO. B-23 - (Re-introduced 5/11/2017) (For adoption) - Amending Section 5-302, 5-303, 5-304, 5-305, 5-307, 5-308, and adding Sections 5-310, 5-311, 5-312, and 5-313 to Article 3 of Chapter 5 of the Fresno Municipal Code, relating to fare evasion and enforcement

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.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 5-302; SECTION 5-303; SECTION 5-304; SECTION 5-305; SECTION 5-307; SECTION 5-308; AND ADDING SECTION 5-309, SECTION 5-310, SECTION 5-311, SECTION 5-312, AND SECTION 5-313 TO ARTICLE 3 OF CHAPTER 5, RELATING TO FARE EVASION AND ENFORCEMENT.

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

SECTION 1. Section 5-302 of the Fresno Municipal Code is amended to read:

SECTION 5-302. ENFORCEMENT AUTHORITY.

[(a)] Each employee of the Department of Transportation is empowered, as a representative of the Director, to require compliance with the provisions of this article, in accordance with the written scope of his or her assigned duties.

[(b)] 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 1-308 of this Code.]

SECTION 2. Section 5-303 of the Fresno Municipal Code is amended to read:

SECTION 5-303. FEES, FARES, RATES~~[, PENALTIES,]~~ AND CHARGES. The Council shall designate, in the Master Fee Resolution, the fees,

1 of 8

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: SGM

Ordinance No.

fares, rates, [penalties,] and charges for services provided by the Department of Transportation.

SECTION 3. Section 5-304 of the Fresno Municipal Code is amended to read:

SECTION 5-304. SPECIAL TRANSPORTATION SERVICE.

(a) The Director, when required by law, shall, and otherwise may, establish and provide special transportation service in the community to meet the needs of any individual who, because of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, cannot use other forms of public transportation.

~~(b) The Mayor may appoint, with the approval of the Council, an advisory committee to act as an advisory body to the Director and to give advice and make recommendations on any such special transportation services provided by transit. This committee shall, if appointed, be an adjunct of the administrative staff of the city and shall not be deemed a board or commission of the city.~~

SECTION 4. Section 5-305 of the Fresno Municipal Code is amended to read:

SECTION 5-305. PASSENGER RESTRICTIONS AND CONDUCT. In addition to other penalties provided by law, all persons shall abide by the following restrictions while on a transit bus and may be denied admittance thereto or removed therefrom, unless the following restrictions and conduct are initially and continuously met:

(a) No person shall smoke any cigarette, cigar, pipe, or other smoke emitting device or substance;

(b) No person shall transport any animals or pets, unless in a container, with the exception of service animals accompanying;

(c) No person shall play any portable radios, tape decks, noise makers or other noise producing or musical instruments;

(d) No person shall be disorderly, obnoxious, indecent, or commit any act of nuisance. The phrase "commit any act of nuisance" as used in this section shall include the intentional evacuation of the bowels or bladder at a place not provided for that purpose;

(e) No person shall engage in gambling or operate a gambling device in any form;

(f) No person shall dispose of garbage, papers, or refuse or other material, except in receptacles provided for that purpose;

(g) No person shall expectorate on the floors, walls, or other surfaces;

(h) No person except peace officers, duly authorized personnel of the United States Post Office, military security personnel, or members of the Armed Forces of the United States on official duty, shall carry any weapon, explosive, or inflammable material on any transit bus or transit property; except that cigars, cigarettes, pipe lighters, or other similar flame ignition devices or matches which are not operated or lit may be carried on any such transit bus or upon transit property. Upon completion of appropriate training and certification as required by the City, transit employees ~~may~~shall be allowed to carry Oleoresin Capsicum (commonly

known as "pepper spray"), while operating a transit bus or while on transit property. For purposes of this subsection, Oleoresin Capsicum is considered a weapon; and

(i) No person shall be admitted on a bus unless wearing shoes and a shirt-]; and

(j) No person shall evade the payment of a fare of any transit vehicle or system, which shall include:

(1) Entering an enclosed area of a transit facility beyond posted signs prohibiting entrance without obtaining valid fare;

(2) Entering a transit vehicle without valid fare;

(3) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare;

(4) Unauthorized use of a discount ticket; and

(5) Failure to present, upon request by a designated transit representative, or within 72 hours thereafter, acceptable proof of identification or eligibility to use a discount ticket.]

SECTION 5. Section 5-307 of the Fresno Municipal Code is amended to read:

SECTION 5-307. LOST OR UNCLAIMED PROPERTY. Lost or unclaimed property on transit buses or property shall be received, kept, sold, and disposed of as required in Chapter 4, Article 3 ~~or~~of this Code.

SECTION 6. Section 5-308 of the Fresno Municipal Code is amended to read:

SECTION 5-308. CONDUCT ON OR ABOUT TRANSIT PROPERTY.

(a) No person shall destroy, injure, deface, or disturb any part of a transit bus, building, sign, equipment, structure, shelter, bus bench, or other transit property;

(b) No person shall loiter on any transit bus, bus bench, shelter, or on transit property;

(c) No person shall knowingly or willfully make any false statement or report to the Director, Transit Manager, or any Supervisor or employee of transit;

[(d) No person shall knowingly or willfully provide false identification to a peace officer, or other designated representative of the Director, when engaged in the enforcement of this article;]

(d[e]) No person shall enter any restricted transit areas posted as being closed to the general public, except as may be authorized by the Transit Manager;

(e[f]) No person shall interfere or tamper with any transit bus, or put in motion such bus, or use any transit bus, part, instrument, or toll without the permission of the Transit Manager.

SECTION 7. Sections 5-309, 5-310, 5-311, 5-312, and 5-313 are added to Article 3 of Chapter 5 of the Fresno Municipal Code to read:

[SECTION 5-309. PENALTY FOR FARE EVASION. Violation of subsection (j) of section 5-305 of this article, upon a first or second violation, is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period

not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment. A third or subsequent violation of subsection (j) of section 5-305 is a misdemeanor punishable by a fine of not more than four hundred dollars (\$400) or by imprisonment in the county jail for a period of not more than 90 days, or by both that fine and imprisonment.

SECTION 5-310. ADMINISTRATIVE CITATION AND PENALTY FOR FARE EVASION.

(a) In the alternative, the city may, at its discretion, issue an administrative citation for any violation of subsection (j) of section 5-305 of this article.

(b) The administrative penalty to be assessed for each violation of subsection (j) of section 5-305 shall be as follows:

(1) Upon a first and second violation, a civil penalty not to exceed \$250;

(2) Upon a third or subsequent violation, a civil penalty not to exceed \$400.

SECTION 5-311. APPEALS. Any person receiving an administrative citation for violation of subsection (j) of section 5-305 of this article shall have the right to appeal pursuant to Article 4, Chapter 1 of the Fresno Municipal Code.

SECTION 5-312. CONDUCT OF ADMINISTRATIVE HEARING. Notwithstanding Section 1-408, the peace officer or designated representative of the Director who issued the administrative citation pursuant to section 5-310 of this article shall not be required to participate in an administrative hearing. In

addition, the city shall not be required to produce any evidence other than the administrative citation. The administrative citation, in proper form, shall be prima facie evidence of the violation.

SECTION 5-313. SEVERABILITY. If any portion of this article is held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article. The Council hereby declares it would have passed each remaining portion irrespective of the fact that any one or more portions are declared invalid.]

SECTION 8. 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 _____, 2017.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

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

BY: _____
Seth Mehrten [Date]
Deputy City Attorney