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Agenda Date: 4/8/2021
Council Meeting

CITY OF FRESNO
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FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 21-504 (4-B)

RESOLUTION - Creating the Rental Mediation Program

Contents of Supplement: Email Comments.

Item(s)

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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Bernard Canez

From: John Pollock (jpollock@publicjustice.org) <jpollock@publicjustice.org>

Sent: Wednesday, April 07, 2021 11:06 AM

To: Luis Chavez <Luis.Chavez@fresno.gov>; Brenda Rapada <Brenda.Rapada@fresno.gov>

Cc: janine@faithinthevalley.org; Yvonne Spence <Yvonne.Spence@fresno.gov>; Esmeralda Soria <Esmeralda.Soria@fresno.gov>; Terry Cox <Terry.Cox@fresno.gov>; Mike Karbassi <Mike.Karbassi@fresno.gov>; Alyssa Stevens <Alyssa.Stevens@fresno.gov>; Miguel Arias <Miguel.Arias@fresno.gov>; Dolores Barajas <Dolores.Barajas@fresno.gov>; Tyler Maxwell <Tyler.Maxwell@fresno.gov>; Laura Garcia <Laura.Garcia@fresno.gov>; Nelson Esparza <Nelson.Esparza@fresno.gov>; Aida Macedo <Aida.Macedo@fresno.gov>; Garry Bredefeld <Garry.Bredefeld@fresno.gov>; Nicole DeMera <Nicole.DeMera@fresno.gov>; Douglas Sloan <Douglas.Sloan@fresno.gov>

Subject: comments on ID 21-504 (Rental Mediation Program)

External Email: Use caution with links and attachments

Council President Chavez:

Attached please find comments from my organization, the National Coalition for a Civil Right to Counsel, on ID 21-504, the proposed Rental Mediation Program. We are happy to respond to any questions the Council may have.

Sincerely,

John Pollock
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Council President Luis Chavez
City of Fresno

April 6, 2021

Council President Chavez:

We would respectfully like to offer some brief thoughts on ID 21-504, the Rental Mediation Program. We are excited that you and the City view tenant protection as a priority for the City, and that the proposal recognizes that tenants require assistance to navigate unlawful detainer actions, but have concerns about this proposal and hope the information we provide can help the City establish the most effective system possible.

The National Coalition for a Civil Right to Counsel (NCCRC) is an association of over 500 participants and partners in 40 states who work to advance the right to counsel in civil cases implicating basic needs, and housing is undeniably one such need. The NCCRC's staff assisted the successful legislative and/or ballot initiative efforts in New York City, San Francisco, Cleveland, Philadelphia, Baltimore, Boulder, and Seattle, and are currently working with over a dozen cities and states on similar legislation, including some efforts elsewhere in California. We have provided guidance to legal aid programs, nonprofits, community-based organizations, state and local legislators, mayoral offices, city/state departments, judges, and others.

As with the rest of the country, Fresno stands at a critical juncture. The Eviction Lab has reported over 3,000 families in Fresno face eviction even in a regular year, and Faith in the Valley estimates that more than 28,000 renters have been made vulnerable to eviction because of COVID-19. This occurs in a world where only 1% of tenants have counsel, compared to 73% of landlords. Such a representational imbalance makes the summary eviction process vulnerable to abuse and error, since unscrupulous landlords know there is virtually no chance a tenant will have an attorney to stop entirely meritless evictions and tenants cannot assert any defenses or even present a coherent factual narrative for the court.

While there are some federal and state protections in place during COVID-19, none is fully effective without the provision of counsel for all tenants:

- Neither California's partial moratorium nor the CDC's flawed moratorium cover all tenants, and the CDC moratorium raises complex legal questions (such as its coverage of no-cause evictions as well as whether landlords can challenge tenant declarations) that require the assistance of counsel. Additionally, both moratoria are temporary measures slated to end on January 31, and the moratoria law is constantly changing, making it difficult for even legal aid attorneys to keep up.
- While Congress has acted to provide rent relief, California is slated to receive less than its total estimated rent debt. Furthermore, many tenants will need legal assistance to apply

for rent relief, ensure the court does not proceed while such applications are pending, and work to have the rent relief successfully applied to any pending eviction action.

The Fresno Right to Counsel Coalition's proposal is a wise and effective response. First, years of accumulated data have proved that counsel is highly effective in preserving housing stability. For instance, the right to counsel has caused 86% of New York City tenants and 66% of San Francisco tenants to remain in their homes. And prior reports by Stout Risius Ross have consistently found that more than 90% of tenants avoid disruptive displacement when represented by counsel. Right to counsel also has a secondary effectiveness factor in that when all tenants have counsel, landlords are far more hesitant to file frivolous actions: New York City has already seen a 30% drop in the filing rate. Second, the right to counsel will not only protect Fresno families, but also save the City money by avoiding the negative externalities (such as homelessness, shelter use, incarceration, unemployment, and so on) that frequently stem from eviction. And third, the right to counsel will also serve as a vital COVID-19 safety precaution, as studies have shown evictions hasten community spread of the virus and increase mortality.

The proposed mediation program seeks to resolve eviction filings prior to a court hearing. While a laudable goal, we feel it will not make a significant impact on the impending eviction crisis:

- It is not clear how tenants will be aware of the existence of the questionnaire.
- We are concerned that tenants will not feel comfortable submitting information to the City Attorney's Office, particularly tenants who are undocumented.
- Past studies have shown that mediation without representation for tenants is largely unsuccessful. One of the most prominent studies looked at two different mediation programs in Massachusetts and found that in both, 100% of cases mediated without a tenant attorney resulted in a judgment of possession for the landlord.
- There is little incentive for a landlord to agree to mediation once the landlord has made the investment of time and resources in filing the eviction, particularly given that landlords know they will obtain everything they seek against the unrepresented tenant once the matter goes before a judge.
- The Questionnaire is focused on unlawful evictions, but the legal issues go far beyond that situation. In every case where a court determines the landlord is entitled to possession, it has to make critical rulings as to whether the eviction will be formally entered on the tenant's record, the amount of time the tenant has to move, and the amount of rental arrears owed. These decisions can often make the difference as to whether a tenant preserves housing stability or experiences homelessness and other disruptions.

As such, we urge you and the City to strongly consider adopting the proposal put forward by the Fresno Right to Counsel Coalition, and we would be happy to provide any guidance or input based on our past experience as the City pursues such a right to counsel.

Thank you for your consideration, and please do not hesitate to reach out with any questions.

Sincerely,



John Pollock

Coordinator, NCCRC

Bernard Canez

From: BONNELL KELLER <mbobok@sbcglobal.net>
Sent: Wednesday, April 07, 2021 4:22 PM
To: Clerk
Subject: 4-B public comment

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I live in a Fresno County Island, but saw the notice of this issue in a comment posted on Facebook. So I thought I would share a personal experience during my brief time as a landlord. And I did contact, my county supervisor on this issue, to no avail.

Fresno county (which includes obviously Fresno City) really NEEDS to acknowledge that California's Domestic Abuse law includes roommates. Ask any landlord, how they can repeatedly loose decent tenants, because they need to move away from such kind of abuse.

I personally know of a single mom, with 2 kids, who lost their rental home because the only way to get away from drug using, once "friends," was to move herself. So then these friends got to squat until the landlord could evict them. I was the landlord. 🤔

Our local legal aide agency would not even take up the case, because my tenant was then considered the landlord also, and they personally told me it was a tenant rights issues. That meant these squatters were treated as tenants. And because of the cost involved for repairs, I then lost the house. Which I had been renting to this mother at a very decent, barely above my costs, price. 🤔 So I personally know of her own struggles, despite working full time as a CNA. My rental cost was still under what she could find a decent 2 bedroom/one bath apartment, in as decent upkeep area, where my rental house was located.

CA FAMILY CODE

6211.

“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.

FAMILY CODE - FAM

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE [6200 - 6409]

(Division 10 repealed and added by Stats. 1993, Ch. 219, Sec. 154.)

PART 1. SHORT TITLE AND DEFINITIONS [6200 - 6219]

(Part 1 added by Stats. 1993, Ch. 219, Sec. 154.)

6209.

“Cohabitant” means a person who regularly resides in the household. “Former cohabitant” means a person who formerly regularly resided in the household.

(Added by Stats. 1993, Ch. 219, Sec. 154. Effective January 1, 1994.)