

AGENDA ITEM NO.	1 0
COUNCIL MEETING	12/15/11
APPROVED BY _____	
DEPARTMENT DIRECTOR _____	
CITY MANAGER	

December 15, 2011

**FROM:** MARK SCOTT, City Manager

**BY:** BRUCE RUDD, Assistant City Manager 

**SUBJECT:** INTRODUCTION OF AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING CHAPTER 5, ARTICLE 6, TO THE FRESNO MUNICIPAL CODE RELATING TO CAMPING ON CITY PROPERTY

**RECOMMENDATION**

It is recommended that the City Council introduce an ordinance of the City of Fresno, California, which adds Chapter 5, Article 6, to the Fresno Municipal Code Relating to Camping on City Property.

**EXECUTIVE SUMMARY**

While the City currently has an ordinance prohibiting camping in City Parks, it does not have an ordinance regulating camping on other City-owned property. This proposed ordinance will enact a reasonable time, place and manner restriction to bar any overnight camping or lodging on or in City outdoor property not under the jurisdiction of the PARCS Department.

**BACKGROUND**

It has been the long-standing practice of the City that camping or lodging on City property is not permitted, and it is necessary and proper to codify and regulate the City's practice in an ordinance. Many cities throughout California have ordinances which prohibit camping on public property, and such ordinances have been upheld by the courts. The City currently has an ordinance that prohibits camping in City parks, but there is no similar prohibition applicable to City owned land or facilities that are not under the jurisdiction of the PARCS Department. The attached ordinance is intended to enact a reasonable time, place and manner restriction to bar any overnight camping or lodging on or in City outdoor property not under the jurisdiction of the PARCS Department.

The City owns multiple properties that have associated outdoor areas, including parking areas, green spaces, lawns, landscaping, terraces, outdoor walkways, courtyards and similar facilities which are generally open to the public, but are not suitable for overnight use or camping. These areas exist for the purpose of ingress and egress, maintaining attractive and welcoming exteriors to City facilities to be enjoyed by all members of the public, and are occasionally used for expressive activities. Allowing overnight camping or lodging in these areas would be contrary to their purpose. Use of these public areas for overnight camping or lodging would create public health and sanitation problems, as these areas lack all-night restroom facilities, sufficient garbage and refuse collection capabilities, and secure areas such that their use for overnight camping or lodging would create an unreasonable risk of harm to any persons or children using such areas for overnight camping or lodging.

The City provides adequate opportunities for persons to engage in expressive conduct and speech in that large organized events and gatherings can obtain permits for speech related activities pursuant to Chapter 14, Article 24 of the Municipal Code (City of Fresno Parade and Other Special Events), and smaller groups are not prohibited from gathering and protesting in a manner otherwise consistent with law. In addition, suitable facilities for overnight camping and lodging are available in and around the City.

A violation of the proposed ordinance is a misdemeanor punishable upon conviction by imprisonment for a term not to exceed six months, or by a fine not to exceed \$250 for the first offense, \$500 for the second offense within six months, and \$1,000 for any subsequent offense within six months of the first offense, or by both fine and imprisonment. A violation of the proposed ordinance shall be declared a public nuisance, subject to the remedies and penalties of Article 10, Chapter 6 of the Municipal Code. Any person found in violation of the proposed ordinance will, in addition to any administrative penalty, be charged with abatement, actual, administrative, and enforcement costs incurred by the City in enforcing the proposed ordinance.

**FISCAL IMPACT**

Enforcement cost will depend on the number of violations, but the ordinance contains a cost recovery provision.

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,  
ADDING CHAPTER 5, ARTICLE 6, TO THE FRESNO  
MUNICIPAL CODE RELATING TO CAMPING ON CITY  
PROPERTY

WHEREAS, the City of Fresno has the right to regulate activities on City property related to control of City property in order to ensure and protect the public health and safety and as well to balance the various competing interests concerning use of City property; and

WHEREAS, Section 5-502 (g) of the Fresno Municipal Code prohibits camping or lodging in any park under the jurisdiction of the City Department of Parks and Recreation that has not been set aside for that purpose without the permission of the Director of Parks and recreation, yet currently there is no similar prohibition applicable to City owned land or facilities not under the jurisdiction of the City Department of Parks and Recreation; and

WHEREAS, the City owns multiple properties that have associated outdoor areas including parking areas, green-spaces, lawns, landscaping, terraces, outdoor walkways, courtyards and similar facilities which are generally open to the public but are not suitable for overnight use or camping; and

WHEREAS, such outdoor areas exist for the purpose of facilitating ingress and egress from City buildings and facilities, maintaining attractive and welcoming exteriors to City facilities to be enjoyed by all members of the public, and are occasionally used for expressive activities; and allowance of overnight camping or lodging in such areas would be contrary to these purposes; and

WHEREAS, using such parking, landscaping, green-spaces, lawns, walkways, terraces and courtyard areas for overnight camping or lodging would create public health and sanitation

problems as these areas lack all night restroom facilities, sufficient garbage and refuse collection capabilities, and secure areas that their use for overnight camping or lodging would create an unreasonable risk of harm to any persons or children using such areas for overnight camping or lodging; and

WHEREAS, the City of Fresno cannot favor one group of individuals over others such that if it were to permit one group to camp or lodge in City owned open areas for expressive purposes, it could be obligated to allow all groups to use the same or similar areas for overnight camping for expressive purposes irrespective of the content of the message thereby opening the areas to repeated overnight uses for which they are not intended nor suited; and

WHEREAS, it is the intent of the City of Fresno to enact a reasonable time, place, and manner restriction to bar any overnight camping or lodging on or in City outdoor property not under the jurisdiction of the Department of Parks and Recreation irrespective of the content of any expressive conduct that might be associated with such overnight camping or lodging; and

WHEREAS, the City of Fresno provides adequate opportunities for persons to engage in expressive conduct and speech in that large organized events and gatherings can obtain permits for speech related activities pursuant to Chapter 14, Article 24 of the Fresno Municipal Code, and smaller groups are not prohibited from gathering and protesting in a manner otherwise consistent with law; and

WHEREAS, suitable facilities for camping and overnight lodging are available in and nearby the City; and

WHEREAS, California Penal Code section 647 (e) states: "Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: . . . (e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it"; and

WHEREAS, it has been the long-standing practice of the City of Fresno that camping or lodging on City property is not permitted, and it is necessary and proper to codify and regulate the City's intent.

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

SECTION 1. The foregoing recitals are hereby adopted as findings of the Fresno City Council and incorporated herein as such.

SECTION 2. CHAPTER 5, ARTICLE 6, is to be added to the Fresno Municipal Code as follows:

SECTION 5-601. DEFINITIONS. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this article.

(a) "Camp" or "lodge" means utilizing or storing tents, temporary shelters, sleeping bags, cooking equipment, and similar items for the purpose of sleeping activities, or making preparations to sleep or for occupying that location between the hours of 10 p.m. and 7 a.m. An activity shall constitute camping or lodging when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

(b) "City property" means all real property owned by the City of Fresno, City streets, alleyways, parking lots, passageways, landscaped areas, greenbelts, and rights-of-way.

SECTION 5-602. CAMPING AND LODGING PROHIBITED. No person shall camp or lodge on any City property not under the jurisdiction of the City Department of Parks and Recreation unless otherwise permitted by City Ordinance or at designated

campgrounds. The use of City property under the jurisdiction of the City Department of Parks and Recreation is governed by Article 5 of this Chapter.

SECTION 5-603. VIOLATION.

(a) A violation of this Chapter is a misdemeanor, punishable upon conviction by imprisonment in the county jail for a term not to exceed six (6) months, or by a fine not to exceed two hundred fifty dollars (\$250) for the first offense, five hundred dollars (\$500) for the second offense within six months of the first offense, and one thousand dollars (\$1,000) for the third or subsequent offense within six months of the first offense, or by both fine and imprisonment.

(b) In addition, a violation of this chapter shall be declared to be a public nuisance, subject to the remedies and penalties provided in Article 10, Chapter 6 of this Code.

(c) In addition to any administrative penalty assessed for a violation of this article, any person found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, calculated to recover the total costs incurred by the City in enforcing this Article.

SECTION 3. Chapter 14, Article 24, Section 14-2408 of the Fresno Municipal Code is hereby amended to add subsection (c) as follows:

...

(c) Under no circumstances shall the Controller or his designee approve an application for a permit that would allow the applicant to engage in camping or lodging on City property in violation of Article 6 of Chapter 5 of this Code.

SECTION 4. Severability. If any section or portion of this Ordinance shall be determined by a court to be invalid or unconstitutional, that section or portion shall be deemed severable and all remaining sections or portions shall remain in full force and effect.

SECTION 5. This Ordinance shall become effective and in full force and effect at 12:01 a.m. on the 31st day following its passage.

\* \* \* \* \*

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

I, REBECCA E. KLISCH, 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 \_\_\_\_\_, 2011.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2011

Mayor Approval/No Return: \_\_\_\_\_, 2011

Mayor Veto: \_\_\_\_\_, 2011

Council Override Vote: \_\_\_\_\_, 2011

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Douglas T. Sloan, Assistant