

February 17, 2011

AGENDA ITEM NO. 1 K

COUNCIL MEETING February 17, 2011

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER

FROM: PATRICK N. WIEMILLER, Public Works Director
Public Works Department

BY: Elizabeth Kunz, ADA Coordinator *ek*
Public Works Department, Administration

SUBJECT: CONSIDERATION OF ORDINANCE AMENDING SECTIONS 1-105, 2-312, SUBSECTION (b) OF SECTION 5-305, SUBSECTION (h) OF SECTION 5-502, SUBSECTION (a) OF SECTION 13-504, and SUBSECTION (p) OF SECTION 14-103 OF AND ADDING SECTION 1-217 TO THE FRESNO MUNICIPAL CODE, RELATING TO ACCESSIBILITY FOR PEOPLE WITH DISABILITIES

RECOMMENDATIONS

Staff recommends that City Council approve the introduction of amendments to the City of Fresno municipal code for the purpose of ensuring nondiscrimination on the basis of disability and compliance with Title II of the Americans with Disabilities Act of 1990 (Title II).

EXECUTIVE SUMMARY

The implementing regulations for Title II required local governments to review their policies to eliminate provisions that could have the effect of discriminating against individuals on the basis of disability. In 2003, an outside consultant reviewed the City programs and policies, and produced a draft "self-evaluation" with a number of the suggestions for improvement. This report suggested that the municipal code be revised to reduce the possibility of unintentional discrimination on the basis of disability. Specifically, it was recommended that the City amend code sections dealing with:

- the provision of the municipal code itself, to allow for its provision in alternative formats;
- the method of addressing City Council, to allow for alternative methods if needed to accommodate a disability;
- permitting service animals on City buses, to include animals serving people with a variety of disabilities;
- use of motor vehicles within City parks, to allow motorized mobility devices;
- the installation of public telephones, to ensure they meet accessibility requirements;
- the definition of pedestrian, to specifically include individuals using mobility devices; and

- requirements for signature or written information, to allow for individuals who because of disability, cannot sign or write.

On September 15, 2010, the US Department of Justice issued revised regulations for Title II. These regulations, which will become effective on March 15, 2011, included distinction between a "wheelchair" and an "other power driven-mobility device." This change was made in response to individuals with disabilities increasingly choosing non-traditional mobility devices, like golf cars and Segway® personal transporters. Under the new regulation, a jurisdiction may, under some circumstances, limit these "other power-driven mobility devices" if it has made the determination that these devices cannot be operated safely in a given area. The regulation, which is found at 28 C.F.R. Part 35 § 35.137, outlines the factors which must be assessed in making this determination, including: the type, size, weight, dimensions, and speed of the mobility device, and the facility's design, operational characteristics and pedestrian usage. This change is reflected in the proposed revision to the municipal code.

The City's Disability Advisory Commission (DAC) reviewed an earlier draft of these proposed changes on July 13, 2009. Their feedback was incorporated, but the project was postponed in anticipation of the US DOJ's revision of the Title II regulation. This current draft was reviewed and approved by the Commission at its October 11, 2010 meeting.

FISCAL IMPACT

The proposed changes are designed to bring the City code into conformance with its existing obligations under Title II, and does not impose new requirements. Accordingly, there is no anticipated fiscal impact.

Attachments: Bill for Introduction

BILL NO. _____

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTIONS 1-105, 2-312, SUBSECTION (b) OF SECTION 5-305, SUBSECTION (h) OF SECTION 5-502, SUBSECTION (a) OF SECTION 13-504, and SUBSECTION (p) OF SECTION 14-103 OF AND ADDING SECTION 1-217 TO THE FRESNO MUNICIPAL CODE, RELATING TO ACCESSIBILITY FOR PEOPLE WITH DISABILITIES

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

SECTION 1. Section 1-105 of the Fresno Municipal Code is amended to read:

SEC. 1-105. ACCESS TO CODE. This Code shall be made available on the City's website. Copies of this Code, in such numbers as the Council may deem adequate, and including the Charter, an index, and such other material as the City Attorney may prescribe, shall be prepared and maintained by the City Clerk in loose-leaf form and shall be mounted in binders to withstand heavy usage. [Consistent with the American with Disabilities Act, copies of the Code will be made available to the public in alternative formats upon request without charge to the requesting party.] Form, size, arrangement and page numbering shall be determined by the City Attorney.

SECTION 2: Section 1-217 is added to the Fresno Municipal Code to read:

[SEC. 1-217. MODIFICATIONS TO SIGNATURE AND WRITING REQUIREMENTS FOR PEOPLE WITH DISABILITIES.

(a) Whenever the city requires an individual to provide a signature, an individual who is unable to sign by reason of a disability may satisfy the signature requirement by creating a mark (including use of a signature stamp), the signer's name being written near the mark by a witness who writes his or her own name near the signer's name. If the individual is unable to create a mark they may have another person sign on his or her behalf, by first signing the signer's name, then writing "signed

and witnessed by” and his or her name near the signature. Consistent with California Code of Civil Procedure section 17, if the signature is required to serve as a signature to a sworn statement, any signature provided under this section must be witnessed by two individuals. The witnesses may be city employees.

(b) Whenever the city requires that a communication be in writing, whether pursuant to the state or local law, regulation or policy, and a person is unable to write because of a disability, alternative means of communication may be used.]

SECTION 3. Section 2-312 of the Fresno Municipal Code is amended to read:

SEC. 2-312. MANNER OF ADDRESSING COUNCIL--TIME LIMIT. Each person addressing the Council shall step up to the microphone. A person addressing the Council will be asked, but not required, to give his or her name and address in an audible tone of voice for the city's records. Unless further time is granted by the Council, speakers will be limited to three minutes. All remarks shall be addressed to the Council as a body and not to any member thereof. [Consistent with the American with Disabilities Act, alternative methods of addressing the Council shall be allowed for persons with disabilities.] No person, other than the Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the presiding officer. No question shall be asked a Councilmember except through the presiding officer.

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

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

SECTION 5. Subsection (h) of Section 5-502 of the Fresno Municipal Code is amended to read:

(h) Ride, drive, or propel any vehicle elsewhere than on the paths, roads, or drives provided for such purpose [with the exception of wheelchairs or other power-driven mobility devices used by persons with mobility disabilities, if those devices can

be safely operated pursuant to City policy and consistent with the Americans with Disabilities Act.]

SECTION 6. Subsection (a) of Section 13-504 of the Fresno Municipal Code is amended to read:

(a) The permittee shall maintain the public telephones and any associated booths in good repair and safe and sightly condition at permittee's expense and to the satisfaction of the Director of General Services. [The permittee shall ensure that the public telephones and any associated booths comply with the current Federal and State regulations for accessibility for persons with disabilities, including signage, clearances, installation height, floor area, and telephone equipment.]

SECTION 7. Subsection (p) of Section 14-103 of the Fresno Municipal Code is amended to read:

(p) "Park" means to stand or leave standing any vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading of passengers or materials.

"Parking meter" means any mechanical device installed adjacent to a parking meter space for the purpose of recording the period of time for occupancy of such parking meter space by any vehicle.

"Parking meter space" includes the area or space adjacent to a parking meter upon any street or upon any city-owned off-street parking lot designated by lines or other markings and of sufficient size to permit the parking of only one vehicle, or up to four motorcycles.

"Parking meter zone" is an area described and established by ordinance as a zone within which the parking of vehicles shall be controlled, regulated and inspected with the aid of parking meters.

"Parkway" means that portion of a street other than a roadway or a sidewalk.

"Passenger loading zone" means the space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

"Pedestrian" means any person afoot [or using a wheelchair. Individuals using other power-driven mobility devices because of a mobility disability may be classified as pedestrians if the devices can be safely operated pursuant to City policy and consistent with the Americans with Disabilities Act.]

"Police officer" means every officer of the Police Department of this city or any other officer authorized to regulate traffic or to make arrests for violations of traffic regulations.

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 passage.

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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 RL 1-24-11
Deputy Loyle Date