Miriam Lens

From:	Larry Johmann [redacted]
Sent:	Tuesday, October 23, 2012 6:23 PM
To:	List-Mayor-Council; CityClerk
Cc:	Fran David
Subject:	Comments regarding Council Agenda Item 19 - Illegal Dumping Ordinance

Dear Mr. Mayor and Members of City Council:

I am writing in opposition to the adoption of the proposed Illegal Dumping Ordinance, Item 19 on tonight's meeting agenda. While I understand the tremendous burden illegal dumping has on City resources, I do not believe the proposed ordinance is an appropriate response. The proposal does not make any sense; it is blatantly unfair and immoral; and its ability to stand up to legal scrutiny is arguable at best.

First of all, the text of the proposed ordinance makes no sense. The proposed text lists a set of actions (i.e. "the discarding of...," "the depositing or spilling of...," and any "use which unlawfully obstructs...") and refers to them as conditions created by maintaining private property for any purpose. What in the world does this mean? I properly maintain my property for the purposes of residing, conducting business, and increasing the value of my investment. What sensible connection can be made here that would make me responsible for and liable for the actions of others beyond the limits of my own property?

Secondly, an automatic reassignment of responsibility for criminal activity conducted by one to an unrelated other is blatantly unfair and immoral. Property owners who find trash dumped in front of their property are essentially victims of crime. Yet the proposed ordinance only serves to criminalize victims and, even worse, places a potentially massive burden on them. Most property owners are not equipped to deal with illegally dumped material and will probably have to hire someone to load, haul, and dispose of the debris at great expense.

What might this expense be? I've been told that it costs the City (an entity which is specially equipped and staffed to expeditiously remove and dispose of dumped materials) about $500,000 annually. The staff report indicates that the city handled 1,500 cases in the last fiscal year. This equates to approximately $330 per instance on average. Is it really fair or moral to force this cost as well as potential fees and fines on an innocent individual or family? Keep in mind that it might be you and your families that these expenses could be forced upon.

The staff report suggests that Waste Management self-haul coupons can be used to offset some of the burden. However, such a coupon is difficult to obtain, can only realistically be requested at the beginning of each month, takes days to receive, and expires within four-weeks. Furthermore, these coupons can not be used for construction or demolition debris or hazardous materials. Practically speaking, these coupons are not an option for property owners who are forced to immediately deal with illegally dumped materials for which they did not and could not plan.

What's worse is if a child is injured or killed playing in an illegally abandoned appliance or if someone damages their vehicle driving into or over illegally dumped material, this proposal assigns liability to adjacent property owners where none currently exists. This will occur without the benefit

of realistically shielding the "deep pockets" of the City. Why should innocent property owners also be put at risk? What property insurance policy is going to cover liability beyond an owner's property limits for a situation created by someone else? Just having to defend against a lawsuit pertaining to such a matter could bankrupt a family.

Finally, I do not believe the proposed ordinance can stand up to legal scrutiny. What precedent suggests that this is constitutional? Are you aware of any other municipality having anything like this in place? Even the City's own controversial graffiti abatement ordinance pertaining to private property does not make owners liable for vandalism beyond their own property limits. When I raised these questions during the only public meeting on this matter held one year ago, I was told it is similar to California's Streets and Highway Code pertaining to maintenance of sidewalks. Being very familiar with this code myself, I can tell you that the proposal currently being considered might appear similar. But, in fact, it is different in a significant way. The Streets and Highway Code only makes property owners responsible for the repair of sidewalk damage stemming from the adjacent property or use of the adjacent property. In other words, if a sidewalk is damaged by a tree planted on the private property or by vehicles accessing the private property, then it is the private property owner's responsibility to repair. But if on the other hand, the state or city causes a tree to be planted within the public right-of-way and it causes damage to the sidewalk, it is not the property owner's responsibility, but that of the public agency. This is detailed in Sec 5610 of the code. This makes sense, both common sense and legal sense. The proposed ordinance does not.

In conclusion, I believe that whenever it is determined that a person, property owner or otherwise, has illegally dumped debris onto the public right-of-way, then that person should be held accountable. This can be accomplished with existing laws. When this is not possible, fairness dictates that the burden of this social problem be bourne equally among all in the community, not just by those unfortunate few who happen to find a pile of trash in front of their property because they happen to be located off the beaten path or where street lighting is poor. In the interest of fairness I urge you to reject this proposal and to direct staff to continue the City's current maintenance and education efforts. Thank you.

Respectfully yours,

Lawrence M. Johmann, P.E.
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