



JAMES C. SANCHEZ
City Attorney

January 16, 2008

MEMORANDUM

TO: Victor Salazar, County Clerk/Registrar of Voters

RE: City of Fresno Elections

The Fresno City Attorney's Office has prepared the attached memorandum addressed to candidates for City of Fresno Elective Office. This memorandum focuses on City ordinances and Charter provisions and supersedes any previously issued memorandum on this subject.

Please transmit a copy of this memorandum to all candidates for City Elective Office. If you have any questions, please do not hesitate to call.

Respectfully submitted,


JAMES C. SANCHEZ
City Attorney

c: Mayor
Councilmembers
Andrew Souza, City Manager
Becky Klisch, City Clerk
David P. Hale, Chief Assistant City Attorney
Department Directors

Enclosure: Memo to Candidates for City of Fresno Elective Office re City Laws Applicable to
Candidates for City Elective Office

JCS:TY:pn[43619JCS ty/JCSty] -01/10/08



JAMES C. SANCHEZ
City Attorney

January 16, 2008

MEMORANDUM

TO: Candidates for City Elective Office

RE: City Laws Applicable to Candidates for City Elective Office

In addition to state law requirements applicable to candidates seeking elective office in the City of Fresno, the City of Fresno has adopted local charter requirements and ordinances. A summary thereof follows:

1. **Charter Prohibition on Contributions.** In the Spring of 1993, the City electors adopted an off-year contributions prohibition. Charter Section 309 states, "No mayoral candidate, Council candidate, or any committee controlled by such person shall solicit or accept any contribution in support of such candidate's election prior to the date fixed by law for the filing of nomination papers with respect to such election, or following the year in which such election is held." (Emphasis added.) Pursuant to Charter Section 309, a candidate cannot begin soliciting or accepting contributions until after the date set by law for filing nomination papers.

In the past, we have received inquiries as to whether invitations to fundraisers to be held on or after the legal date for filing of nomination papers are permissible. The Charter provision expressly prohibits "solicitations" prior to the subject date. To "solicit" means that one is appealing for something or asking for the purpose of receiving. For this reason, Charter Section 309 prohibits invitations to a fundraiser for a candidate to be distributed prior to the date for filing nomination papers.

2. **Candidate Filing Fees and Alternative Signature Gathering Method.** The City Council has adopted Ordinance No. 93-32 setting candidate filing fees and adopting the Elections Code provisions for alternative signature gathering. These requirements are codified in Section 2-1003 through 2-1006 of the Fresno Municipal Code, which are attached as Exhibit "A." Where the ordinance is silent as to specific provisions, the Elections Office shall utilize Elections Code provisions for making determinations on the requisite number of signatures and the monetary value attributed to signatures.
3. **Campaign Contribution Limits Ordinance.** The City Council adopted an ordinance establishing campaign contribution limits to candidates in Chapter 2, Article 11 of the

Fresno Municipal Code. The contribution limits for candidates for City elective office are the same as for candidates for State Assembly under the Political Reform Act (PRA). The contribution limits will be adjusted every odd numbered year by the Fair Political Practices Commission (FPPC), in accordance with the Consumer Price Index. The contribution limits for the 2008 election are set at \$3,600 from persons, and \$7,200 from small contributor committees for a single election. A copy of the ordinance is attached as Exhibit "B."

The ordinance complements the provisions in the Political Reform Act (Gov. Code §§ 81000 et seq.), which contain a comprehensive scheme on the conduct of election campaigns. The City Attorney's Office does not have the statutory duty or authority to give advice on the PRA or its application. Candidates should contact the FPPC for questions or advice relating to the PRA. The FPPC can be reached at (866) ASK-FPPC (toll free) or 916.322.5660.

4. **Charter Prohibition Against Political Activities.** Section 813 of the Charter of the City of Fresno provides in part:

No officer or employee of the city and no candidate for any city office shall, directly or indirectly, solicit any assessment, subscription, or contribution, whether voluntary or involuntary, for any political purpose whatever, from anyone on the eligible lists or holding any position in the Administrative Service.

This language has been interpreted to prohibit telephone calls, faxes, and personal contacts for political purposes during business hours at City Hall or during an employee's or officer's hours of duty on City premises. See also Section 3-103 of the Fresno Municipal Code attached hereto as Exhibit "C."

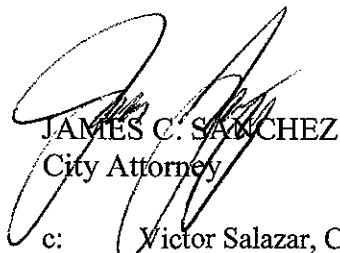
The local provisions are consistent with Government Code Sections 3201 et seq., which among other things, prohibit public employees from engaging in the following types of activities:

- a. Unlawful use of office, influence, or authority;
- b. Solicitation of political funds or contribution from other officers, employees, or from persons on employment lists from the same local agency, or from which the candidate is seeking office;
- c. Arranging for increase in compensation or salary in exchange of contribution to committee or person seeking office;
- d. Participation in political activities while in uniform; and
- e. Participation in political activities during work hours on City premises, as governed by the local rules and regulations.

5. **Political Signs.** The City of Fresno exempts political signs from application, permit, and fee requirements. However, the City does impose time, place, and manner restrictions on political signs. Under the City's ordinance located in FMC Section 12-1710 (attached as Exhibit "D"), such signs:
- a. may not exceed 32 square feet in area;
 - b. may not be erected or displayed earlier than 90 days prior to the election date nor later than 15 days following the election date;
 - c. may not be attached to utility poles;
 - d. may not be placed on any public right of way or any property owned by the City of Fresno or Redevelopment Agency;
 - e. may be placed on private property with the permission of the property owner or on existing signs on private property with the permission of the sign owner or lessee; and
 - f. may not be erected in a manner so that it will or reasonably may be expected to, interfere with, obstruct, confuse or mislead traffic.

The foregoing is meant solely as an outline of applicable City provisions. Candidates are responsible for ensuring that all state and local laws are complied with. The City Attorney's Office does not provide legal advice to candidates for elective office. If you need an interpretation of the City Charter or the Fresno Municipal Code, you may submit your question in writing to the City Attorney. The written response will be provided to the requester and copied to all candidates for City office.

Respectfully submitted,


JAMES C. SANCHEZ
City Attorney

c: Victor Salazar, County Clerk/Registrar of Voters
Andrew T. Souza, City Manager
Rebecca E. Klisch, City Clerk
David P. Hale, Chief Assistant City Attorney

Attachments:

Exhibit "A" Ordinance 93-32; FMC Sections 2-1003 through 2-1006
Exhibit "B" Chapter 2, Article 11 FMC
Exhibit "C" FMC Section 3-103
Exhibit "D" FMC Section 12-1710

JCS:TY:pn[43618Jpn JCSty_pn/JCS:ty] 01/10/08

SEC. 2-1003. FILING FEES FOR MAYOR AND COUNCIL CANDIDATES.

The City Council, by resolution, may establish filing fees for the elective office of Mayor and Councilmember. Those fees shall not exceed the cost reasonably borne for conducting the election for the seat in question. The costs to be covered by the filing fees shall include all costs associated with the candidate's filing, including, but not limited to, the proportional cost in administering the election by the City Clerk or County Clerk under contract to provide election services.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1004. FILING FEE WAIVER PETITION.

In lieu of payment of the filing fees required under Section 2-1003, a candidate may gather signatures on a form to be provided by the City Clerk or County Clerk under contract to provide election services. For Council candidates, the number of signatures required shall be two hundred and fifty registered voters registered to vote within the Council district boundary. Candidates for Mayor shall collect five hundred signatures from voters registered within the City. A voter may sign both the nomination papers and the Filing Fee Waiver Petition for each candidate. A voter may only sign one filing fee waiver form for each office in which he or she is eligible to vote.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1005. FILING FEE WAIVER PROCEDURES.

By resolution, the City Council may adopt further regulations to implement the filing fee waiver process. The filing fee waiver forms shall be provided at no cost to each candidate upon request. However, the elections official may, rather than provide the candidate with the number of forms necessary to gather the requisite signatures, or, upon request of a candidate, provide the candidate with a master form, which may be duplicated by the candidate for the purpose of circulating additional petitions. No other form except the furnished form, or duplicates thereof, shall be used by a candidate to secure signatures. All forms shall be made available commencing forty-five days before the first day for circulating nominating papers. However, in case of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the prescribed nomination period would commence less than forty-five days after the declaration of the vacancy by the City Council, the forms shall be made available within five working days after the City Council declaration. The forms to be used shall be in substantially the same form as the nomination papers signature form.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1006. FILING FEE WAIVER REQUIREMENTS.

The fee waiver process shall be subject to the following provisions:

- (a) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he or she is eligible to vote.
- (b) If a voter signs more candidate's petitions than there are offices to be filled, the

voter's signatures shall be valid only for those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.

- (c) In-lieu-filing-fee petitions shall be filed at least fifteen days prior to the close of nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, the elections official shall issue nomination papers provisionally. Within ten days after receipt of a petition, the elections official shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, submit a supplemental petition to cover the deficiency.
- (d) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The elections official shall not be required to determine the validity of a greater number of signatures than that required by this section.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

ARTICLE 11 CANDIDATES FOR ELECTIVE CITY OFFICE-CAMPAIGN CONTRIBUTION LIMITS

- Sec. 2-1101. Title.
- Sec. 2-1102. Purpose and application.
- Sec. 2-1103. Definitions.
- Sec. 2-1104. Off-year contribution prohibition.
- Sec. 2-1105. Campaign contributions--Limitations on amount.
- Sec. 2-1106. Loans.
- Sec. 2-1107. Affiliated entities: aggregation of contributions.
- Sec. 2-1108. Restrictions on contributions by candidates.
- Sec. 2-1109. Return of excessive contributions.
- Sec. 2-1110. Separate bank account for attorney's fees.
- Sec. 2-1111. Enforcement authority--Complaints, legal action, investigatory powers.
- Sec. 2-1112. Enforcement.
- Sec. 2-1113. Applicability of other laws.

SEC. 2-1101. TITLE.

This article may be cited as the "Local Campaign Contribution Limits Ordinance" of the City of Fresno.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1102. PURPOSE AND APPLICATION.

The purpose of this article is to ensure that individuals and interest groups have a fair and equal opportunity to participate in municipal elective and governmental processes. This article is intended to supplement, and in no way conflict with, the Political Reform Act of 1974 ("Political Reform Act"), as amended. Statutory references to specific provisions of the Political Reform Act shall include its amendments.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1103. DEFINITIONS.

- (a) Unless the particular provision or the context otherwise requires, the provisions, definitions of words and phrases, and interpretations of the Political Reform Act codified in Government Code Sections 81000 et seq., and its implementing regulations in California Code of Regulations, Title 2, Sections 18110 et seq., as amended, are to be relied upon in administering this article.
- (b) "Election" means any direct primary election, any general municipal election, and any special municipal election as outlined in Charter Sections 1400 and 1401. For purposes of this article, "election" does not include recall elections or elections on ballot measures.
- (c) "Enforcement Authority" means the officer, agent or organization designated by resolution of the Council to enforce the provisions of this article. Nothing in this article shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this article.
- (d) "Entity" means any person, other than an individual.

- (e) "Majority-owned" means an ownership of more than 50 percent.
- (f) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, a controlled committee, and any other organization or group of persons acting in concert, as defined in Government Code Section 82047.
- (g) "Political Party Committee" means a state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code, as defined in Government Code Section 85206.
- (h) "Small contributor committee" as defined in Government Code Section 85203, means any committee that meets all of the following criteria:
 - (1) The committee has been in existence for at least six months; and
 - (2) The committee receives contributions from 100 or more persons; and
 - (3) No one person has contributed to the committee more than two hundred dollars (\$200) per calendar year; and
 - (4) The committee makes contributions to five or more candidates.

SEC. 2-1104. OFF-YEAR CONTRIBUTION PROHIBITION.

In accordance with Charter Section 309, no Mayoral candidate, Council candidate, or any committee controlled by such person shall solicit or accept any contribution in support of such candidate's election prior to the date fixed by law for the filing of nomination papers with respect to such election, or following the year in which such election is held.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1105. CAMPAIGN CONTRIBUTIONS--LIMITATIONS ON AMOUNT.

- (a) A person, other than a small contributor committee or a political party committee, may not make to any candidate for elective City office, and a candidate for elective City office may not accept from a person, any contribution totaling more than three thousand two hundred dollars (\$3,200) per election. The provisions of this section do not apply to a candidate's contributions of his or her personal funds to his or her own campaign.
- (b) A small contributor committee may not make to any candidate for elective City office, and a candidate for elective City office may not accept from a small contributor committee, any contribution totaling more than six thousand four hundred dollars (\$6,400) per election.
- (c) The contribution limitations set forth in this article shall be adjusted in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index, as determined by the Fair Political Practices Commission pursuant to Government Code Sections 83124, 85301(a), and 83502(a).

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1106. LOANS.

- (a) The provisions of this article do not apply to loans and extensions of credit made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable.
- (b) In accordance with Government Code Section 85307, a candidate for elective City office may not personally lend to his or her campaign an amount, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000). A candidate may not charge interest on any loan he or she made to his or her campaign.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1107. AFFILIATED ENTITIES: AGGREGATION OF CONTRIBUTIONS.

- (a) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.
- (b) If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.
- (c) Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.
- (d) Contributions made by a husband and wife may not be aggregated, and shall be treated as contributions from separate persons. Contributions made by a child under 18 years of age is presumed to be a contribution from the parent or guardian of the child.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1108. RESTRICTIONS ON CONTRIBUTIONS BY CANDIDATES.

A candidate for elective office or committee controlled by that candidate may not make any contribution to any candidate for elective city office in excess of the limits for persons set forth in Section 2-2205(a).

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1109. RETURN OF EXCESSIVE CONTRIBUTIONS.

The candidate or the candidate's controlled committee shall return any amount in excess of the contribution limit set forth in this article to the contributor within 14 days of receipt. The excess contribution and the date of its return shall be reported on a form prepared or provided by the City Clerk.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1110. SEPARATE BANK ACCOUNT FOR ATTORNEY'S FEES.

- (a) A candidate for elective city office or an elected city officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. These funds may be used only to defray those attorney fees and other related legal costs.
- (b) A candidate may receive contributions to this account that are not subject to the contribution limits set forth in this article. However, all contributions shall be reported in a manner prescribed by the Political Reform Act.
- (c) Once the legal dispute is resolved, the candidate shall dispose of any funds remaining after all expenses associated with the dispute are discharged for one or more of the purposes set forth in the Political Reform Act.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1111. ENFORCEMENT AUTHORITY--COMPLAINTS, LEGAL ACTION, INVESTIGATORY POWERS.

- (a) Any person who believes that a violation of any portion of this article has occurred may file a report with the Enforcement Authority. If the Enforcement Authority determines that there is reason to believe a violation of this article has occurred, he or she shall make an investigation. Whenever the Enforcement Authority has reason to believe a willful violation of this article has occurred or is about to occur, he or she may institute such legal action at such time as he or she deems necessary to prevent further violations or to redress prior violations.
- (b) The Enforcement Authority shall have such investigative powers as are necessary for the performance of the duties prescribed in this article and may demand, and shall be furnished, records of campaign contributions and expenses at any time.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1112. ENFORCEMENT.

- (a) Each candidate or treasurer who received part or all of the contributions in violation of the contribution limits of this article, shall pay promptly, from available campaign funds, if any, the amount received in excess of the amount permitted in this article, to the City Controller for deposit in the General Fund of the city, even though outstanding debts remain unpaid because of such forfeiture.
- (b) Any person who knowingly or willfully causes another person to violate any provision of this article, or who aids and abets any other person in the violation of any provision of this article, shall be liable under the provisions of this section.
- (c) Prosecution of violation of any provision of the article shall be commenced within four years after the date of the violation.

- (d) The enforcement provisions of this section are in addition to, and not in place of, any means of enforcement or remedies at law.
- (e) Any person who violates any of the provisions of this article shall, in addition to any other provisions of this article, be subject to the enforcement provisions set forth in the Political Reform Act, which are hereby incorporated by reference.
- (f) The Enforcement Authority may institute such legal action at such time as he or she deems necessary to prevent further violations or to redress prior violations.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 2-1113. APPLICABILITY OF OTHER LAWS.

Nothing in this article shall exempt any person from, or excuse such person's noncompliance with, applicable provisions of any other laws of the state or any other jurisdiction.

(Added Ord. 2007-55, § 4, eff. 9-4-07).

SEC. 3-103. PERMISSIBLE POLITICAL ACTIVITIES.

The limitations on political activities imposed by Section 813 of the Charter shall not be deemed to prevent any person who holds a position in the administrative service, or whose name is on any register for appointment to a position in the administrative service, from

- (1) Attending a political meeting;
- (2) Enjoying entire freedom from all interference in casting his vote;
- (3) Seeking or accepting election or appointment to public office;
- (4) Seeking signatures to any initiative or referendum petition affecting his rates of pay, hours of work, retirement, civil service, or other working conditions provided such activity is not carried on during hours of work. (Rep. and Added Ord. 5988, 1961, based on former Secs. 2-814 and 2-815; Am. Ord. 69-90, 1969).

SEC. 12-1710. EXEMPT SIGNS.

The following signs, if nonilluminated, shall be exempt from the application, permit, and fee requirements of this article:

(a) Window Signs. Window signs not exceeding six square feet and limited to lease, sale, business identification, hours of operation, address, and emergency information only.

(b) Real Estate Signs. Real estate signs, other than temporary on- and off-site subdivision signs, provided that:

(1) The number and size of such signs displayed complies with the limitations of the relevant zone district.

(2) No individual sign exceeds thirty-two square feet in area, including any attached rider(s) used to provide additional information about the property.

(3) If free-standing, such sign does not exceed six feet in height.

(4) Any model home sign is removed after the lot or home is sold, any open house sign is removed after forty-eight hours and any other on-site real estate sign is removed within fifteen (15) days of the close of escrow or occupancy of the premises.

(c) Memorials. Memorial tablets and plaques installed by an historical agency, provided such historical agency submits a letter to the Director which requests application of this exception and describes the memorial tablet or plaque. The Director shall review the request within five (5) working days of receipt and shall approve or deny the request. The request will be deemed approved if the Director does not deny the request within such review period.

(d) Convenience Signs. Convenience signs not exceeding four square feet in area.

(e) Identification Signs. Identification signs on residential buildings used to identify individual residences and not exceeding two square feet.

(f) Official Notice. Official and legal notices issued by any court, public body, person or officer in the performance of a public duty or in giving any legal notice.

(g) Directional Signs. Directional or identification signs not exceeding six square feet in area or required by law, or by federal, state, county or city authority.

(h) Flags. Official flags of the United States of America, the State of California and other states of the United States, counties, municipalities and official flags of foreign nations and flagpoles or similar supporting structures attached to buildings. Decorative cloth flags and banners, not exceeding eighteen square feet in area and attached singly or in pairs to light standards or individual poles, which are used to attract the attention of the public or complement the visual appearance of a development which do not contain written copy and such flags or banners which have written copy provided such flags and banners with copy comply with 12-1713(I). Freestanding flagpoles or similar structures, used exclusively to support a flag or decorative banner, are exempt from the sign permit

requirement but shall not be installed without issuance of a building permit, and must conform to the height and number limitations stated in Chapter 12 for the appropriate zone district.

(i) Barberpoles. Barberpoles less than eighteen (18) inches in height.

(j) Public Carriers. Signs on public carriers vehicles, such as buses, taxicabs and limousines.

(k) Political signs. Political signs, provided that:

(1) Such sign does not exceed thirty-two square feet in area.

(2) Such sign is not erected or displayed earlier than ninety days before the election to which it relates, nor later than fifteen days following such election.

(3) Such sign is not attached to any utility pole and such sign, or portion thereof, is not placed in any public right-of-way or on any property owned by the City of Fresno or Redevelopment Agency of the City of Fresno. Such sign is placed on private property with the permission of the property owner or is attached to an existing sign on private property with the permission of the sign owner or lessee.

(4) Such sign is not erected in such a manner that it will, or reasonably may be expected to, interfere with, obstruct, confuse or mislead traffic.

(5) Signs not erected or maintained in accordance with the provisions of this subsection shall be the responsibility of the owner of the property upon which the sign is located, shall be deemed a public nuisance, and may be abated by such property owner, the candidate or person advocating the vote described on the sign, or the Development Director. The cost of removal incurred by the Development Director shall be assessed against the property owner and/or the candidate and/or the person advocating the vote described on the sign.

(l) Roof Address and Location Signs. Signs on roofs of buildings used for industrial, commercial or office purposes, or public buildings, provided that:

(1) Such sign contains only the street address of the building, the name of the building or other information that will assist law enforcement personnel in locating the building from the air.

(2) Such sign is located only on a flat roof, and is either painted on the roof surface or on a rectangular or square board firmly affixed to the roof surface.

(3) Such sign consists of either white numerals and letters on black background or black numerals and letters on white background, and such numerals and letters are no less than three feet high and no more than four feet high.

(m) Occupancy Signs. Occupancy signs not exceeding six square feet in area. (Am. Ord. 82-137, § 3, eff. 1-21-83; Am. Ord. 87-80, § 1, eff. 7-24-87; Am. Ord. 91-125, §§ 55--61, eff. 12-20-91; Am. Ord. 2001-11, § 1, eff. 3-18-01).