



DOUGLAS T. SLOAN
City Attorney

December 4, 2015

MEMORANDUM

TO: Brandi L. Orth, 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 addresses frequently asked questions regarding the interpretation of City ordinances and Charter provisions.

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,



DOUGLAS T. SLOAN
City Attorney

c: Mayor
Councilmembers
Bruce Rudd, City Manager
Yvonne Spence, City Clerk
Francine M. Kanne, Chief Assistant City Attorney
Department Directors

Enclosure: Memo to Candidates for City of Fresno re Frequently Asked Questions



DOUGLAS T. SLOAN
City Attorney

December 4, 2015

MEMORANDUM

TO: Candidates for City Elective Office

RE: Frequently Asked Questions on the Interpretation of City Laws Applicable to Candidates for City Elective Office

Candidates seeking elective office in the City of Fresno are subject to state and local laws. The City Attorney's Office does not provide legal advice to candidates or to the public regarding campaigns. This Office does respond to written inquiries on the interpretation of the Fresno City Charter ("Charter") and the Fresno Municipal Code ("FMC"). Our policy is to copy all candidates on any opinions we issue in response to such inquiries.

The following provides a list of frequently asked questions and corresponding answers taken from our past responses to written inquiries submitted to our Office. This memorandum will also be available on the City of Fresno website.

1. When may a candidate for City elective office begin soliciting or accepting contributions for the election?

Pursuant to Charter Section 309, a candidate may not begin soliciting or accepting contributions until after the date set by law for filing nomination papers. According to the Fresno County Elections Office, the first date for filing nomination papers is February 15, 2016, for the upcoming election. Candidates for City elective office may begin soliciting or accepting contributions on February 15, 2016.¹

2. If a candidate files a petition in lieu of filing fees, can the candidate begin soliciting or accepting contributions at an earlier date than candidates who pay the filing fees?

No. The date referred to in the Charter is a date that remains constant and is not subject to change.²

3. What is the maximum contribution amount allowed by the City's Local Campaign Contribution Limits Ordinance ("Ordinance") for the upcoming election?

Under the Ordinance located at FMC Section 2-1101 et seq., a "person" may contribute up to \$4,200 per election, and a "small contributor committee" may contribute up to \$8,500 per election.³ The word "election" refers to any direct primary election, general

municipal election, or special municipal election, held pursuant to Charter Sections 1400 and 1401, or other applicable laws.⁴

4. *May a committee contribute to a candidate, the maximum amount permitted by Ordinance in the direct primary election, and if a run-off is needed, the maximum amount to the same candidate in the run-off election?*

Yes. Under the Ordinance, a "person" may contribute up to \$4,200 per election, and a "small contributor committee" may contribute up to \$8,500 per election.³ Since the maximum contribution amount is established per election, a committee may contribute up to the maximum amount permitted to a candidate in the direct primary election, and make the same contribution amount to the same candidate for the general municipal election. If a candidate is not in a run-off election, he/she may only receive the maximum amount permitted for the direct primary election.⁵

5. *If a corporation has three principals and each principal may direct and control the contribution of the corporation, can each principal make a separate \$4,200 contribution to a candidate on behalf of the corporation?*

No. Pursuant to FMC Section 2-1105(a), the contribution limit for a "person" is \$4,200 to a candidate per election. A corporation is a "person" for purposes of the contribution limits.⁶ Thus, the corporation through its principals, acting independently or in concert, may only contribute \$4,200 to the candidate.³ In addition, pursuant to FMC Section 2-1107, a contribution made by the corporation at the direction and control of a particular principal will be aggregated with any other contribution made by that principal to the same candidate in the same election.⁷

6. *What should a candidate do if he/she receives a contribution in excess of the contribution limit?*

Under the Ordinance, the candidate or the candidate's controlled committee shall return any amount in excess of the contribution limit 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.⁸

7. *Is a loan to a candidate from himself or herself used for campaign purposes subject to our local campaign contribution limits?*

No. Our Ordinance does not apply to loans made by a candidate to his or her own campaign. However, a candidate for elective office may not personally lend to his or her campaign an amount, the outstanding balance of which exceeds \$100,000. Furthermore, a candidate may not charge interest on any loan he or she made to his or her campaign.⁹

8. *Is a loan to a candidate from a third party used for campaign purposes subject to our local campaign contribution limits?*

Yes, unless the loan is received by the candidate from a commercial lending institution in the ordinary course or business.¹⁰ All other loans are subject to our local campaign contribution limits.¹¹

9. Are candidates' personal funds used for campaign purposes subject to our local campaign contribution limits?

No. Our Ordinance provisions do not apply to a candidate's contributions of his or her personal funds to his or her own campaign.¹²

10. Does Charter Section 309 apply to a candidate's personal loans or personal funds used to support his or her own election?

No. Charter Section 309, which prohibits candidates from soliciting or accepting contributions until the date fixed for filing nomination papers, does not apply to loans or contributions by a candidate to himself or herself to support his or her election.¹³

11. Is it legally permissible under Charter Section 309 and the FMC for a candidate to schedule an event at the end of this election year for individuals who contributed to the campaign?

Charter Section 309 prohibits candidates from soliciting or accepting contributions following the year in which an election is held. A candidate may schedule an event to be held after the end of this election year; however, all campaign contributions must be sought and accepted by December 31, 2016. The amount of the contribution must also comply with the local campaign contribution limits set forth in FMC Section 2-1101 et seq.¹⁴

12. Will the transfer of funds from a campaign account to a different campaign account of the same candidate violate Charter Section 309 or the Ordinance?

No. Charter Section 309 prohibits candidates from soliciting or accepting contributions until the date fixed for filing nomination papers or after the election year. A transfer of funds into a campaign bank account does not involve soliciting or accepting any contribution in support of a candidate's election and therefore does not trigger the contributions prohibition in Charter Section 309.

Our Ordinance is silent on whether a candidate may transfer funds from one campaign account to another campaign account of the same candidate. Under state law, when campaign funds are transferred from one controlled committee to another controlled committee for elective state office of the same candidate, contributions transferred shall be attributed to specific contributors using a "last in, first out" or "first in, first out" accounting method, under Government Code Section 85306. Comparable language was not included in the Ordinance. As such, our campaign contribution limits do not apply to such transfer of funds.

The City Attorney's Office does not have the statutory duty or authority to give advice on the Political Reform Act ("PRA") or its application. Candidates should contact the

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California Fair Political Practices Commission ("FPPC") for questions or advice relating to the PRA. The FPPC can be reached at (866) ASK-FPPC or (916) 322-5660.

Respectfully submitted,

A handwritten signature in black ink, reading "Tracy N. Parvagian". The signature is written in a cursive, flowing style.

TRACY N. PARVAGIAN
Deputy City Attorney

TNP:nd (69459nd/TNP)

- 1 City Attorney memorandum dated January 7, 2008.
- 2 City Attorney memorandum dated August 12, 1999.
- 3 FMC Sections 2-1105(a) and (b). By Ordinance, the contribution limits are
adjusted every odd numbered year according to the Consumer Price Index.
These contribution limits apply to elections held in 2016.
- 4 FMC Section 2-1103(b)
- 5 City Attorney memorandum dated October 1, 2008.
- 6 FMC Section 2-1103(f).
- 7 City Attorney memorandum dated February 13, 2004.
- 8 FMC Section 2-1109.
- 9 FMC Section 2-1106(b).
- 10 FMC Section 2-1106(a)
- 11 City Attorney Memorandum dated December 21, 1999.
- 12 FMC Section 2-1105(a).
- 13 City Attorney memorandum dated December 21, 1999.
- 14 City Attorney memorandum dated November 29, 2000.