RESOLUTION NO. 2012-75

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING RESOLUTION NO. 2010-197 AS AMENDED IN RESOLUTION 2012-27, ESTABLISHING A POLICY ENTITLED "COUNCIL RESIDENCY ACT" TO ENHANCE COUNCIL RESIDENCY REQUIREMENTS.

WHEREAS, the Council for the City of Fresno adopted the Council Residency Act in Resolution No. 2010-197 and as amended in Resolution No. 2012-27 (collectively, "Council Residency Act"); and

WHEREAS, the Council desires to amend the Council Residency Act.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno that the Council Residency Act is hereby amended as follows:

SECTION 1. ARTICLE VI, VERIFYING RESIDENCY FOR COUNCILMEMBERS, Section 6, is amended to read:

In the event that Councilmember moved to a new residence in the district after the filing of the previous affidavit, Councilmember must confirm, within ~~30~~60 days of moving, using items 1 through 4, the new district residence address.
[remainder of Article VI remains unchanged.]

SECTION 2. The full text of the Council Residency Act, as amended, is attached as Exhibit "A."

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Adopted 4-26-12
Approved 5-7-12
Effective 5-7-12

SECTION 3. This resolution shall become effective upon date of final passage.

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 26th day of April, 2012.

AYES : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
NOES : None
ABSENT : None
ABSTAIN : None

Mayor Approval: N/A, 2012

Mayor Approval/No Return: May 7, 2012

Mayor Veto: N/A, 2012

Council Override Vote: N/A, 2012

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: Tei Yukimoto
Tei Yukimoto, Sr. Deputy Attorney
Dated: 4/18/12

TY:cg-[58634cg/RESO]-4/18/12

April 27, 2012

RECEIVED
2012 MAY -8 AM 9:09
CITY CLERK, FRESNO CA

Council Adoption: 4/26/2012
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 4/26/12, Council adopted the attached Resolution No. 2012-75 entitled "**Amending a resolution establishing a policy entitled "Council Residency Act" to enhance residency requirements",** Item No. **10:45 B,** by the following vote:

Ayes	:	Baines, Borgeas, Brand, Olivier, Quintero, Westerlund, Xiong
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before May 7, 2012. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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APPROVED/NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

Ashley Swearengin, Mayor

Date: 5/8/12

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:

CITY OF FRESNO

COUNCIL RESIDENCY ACT

April 26, 2012

The following policies are enacted to help insure that City Council candidates and current City Councilmembers reside in the district they will or do represent.

ARTICLE I
DEFINITIONS

At Large Municipal Elections
In at large elections, all voters can vote for all seats up for election. At large elections allow a simple majority of the voters to elect all of the seats in a local election. This can result in disenfranchisement of the local electorate and elected bodies not in compliance with applicable law. Prior to 1981, City Council seats in Fresno were contested in at large elections.

City
"City" means the City of Fresno, a municipal corporation.

District Municipal Elections
A jurisdiction is divided into districts and one member is elected per district. Only the voters in a specific City Council district may vote for City Council candidates in that district.

Fresno City Charter Section 304
This Charter Section provides that no person shall be eligible to hold an elective office unless that person is, and has been for a period of at least 30 days immediately preceding the filing of nomination papers for such office or appointment of such office, a resident of the City, and has been at the time of assuming such office, an elector of the City.

Fresno City Charter Section 304.1
City of Fresno Charter Section 304.1 took effect on all municipal elections after 1981. It provides that no person shall be eligible to hold elective office as a Councilmember unless that person is, and has been for a period of at least thirty days immediately preceding the filing of nomination papers for such office or appointment to such office, a resident within the Council district corresponding in number to the office to which that person is elected or appointed.

Municipal Ordinance
A Municipal Ordinance is a law of local application. Local ordinances are adopted by the City Council and enforced by the City Manager and staff of local government.

Voting Rights Act of 1965
The National Voting Rights Act of 1965 outlawed discriminatory voting practices for the widespread disenfranchisement of minorities in the United States. The Act established extensive federal oversight of elections administration, providing that states and local governments with a history of discriminatory voting practices could not implement any change affecting voting without first obtaining the approval of the Department of Justice, a process known as preclearance.

ARTICLE II
PURPOSE OF ACT

Prior to 1981, there was a concern that some citizens of Fresno did not have a Councilmember to properly represent their district. There was also a potential violation of the Voting Rights Act of 1965 and subsequent election laws governing citizen representation. This issue was finally decided by the voters in a ballot issue.

On May 31, 1977, the voters of Fresno amended Charter Section 304 to require that persons running for City municipal elections must live in the City for a period of at least 30 days immediately preceding the filing of nomination papers for City offices and live in the City at the time of assuming office.

The voters of Fresno also added Charter Section 304.1 to require that persons running for City Council seats must reside in the district at the time the nomination papers are filed for such office or appointment. It further provided that each Councilmember shall, during the Councilmember's term, reside within such Council district. This was strictly a residence requirement and elections continued to be held at large. On June 3, 1980, the voters amended Charter Section 304.1 to provide that each Councilmember must reside in, and be elected from the district corresponding in number to his/her office. Thus, only the electors from the district could vote for the Councilmember within such district.

Objectives of Act:

1. To provide stricter and more detailed criteria for establishing a Council candidates residency in the Council district. Developing structured, objective criteria will help ensure proof of district residency for Council candidates.

2. To provide stricter and more detailed criteria for establishing current Councilmembers' residency in the districts they represent during their term in office. Developing structured, objective criteria will help ensure proof of district residency during the entire term of a Councilmember.

3. To protect the interests of all Fresno citizens and insure proper representation by developing policies that will help ensure that the Councilmembers truly reside in the district they represent.

4. Adopt enabling legislation via a municipal resolution to establish necessary policies.

Accomplishing the above stated objectives will help ensure that both the letter and spirit of Charter Section 304.1 can be implemented as Fresno voters intended when they passed the ballot measure 30 years ago.

ARTICLE III
ADVANTAGES OF DISTRICT REPRESENTATION

There are compelling reasons for establishing district representation. The Voter Rights Act of 1965 was the legislative vehicle for eliminating discriminatory voting qualifications, standards, practices, and procedures. The advantages of district elections include:

1. It encourages personal campaigns;

2. It encourages attention to neighborhood concerns;

3. It is easier for new candidates to win;

4. There is a lower cost of campaigning; and

5. It enhances descriptive representation and shared policy views and ideology.

Candidates not in compliance with the residency requirements of Charter Section 304.1 undermine the legal principles of representative local elections and raise questions regarding a local election's compliance with applicable law.

ARTICLE IV
RESIDENCY REQUIREMENTS FOR COUNCIL CANDIDATES

In addition to providing the Fresno County Clerk proof of voter registration in the district residence claimed for running for a City Council seat, a candidate must provide the following additional information to verify their 30 day residency requirement:

1. Proof of home ownership as evidenced by 1) a copy of a grant deed, a mortgage payment billing statement verifying the address; or any other document that can verify home ownership and residency of the property; and 2) evidence of a homeowners property tax exemption filed with the Fresno County Assessor for proof that the home is the primary residence. If a candidate does not have a tax exemption on file they must submit an affidavit signed by the candidate verifying that the home is the candidates primary residence; or

   If the home ownership is in the name of a person other than the candidate, or in the name of a legal entity, such as a trust, partnership or corporation, the candidate must submit an affidavit signed by the homeowner or authorized legal representative of the entity verifying that candidate is living in the home as his/her primary residence; or

2. If the residence is rented or leased by the candidate, the candidate will provide proof of residency by providing a signed copy of a lease or rental agreement. If the lease/rental agreement expiration date is longer than 90 days, the candidate shall provide a letter from the property manager or property owner verifying that the candidate is continuing on a month-to-month basis; or

   If a candidate is living at a residence without a lease/rental agreement and whose name otherwise does not appear in the proof of home ownership, candidate must have landlord/property owner sign an affidavit, under penalty of perjury, verifying candidate's residency in landlords/property owner's property.

3. Proof of motor vehicle registration, if any motor vehicles are registered to the candidate for the residency claimed or proof of a valid California driver's license showing their address on their license is consistent with the address shown on their nomination papers. If the residence address on either the drivers license or auto registration is in the process to being changed, the candidate must provide a document from the California Department of Motor Vehicles (DMV14 form) verifying the change is in process. If a candidate does not own an automobile or does not have a California driver's license, the candidate must submit any other State of California issued identification showing their address on the identification document is consistent with the address shown on their nomination papers.

4. A PG&E bill or Fresno City Utility bill in the candidate's name showing that the service address is consistent with the address in candidate's nomination papers. In the event a PG&E and/or Fresno City Utility bill has not been generated, a letter from an authorized representative of the utility provider stating that an account has been opened in the candidate's name will suffice. If there is an agreement with a landlord or other legal entity, as verified by a rental contract or lease contract, that the landlord or other legal entity will pay the PG&E bill and/or the Fresno Utility bill, the candidate must submit an affidavit signed by the landlord or the other legal entity's authorized legal representative verifying that the landlord or other legal entity, is responsible for paying the PG&E bill and/or the Fresno City Utility bill.

5. The candidate must sign an affidavit, under penalty of perjury, verifying residency.

Failure to provide any of the above-required documents will disqualify a candidate from meeting the Charter Section 304.1 district residency requirement. Willfully submitting false, forged, altered documents or coercing or unduly influencing persons providing affidavit documents will also disqualify candidates and constitute a misdemeanor Charter violation in addition to any other legal remedy available to enforce a similar fraudulent act.

ARTICLE V
VERIFYING RESIDENCY AND CERTIFICATION FOR COUNCIL CANDIDATES

No earlier than the initial filing date for documents related to a candidate running for a City Council seat and no later than the closing date to file nomination papers, candidates are required to file all of the documents specified in Article IV above with the Fresno City Clerk's office for verification. The City Clerk will review and verify that all required information is correct and meets the requirements of this Act. The City Clerk will diligently work to review and verify all residency documents submitted. No later than five calendar days from receipt of the candidate's documents, the City Clerk's office shall complete the review and verification of the documents. The City Clerk will then do one of the following:

1. If all City residency requirements are satisfied pursuant to this Act, the City Clerk's office will mail a letter to the Fresno County Clerk's office and mail a letter to the candidate certifying that the candidate has met the City's residency requirements; or

2. If any deficiencies are discovered in the documents provided or certain documents are missing, the City Clerk's office will send a letter to the candidate showing the specific deficiency(s) or missing document(s). The candidate will have until the closing date to file nomination papers to correct the deficiencies and re-submit the required documents for verification to the City Clerk; or

3. If the candidate either fails to complete verification of all of the requirements of this Act within the prescribed time limits, or the resubmitted documents do not meet the requirements of the Act, the City Clerk's office will mail a letter to the candidate advising them that they have failed to meet the requirements of the Act; or

4. If the re-submitted documents by the candidate meet all requirements of this Act, the City Clerk's office will certify the Act's residency requirements have been met and mail a letter to the Fresno County Clerk's office and mail a letter to the candidate.

ARTICLE VI
VERIFYING RESIDENCY FOR COUNCILMEMBERS

Councilmembers are required to live in the district they represent during their entire term in office. To insure that Councilmembers continue to live in the district they represent, each Councilmember must submit the following documents to the City Clerk during the last 31 calendar days of the year (December 1st to 31st), at the end of each year in office:

1. Proof of home ownership as evidenced by 1) a copy of a grant deed, a mortgage payment billing statement verifying the address; or any other document that can verify home ownership and residency of the property; and 2) evidence of a homeowners property tax exemption filed with the Fresno County Assessor for proof that the home is the primary residence. If a Councilmember does not have tax exemption on file they must submit an affidavit signed by the Councilmember verifying that the home is their primary residence; or

   If the home ownership is in the name of a person other than the Councilmember, or in the name of a legal entity, such as a trust, partnership or corporation, the Councilmember must submit an affidavit signed by the homeowner or authorized legal representative of the entity verifying that Councilmember is living in the home as his/her primary residence; or

2. If the residence is rented or leased by the Councilmember, the Councilmember will provide proof of residency by providing a signed copy of a lease or rental agreement. If the lease/rental agreement expiration date is longer than 90 days, the Councilmember shall provide a letter from the property manager or property owner verifying that the Councilmember is continuing on a month-to-month basis; or

   If a Councilmember is living at a residence without a lease/rental agreement and Councilmember must have landlord/property owner sign an affidavit, under penalty of perjury, verifying Councilmember's residency in landlords/property owner's property.

3. Proof of motor vehicle registration, if any motor vehicles are registered to the Councilmember for the residency claimed or proof of a valid California driver's license showing their address on the license is consistent with their address on their original nomination papers. If the residence address on either the drivers license or auto registration is in process to being changed, the Councilmember must provide a document from the California Department of Motor Vehicles (DMC14 form) verifying the change is in process. If a Councilmember does not own an automobile or does not have a California driver's license, the Councilmember must submit any other State of California issued identification showing their address on the identification document is consistent with the address shown on their nomination papers.

4. A PG&E bill or Fresno City utility bill in the Councilmember's name showing that the service address is consistent with the address is in the Councilmember's original nomination papers in candidate's name. In the event a PG&E and/or Fresno City Utility bill has not been generated, a letter from an authorized representative of the utility provider stating that an account has been opened in the Councilmember's name will suffice. If there is an agreement with a landlord or other legal entity, as verified by a rental contract or lease contract, that the

landlord or other legal entity will pay the PG&E and/or the Fresno Utility bill, the candidate must submit an affidavit signed by the landlord or the other legal entity's authorized legal representative, verifying that the landlord or other legal entity is responsible for paying the PG&E bill and/or the Fresno City Utility bill.

5. The Councilmember must sign an affidavit, under penalty of perjury, verifying residency.

6. In the event that Councilmember moved to a new residence in the district after the filing of the previous affidavit, Councilmember must confirm, within 60 days of moving, using items 1 through 4, the new district residence address.

Failure to provide any of the above-required documents will disqualify a Councilmember from meeting the Charter Section 304.1 district residency requirement. Willfully submitting false, forged, altered documents or coercing or unduly influencing persons providing affidavit documents will also disqualify a Councilmember and constitute a misdemeanor Charter violation in addition to any other legal remedy available to enforce a similar fraudulent act.

ARTICLE VII
INVESTIGATION AND ENFORCEMENT

Any fraudulent residency complaints shall be submitted to the City Attorney. The City Attorney will refer all complaints to the Fresno County District Attorney. The Fresno County District Attorney shall have the discretion to investigate residency complaints and if sufficient evidence of fraud is found during the investigation, the District Attorney can elect to prosecute.

ARTICLE VIII
TRANSPARENCY

The City Clerk shall post the names, corresponding Council district and all required supporting documents, consistent with applicable confidentiality laws, of all candidates that have been certified to meet the residency requirements of this Act at the City's web site and have a hard copy of the list available to be picked up at the City Clerk's office during normal business hours. Any confidential information shall be redacted before the public record is made available for inspection, in accordance with the Public Records Act. After the General Election the list shall be removed from the City web site and hard copies will no longer be available for pickup at the City Clerk's office.

A PDF copy of this Act shall be available, year round, at the City's web site and a hard copy shall be available to be picked up at the City Clerk's office during normal business hours. This will enable prospective candidates to review residency requirements pursuant to this Act.

ARTICLE IX
ONE YEAR REVIEW

One year from the adoption of this Act, the Council shall, at a regularly scheduled meeting, review the implementation and practice of this Act and, if necessary, amend the Act to reflect required changes.

ARTICLE X
EFFECTIVE DATE

This resolution shall take effect January 1, 2011. This Act, along with any subsequent amendments, shall be the Council Residency Act of the City of Fresno.

58635cg/ty Council Residency Act Amended 4-26-12 docx