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City Attorney

February 3, 2022

TO: Candidates for City of Fresno Elective Office

RE: City of Fresno Election Law Frequently Asked Questions

Candidates seeking election to a City of Fresno office (Council or Mayor) are subject to applicable federal, state, and local laws.

The following is a list of frequently asked questions, followed by corresponding answers taken from our past responses to written inquiries submitted to our Office. This memorandum is also available on the City of Fresno website. Please note the law could change following the publication of this memo, and the law should be independently verified at the time there is a concern.

QUESTIONS

- 1. Will the City Attorney's Office offer legal advice on campaign issues?**
- 2. What are the sources of local laws concerning City elections?**
- 3. What are the primary local legal issues to be aware of when running for a City office?**
- 4. What are the City's residency requirements for elective offices?**
- 5. What are the fee and alternative signature requirements to file nomination papers?**
- 6. Are candidates limited to a specific window of time for fundraising?**
- 7. What is the maximum contribution amount allowed by the City's Local Campaign Contribution Limits Ordinance (the Ordinance)?**
- 8. May a person or small contributor committee contribute the maximum amount permitted by the Ordinance to a candidate in the direct primary election, and then, if a run-off is needed, contribute the maximum amount to the same candidate in the run-off election?**
- 9. If a corporation has three principals and each principal may direct and control the contribution of the corporation, can each principal make a separate \$4,900 contribution to a candidate on behalf of the corporation?**
- 10. What should a candidate do if he or she receives a contribution in excess of the contribution limit?**
- 11. Are candidates' personal funds used for campaign purposes subject to local campaign contribution limits?**
- 12. Is a loan to a candidate from himself or herself, used for campaign purposes, subject to local campaign contribution limits?**

13. **Is a loan to a candidate from a third party, used for campaign purposes, subject to local campaign contribution limits?**
14. **May a candidate transfer funds from one campaign account to a different campaign account of the same candidate?**
15. **May a state or local elected official (or defeated candidate) transfer unexpended campaign funds to a candidate for City office? If so, what are the limitations?**
16. **What restrictions apply to the use of public resources and authority for an election?**
17. **What types of activities may the City fund using public resources?**
18. **What types of activities may City officials and employees engage in during a campaign?**
19. **What rules apply to campaign political signs?**
20. **May political signs be placed on the sides or tops of buildings?**
21. **Must a member of an appointed City board or commission resign from his or her appointment before becoming a candidate for an elected City office?**
22. **What are the upcoming Municipal Election dates?**
23. **What are the deadlines to request the County Clerk to add ballot measures to the June and November elections?**
24. **Where can candidates obtain additional information about election laws and procedures?**

ANSWERS

1. Will the City Attorney's Office offer legal advice on campaign issues?

The City Attorney's Office does not provide legal advice to candidates concerning state or federal law, but may offer clarifications of applicable City election laws.

Candidates should retain their own advisors for compliance with state laws, such as the Political Reform Act (PRA), and federal laws concerning tax exempt entities and committees, among others. The City Attorney's Office is pleased to work with candidates and their advisors to help ensure compliance with City laws. All discussions will be on a neutral, objective basis, not confidential, and if the discussion results in analysis of an issue not previously covered, it is likely the City Attorney's Office will publish the response so all can be similarly informed. The City Attorney's Office will not discuss policy or potential policy changes with candidates. Once a candidate has been elected, the City Attorney's Office will be pleased to meet with the elected candidates to discuss City organizational structure and legal issues.

2. What are the sources of local laws concerning City elections?

Sources of local election laws include the City of Fresno Charter (Charter), the Fresno Municipal Code (FMC), and Council resolutions and ordinances. Candidates must be familiar with the provisions of all sources of applicable laws, which are available on the

City's website or from the City Clerk's Office or the City Attorney's Office. Here is a summary list:

- A. Charter Article III
- B. Charter Article VIII
- C. Charter Article XIV
- D. FMC Sections 2-1001 – 2-1006
- E. FMC Sections 2-1101 – 2-1113
- F. FMC Section 3-103
- G. City of Fresno Resolution No. 2019-120
- H. City of Fresno Master Fee Schedule
- I. See: <https://www.fresno.gov/cityattorney/#legalresources>

3. What are the primary local legal issues to be aware of when running for a City office?

- A. Residency requirements for Mayor and Councilmembers
- B. Fee and/or signature gathering requirements for nomination paperwork
- C. Fundraising time window to solicit and accept contributions (see update below)
- D. Contribution dollar limits per donor per election
- E. Campaign loan restrictions
- F. Contribution transfer restrictions
- G. Restrictions on use of public resources or authority for campaigns
- H. Election sign rules

4. What are the City's residency requirements for elective offices?

To be eligible to hold City elective office, a person must have been a resident of the City for at least thirty days immediately preceding the filing of the nomination papers for that office. (Charter, § 304.) To be eligible to hold office as a Councilmember, a person must have been a resident of the Council District for which he or she is seeking office, for at least the same time period. (Charter, § 304.1.)

To ensure compliance with the thirty day residency requirement for candidates seeking a Council office, the Council and Mayor Residency Act (Act) was enacted in 2011 and has been amended various times to address concerns and clarify requirements. (See City of Fresno Resolution No. 2019-120.) The Act requires candidates to file specific documents with the City Clerk to verify residency in the district, including proof of voter registration, a residential deed or evidence of a lease, motor vehicle registration, a PG&E or City utility bill, and an affidavit of residency. In addition, the Act specifies a process for verification of Councilmember residency while serving in office.

5. What are the fee and alternative signature requirements to file nomination papers?

Candidate filing fees and alternative signature requirements are set by FMC Sections 2-1003 through 2-1006. Current filing fees are \$300 for Councilmember candidates and \$500 for Mayoral candidates. (See Master Fee Schedule.)

In lieu of the filing fee, a candidate may gather signatures on a form to be provided by the City Clerk or County Clerk under contract to provide election services. Generally, Council candidates must submit 250 signatures from registered voters within the applicable Council district boundary; Mayor candidates must submit 500 signatures from voters registered within the City.

Note: Candidates running for Council office in the June 2022 direct primary election must submit only 155 signatures pursuant to Elections Code Section 21620 (for elections following redistricting).

6. Are candidates limited to a specific window of time for fundraising?

No. Following the U.S. Fifth Circuit's decision in *Zimmerman v. City of Austin, Texas* (5th Cir. 2019) 881 F.3d 378 (holding fundraising time limits violate the First Amendment); the City does not enforce campaigning windows.

Note that Charter Section 309 limits campaign solicitations and contributions to a time window of the election filing date through the end of the calendar year in which the election is held. However, in light of the holding in *Zimmerman* the City's temporal provision of Charter Section 309 will not be enforced unless and until a court having jurisdiction over the City holds to the contrary or the *Zimmerman* holding is reversed or overruled. This does not affect the campaign contribution dollar limits, but only pertains to the time limits for contribution solicitations and payments.

7. What is the maximum contribution amount allowed by the City's Local Campaign Contribution Limits Ordinance (the Ordinance)?

Under the Ordinance a "person" may contribute up to \$4,900 per election, and a "small contributor committee" (as defined in Government Code Section 85203) may contribute up to \$9,700 per election. (FMC, §§ 2-1101, et seq.) The contribution limits apply to each election taking place during the period January 1, 2021, through December 31, 2022, without regard to when contributions are made. 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. The contribution limits for candidates for City elective office are the same as for candidates for State Assembly under the PRA. The contribution limits are adjusted every odd numbered year by the Fair Political Practices Commission (FPPC), in accordance with the Consumer Price Index.

8. May a person or small contributor committee contribute the maximum amount permitted by the Ordinance to a candidate in the direct primary election, and then, if a run-off is needed, contribute the maximum amount to the same candidate in the run-off election?

Yes. 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 on the ballot in a run-off election, he or she may only receive the maximum amount permitted for the direct primary election.

9. If a corporation has three principals and each principal may direct and control the contribution of the corporation, can each principal make a separate \$4,900 contribution to a candidate on behalf of the corporation?

No. Pursuant to FMC Section 2-1105(a), the contribution limit for a “person” is \$4,900 to a candidate per election. A corporation is a “person” for purposes of the contribution limits. Thus, the corporation through its principals, acting independently or in concert, may only contribute \$4,900 to the candidate. 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.

10. What should a candidate do if he or 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 fourteen 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.

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

No. The Ordinance does not apply to a candidate's contributions of his or her personal funds to his or her own campaign. However, personal loans from a candidate to his or her own campaign are subject to the provisions described below.

12. Is a loan to a candidate from himself or herself, used for campaign purposes, subject to local campaign contribution limits?

No. The Ordinance's contribution limits do 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 makes to his or her campaign. (FMC, § 2-1106(b).)

13. Is a loan to a candidate from a third party, used for campaign purposes, subject to local campaign contribution limits?

Yes, unless the loan is received by the candidate from a commercial lending institution in the ordinary course of business on terms available to the general public, and for which the candidate is personally liable. All other loans are subject to local campaign contribution limits. (FMC, § 2-1106(a).)

14. May a candidate transfer funds from one campaign account to a different campaign account of the same candidate?

Yes. Candidates are permitted to transfer funds raised in a prior election for City office or legally accepted in connection with another office that is not a City office, into a campaign account for a City elective office. Transfers that include contributions from prior campaigns that were not City campaigns shall be subject to contribution limits set forth in the Charter and FMC.

15. May a state or local elected official (or defeated candidate) transfer unexpended campaign funds to a candidate for City office? If so, what are the limitations?

Yes, provided the unexpended funds are not “surplus” campaign funds, which may not be transferred to another candidate under state law, and that the transfer complies with local elections laws.

“Surplus” funds are unexpended campaign funds which remain under the control of a candidate upon the ninetieth day after leaving elective office, or the ninetieth day following the end of the postelection reporting period following the defeat of a candidate for office, whichever occurs last. (Gov. Code, § 89519(a).) “Surplus” funds may only be used for certain purposes which do not include transfers to another candidate.

Based on the City of Fresno’s election laws, the transfer of unexpended campaign funds (which are not surplus funds) is limited to \$4,900 per contributor per election. (FMC, §§ 2-1105(a), 2-1108.) To transfer campaign funds, the candidate must track what funds from particular contributors have been spent or transferred previously, and then account for transfers per contributor per election within the contribution limits. For example, if Donor 1 contributed \$4,900 to Candidate A for the 2022 election, and Candidate A desires to transfer those funds to Candidate B, then Candidate B may not accept any further contribution for that election from Donor 1. Contributions are considered spent on a “first in first out” basis, so the timing and sequence of prior contributions and expenditures must be tracked. The City Attorney’s Office may assist in clarifying these issues.

The foregoing limitations do not apply to independent expenditures, which are governed by Government Code Section 85500, et seq.

16. What restrictions apply to the use of public resources and authority for an election?

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 whatsoever, from anyone on the eligible lists or holding any position in the Administrative Service. (Charter, § 813.)

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 are prohibited. (Gov. Code, § 8314.) Additionally, use of City distribution channels (City mailboxes, e-mail, etc.) may not be used for campaign activities. (*San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 845.)

The local provisions are consistent with Government Code Sections 3201 through 3209, which, among other things, prohibit public employees from engaging in the following types of activities:

- A. Use public funds to “take sides” to influence a measure that has qualified for the ballot.
- B. Distribute campaign literature through the City’s mail system.
- C. Send or receive campaign related e-mails on City computers or other electronic devices.

- D. Place campaign literature on the City's web page or City premises.
- E. Create a link from the City website to a website containing campaign materials.
- F. Use City copy machines, telephones, fax machines, computers, stationary, or other City resources for campaign purposes.
- G. Direct City staff to walk precincts, draft campaign ads, or carry out other campaign related tasks during compensated work hours.
- H. Urge City employees to vote for a candidate or ballot measure during compensated work hours.
- I. Participate in political activities while in uniform displaying a City logo or references.
- J. Use public funds to attend a political fundraiser.
- K. Directly or indirectly solicit campaign contributions from other City officials or employees, unless the solicitation is part of a general effort that incidentally includes local officials and employees.
- L. Solicit, receive, or agree to receive a benefit in exchange for any official actions (bribery or extortion).
- M. Request a donation to any campaign in exchange for any City action.

17. What types of activities may the City fund using public resources?

The following are permitted uses of public resources:

- A. Use public funds to develop a measure for the ballot to present to Council for legislative action.
- B. Use public funds to prepare and disseminate an accurate, fair, and impartial analysis of a measure that has qualified for the ballot.
- C. Use public funds to lobby the state legislature to aid or prevent passage of state legislation that will affect the City as directed by Council.
- D. Have Council adopt a resolution to support or oppose a ballot measure at an open meeting that does not expressly advocate the passage or defeat of the ballot measure.

18. What types of activities may City officials and employees engage in during a campaign?

City officials and employees may do all of the following with regard to ongoing campaigns:

- A. Take a position or work on a campaign on personal time.
- B. Make campaign contributions to a candidate or local ballot measure with personal funds.
- C. Attend a campaign fundraiser at one's own personal expense during personal time.
- D. Make public appearances on personal time to advocate a ballot measure or candidate.

- E. Participate in campaign activities at City facilities that are open and available for expression of all political viewpoints, such as sidewalks, parks, and areas in front of City Hall on personal time.

19. What rules apply to campaign political signs?

Political signs are regulated as “yard signs” (without regard to content) under the City’s Development Code (FMC, Chapter 15) that became effective in January 2016. There is no application, permit, or fee requirement for yard signs. The former restrictions on political signs being allowed only between ninety days prior to an election and fifteen days after an election no longer exist. Candidates may place signs in any of the Council districts. However, the City does impose time, place, and manner restrictions on yard signs. FMC Section 15-2611 provides that yard signs:

- A. May not exceed six square feet in area in residential districts or thirty-two square feet in area for other districts;
- B. May not exceed three feet in height or width including support structures in residential districts or eight feet in height or width, including support structures in other districts;
- 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;
- 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.

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

20. May political signs be placed on the sides or tops of buildings?

There is currently nothing in the Development Code that specifically addresses yard signs on the sides or tops of buildings. However, the Code provides that yard signs are lightweight materials supported by poles, stakes or wireframes; which entails placement of yard signs in the ground, and not on buildings. Signs that are attached to buildings are subject to additional requirements related to size, material, and sight lines, and require a permit from the Planning Director.

In the event of ambiguity FMC 15-203 states the Planning Director, upon consultation with the City Attorney’s office, shall make the interpretation for any definition not expressly identified in the Development Code, or provide clarification and interpretation of the Development Code.

21. Must a member of an appointed City board or commission resign from his or her appointment before becoming a candidate for an elected City office?

No. Charter Section 902 provides that members of boards and commissions may not hold paid office or employment in the City government. However, candidates for such offices are not prohibited from serving on boards and commissions.

If a candidate holds a position on an appointed board or commission, he or she is restricted from soliciting or receiving campaign contributions from persons with business before the board or commission and may be subject to the limitations of Government Code Section 84308.

22. What are the upcoming Municipal Election dates?

2022 Regular Elections for Council Districts 1, 3, 5, and 7

- February 14 - March 11, 2022 - Filing window for nomination papers
- June 7, 2022 - Direct Primary Election
- November 8, 2022 - General Election

Unless otherwise published, key filing dates and deadlines will coincide with those set by the California Secretary of State for California's Presidential Primary and are available at: <https://www.sos.ca.gov/elections/upcoming-elections/statewide-direct-primary-election-june-7-2022>.

23. What are the deadlines to request the County Clerk to add ballot measures to the June and November elections?

The deadline for the June 7, 2022, direct primary election is March 11, 2022, and the deadline for the November 8, 2022, general election is August 12, 2022.

24. Where can candidates obtain additional information about election laws and procedures?

Candidates may contact the City Clerk or the City Attorney with questions or concerns regarding local election law and procedures. A candidate may request written clarifications from the City Attorney concerning City election laws or procedures. To the extent the candidate shall rely upon and follow the written clarifications, the candidate shall be deemed to have complied with the City elections laws in questions, and it shall be deemed a complete defense to any claim or action concerning the matter. 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 or (916) 322-5660.

Respectfully submitted,



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City Attorney