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Douglas T. Sloan
City Attorney

August 22, 2018

VIA HAND DELIVERY

UTY

Brandi L. Orth
Fresno County Clerk
2221 Kern Street
Fresno, California 93721

Re: City Attorney's Impartial Analysis

Madam Clerk:

The following is an impartial analysis for the proposed amendment to the City of Fresno Charter that would eliminate or modify portions of the charter that are unconstitutional or preempted by state or federal law, including: (1) §309, prohibiting "off-year" campaign contributions, shall be removed as unconstitutional; (2) §701's residency requirement for the City Manager shall be eliminated as unconstitutional; (3) §1225, prohibiting residential water meters, shall be removed as preempted by state and federal law; and (4) §1207, requiring the City Council to impose taxes to meet appropriations, shall be amended and made subject to the Proposition 218 requirement for voter approval of taxes.

IMPARTIAL ANALYSIS BY CITY ATTORNEY

Ballot Measure proposes several technical changes to the City Charter to modify or eliminate provisions that are unconstitutional or preempted by state or federal law.

Existing Law: Charter §309 prohibits "off year" campaign contributions, which is contrary to and therefore unconstitutional under the First Amendment to the United States Constitution pursuant to a United States Circuit Court of Appeals decision.

Charter §701 requires the Chief Administrative Officer (City Manager) to reside within the Fresno City limits, which is contrary to and preempted by the California State Constitution, Article 11, §10(b).

Charter §1225 prohibits residential water meters, which is contrary to and preempted by California Water Code §§525 & 529 and the Central Valley Project Improvement Act, which makes federal Central Valley water allocations contingent upon meter installation and use.

Charter §1207 requires the Council to impose taxes necessary to meet appropriations made, which is not permissible following the passage of Proposition 218 which requires new municipal taxes to be approved by voters.

Proposed Change: The Charter Amendment will amend the City of Fresno Charter to remove or modify the following illegal and unenforceable sections:

- (1) §309, prohibiting "off-year" campaign contributions—removed as unconstitutional.
- (2) §701's residency requirement for the City Manager—removed as unconstitutional.
- (3) §1225, prohibiting residential water meters—removed as preempted by state and federal law.

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- (4) §1207, requiring the City Council to raise taxes to balance the budget—amended and made subject to the Proposition 218 requirement for voter approval of taxes.

This Measure was placed on the ballot by the City of Fresno.

Sincerely,

DOUGLAS T. SLOAN
City Attorney

The above statement is an impartial analysis of Measure 0. If you desire a copy of the measure, please call the Fresno County Clerk's Office at 559-600-3011 or the City of Fresno Clerk's Office at 559-621-7650, and a copy will be mailed at no cost to you.

DTS:JWH:prn [80157prn prn/dts]

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