



DOUGLAS T. SLOAN
City Attorney

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TO: Candidates for Fresno City Elective Office

RE: City of Fresno Election Laws Frequently Asked Questions

Candidates seeking election to a City of Fresno office (Council or Mayor) may be subject to federal, state, and local laws. The City Attorney's Office does not provide legal advice to candidates concerning state or federal law, but will 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 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 website.

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

Sources of local election laws include the City 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 all 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. o Charter Article III
- B. o Charter Article VIII
- C. o Charter Article XIV
- D. § FMC Section 2-1001 - 2-1006
- E. § FMC Section 2-1101 - 2-1113
- F. § FMC Section 3-103
- G. o Resolution 2017-282
- H. § Master Fee Schedule
- I. o See: <https://www.fresno.gov/cityattorney/#legalresources>

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

- A. o Residency requirements for Mayor and Councilmembers
- B. o 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

3. RESIDENCY: 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 Section 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 Section 304.1.)

To ensure compliance with the thirty day residency requirement for candidates seeking a Council office, the Council Residency Act ("Act") was enacted in 2011 and has been amended various times to address concerns and clarify requirements. (See Resolution 2017-282.) The Act requires candidates to file specific documents with the City Clerk to verify their 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.

4. NOMINATION PAPERWORK: What are the fee and/or signature requirements to file nomination papers?

Candidate filing fees and alternative signature requirements are set by FMC Section 2-1003 – 2-1006. The current filing fees are \$300 for Councilmember candidates and \$500 for Mayor 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. Council candidates must submit two hundred fifty signatures from registered voters within the applicable Council district boundary. Mayor candidates must submit five hundred signatures from voters registered within the City.

5. FUNDRAISING WINDOW

While City of Fresno Charter section 309 limits campaign solicitations and contributions to a time window of the election filing date through the end of that calendar year, in light of the U.S. Fifth Circuit Court of Appeals decision of *Zimmerman v. City of Austin, Texas*, No. 16-51366, 2018 WL 652854 (5th Cir. Feb. 1, 2018) (holding fundraising time limits violate the First Amendment), the City Attorney's Office will not be enforcing the temporal provision, at least unless and until a court having jurisdiction over the City of Fresno 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. Therefore, candidates are now not limited as to the timing of fundraising for City offices.

6. CONTRIBUTION LIMITS

A. 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 \$4,700 per election, and a "small contributor committee" may contribute up to \$9,300 per election. (FMC Section 2-1101 – 2-1113.) The contribution limits apply to each election taking place during the period January 1, 2019, through December 31, 2020, 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.

B. May a committee contribute to a candidate the maximum amount permitted by the 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 \$4,700 per election, and a "small contributor committee" may contribute up to \$9,300 per election. 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.

C. If a corporation has three principals and each principal may direct and control the contribution of the corporation, can each principal make a separate \$4,700 contribution to a candidate on behalf of the corporation?

No. Pursuant to FMC Section 2-1105(a), the contribution limit for a "person" is \$4,700 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 \$4,700 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.

D. 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.

E. 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.

7. CAMPAIGN LOANS

A. 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 Section 2-1106(b).)

B. 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 Section 2-1106(a).)

8. CAMPAIGN CONTRIBUTION TRANSFERS

A. 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.

B. 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. (Government Code Section 89519(a).) "Surplus" funds may only be used for certain purposes which do not include transfers to another candidate.

Non-surplus funds may be transferred provided such transfer complies with all applicable local laws.

9. RESTRICTIONS ON USE OF PUBLIC RESOURCES: What are the restrictions on 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 Section 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. (See also FMC Section 3-103.)

The local provisions are consistent with Government Code Sections 3201 - 3209, 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.

10. POLITICAL SIGNS:

A. What rules apply to campaign political signs?

Political Signs are regulated as "yard signs" (without regard to content) under the City's Development Code 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. The Development Code provides that yard signs (FMC Section 15-2611):

- 1. May not exceed 32 square feet in area;
- 2. May not exceed **8** feet in height or width, **including support structures**;
- 3. May not be attached to utility poles;
- 4. May not be placed on any public right of way or any property owned by the City;
- 5. 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

6. 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.


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

There is currently nothing in the 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 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 Code.

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,


DOUGLAS T. SLOAN
City Attorney