

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING SECTION 3-102 OF THE
FRESNO MUNICIPAL CODE CONCERNING
EMPLOYMENT OUTSIDE CITY SERVICE.

WHEREAS, Fresno Municipal Code Section 3-102 provides that Council, by resolution, shall establish standards for the granting, denial, and revocation of outside work permits; and

WHEREAS, Resolution No. 93-323 sets forth standards and procedures for granting outside work permits to city employees under Fresno Municipal Code section 3-102; and

WHEREAS, the Council now wishes to repeal Resolution No. 93-323 and amend Section 3-102 as set forth below.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1: SECTION 3-102 of the Fresno Municipal Code is amended to read:

SECTION 3-102. FULL-TIME EMPLOYMENT DEFINED. EMPLOYMENT
OUTSIDE CITY SERVICE.

(a) Forty hours of actual attendance on duty, less time off on authorized leaves of absence as provided for in this article, shall constitute a minimum work week for all full-time employees of the city, except that the following shall be deemed full-time employees though their regular work week is more or less than forty hours:



(1) Members of the fire-fighting forces who work a twenty-four hour shift;

(2) Employees holding permanent positions whose compensation is fixed pursuant to the second paragraph of Section 809 of the Charter and whose rate of pay is established by a collective bargaining agreement which provides for a regular work week of less than forty hours and when the Council has established such lesser work week as the regular work week for such employees in the salary resolution or other action of the Council fixing the rate of pay of such employees; provided, that nothing herein contained shall be construed to guarantee to any employee any number of hours of work in any week if work is not available or cannot for any reason be performed. Except for full-time employees whose regular work week is established at less than forty hours, and except as may be otherwise established at less than forty hours, and except as may be otherwise established by departmental rules governing personnel assignment or an approved memorandum of understanding, the regular minimum work day for full-time employees shall be eight hours, commencing at eight o'clock a.m. and ending at five o'clock p.m. with a lunch period of one hour during the day.

(b) Employees holding full-time permanent positions shall devote their whole time and attention to the city service except as hereinafter provided. No such employee shall engage in or work at any other remunerative occupation without having first obtained an outside work permit[,] from the Chief Administrative Officer. ~~The Council, by resolution, shall establish standards for the granting, denial and revocation of outside work permits by the Chief Administrative Officer, and may provide in such resolution for the creation and appointment of an advisory committee to review applications for outside work permits and make recommendations thereon to the Chief Administrative Officer prior to his granting or denial thereof.~~

[(1) Application. Every applicant for an outside work permit shall file an application with his/her Department Head or Appointing Authority (Councilmember, City Attorney or City Clerk) on a standardized form. The Department Head or Appointing Authority shall make a determination whether the proposed outside work is compatible with the applicant's city position and with the terms of this Section, or will adversely affect the efficiency of the employee.

(i) For those employees who report to a Councilmember, City Attorney or City Clerk, the Appointing Authority shall approve or deny the permit. The Council

shall be notified of all work permits issued by the City Attorney or City Clerk.

(ii) For those employees of a Department or Division that reports to the City Manager, the Department Head shall forward the application and his or her recommendation to Personnel Services, which shall recommend issuance or disapproval of the permit, and the City Manager shall either approve or deny the permit. In the event either the Department Head or Personnel Services recommends disapproval, the applicant shall be notified of such recommendation prior to submission of the work permit application to the City Manager.

(2) Issuance. The Appointing Authority or City Manager shall issue an outside work permit unless there is cause for denial. Such cause may include but shall not be limited to one or more of the following reasons:

(i) The work request might be in violation of California Government Code Section 1126, which currently states, "a local agency officer or employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his or her duties as a local agency officer or employee"; or

(ii) The number or arrangement of the hours of employment in the proposed outside work is such that the efficiency of the applicant in his/her city position will be impaired to any degree; or

(iii) The applicant's city position is one which requires occasional or regular standby duty for emergency call and the proposed outside work would seriously restrict the availability for such emergency call; or

(iv) A physical disability or infirmity of the applicant (as indicated by sick leave record, injury records, or physical examination) may be aggravated by the proposed outside work or the physical condition and/or nature of the work for the city is such that the applicant's efficiency in their city position may be impaired by the physical or mental stress of the outside work; or

(v) if not self-employed, failure of the applicant to indicate proof of workers' compensation insurance in the outside employment; or

(vi) The applicant has willfully mis-stated on the application any fact concerning the nature of the outside work.

(3) Restrictions. All approved work permits shall be issued subject to the restrictions as specified herein including, but

not limited to the restrictions stated and implied in the California Government Code, Section 1126.

(4) Time Limit. Hours. An outside work permit shall be granted for such periods of time as the Appointing Authority or City Manager prescribe but not to exceed a period of one year, and shall be renewable in the same manner as issuance of the original work permit. Each work permit shall show thereon the date of its expiration, and it shall be the duty of the employee holding such permit and desiring its renewal to file an application for renewal sufficiently in advance of the expiration date to avoid lapse. Notwithstanding, the Appointing Authority or City Manager, in his or her discretion, may retroactively issue a work permit. The maximum number of hours for which a work permit may be approved shall be sixteen hours per week for eight and ten hour shift employees and twenty-four hours per week for twenty-four hour shift employees. Any exception to these time limits will be determined on an individual basis and will be governed by the nature of the work to be performed, the nature of the applicant's city duties, and other pertinent factors that have bearing on the individual's ability to devote his/her full time and attention to city employment.

(5) Revocation. The Appointing Authority or City Manager shall revoke any outside work permit issued by him or her.

for any reason which would have required the denial of such permit under Section 2 hereof, or for any other good cause. Work permits may be revoked where any act or behavior of the employee in performing his or her outside work reflects unfavorably upon his or her Department or the city. Written notice of the revocation stating the effective date thereof shall be given to the employee who shall surrender the revoked permit to the Appointing Authority or City Manager on or before the effective date of the revocation. An employee whose work permit has been revoked shall cease outside employment immediately upon receipt of such notice. Work permits automatically shall become invalid and remain invalid, without notice, for the duration of the time that an employee is:

(i) on sick leave or special leave charged to sick leave; or

(ii) receiving injury pay. Exception: Employees with an approved work permit may continue to perform such outside work provided it is consistent with the work restrictions/limitations imposed by their treating physician and no light duty is available within the city. In cases of dispute regarding an employee's medical status, the opinion of the most recent specialist shall prevail; or

(iii) receiving temporary disability payments under workers' compensation insurance.

(6) Review.

(i) Denial or revocation of a work permit by a Councilmember, City Attorney, or City Clerk shall be appealable by submitting a written request for review to the Council President within seven business days of the decision. The Council President shall establish an Ad Hoc Review Committee consisting of three Councilmembers (excluding the affected employee's Appointing Authority).

(ii) The City Manager's decision to deny or revoke a work permit shall be appealable by submitting a written request for review to the Director of Personnel Services within seven business days of the decision. The request shall be reviewed by a Work Permit Review Committee, consisting of one management group member to be assigned by the City Manager, an employee representative selected by the affected employee, and a third member shall be a city employee in a permanent position jointly selected by the management group member and the employee's representative. No member of the committee shall be a member of the affected employee's Department.

(iii) The request for review shall include any evidence which bears upon the issuance, denial, renewal, or revocation of the work permit. The applicable review

committee shall review the request and render a decision within forty-five days to issue, modify, deny, or revoke the work permit, using the criteria outlined in this Section.]

SECTION 2. SEVERABILITY. The City Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

* * * * *

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2016.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2016
Mayor Approval/No Return: _____, 2016
Mayor Veto: _____, 2016
Council Override Vote: _____, 2016

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Katie Doerr Date
Chief Assistant City Attorney

KBD:ns [70757ns/kbd]- 3/9/16

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval: _____

Ordinance No.