

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, SUBMITTING TO CITY ELECTORS A PROPOSAL TO AMEND THE CHARTER TO MODIFY OR ELIMINATE PROVISIONS THAT ARE CONTRARY TO AND PREEMPTED BY STATE OR FEDERAL LAW AND PROVIDING FOR THE PLACEMENT OF THE MEASURE ON THE NOVEMBER 6, 2018, GENERAL ELECTION BALLOT

WHEREAS, the Fresno City Charter is the City's primary governing legal document, but provisions contained in it have become contrary to and preempted by state or federal law; and

WHEREAS, Charter section 309 prohibits "off year" campaign contributions, which is unconstitutional under the First Amendment to the United States Constitution pursuant to a United States Circuit Court of Appeals decision; and

WHEREAS, Charter section 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); and

WHEREAS, Charter section 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; and

WHEREAS, Charter section 1207 requires the Council to approve the budget and then raise taxes if necessary to balance the budget; however, Proposition 218 requires voter approval to raise taxes, so the Charter should be amended to be compliant with Prop. 218; and

1 of 6

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: _____

Resolution No.

WHEREAS, it is the desire of the City Council that the Charter be compliant with state and federal law and legally enforceable.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Council submits to the electors of the City of Fresno at its general municipal election to be consolidated with the statewide general election to be held on November 6, 2018, a ballot measure proposing to amend the Charter of the City of Fresno as set forth in Exhibit A attached hereto, and incorporated herein by reference.

2. The question to be submitted to the electors with respect to the proposed Charter amendments as set forth in Exhibit A shall be printed on the election ballot with the title and in the form hereinafter set forth:

TECHNICAL CHARTER CLEANUP	
Shall the City of Fresno Charter be amended to remove or modify these legally unenforceable sections?	YES
(1) §309, prohibiting “off-year” campaign contributions—removed as unconstitutional.	
(2) §701’s residency requirement for the City Manager—removed as unconstitutional.	NO
(3) §1225, prohibiting residential water meters—removed as preempted by state and federal law.	
(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.	

3. The following constitutes the synopsis of the measure to be voted on for the purpose of meeting the publication requirements of Elections Code Section 12111:

An amendment to the City of Fresno Charter that would eliminate or modify portions of the Charter that are contrary to and 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; (3) §1225, prohibiting residential water meters, shall be removed as preempted by state and federal law; (4) §1207, requiring the City Council to raise taxes to balance the budget, shall be amended and made subject to the Proposition 218 requirement for voter approval of taxes.

4. The City Clerk shall file a certified copy of this resolution with the Fresno County Elections Office on or before August 10, 2018.

5. The Fresno County Clerk/Registrar of Voters shall give the appropriate notices for the election and shall conduct the election pursuant to appropriate provisions of state law.

6. The City shall reimburse the County of Fresno for the above mentioned services performed by The Fresno County Clerk/Registrar of Voters, upon presentation of the bill to the City.

7. The City Attorney shall prepare an impartial analysis of the measure in accordance with Elections Code §9280.

* * * * *

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 ____ day of _____ 2018.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2018
Mayor Approval/No Return: _____, 2018
Mayor Veto: _____, 2018
Council Override Vote: _____, 2018

YVONNE SPENCE, CRM MMC
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: _____
John W. Hastrup Date
Deputy

Attachment: Exhibit A

EXHIBIT A TO RESOLUTION _____

PROPOSED AMENDMENTS TO CHARTER OF CITY OF
FRESNO TO BE SUBMITTED TO THE CITY ELECTORS
AS A BALLOT MEASURE AT THE GENERAL MUNICIPAL
ELECTION TO BE HELD ON NOVEMBER 6, 2018

Article VII Chief Administrative Officer, Sec. 701 Qualifications, shall be amended to read:

The Chief Administrative Officer shall be appointed solely on the basis of [his] executive and administrative qualifications, with special reference to [his] actual experience in or [his] knowledge of accepted practice in respect to the duties of his office as hereinafter set forth. ~~[He]~~ **The Chief Administrative Officer** shall have at least five ~~[year's]~~ **[year's]** experience as the administrative head or assistant administrative head of a city, or ~~[he]~~ shall have had equivalent experience in the direction and supervision of other governmental, private business, or industrial activities of comparable importance and magnitude. ~~[He need not be a resident of the City or State at the time of his appointment, but during his tenure in office, he shall reside in the City of Fresno. No resident of the County of Fresno at the time this Charter becomes fully operative shall be appointed Chief Administrative Officer within twelve months thereafter.]~~

Article XII Fiscal Administration, Sec. 1225 Water Meters Prohibited, shall be deleted in its entirety:

~~[The City shall not, directly or indirectly (1) install or require the installation of water meters at single-family housing units; (2) bill or otherwise levy charges for single-family residential water consumption at a metered rate; or (3) charge the property owner or tenant for the cost of installing, maintaining, or removing residential water meters from single-family residents.]~~

Article III Elective Officers, Sec. 309 Off-Year Contributions Prohibition, shall be deleted in its entirety:

~~[No mayoral candidate, Council candidate, or any committee controlled by such person shall solicit or accept any contribution in support of such candidate's election prior to the date fixed by law for the filing of nomination papers with respect to such election, or following the year in which such election is held.]~~

Article XII Fiscal Administration, Sec. 1207 Tax Levy, shall be amended to read:

On or before the last Tuesday in August in each year, the Council shall, by ordinance **[and subject to applicable state law voter approval requirements]**, levy such tax as may be necessary to meet the appropriations made (less the estimated amount of

revenue from other sources), and all sums required by law to be raised on account of the City debt and interest thereon, together with such addition, not exceeding five per cent, as may be deemed necessary to meet commissions, fees and deficiencies from the estimates in the amount of taxes collected.