

DATE: AUGUST 5, 2019
TO: COUNCIL
FROM: YVONNE SPENCE, City Clerk
SUBJECT: TRANSMITTAL OF MAYOR'S VETO

YJS

RECEIVED
2019 AUG -5 P 4: 53
CITY OF FRESNO
CITY CLERK'S OFFICE

The Mayor has vetoed the attached Resolution No. 2019-155 or other legislative action entitled "Amending the Transparency in City Government Act to Prohibit Retroactive Raises and Raises after an Employee has given notice". Under the Charter, if a vetoed ordinance, resolution or other legislative action is not overridden within 30 days of the veto, the resolution or ordinance is deemed disapproved. In accordance with the Fresno Municipal Code, any Councilmember may request the City Clerk to place the resolution, ordinance or other legislative action on the agenda for an override vote.

Any Councilmember who wishes this matter be placed on the agenda for an override vote must sign below and file this request with the City Clerk before the agenda for the meeting of August 22, 2019 is posted.

TO: CLERK

Please place this item on the agenda for override consideration.

Sally Ruffell
(Signature)

8/5/19
Date

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TO: CLERK

Please place this item on the agenda for override consideration.

[Signature]
(Signature)

08/07/19
Date

RECEIVED
2019 AUG -7 A 9:44
CITY OF FRESNO
CITY CLERK'S OFFICE

DATE: AUGUST 5, 2019
TO: COUNCIL
FROM: YVONNE SPENCE, City Clerk
SUBJECT: TRANSMITTAL OF MAYOR'S VETO



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TO: CLERK

Please place this item on the agenda for override consideration.

(Signature)

Date

July 26, 2019

Council Adoption: 7/25/19

Mayor Approval:

Mayor Veto:

Override Request:

TO: MAYOR LEE BRAND

FROM YVONNE SPENCE, MMC 
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

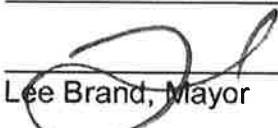
At the City Council meeting of 7/25/19, Council adopted the attached Resolution No. 2019-155, entitled "Amending the Transparency in City Government Act to Prohibit Retroactive Raises and Raises After an Employee Has Given Notice", as amended in Article V. Item No. 4-B, File ID19-11050, by the following vote:

Ayes	:	Arias, Bredefeld, Caprioglio, Chavez, Esparza, and Soria
Noes	:	None
Absent	:	None
Recused	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before August 5, 2019. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval

APPROVED/NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)
see attached


Lee Brand, Mayor

Date: 8-5-19

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:

CITY OF FRESNO
CITY CLERK'S OFFICE
2019 AUG -5 - 11: 51

RECEIVED



MAYOR LEE BRAND

August 5, 2019

Mayor's Reasons for Vetoing Resolution 2019-155 entitled Amending the Transparency in City Government Act to Prohibit Retroactive Raises and Raises After an Employee Has Given Notice.

Attached are my written objections and reasons for vetoing Resolution 2019-0155, entitled Amending the Transparency in City Government Act to Prohibit Retroactive Raises and Raises After an Employee Has Given Notice.

As the author of the original Transparency in City Government Act and the 2015 Amendment, I do not believe this new amendment complies with the spirit of the City Charter and I do not believe this amendment has been thoroughly discussed with the City Manager and other members of my administration to fully understand and address its long-term implications.

In my eight years on the City Council, I wrote and passed 18 legislative acts that made fundamental and necessary changes to how the City of Fresno does business. While I take pride in authorship, I collaborated extensively with the Mayor, City Manager and Administration in the development of these acts. Without exception, long before they showed up on a Council agenda as an action item each and every one had been thoroughly vetted. This collaboration made for a better process and a better result. A fully funded emergency reserve fund and the fact that the City has not squandered millions of taxpayer dollars on ill-advised investments or giveaways are two of the best examples of the success of this process.

That is not the case with this Amendment. Neither myself, my staff nor the City Manager knew about this Amendment until it appeared on the Council Agenda, less than a week before it was scheduled for a vote. That is not enough time for the types of discussions necessary for this type of change.

I believe this Amendment – unlike the prohibitions on bonuses in the current Transparency Act – violates the spirit, if not the letter, of the Charter by interfering in the ability of the City Manager (Chief Administrative Officer) to run the City for the benefit of the Fresno's residents as described in Charter Sections 705 and 706.

It is my hope that by vetoing this Resolution the Council will choose to work with me and my Administration to develop a solution to this issue that allows the City Manager to effectively manage her Directors and employees while also maintaining transparency and accountability to the people of Fresno and its Councilmembers.



Legislation Text

File #: ID19-11050, Version: 1

REPORT TO THE CITY COUNCIL

July 25, 2019

FROM: COUNCILMEMBER BREDEFELD, Councilmember for District 6; and
MIGUEL ANGEL ARIS, Vice President
City Council Offices

SUBJECT

***RESOLUTION - Amending the Transparency in City Government Act to Prohibit Retroactive Raises and Raises After an Employee Has Given Notice (Subject to Mayor's Veto)

RECOMMENDATION

[If more than one recommendation pluralize]

EXECUTIVE SUMMARY

[Brief, 1-2 paragraphs; information stated here must be expanded in Background section; clear and concise so anyone understands action being requested]

BACKGROUND

[Include: Any prior history; "City Attorney has reviewed and approved to form," if applicable; source of funding; appropriate regulation summary information]

ENVIRONMENTAL FINDINGS

[Include CEQA findings or state N/A]

LOCAL PREFERENCE

[N/A due to State and Federal money; N/A because it is more than 1/2 of 1%; or yes, state why]

FISCAL IMPACT

[Funding source, clarify whether General Fund is or is not impacted; appropriation authority already

approved or an AAR is attached; if appropriate explain impact on other projects or timing of funding from other agencies; future obligations]

Attachment: [If more than one, pluralize]

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, AMENDING THE
"TRANSPARENCY IN CITY GOVERNMENT ACT" TO
PROHIBIT RETROACTIVE RAISES AND RAISES AFTER
AN EMPLOYEE HAS GIVEN NOTICE OF SEPARATION

WHEREAS, the Transparency in City Government Act (the Act) was co-authored by Councilmember Lee Brand and former Councilmember Henry T. Perea, and approved on a 7-0 vote in 2010; and

WHEREAS, the Act was amended in 2015 to improve the transparency in employee and official compensation disclosure, enhance the Council's authority over approving employee bonuses and toughen the enforcement of the Act; and


WHEREAS, the Act as hereby amended will further improve the transparency in employee and official compensation by prohibiting employees and officials in non-represented management and confidential classifications from receiving retroactive raises and raises after there is notice of the employees' or officials' separation from City service.

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

SECTION 1. The Council hereby adopts the attached Exhibit "A" Amended Transparency in City Government Act as a formal Council policy.

SECTION 2. This resolution shall become effective upon its adoption.

* * * * *

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

Resolution No.

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 _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: _____
Tina R. Griffin [DATE]
Assistant City Attorney

CITY OF FRESNO

TRANSPARENCY IN CITY GOVERNMENT ACT



Amended July __, 2019

The following policies are enacted to help improve and enhance transparency in City of Fresno government operations by providing disclosure of City employees and elected officials compensation. This Act shall supersede any provisions of the Fresno Municipal Code, resolutions, or employment contracts that are inconsistent, except for provisions of any approved Memorandum of Understanding with a City bargaining unit.

ARTICLE I DEFINITIONS

Base Salary

The base salary is the defined salary of an elected or public official as set forth in either the annually approved City salary resolution or by a negotiated contract between the City and a public official.

Benchmark or Peer Cities

Benchmark or peer cities represent those cities in California that are comparable population wise and demographically to Fresno.

Bonus

Compensation paid to employees in the form of either cash or City funded deferred compensation contributions that are in addition to base salary but not covered by another form of authorized compensation (e.g., car allowance, premium pay, leave cash out).

City Charter Officials

Certain City officials are identified in the City's Charter including the Mayor, Council members, the City Manager, City Attorney, City Clerk and City Controller/Treasurer.

Consultant Services

Consultant services are professional services provided by individuals or entities who are not employed by the City of Fresno.

Evergreen Provision

A contract provision that automatically renews the length of the agreement after a predetermined period, unless notice for termination is given. Evergreens are often used for long-term agreements such as memberships or maintenance contracts.

Executive Employees

Executive level employees are unclassified, "at will" department head and above management positions.

Gross Wages

An employee's pre-tax compensation including all normal salary/hourly earnings, bonuses, overtime, deferred compensation, leave payoff/administrative leave, car allowance, and pay deferral.

Municipal Code Section 4-107 (b)

Municipal Code Section 4-107 (b) provides that except for legal services, the City Manager is authorized to contract for all services required by the City for which an appropriation has been made; provided the contract involves an expenditure of City moneys of less than or equal to fifty thousand dollars (\$50,000).

Professional Services

Professional services are infrequent, technical or unique functions provided by independent contractors or consultants whose occupation is the rendering of professional services.

Request for Proposal

A Request for Proposal (RFP) is a solicitation initiated by the City to provide a competitive process for selecting professional consultants, and establishing terms and conditions thereof.

ARTICLE II PURPOSE OF ACT

Revelations in 2010 in the City of Bell, California and recently in the City of Fresno have brought attention to the compensation of public officials. In a time of declining revenues and decreasing budgets it is important for the City to demonstrate fiscal responsibility and transparency. Salaries, benefits and pension costs represent over 80% of the costs of the City General Fund. The public has a right to know compensation levels for all City employees. It is imperative that the City of Fresno takes the lead in providing full disclosure of compensation of its employees including executive public officials and elected officials. The purpose of this Act is to create an easy to find, readily available means to view current employees and elected officials compensation levels. It is also important to compare the compensation levels of City executive and elected officials with officials from our peer cities in California.

Objectives of Act:

1. To provide annual disclosure of City of Fresno employees and elected official compensation.
2. To provide a comparative analysis of compensation levels for executive employees and elected officials in peer cities in California.
3. Adopt enabling legislation via a municipal resolution to establish necessary policies.

ARTICLE III CITY ELECTED OFFICIALS AND EMPLOYEE EARNINGS DISCLOSURE

It shall be the practice of the City of Fresno to provide: 1) a list of all earnings of all City employees in Gross Wages as reported on the year end W-2 form; and 2) a separate list, as provided below, of earnings from the prior calendar year of all elected officials and all Unit 2 – Non-represented officials and employees. Both lists shall be in an easy to find location at the City website, and printed lists at the City Clerk's office. The list shall be updated annually to the City website as part of the Mayor's annual proposed budget. The list shall be published and made available to Council at the time the Mayor's proposed budget is provided to Council, but in any event no later than June 1 of each year. The City Attorney shall timely advise the Administration and report to Council on the status of compliance with this Act.

Review and approval of the annual employee/official compensation disclosure report(s) described in this Act by a majority vote of the Council is a pre-condition of approving the annual City budget.

The earnings disclosure for all employees, except for the City Manager, Assistant City Manager, other Charter Officials, and department heads, will be listed by occupation/title only. It will not include individual employee names and will only list those employees who have been in the City's employment for 12 months or longer except for executive level employees. If an executive level employee has been employed for less than 12 months then the Gross Wages compensation shall be computed based on earnings to date and projected for an annual figure.

A description of health and retirement benefits by bargaining unit and for non-represented employees will also be provided along with the earnings disclosure.

The reporting for all elected officials and all Unit 2 Non-represented officials and employees shall specify earnings, itemized by the following categories:

1. Total earnings
2. Base pay/salary
3. Overtime
4. Cash bonus (which are prohibited)
5. Deferred compensation bonus (which are prohibited)
6. Leave payoff/cash out
7. Auto allowance
8. Premium pay
9. Severance paid

ARTICLE IV CONSULTANTS DISCLOSURE

The total annual compensation paid to any consultant providing professional services for the City shall be disclosed including those consultants making less than \$50,000 per year. A report will be prepared by the City Manager detailing the following information:

1. The name of the consultant;
2. A description of the consulting services provided; and
3. A detailed account of all payments by the City to the consultant including the total paid for the fiscal year.

ARTICLE V UNIT 2 EMPLOYMENT CONTRACTS, BONUS, SALARY INCREASES, AND SEVERANCE PAY

For all Unit 2 – Non-represented Management and Confidential Classes officials and employees, no bonus in the form of cash compensation and/or City funded deferred compensation contributions, or any equivalent, shall be paid. Unless specifically authorized by Council, all Unit 2 – Non-represented Management and Confidential Classes officials and employees shall only receive base salary increases prospective from the date of submission to the Personnel Services Department of a completed employee action form (EAF) (i.e., there shall be no retroactive raises), and such officials

or employees shall not receive base salary increases if there is notice by their appointing authority of their involuntary or voluntary separation from City service (i.e., the official or employee is to resign, retire, or be terminated).

For all Unit 2 – Non-represented Management and Confidential Classes officials and employees, the appointing authority may authorize an employment contract with the official or employee. Unless specifically authorized by the Council, for any such employment contract to be valid and enforceable, the following conditions shall be required:

1. The contract shall be executed by the appointing authority and the employee, and approved by the City Attorney as to form;
2. A copy of the fully executed contract, including any amendments, shall be provided to the City Clerk, who shall make the contract available for inspection on the City's website;
3. The contract may provide that the employee may accept a portion of salary/base pay in the form of deferred compensation;
4. The contract may provide for severance pay, not to exceed six (6) months base pay, plus the City's contribution of health care benefits during that time, starting from the last day of service; health care benefits shall not be authorized for a time period that exceeds the stated severance term;
5. Severance pay shall not be authorized in the event of the employee's voluntary separation from service, retirement, or termination for cause, including but not limited to criminal conviction, misfeasance, or malfeasance in office; and
6. Any existing applicable employment contracts shall be revised to conform to these provisions.

ARTICLE VI BENCHMARK CITIES EXECUTIVE EMPLOYEE COMPENSATION MATRIX

The compensation of executive employees for the 10 California benchmark cities shall be presented in a side-by side comparison matrix. The following executive positions shall be included in the peer city comparison: City Manager; Assistant City Manager; City Attorney; City Clerk; City Controller/Treasurer; Police Chief and Fire Chief. This matrix will detail comparable executive city positions showing the compensation levels. Compensation displayed will include base salaries and, when information is available, other types of compensation (e.g. performance bonuses). Because of the inherent difficulty in obtaining data on any additional compensation it may be difficult to disclose full compensation figures for defined executive positions from other peer cities.

If any future comparisons of any other employee classification become necessary, they shall use the same 10 California benchmark cities.

This matrix shall be updated every year to reflect current population statistics and compensation levels. Please see exhibit 'A' for sample matrix.

ARTICLE VII CALIFORNIA 10 LARGEST CITIES ELECTED OFFICIALS COMPENSATION MATRIX

The compensation for elected officials of the 10 largest cities in California shall be presented in a side-by-side comparison matrix. The matrix will detail comparable elected officials' compensation levels. This matrix display shall be updated every year to reflect current population statistics and compensation levels. Please see Exhibit 'B' for sample matrix.

**ARTICLE VIII
ANNUAL COMPENSATION DISCLOSURE REPORT**

Once a year the City Manager will make a presentation to the Council and provide a written report to the Council members outlining all of the reporting described in Articles III, IV, V, VI and VII. The written report shall be made available to Council at the time the Mayor's proposed budget is provided to Council, but in any event no later than June 1 of each year, and the presentation shall be made during the annual budget hearings.

**ARTICLE IX
EXTENDED NOTICE FOR CONTRACTS
WITH CONTINUOUS ("EVERGREEN") PROVISIONS**

The City Council shall be provided seven days prior notice of the effective date of any employee contract containing an evergreen provision automatically increasing compensation for any employee earning a base salary of \$100,000 per year or more unless the increase is consistent with increases for other unclassified employees.

**ARTICLE X
TRANSPARENCY**

All information and reports described in this Act shall be available for public viewing at an easy to find identified link titled, "City Elected Officials and Employee Earnings Disclosure" at the City's Home Page website. Hard copies shall also be available to members of the public for viewing or pickup at the City Clerk's office during regularly scheduled business hours.

**ARTICLE XI
ONE-YEAR REVIEW**

One year from the adoption of this Amended Act, the Council shall, at a regularly scheduled meeting, review the implementation and practice of this Act and, if necessary, amend the Act to reflect required changes. The Act will continue to be effective whether or not the review takes place.

**ARTICLE XI
EFFECTIVE DATE**

This resolution shall take effect upon its adoption.