RESOLUTION NO. 8918

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA ESTABLISHING UPDATED GUIDELINES FOR IMPLEMENTATION OF THE TAXPAYER PROTECTION ACT (PASADENA CITY CHARTER, ARTICLE XVII)

WHEREAS, in November of 2006, the voters of the City of Pasadena adopted amendments to the Taxpayer's Protection Act ("TPA"); and

WHEREAS, in August of 2005, the City Council adopted Guidelines for the Implementation of the TPA; and

WHEREAS, from time to time, Council has updated the Guidelines to reflect the City's experience with implementation of the TPA; and

WHEREAS, the City's best efforts at interpretation of the TPA are required so that it can be implemented to the best of City staff's abilities.

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

The updated guidelines for implementation of the TPA, attached hereto and incorporated herein by reference, are hereby approved and shall take effect immediately.

Adopted at the regular meeting of the City Council on the 26th day of January, 2009 by the following vote:

AYES: Councilmembers Gordo, Madison, McAustin, Robinson, Tyler, Vice Mayor Haderlein, Mayor Bogaard

NOES: None

ABSENT: Councilmember Holden

ABSTAIN: None

MARK JOMSKY, CMC
CITY CLERK

Approved as to form:

THERESA E. FUENTES
ASSISTANT CITY ATTORNEY

GUIDELINES FOR IMPLEMENTATION OF THE TAXPAYER PROTECTION ACT ("TPA") (PASADENA CITY CHARTER, ARTICLE XVII)

I. DEFINITIONS

A. "City public official" is partially defined in the TPA as "any elected or appointed public official acting in an official capacity." The City interprets the definition to:

i. Exclude any Board member or employee of the Pasadena Unified School District; any person(s) making recommendations, or acting within a series of required approvals, preceding the last required approval; any hearing officers who are not City employees; any person(s) approving as to form, content, process, or execution only.

ii. Include only the person(s) who make the final approval, and is intended to be limited to the following when they have made the final approval decision on a matter:

1. City Council members;
2. The following commission members, to the extent any action taken by the following commissions is subject to the TPA: Planning Commission, Board of Zoning Appeals, Design Commission, Historic Preservation Commission, Arts Commission, and Code Enforcement Commission;
3. City Manager or official designees thereof;
4. Department heads and Operating Company directors or official designees thereof;
5. Board Members of each of the Operating Companies;
6. Fire and Police Retirement Board members.

B. "Public benefit" as defined in the TPA "does not include public employment in the normal course of business for services rendered . . ." and thus excludes memoranda of understanding or other contracts primarily concerning compensation, benefits, or employment arrangements between the City and any union, employee association or employee. "Public benefit" is defined in the TPA, and is limited to "a contract, benefit, or arrangement between the City and any individual, corporation, firm, partnership, association, or other person or entity to:

i. provide "personal services" of a value in excess of $25,000 over any 12 month period [the contract price is the presumed value];

ii. sell or furnish any material, supplies, or equipment to the City of a value in excess of $25,000 over any 12 month period [the sale/contract price is the presumed value];

iii. buy or sell any real property to or from the City with a value in excess of $25,000, or lease any real property to or from the City with a value in excess of $25,000 in any 12 month period [the sale/purchase/lease price is the presumed value];

iv. receive an award of a franchise from the City to conduct any business activity in a territory in which the City agrees to limit competition to provide similar and competitive services, and for which gross revenue from the business activity exceeds $50,000 in any 12 month period;

v. confer a land use variance, special use permit, or other exception to a pre-existing master plan or land use ordinance pertaining to real property where such decision has a value in excess of $25,000 [the presumed value of the land use application is as indicated by the applicant on the application]. The land use terms used herein are undefined and, on a literal basis, may be inapplicable in Pasadena. Accordingly, they are clarified by reference to specific Pasadena Municipal Code sections as follows: "land use variance" shall mean variances (17.61.070), adjustment permits (17.61.080), or sign exceptions (17.48.050); "special use permit" shall mean temporary use permits (17.61.040), conditional use permits, and master plans (17.61.050), and expressive use permits (17.61.060); "exception to a pre-existing master plan" shall mean master plan inconsistency projects (17.61.050(I)(2)(c)); "exception to land use ordinance pertaining to real property" shall mean a planned development (17.26.020(C));

vi. confer a tax abatement, exception, or benefit not applicable to the public generally of a value in excess of $5,000 in any 12 month period [the value is that determined by the Finance Director]; or

vii. receive cash or specie of a net value to the recipient in excess of $25,000 in any 12 month period.

viii. The "12-month period" referenced in subsections (i) through (vii) above shall run concurrent with the City's fiscal calendar: July 1 through June 30.

ix. The City need not track public benefits of less than $5,000 (except as provided in subsection vi., above) unless it is reasonably

foreseeable that the amounts under $5,000 will cumulate in excess of the threshold amounts set forth above in any 12 month period.

x. The annual amounts set forth above shall be adjusted on July 1 every five years, starting in 2010, per the Consumer Price Index, and rounded to the nearest $1,000 dollars.

xi. Public benefit excludes, among others:
    1. third party benefits and/or indirect benefits arising from the receipt of a public benefit;
    2. loans which are reasonably certain to be paid back and are not forgiven (regardless of the interest rate charged);
    3. sponsorships;
    4. membership dues or obligations;
    5. purchases made with credit cards held by individual mid-level staff members for ongoing, minor purchases which are not aggregated under the City's purchasing ordinance;
    6. transactions in which the City has set a standard fee for use of City facilities (e.g., renting out or licensing the use of convention center space), or receipt of City permits to use public property (e.g., park use permits);
    7. settlement agreements;
    8. public utility trading transactions; and
    9. competitive low bid contracts awarded pursuant to the requirements of PMC Section 4.08.045.

C. "Personal or campaign advantage" is limited to:

i. any gift, honoraria, emolument, or personal pecuniary benefit of a value in excess of $50; excluding gift exceptions contained in the FPPC regulations (2 CCR 18940 et seq.); and excluding gifts from public agencies or gifts distributed by the City, or

ii. any employment for compensation, or

iii. any campaign contributions for any Pasadena City elective office said official might pursue, or for any City ballot measure committee controlled by the public official. (Any Pasadena City official who receives contributions for a campaign outside the City from a public benefit recipient may not use or transfer such contributions to any election for a Pasadena City race.)

D. "Persons or entities receiving public benefits" excludes governmental entities; excludes any organization that is exempt from income taxation under Section 501(c)(3), (4) or (6) of the Internal Revenue Code; excludes the spouse of the public benefit recipient; excludes any

agent for the applicant if the agent is not listed in subpart D(ii), below; requires disclosure of the real party in interest,[1] and includes:

i. the individual, corporation, firm, partnership, association, or other person or entity so benefiting, and

ii. any individual or person who, at the time the public benefit is conferred, or within the 12 month period where the public benefit accrues, if applicable:
   1. has more than a 10% equity, participation, or revenue interest in that entity, or
   2. is a trustee, director, partner, or officer of that entity.
   3. If any of the entities disclosed under subsections 1 and 2 directly above are themselves a corporation, firm, partnership or other entity, the TPA does not require further disclosure of those interest holders or corporate officers.

iii. any political committee as defined by Government Code Section 82013 or 2 U.S.C. 431(4), and its trustees, directors, partners, or officers, or those who control such committees.

II. REQUIREMENTS OF TPA

A. The TPA does not apply to the exercise of a ministerial duty, or to the award of any public benefit arising out of an emergency as provided in Pasadena Municipal Code Section 4.08.150.

B. The language within the TPA is inconsistent and unclear regarding whether its requirements are triggered upon any vote to confer a public benefit, or only upon a vote that results in actual award of the public benefit. The City reconciles these inconsistencies by finding that the TPA's requirements are only triggered when a public benefit is actually conferred. The denial of an application, permit or contract does not confer a public benefit.

C. The TPA sets forth a contract negotiating blackout period, during which a City Council member or candidate for City Council may not accept campaign contributions, or contributions to committees controlled by the Council member or candidate, from any entity (or its trustees, directors, partners, officers, and 10% equity, participation, or revenue interest holders) who bids on a contract with the City, or is negotiating a lease agreement or land sales agreement, to be approved by the City Council, with a value in excess of $25,000. The blackout period applies from the time the negotiations commence (for those

[1] For example, a land use applicant who wishes to remain anonymous may not avoid disclosure by causing a project planner, architect or other persons to complete a land use application on their behalf.

contracts requiring a bid, on the due date for all bids and if no date is specified, the date when a bid is submitted; for leases/land sales, when instructions to negotiate have been given by Council), until the time the negotiations have terminated (for those contracts requiring a bid, when the contract is awarded; for leases/land sales, when the lease/sale agreement is awarded). The pre-contractual blackout period does not apply to competitive and noticed low bid contracts awarded pursuant to the requirements of PMC Chapter 4.08.

D. A person who receives a public benefit may hire the employer of a public official who voted to grant the public benefit if: (1) the public official is not working on the person's matter, and (2) the public official does not have a 10% (or more) equity, participation, or revenue interest in his/her employer.

III. DUTIES OF THE CITY

A. Notice: The City will provide any person or entity applying/competing for a "public benefit" with notice of the TPA requirements. The City has revised its model contracts, requests for proposals, purchase orders, and discretionary application forms to include such notice.

i. All applicants for a public benefit must disclose those individuals or other entities which would be "persons or entities receiving public benefits," as requested by the City. This disclosure will be considered a public record and will be transmitted to the City public official/body as an attachment to the applicable staff report, or otherwise transmitted to the City public official/body prior to the grant of the public benefit.

ii. Failure of an applicant to make this disclosure may result in disqualification for award of the contract, forfeiture of bid security, and/or designation of an application as incomplete, at the City's discretion.

B. Lists of benefits conferred and recipients: The City will maintain lists of public benefits conferred, the date on which the public benefit was conferred, the value of the public benefit, and the recipients of the public benefit. The lists will be updated as required to delete transactions to which application of the TPA has expired. The City assumes any responsibility for any errors or omissions on the lists, excluding the knowing or intentional failure of a City public official to report a qualifying public benefit which gives rise to an error on the

City's list, and excluding erroneous or incomplete representations by recipients of public benefits.

i. The City Clerk will maintain the list with regard to any public benefits conferred by the City Council.

ii. Each Operating Company and the Fire and Police Retirement Board will maintain their own respective list with regard to any public benefits conferred by those respective bodies.

iii. Each department within the City will maintain the list with regard to any public benefit conferred by that department.

C. Nonprofit tracking list: Although the definition of "persons or entities receiving public benefit" excludes any organization that is exempt from income taxation under Section 501(c)(3), (4) or (6) of the Internal Revenue Code, the City shall maintain a separate list of all public benefits conferred on such organizations, the date on which the public benefit was conferred, and the recipients of the public benefit. This list is maintained for the sole purpose of promoting open government and public information.

D. Pre-contractual blackout list: The City will maintain a list of contracts, leases and land sales agreements being negotiated which fall under the pre-contractual blackout period. The City assumes any responsibility for any errors or omissions on the lists, excluding the knowing or intentional failure of a City public official to report an item under negotiation which gives rise to an error on the City's list, and excluding erroneous or incomplete representations by the party seeking the public benefits.

E. The City shall post all lists set forth in this section on the City's website by July 1, 2007.

IV. DUTIES OF CITY PUBLIC OFFICIALS

A. City public officials have the following duties under the TPA:

i. Keep track of all actions by which a public benefit is conferred. As set forth in section III above, the City assumes this duty. City public officials must report any approval of a qualifying public benefit for entry into the City's list(s).

ii. Keep track of all campaign contributions for those elective offices for which a City public official has declared an intent to run, or has

established an account into which campaign contributions are deposited.

iii. Return any personal or campaign advantages received within 10 days of receipt, or within 10 days of becoming aware that the personal or campaign advantage was received in violation of the TPA.

iv. Provide, upon inquiry, the names of all public benefit recipients known, by referring the inquiring party to the appropriate City department responsible for maintaining the lists.

V. INDEMNITY

In the event that a City public official is sued for violating the TPA, the City will defend and indemnify the City public official, to the extent allowed by law.