Agenda Report

July 15, 2019

TO: Honorable Mayor and City Council

FROM: City Manager

SUBJECT: PROPOSED POLICY REGARDING PUBLIC BENEFIT PAYMENTS RELATED TO DEVELOPMENT AGREEMENTS WITH TAX-EXEMPT INSTITUTIONS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the actions proposed herein are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption); and

2. Adopt a policy whereby Development Agreements between tax-exempt institutions and the City of Pasadena include a Public Benefit Payment made by the institution.

BACKGROUND:

The City Council approved the ArtCenter Master Plan and related Development Agreement ("DA") in July 2018. The DA included a Public Benefit Payment to partially offset the cost of providing City services which benefit Art Center. Nonprofit institutions are generally exempt from property taxes which the City uses to help pay for the cost of providing services (e.g. police and fire protection, infrastructure, etc.). Rather than addressing this issue with a single nonprofit entity, the City Council directed staff to return with a proposed policy that could be applied equally to all nonprofits in similar circumstances.

This report provides background on a tool known as a Payment in Lieu of Taxes, or PILOT, that has been used nationwide to address the cost of providing government services to tax-exempt institutions that was utilized in developing the Public Benefit Payment provision in the adopted DA. The recommended action would authorize the City Manager to negotiate with tax-exempt institutions when a Master Plan and Development Agreement is proposed by such an institution. Consistent with City Council direction of July 16, 2018, the Public Benefit Payment provision of the ArtCenter

Development Agreement would only go into effect if the City Council adopted a policy regarding PILOTS within one year of its approval of the ArtCenter Agreement.

COST OF SERVICES AND TAX-EXEMPT INSTITUTIONS

The City of Pasadena provides a wide-range of services in support of all those who live, work, and visit the city. These services include police, fire, emergency medical response, library, recreation and parks. The vast majority of these services are funded by the City's General Fund. The largest single revenue source in the General Fund is Property Tax, which accounted for approximately 36 percent of total General Fund revenues, or roughly $82.5 million in the fiscal year 2019.

The City is also the home to numerous[1] nonprofit organizations including private universities, museums, and other institutions which bring employees, students, and visitors to Pasadena, who also benefit from the services provided by the City. In California, if a nonprofit's property is used for religious, hospital, scientific, or charitable purposes, and the charitable and/or other activities primarily benefit persons within the geographical boundaries of the State, then the nonprofit organization is exempt from paying a Property Tax. Many other states have similar regulations. While these institutions provide invaluable services for many worthwhile causes, the City receives no corresponding tax revenue to help support the funding of its vital services.

At the same time, these nonprofits impose a cost on municipalities by consuming public services, such as police and fire protection and infrastructure such as roads and utilities. Payments in lieu of taxes (PILOTs) are payments made voluntarily by these nonprofits as a substitute for property taxes.

PILOT PROGRAMS NEEDED THROUGHOUT THE COUNTRY

In recent years, municipal revenue pressures have led to heightened interest in PILOTs in numerous municipalities, and over the last decade have been used in at least 117 municipalities in at least 18 states. Large cities collecting PILOTs include Baltimore, Boston, Philadelphia, and Pittsburgh. Boston has one of the longest standing and the most revenue-productive PILOT program in the United States.

PILOTs can provide crucial revenue for certain municipalities, and are one way nonprofits can offset the cost of the public services they consume. However, PILOTs can potentially be haphazard, secretive, and calculated in an ad hoc manner that can result in widely varying payments among similar nonprofits. In addition, a municipality's attempt to collect PILOTs could potentially prompt battles between municipalities and nonprofits and lead to years of contentious, costly, and unproductive litigation.

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[1] In 2017, CalNonProfits (http://www.calnonprofits.org) Policy Director Nancy Berlin worked with Leadership Pasadena to produce a Pasadena focused report that concluded that there were 1,021 non-profits in Pasadena.

In "Rethinking Property Tax Incentives for Business" (2012), authors Daphne A. Kenyon and Adam H. Langley have researched the continuing policy debate over property tax exemptions among municipalities and nonprofit organizations, and offer the following recommendations.

PILOTs are one revenue option for municipalities. They are most appropriate for municipalities that are highly reliant on the property tax and have a significant share of total property owned by nonprofits. For example, a Minnesota study found that while PILOTs could increase property tax revenue by more than ten percent in six municipalities, there was negligible revenue potential from PILOTs for the vast majority of Minnesota cities and towns. Similarly, PILOTs are not appropriate for all types of nonprofits. PILOTs are most suitable for nonprofits that own large amounts of tax-exempt property and provide modest benefits to local residents relative to their tax savings.

Municipalities should work collaboratively with nonprofits when seeking PILOTs. The best PILOT initiatives arise out of a partnership between the municipality and local nonprofit organizations, because both sectors serve the general public and have an interest in an economically and fiscally healthy community. In some cities, case-by-case negotiation with one or several nonprofits is best, as is the case between Yale University and New Haven. In cities with a large number of nonprofits, such as Boston, creating a systematic PILOT program can promote horizontal equity among tax-exempt nonprofits and raise more revenue than negotiating individual agreements.

PUBLIC BENEFIT PAYMENT

As an alternative to a strict PILOT program or policy, it is proposed that a policy be adopted that authorizes the City Manager to negotiate a Public Benefit Payment as part of a Development Agreement, when such an agreement is requested by a tax-exempt institution in conjunction with a new or amended Master Plan. The City Council would still retain approval authority for all Development Agreements and would have the final say on any Public Benefit Payment included in a proposed Development Agreement.

The negotiation of a Public Benefit Payment would specify the amount and duration of any such payment to be customized to the institution, the services they provide the community, and the services they consume. It does not necessarily seek full compensation of Property Tax that would otherwise be paid were the institution not tax-exempt. Further, the timing of payment(s) of the Public Benefit Payment can be tied to specific milestones or achievements (e.g. building permit issuance, Certificate of Occupancy, etc.), and can either be made in perpetuity or for discreet period of time.

Development Agreements

A Development Agreement is a voluntary agreement, or contract, between a local jurisdiction and a property owner(s) or other persons having a legal or equitable interest in the property proposed to be subject to the agreement or an authorized agent of the owner(s) in compliance with Government Code Section 65864 and Chapter 17.66 of the Zoning Code (Development Agreements). It is typical that a Development Agreement would include items that either side wishes to obtain from the other, although these items do not require a nexus, or connection, to the development application. Although the agreements are voluntary, once made they are binding on the parties and their successors.

A Development Agreement provides assurances to the developer that the development regulations that apply to the project will not change during the term of the agreement. The city or county may require conditions to mitigate project impacts, as well as clarification about project phasing and timing of public improvements.

Development Agreements are typically proceeded in conjunction with a specific development application, and are therefore made available for public review and comment, as well as by any advisory body, such as the Planning Commission. This review process allows for transparency and full disclosure of the benefits and agreements being sought by the applicant and the City. As noted early, Development Agreements are voluntary, meaning an applicant is not required to request one. In the context of this report, if a tax-exempt institution does not request a Development Agreement, then the City could not negotiate a Public Benefit Payment.

The Public Benefit Payment included in the ArtCenter Development Agreement would require ArtCenter to pay the City $50,000 annually starting with the issuance of a Certificate of Occupancy for the first newly constructed building. The Master Plan includes up to four new structures and the Development Agreement requires an additional $50,000 per year at the issuance of each Certificate of Occupancy, for a total of $200,000 per year if ArtCenter builds out its Master Plan.

ENVIRONMENTAL ANALYSIS:

Under the California Environmental Quality Act (CEQA), the policy to include a Public Benefit Payment in future Development Agreements between the City and tax-exempt institutions is not a "project" in and of itself, and is therefore not subject to environmental review pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). Any future Development Agreement will be analyzed in compliance with CEQA.

COUNCIL POLICY CONSIDERATION:

The proposed recommendation furthers the goals and policies of the General Plan, specifically:

- *Land Use Element, Goal 15: Sound Local Economy. A sound local economy which attracts investment, increases the tax base, creates employment for Pasadena residents and generates public revenues.*

- *Land Use Element, Policy 15.1: Local Investment. Advance local investment to support a robust and consistent resource for municipal revenues and opportunities that support community services and improvements.*

In addition, the following City Council Strategic Planning Goals would also be achieved:

- *Maintain fiscal responsibility and stability*
- *Improve, maintain, and enhance public facilities and infrastructure*

FISCAL IMPACT:

The amount of any future funds collected through the proposed Public Benefit Payment cannot be estimated at this time as the exact amount would have to be negotiated by the City and relevant institution. Further, any such funds collected would likely only partially offset public services provided to the Project (e.g. police and fire).

Respectfully submitted,

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