

Agenda Report

TO: CITY COUNCIL

DATE: JUNE 25, 2001

THROUGH: LEGISLATIVE COMMITTEE

FROM: CITY MANAGER

SUBJECT: OPPOSE SENATE BILL 974 (TORLAKSON), PUBLIC CONTRACTS CODE
AND SENATE BILL 1119 (MARGETT)

RECOMMENDATION:

It is recommended that the City Council:

1. Join with the League of California Cities to oppose Senate Bill 974 (Torlakson) and Senate Bill 1119 (Margett), Public Contracts Code.
2. Authorize the Mayor to send letters to the appropriate authorities stating Pasadena's position.

BACKGROUND:

The California Constitution allows a city, with the consent of the local voters, to govern its "municipal affairs" by adopting a charter. A charter city may specify the organization and power of the city in its charter. A city charter operates as a mini-constitution that allows a city to design an alternative administrative structure for its government. The constitutional "home rule" doctrine grants precedence to a city charter over a conflicting state statute. The California Constitution allows flexibility and local control by charter cities.

Senate Bill 974 specifies that the California Public Contracts Code would be the basis of all contracts between most public entities and their contractors and subcontractors rather than local procedures. This bill further specifies that the Public Contracts Code would apply to charter cities in the absence of a specific exemption or a charter city ordinance or regulation that is in direct conflict with the relevant provisions of the Code.

Senate Bill 974 would cause numerous city procedures now in place statewide to be rewritten by state law, and would cause unnecessary confusion over which law applies because of the rewriting of city codes. Further, the bill will result in unnecessary lawsuits and legal expenses

because of disputes over whether or not the city ordinances conflicted with the Public Contracts Code. Contractors, when faced with a possible conflict, will simply demand using the state code or city ordinance that is more favorable to them, and will force legal action to settle the issue. Currently, if the matter is one of statewide concern, the state laws are applied. If the matter is not of statewide concern, then the local procedures apply. This is as it should be, and eliminates the argument over whether or not the laws are in conflict.

Senate Bill 1119 would place the burden upon charter cities to announce to contractors that they are doing business with a charter city which may not have the same contracting rules as the state of California. The burden should not be on cities to advise contractors on the law. This bill shifts the legal burden to the city to announce to contractors what they should already know, and therefore punishes cities for a contractor's lack of due diligence.

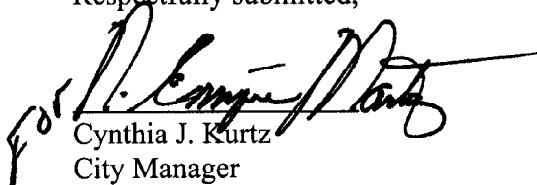
In addition, SB 1119 will add to the already heavy litigation burden of cities by opening the door to unnecessary litigation over the adequacy of the City's advice and its impact.

The League of California Cities opposes both bills because they would adversely impact California's charter cities and has asked the City to join in opposing the bills. Charter cities need the flexibility to respond to local concerns and to provide rules which work best within their local jurisdiction as provided for in the home rule doctrine.

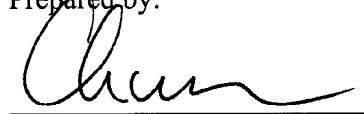
FISCAL IMPACT:

While the precise fiscal impact of this legislation is unknown at this time, at a minimum the review and redrafting of City ordinances that would be required under SB 974 represents a significant cost in staff time. Moreover, the costs associated with lawsuits that may arise should SB 974 become law could be significant.

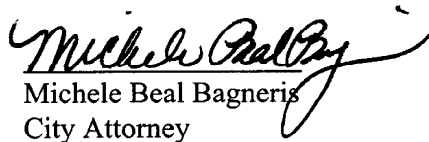
Respectfully submitted,


Cynthia J. Kurtz
City Manager

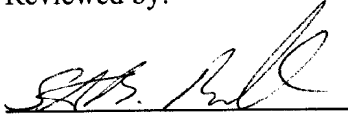
Prepared by:


Nicholas George Rodriguez
Assistant City Attorney

Concurrence:


Michele Beal Bagneris
City Attorney

Reviewed by:

A handwritten signature in black ink, appearing to read "S.B. Mermell", is written over a horizontal line.

Steven B. Mermell
Purchasing Administrator