



Ordinance Fact Sheet

TO: City Council

DATE: April 8, 2002

FROM: City Attorney

SUBJECT: Introduction and First Reading of an Ordinance Amending Pasadena Municipal Code Chapter 4.08, Competitive Bidding and Purchasing, Repealing Pasadena Municipal Code Chapter 4.09, Affirmative Action in Contracting, and Amending Chapter 2.360, Affirmative Action in City Employment

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PASADENA AMENDING PASADENA MUNICIPAL CODE, TITLE 4, CHAPTER 4.08, COMPETITIVE BIDDING AND PURCHASING, REPEALING PASADENA MUNICIPAL CODE TITLE 4, CHAPTER 4.09, AFFIRMATIVE ACTION IN CONTRACTING, AND AMENDING PASADENA MUNICIPAL CODE TITLE 2, CHAPTER 2.360, AFFIRMATIVE ACTION IN CITY EMPLOYMENT, TO ENSURE COMPLIANCE WITH THE CONSTITUTION OF THE STATE OF CALIFORNIA

PURPOSE OF ORDINANCE:

The attached Ordinance amends the Pasadena Municipal Code Chapters relating to City Employment and Contracting to eliminate provisions related to preferential treatment in City employment and contracting made unconstitutional by the enactment of Section 31 to Article 1 of the Constitution of the State of California.

The proposed revisions to the Competitive Bidding and Purchasing Ordinance will preserve the City's commitment to equal opportunity and local contracting, as previously established in the Affirmative Action in Contracting Ordinance, and will require contractor compliance with these provisions. In addition, the proposed amendments will improve efficiency of the City's procurement process by authorizing the City Manager to approve all contracts less than \$75,000.

MEETING OF 4/8/2002

AGENDA ITEM NO. 9.A.1.

The proposed revisions in the Affirmative Action in City Employment preserve the City's commitment to equal opportunity in employment, while ensuring the City's employment practices conform to the requirements of the Constitution of the State of California.

The proposed revisions to the Competitive Bidding and Purchasing Ordinance will preserve the City's commitment to equal opportunity and local contracting, as previously established in the Affirmative Action in Contracting Ordinance, and will require contractor compliance with these provisions. Additionally, the proposed revisions will have an impact on the award of contracts not subject to competitive bidding and between \$25,000 and \$75,000.

The Affirmative Action in Contracting Ordinance that is being repealed provides that contracts in excess of \$25,000 that are not subject to competitive bidding are subject to a competitive selection process. Under the current Ordinance, exemptions to this requirement are subject to the approval of the City Council. The proposed revisions maintain the requirement to undertake a competitive selection process for contracts in excess of \$25,000 which are not subject to competitive bidding, by incorporating such requirement into the Competitive Bidding and Purchasing Ordinance. The City Manager would have authority to approve such contracts if they are less than \$75,000. This is consistent with Article X Section 1001 of the City Charter which exempts contracts less than \$75,000 from Council approval, and Section 4.08.030 of the Competitive Bidding and Purchasing Ordinance which authorizes the City Manager to establish procedures for procurements excluded from competitive bidding.

REASON WHY LEGISLATION IS NEEDED:

Proposition 209, interpreted by subsequent court decisions in 2000 and 2001, amended the California State Constitution, to prohibit preferential treatment in public employment, contracting and education. The attached Ordinance is required to amend the Municipal Code to ensure consistency with the State Constitution.

PROGRAM, DEPARTMENTS OR GROUPS AFFECTED:

The Human Resources Department will implement the proposed amendments to Chapter 2.360; the Finance Department will implement the proposed amendments to Chapter 4.08.

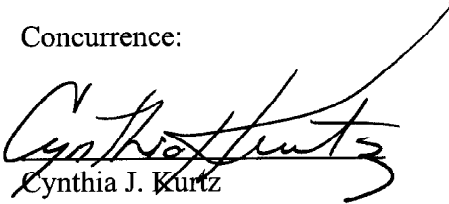
FISCAL IMPACT:

Minimal. Staff expects no change in administrative costs as a result of the proposed amendments to the Municipal Code; nor does staff anticipate any change in the participation, financial or otherwise, of members of any protected classes in either contracting or employment relationships with the City.

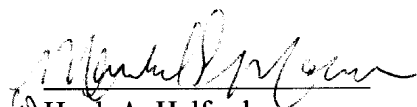
Respectfully Submitted,



Michele Beal Bagneris
City Attorney

Concurrence:


Cynthia J. Kurtz
City Manager

Prepared By:


Hugh A. Halford
Assistant City Attorney


Nicholas G. Rodriguez
Assistant City Attorney

Introduced by Councilmember _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PASADENA AMENDING PASADENA MUNICIPAL CODE, TITLE 4, CHAPTER 4.08, COMPETITIVE BIDDING AND PURCHASING, REPEALING PASADENA MUNICIPAL CODE TITLE 4, CHAPTER 4.09, AFFIRMATIVE ACTION IN CONTRACTING, AND AMENDING PASADENA MUNICIPAL CODE TITLE 2, CHAPTER 2.360, AFFIRMATIVE ACTION IN CITY EMPLOYMENT, TO ENSURE COMPLIANCE WITH APPLICABLE STATE LAW

WHEREAS, the voters of the State of California passed Proposition 209 in the statewide election of November 1996, adding Section 31 to Article I of the Constitution of the State of California, prohibiting discrimination or preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin; and,

WHEREAS, the California State Supreme Court found in *Hi-Voltage Wire Works Inc. v. City of San Jose* (December 1, 2000) that a contracting regulation that provided an advantage to minority and women-owned firms violated Article I, Section 31 of the California State Constitution; and,

WHEREAS, the California Court of Appeal for the Third Appellate District ruled in *Connerly v. State Personnel Board* (September 4, 2001) that a hiring policy that required the establishment of goals and timetables to overcome identified underutilization of minorities and women violated Article 1, Section 31 of the California State Constitution; and,

WHEREAS, Pasadena Municipal Code Title 4, Chapter 4.09, Affirmative Action in Contracting, includes provisions for advantages for minority or women-owned firms in purchasing and contracting processes which appear to be inconsistent with the California State Constitution, and must therefore be repealed; and,

WHEREAS, those provisions of Pasadena Municipal Code Title 4, Chapter 4.09, Affirmative Action in Contracting which are in compliance with the California State Constitution are found to apply to the provisions of Pasadena Municipal Code Title 4, Chapter 4.08, Competitive Bidding and Purchasing, and should therefore be included therein; and,

WHEREAS, the efficiency of the procurement process will be enhanced by providing for approval by the City Manager of all contracts under \$75,000; and,

WHEREAS, Pasadena Municipal Code Title 2, Chapter 2.360, Affirmative Action in City Employment, which provides for the establishment of hiring goals and timetables by the City is inconsistent with the California State Constitution, and must therefore be amended;

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. Pasadena Municipal Code Title 4, Chapter 4.08, Competitive Bidding and Purchasing, shall be amended in its entirety to read as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 2. Pasadena Municipal Code Title 4, Chapter 4.09, Affirmative Action in Contracting, shall be repealed in its entirety.

SECTION 3. Pasadena Municipal Code Title 2, Chapter 2.360, Affirmative Action in City Employment, shall be amended in its entirety to read as set forth in Exhibit B attached hereto and incorporated herein by this reference.

SECTION 4. The City Clerk shall certify the adoption of this Ordinance and shall cause a summary of the Ordinance to be published.

SECTION 5. This Ordinance shall take effect upon publication.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council at its regular meeting held March 25, 2002, by the following vote:

AYES:

NOES:

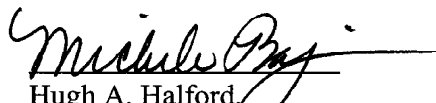
ABSTAIN:

ABSENT:

Published:

Jane Rodriguez, CMC, City Clerk

Approved as to Form:


Hugh A. Halford
Assistant City Attorney