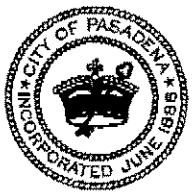

OFFICE OF THE CITY ATTORNEY/CITY PROSECUTOR

September 10, 2008

Via Fax & US Mail
(916) 327-2026

Honorable Chairman and Members of the
Fair Political Practices Commission
428 J Street
Suite 800
Sacramento, CA 95814

Re: Tickets and Proposed Regulation 18944.1

Dear Chairman Johnson and Members of the Commission:

The City of Pasadena previously commented on proposed revisions to Regulation 18944.1 (Receipt of Tickets or Passes by an Agency) in July of 2008. We reiterate those comments and also generally concur with the positions presented in correspondence submitted by Mountain View City Attorney, Mike Martello, the City of Anaheim and the City of San Jose. The City appreciates the opportunity to comment on the latest proposed version of Regulation 18944.1 and 18944.3. In sum, it is our opinion that it is inappropriate for the FPPC to interfere with municipal affairs by regulating how the city determines to use publicly owned assets within state constitutional and statutory authority.

The proposed Regulation continues to make the same underlying, and incorrect, assumption as before. The Regulation is predicated on the argument that tickets required as consideration in a contract for use of a City-owned venue continue to carry the influence of the promoter. That assumption is inherently flawed when the City requires and receives the tickets as consideration for use of the venue. Once the tickets are delivered to the City as consideration, they belong only to the City. Their connection to the promoter is completely severed on exchange and delivery. Thus, any presumption of undue influence on the public process that the Political Reform Act is designed to guard against is misplaced since they are not "gifts" to anyone or to any entity.

Further, some seats in venues are retained as "house seats" with a face value of zero dollars. These tickets are not placed on the manifest of seating made available to the promoter and are, in effect, never licensed to the promoter. How

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could the use of retained seating owned by the venue and never transferred be transformed into a "gift" from an event promoter? In addition, in some cases, event agreements provide only a right to purchase a certain number of tickets from the event promoter at face value. As they are purchased with no discount, they cannot then be converted by FPPC regulations into gifts from the event promoter for the purpose of the FPPC reporting.

Accordingly, the City remains firm in its contention that the Regulation would result in a significant and prohibited impairment of contract, as the scope of the legislative impairment is not narrowly tailored to conform to a "significant and legitimate public purpose" as identified by the State legislature. (*Cf.* Hall v. Butte Home Health, Inc. (1997) 60 Cal.App.4th 308, 318.) Likewise, the Regulations interfere with the use and allocation of city assets by a Charter City.

The second key flaw in the current version of the Regulation is the assumption that the duties of an elected (or appointed) public official could be contained within "written job duties" which specify when it is appropriate for them to attend certain events or public functions. Written job duties for elected and appointed public officials are not called for by the California Constitution, nor by any body of law. Requiring written job duties for these offices for the narrow purpose of complying with FPPC ticket rules would have the FPPC defining the manner of operation of government instead of the California Constitution and the legislature.

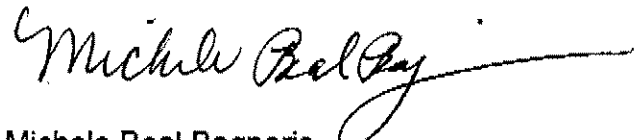
Finally, the third key flaw in the current version of the Regulation is its attempt to regulate tickets by indicating that they are not gifts when they are "salary." Again, assuming arguendo that the tickets were gifts to the agency in the first instance, as opposed to consideration in a contract, police officers, fire fighters, and other public officials who enter via a ticket or via a credential to work should not have to declare and report the value of that ticket or credential as salary or compensation.

We also respectfully submit that the Commission is likewise outside of its purview in its consideration of new Regulation 18944.3. This Regulation is merely duplicative of existing law, and provides that where a gift of public funds is a misuse of public resources, the violator is also in violation of the Political Reform Act.

The City has reviewed the most recent comment letter submitted by the City of Anaheim, and fully supports the points made therein.

We look forward to working with the Commission and its staff to address the concerns the Commission has with improper gifts, albeit within the appropriate context.

Sincerely,



Michele Beal Bagneris
City Attorney
City of Pasadena

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