

Agenda Report

TO: CITY COUNCIL

DATE: FEBRUARY 26, 2007

FROM: CITY ATTORNEY

SUBJECT: ADOPTION OF A RESOLUTION REVISING GUIDELINES FOR IMPLEMENTATION OF THE TAXPAYER PROTECTION ACT (PASADENA CITY CHARTER, ARTICLE XVII)

RECOMMENDATION:

Adopt a resolution adopting revised guidelines for the implementation of the Taxpayer Protection Act ("TPA," Pasadena City Charter, Article XVII), in the form attached hereto.

BACKGROUND:

The TPA prohibits City public officials from receiving a "personal or campaign advantage" after exercising discretion to approve or vote to approve a "public benefit." The stated intention behind the Initiative is to cause City public officials to avoid the exercise of discretion in favor of an entity, in apparent exchange for a later personal benefit to the City public official from the entity. The City Council adopted Guidelines for Implementation of the TPA in August of 2005. The TPA Guidelines were originally adopted to resolve ambiguities, assist staff with setting a process for tracking of decisions subject to the TPA, and to clarify applicability of the TPA in certain instances.

Voters amended the TPA in November of 2007. A copy of the revised TPA is attached as Attachment A. The amendments, and staff experience with the TPA since 2005, are the driving force behind the need for updated Guidelines. Below are the key changes to the Guidelines.

CONSULTATION WITH FORMER TASK FORCE FOR GOOD GOVERNMENT MEMBERS

At its meeting on February 5, 2007, Council asked that the City Attorney's Office consult with Mr. John Van de Kamp, former chair of the Task Force for Good Government, and Mr. Robert Stern, consultant to the Task Force, regarding certain of the proposed amendments to the Guidelines for Implementation of the TPA. After doing so, slight revisions were made to the following Guidelines for clarification (*italics denote additions*):

xi. Public benefit excludes, among others:

6. transactions in which the City *has set a standard fee for use of City facilities (e.g., is acting in an entrepreneurial capacity and competing in the open market, including, but not limited to, renting out or licensing the use of its facilities convention center space), or receipt of*

City permits to use public negotiating advertising or use rights regarding City trademarks or copyrighted materials property (e.g., park use permits):

I.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 or other relatives of the public benefit recipient, in the manner provided in the Fair Political Practices Commission Regulations;~~ 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:

~~II.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 There will be occasions when a City public official's employer may do business with a public benefit recipient, which cannot be assumed to be subject to influence by the City public official. The TPA's restriction on future employment as a personal or campaign advantage shall apply to the employer of the City public official only when the public official is a 10% (or more) equity, participation, or revenue interest holder in its his/her employer.~~

GUIDELINE CHANGES ARISING FROM VOTER AMENDMENTS TO THE TPA:

Exemption for Certain Nonprofits

Certain nonprofit organizations are now exempt from the TPA. The relevant nonprofits are those that are exempt from income taxation under Internal Revenue Code Section 501(c)(3) (charitable and educational organizations), 501(c)(4) (social welfare groups, civic league or local employee associations) or 501(c)(6) (business leagues or chambers of commerce). Thus, a City public official who exercises discretion to grant a public benefit to one of these nonprofits may accept campaign contributions and other "personal or campaign advantage" from members of the nonprofit. Officials may receive a "campaign or personal advantage" from those who were 501(c) (3), (4), or (6) public benefit recipients before the 2006 amendments. So, for example, a board member of a 501(c) (3) organization which had a contract approved by Council in 2005 may give a campaign contribution to a City Council member who voted to approve the contract. However, as required by the TPA, public benefits received by nonprofits will still be tracked, on a list separate from those of other entities, so as to continue to provide for open and transparent government. (See Section I.D. of the proposed Guidelines)

Contractual Negotiations Blackout Period

One of the key amendments to the TPA was the creation of a contract negotiating "blackout period," during which a City Council member or candidate for City Council may not accept campaign contributions 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 with the City, of a certain value. This section only applies to contracts, leases or sales agreements that must be approved by City Council, and does not apply to low bid contracts. This will require creation of a new tracking list and a new process within the City to monitor applicable negotiations. (See Section II.C. of the proposed Guidelines.)

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.

Thus, with the implementation of the nonprofit disclosure tracking list, and the contract negotiations blackout period list, the City will maintain *three* TPA lists. City public officials should be sure to check all three lists when accepting campaign contributions, employment or gifts valued at more than \$50.

GUIDELINE CHANGES ARISING FROM PAST EXPERIENCE WITH THE TPA:

Application of TPA to Hiring of Outside Employers

The question was raised during the past year regarding how the TPA should apply to situations where a public benefit recipient wishes to do business with the employer of a City public official. The assumption that the public official's decision on City business can be influenced by the hiring of his/her employer loses credibility when the public official does not directly and materially benefit from the hiring transaction. In other contexts, the TPA sets a 10% interest as a guideline for when potential corrupt influence may be had, and thus that guideline is proposed here as well. As a result, it is suggested that the TPA's restriction on future employment as a personal or campaign advantage shall apply to the employer of the City public official only when the public official is a 10% (or more) equity, participation, or revenue interest holder in its employer. For example, a commissioner's employer could accept work from a client who was a public benefit recipient if the Commissioner owns less than a 10% interest in the employer. (See Section II.D. of the proposed Guidelines.)

More Literal Interpretation as Applied to Land Use Approvals

Staff was very conservative in its initial application of the TPA in the land use context, since the land use items to which the TPA applied were undefined and unclear. Over time and with experience, staff has concluded that its conservative approach may not offer much return in the name of open government because nearly every Planning permit is being tracked, thus blurring the TPA's focus on those permits it found as more likely to be the subject of unethical conduct. As a result, during the time that the amendments to the TPA were being presented to the Legislative Committee, staff presented the question to the Legislative Committee of whether to revise the text of the TPA to clarify its application to land use approvals. The Legislative Committee chose not to amend the TPA in this regard, but instead expressed a preference to see interpretive changes as part of the Guidelines. The amended Guidelines include the clarification on land use approvals proposed to the Legislative Committee. (See Section I.B.v).

Exclusion for Certain City Entrepreneurial Activities

The City's application of the TPA to those times when the City is acting in an entrepreneurial capacity has left staff speculating without foundation as to the rationale supporting the TPA's application to such activities, and to make educated but inherently unreliable guesses at the value of the entrepreneurial activity to the other party. As one example, the City rents out space in the Convention Center, or the Rose Bowl, and thus it appears that the rental agreement should be subject to the TPA. However, the City seeks out such rentals so that it can generate revenue to support those separate facilities. Thus, any potential for corruption in those examples is speculative, since the City is not acting in any quasi-judicial capacity, but instead as a competitor on the open market. Thus, the TPA's rationale to avoid corrupting influences of government is not present in these situations. The amended Guidelines would exempt these situations from the TPA. (See Section I.B.xi.6)

ENVIRONMENTAL:

The changes to the Guidelines are not a "project" and thus are not subject to the California Environmental Quality Act pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Section 15060(c).

FISCAL IMPLICATIONS:

The fiscal implications of implementation of the TPA are not known and depend on the need, if any, for additional staffing and additional computer technology.

Respectfully submitted,


MICHELE BEAL BAGNERIS
City Attorney

Prepared by:



THERESA E. FUENTES
Deputy City Attorney

MEASURE B

PROPOSAL TO AMEND THE CHARTER OF THE CITY OF PASADENA, ARTICLE XVII, TAXPAYER PROTECTION

Section 1701. TITLE.

This Article shall be known as the City of Pasadena Taxpayer Protection Act Amendment of 2000.

Section 1702. FINDINGS AND DECLARATIONS.

(a) The people of the City of Pasadena ("City") find that the use or disposition of public assets are often tainted by conflicts of interest among local public officials entrusted with their management and control. Such assets, including publicly owned real property, land use decisions conferring substantial private benefits, conferral of a franchise without competition, public purchases, taxation, and financing, should be arranged strictly on the merits for the benefit of the public, and irrespective of the separate personal or financial interests of involved public officials.

(b) The people find that public decisions to sell or lease property, to confer cable, trash hauling and other franchises, to award public construction or service contracts, or to utilize or dispose of other public assets, and to grant special land use or taxation exceptions have often been made with the expectation of, and subsequent receipt of, private benefits from those so assisted to involved public "decision makers". The people further find that the sources of such corruptive influence include gifts and honoraria, future employment offers, and anticipated campaign contributions for public officials who are either elected or who later seek elective office. The trading of special favors or advantage in the management or disposal of public assets and in the making of major public purchases compromises the political process, undermines confidence in democratic institutions, deprives meritorious prospective private buyers, lessees, and sellers of fair opportunity, and deprives the public of its rightful enjoyment and effective use of public assets.

(c) Accordingly, the people declare that there is a compelling state interest in reducing the corruptive influence of emoluments, gifts, and prospective campaign contributions on the decisions of public officials in the management of public assets and franchises, and in the disposition of public funds. The people, who compensate public officials, expect and declare that as a condition of such public office, no gifts, promised employment, or campaign contributions shall be received from any substantial beneficiary of such a public decision for a reasonable period, as provided herein.

Section 1703. DEFINITIONS.

(a) As used herein, the term public benefit does not include public employment in the normal course of business for services rendered, but includes a contract, benefit, or arrangement between the City and any individual, corporation, firm, partnership, association, or other person or entity to:

- (1) provide personal services of a value in excess of \$25,000 over any 12 month period,
- (2) sell or furnish any material, supplies or equipment to the City of a value in excess of \$25,000 over any 12 month period,
- (3) 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 over any 12 month period,
- (4) receive an award of a franchise from the City to conduct any business activity in a territory in which no other competitor potentially is available to provide similar and competitive services, and for which gross revenue from the business activity exceeds \$50,000 in any 12 month period,
- (5) 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,
- (6) confer a tax abatement, exception, or benefit not generally applicable to the public generally, of a value in excess of \$5,000 in any 12 month period,
- (7) receive cash or specie of a net value to the recipient in excess of ~~\$10,000~~ \$25,000 in any 12 month period.
- (8) For purposes of this section, other than subdivision 6, no person need track public benefits of less than \$5,000 unless it is reasonably foreseeable that the amounts under \$5,000 will cumulate in excess of the thresholds set forth in Section 1703(a)(1)-(5) and (7), in any 12 month period.

(9) The City shall adjust the amounts in this Section 1703(a) on July 1 every five years starting in 2010 to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one thousand dollars (\$1,000).

(b) Those persons or entities receiving public benefits as defined in Section 1703(a)(1)-(7) shall include the individual, corporation, firm, partnership, association, or other person or entity so benefiting, and any individual or person who, during a period where such benefit is received or accrues,

(1) has more than a ten percent (10%) equity, participation, or revenue interest in that entity, or

(2) who is a trustee, director, partner, or officer of that entity except for such persons from an organization that is exempt from income taxes under Section 501 (c) (3), (4), or (6) of the Internal Revenue Code. However, this exception shall not apply to trustees, directors, partners, or officers of such organizations that are political committees or control political committees as defined by California Government Code Section 82013 or 2 U.S.C. 431 (4). Any person who is exempted by this subdivision shall still be considered a public benefit recipient for the purposes of disclosure under Section 1705(b) and (c).

(c) As used herein, the term personal or campaign advantage shall include:

(1) any gift, honoraria, emolument, or personal pecuniary benefit of a value in excess of \$50;

(2) any employment for compensation;

(3) any campaign contributions for any Pasadena City elective office said official may pursue or for any City ballot measure committee controlled by the official. Any Pasadena City official who receives contributions for a campaign outside of the City from a person or entity who has obtained public benefits shall not subsequently use or transfer such contributions to any election for a Pasadena City race.

(d) As used herein, the term public official includes any elected or appointed public official acting in an official capacity.

Section 1704. CITY PUBLIC OFFICIAL SHALL NOT RECEIVE PERSONAL OR CAMPAIGN ADVANTAGE FROM THOSE TO WHOM THEY ALLOCATE PUBLIC BENEFITS.

(a) No City public official who has exercised discretion to approve and who has approved or voted to approve a public benefit as defined in Section 1703(a) may receive a personal or campaign advantage as defined in Section 1703(c) from a person as defined in Section 1703(b) for a period beginning on the date the official approves or votes to approve the public benefit, and ending no later than

(1) one year after the expiration of the term of office that the official is serving at the time the official approves or votes to approve the public benefit;

(2) one year after the official's departure from his or her office whether or not there is a pre-established term of office; or

(3) five years from the date the official approves or votes to approve the public benefit; whichever is first.

(b) Section 1704(a) shall also apply to the exercise of discretion of any such public official serving in his or her official capacity through a redevelopment agency, or other public agency, whether within or without the territorial jurisdiction of the City either as a representative or appointee of the City. Section 1704(a) shall apply to agencies outside the City on which a City public official serves only if the outside agency voluntarily provides to the City the information in Section 1703 for those public benefits granted by the outside agency.

(c) When the public official, other than a member of the City Council or a person appointed to a City Commission, acts in his or her capacity as an employee of the City, the time restrictions in Section 1704(a) shall apply for one year after the City employee departs from his or her office or for two years from the date the City employee approves the public benefit, whichever comes first.

(d) No person or entity who bids on a contract with the City, or enters into a lease agreement or land sales agreement with the City, with a value in excess of \$25,000, which requires approval by the City Council, shall make any campaign contribution to any member of or candidate for the City Council, or committee controlled by the member or candidate, from the time the Request for Proposal or other bid process has been issued or from the time negotiations commence, whichever is earlier, until the negotiations have terminated. The prohibition on campaign contributions set forth in the preceding sentence shall also apply to trustees, directors, partners, officers, and 10% equity, participation, or revenue interest holders of the entity bidding on a contract with the City, but shall not apply to employees of the entity who are not trustees, directors, partners, officers, and 10% equity, participation, or revenue interest holders of the entity. When negotiations have terminated, this Article continues to apply to the public benefit recipient. This section does not apply to low bid contracts as defined by the City Charter.

**Section 1705. APPLICABLE PUBLIC BENEFICIARIES SECTION.
RESPONSIBILITIES OF CITY PUBLIC OFFICIALS AND
ADVANTAGE RECIPIENTS.**

(a) City public officials shall practice due diligence to ascertain whether or not a benefit defined under Section 1703(a) has been conferred, and to monitor personal or campaign advantages enumerated under Section 1703(c) so that any such qualifying advantage received is returned forthwith, and no later than ten days after its receipt.

(b) City public officials shall provide, upon inquiry by any person, the names of all entities and persons known to them who respectively qualify as public benefit recipients under the terms of Sections 1703 and 1704.

(c) All information compiled by city offices in compliance with Section 1705(a) and (b) shall be posted on the City of Pasadena website for public access.

Section 1706. DISCLOSURE OF THE LAW.

The City shall provide any person, corporation, firm, partnership, association, or other person or entity applying or competing for any benefit enumerated in Section 1703(a) with written notice of the provisions of this Article and the future limitations it imposes. Said notice shall be incorporated into requests for "proposal," bid invitations, or other existing informational disclosure documents to persons engaged in prospective business with, from, or through the City.

Section 1707. PENALTIES AND ENFORCEMENT.

(a) In addition to all other penalties which might apply, any knowing and willful violation of this Article by a public official constitutes a criminal misdemeanor offense. The City Attorney is responsible for enforcing violations of this Article except as to violations by members of the City Council, which shall be referred to the Los Angeles County District Attorney's office for investigation and prosecution.

(b) A civil action may be brought under this Article against a public official who receives a personal or campaign advantage in violation of Section 1704. A finding of liability shall subject the public official to the following civil remedies:

- (1) restitution of the personal or campaign advantage received, which shall accrue to the general fund of the City;
- (2) a civil penalty of up to five times the value of the personal or campaign advantage received;
- (3) injunctive relief necessary to prevent present and future violations of this Article;
- (4) disqualification from future public office or position within the jurisdiction, if violations are willful, egregious, or repeated.

(c) A civil action under subdivision (b) of this section may be brought by any resident of the City. In the event that such an action is brought by a resident of the City and the petitioner prevails, the respondent public official shall pay reasonable attorney's fees and costs to the prevailing petitioner. Civil penalties collected in such a prosecution shall accrue 10% to the petitioner and 90% to the City's general fund.

(d) The City Attorney and the Los Angeles County District Attorney may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of his or her duties or exercise of his or her powers.

(e) The City may adopt guidelines for implementation of this Article that are consistent with the findings and declarations set forth in Section 1702.

Section 1708. SEVERABILITY.

If any provision of this Article is held invalid, such invalidity or unconstitutionality shall not affect other provisions or applications which can be given effect without the invalidated provision, and to this end the provisions of this Article are severable.

RESOLUTION NO. _____

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, which now need to be updated in light of the adopted amendments; and

WHEREAS, the Guidelines also need to be updated to reflect the City's experience with the TPA since the Guidelines were first updated; and

WHEREAS, the City Council determines that the TPA and the Guidelines as amended, by rules of statutory construction, apply from the effective date of the initial adoption of the TPA to remove the bar against certain nonprofit entities from giving personal or campaign advantages; 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 _____ day of _____, 2007 by the following vote:

AYES:

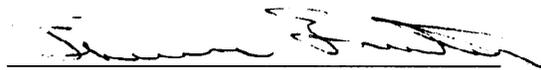
NOES:

ABSENT:

ABSTAIN:

JANE L. RODRIGUEZ, CMC
CITY CLERK

Approved as to form:



THERESA E. FUENTES
DEPUTY CITY ATTORNEY

**GUIDELINES FOR IMPLEMENTATION OF THE
TAXPAYER PROTECTION AMENDMENT (“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: Planning Commission, Board of Zoning Appeals, Design Commission, Historic Preservation Commission, Arts Commission, and Code Enforcement Commission;
 - 3. Subdivision Committee members;
 - 4. City Manager or official designees thereof;
 - 5. Department heads and Operating Company directors or official designees thereof;
 - 6. Board Members of each of the Operating Companies;
 - 7. 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 [including ~~any~~ contracts awarded through a competitive bidding process; 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 no other competitor potentially is available to provide similar and competitive services, and for which gross revenue from the business activity exceeds ~~excess~~ \$50,000 in any 12 month period [non exclusive contracts are exempt];
- 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, excluding 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 ~~generally~~ 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 ~~\$10~~25,000 in any 12 month period.
- viii. The “12-month period” referenced in subsections (i) through (vii) above 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); licenses that result in income to the licensee less than \$10,00 and
 - 7. public utility trading transactions.

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.)

~~Subsection iii of this definition is overly broad as it could encompass campaigns for which a candidate has not yet declared intent to run. Accordingly, it is narrowed to include only campaign contributions for any elective office for which a person has declared an intent to run, or~~

~~has established an account into which campaign contributions may be deposited.~~

- 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

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.

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 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). This section does not apply to low bid contracts.

- 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 holder 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 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 as quickly as reasonably possible.

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.
- 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.

Rodriguez, Jane

From: Carmen Balber [mailto:carmen@consumerwatchdog.org]
Sent: Friday, February 23, 2007 10:48 AM
To: Rodriguez, Jane
Cc: Fuentes, Theresa
Subject: Comments, TPA implementation guidelines

Jane,

Please forward the following comments to the Mayor, Council, and City Attorney regarding Monday's Agenda Item 4A, the TPA implementation guidelines. I've cc'd Theresa Fuentes directly. If there's a more convenient way for me to be sure the rest receive this without going through you, please let me know.

Thank you,
Carmen

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February 23, 2007

To: Pasadena Mayor, City Council, City Attorney
From: Foundation for Taxpayer and Consumer Rights
Re: Taxpayer Protection Act Implementation Guidelines

We concur with city staff's recommendations for guideline changes arising from November's voter amendments to the TPA.

Several of the recommendations made on Feb. 5 concerning the city's 'experience' with the Taxpayer Protection Act conflicted with the spirit and letter of the law. However, we agree with the changes you have made after consultation with the former Chair and consultant for the Task Force on Good Government. We also suggest the following additions.

Application of TPA to Hiring of Outside Employers

Your current guideline would not allow a public benefit recipient to hire the employer of a public official who voted to grant the public benefit if that public official is working on the person's matter, or has a 10% or more equity, participation or revenue interest in the employer. We would suggest you amend this to also exclude hiring a public official who "is a trustee, director, partner, or officer" of that employer, in order to be consistent with the TPA.

Disclosure

We would also urge you to set a firm date, no later than May 1 or six months after the election, by which the city must provide TPA tracking information online.

Technical

In guideline II.D.: remove the word "holder."

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Carmen Balber
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fx: 310-392-8874

02/26/2007
4.A.