

**EXHIBIT 1**

**ARTICLE XVII  
TAXPAYER PROTECTION ~~AMENDMENT OF 2000 ACT~~  
(WITH PROPOSED AMENDMENTS)**

**Section 1701. TITLE.**

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

**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 provided by 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 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 ~~\$40,000~~ \$25,000 in any 12 month period.

(8) For the purpose 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)-(7).

(9) The City shall adjust the amounts in this subdivision on July 1 every five years starting 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. Any person who is exempted by this subdivision shall still be considered a public benefit recipient for the purposes of disclosure only under Section 1705 (b) and (c). 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).

(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) 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. When negotiations have terminated, this Article continues to apply to the public benefit recipient, if any. This section does not apply to low bid contracts as defined by Section 1002 of 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 internet so that the records are available to the public in an easy-to-use and timely manner.

**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 1706.5. CONTRIBUTION LIMITATIONS.**

The following contribution limitations are in addition to the restrictions set forth in Section 1704:

(a) A person or entity may not make to any candidate for City office, other than a candidate for Mayor, and a candidate for City office, other than a candidate for Mayor, may not accept from a person, any campaign contribution totaling more than one thousand dollars (\$1,000) per election.

(b) A person or entity may not make to any candidate for Mayor and a candidate for Mayor may not accept any campaign contribution totaling more than two thousand dollars (\$2,000) per election.

(c) The provisions of this section do not apply to a candidate's contributions of his or her personal funds to his or her own campaign.

(d) The City shall adjust the contribution limitations in subdivisions (a) and (b) on July 1 of every even-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

**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 the Mayor or members of the City Council, which shall be referred to the Los Angeles County District Attorney 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, when acting pursuant to Section 1707 (a), 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.

**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.

**EXHIBIT 2**

**INDEX OF MATERIALS USED BY THE TASK FORCE**

	<b>Date</b>	<b>Document</b>	<b>Author</b>
A.		Taxpayer Protection Amendment	
B.	11/7/2005	Public Information Sheet	City Attorney
C.	11/7/2005	Memo re: Brief Outline of Legal Issues Related to the Taxpayer Protection Amendment	City Attorney
D.	12/20/2005	Memo re: Constitutional Issues presented by TPA	Center for Governmental Studies
E.	1/11/2006	Memo re: Rough Estimate of Cost to Implement Taxpayer Protection Amendment	City Attorney
F.	1/12/2006	Memo re: City Public Officials/Employees Representing City on Outside Public Agencies	City Attorney
G.	1/25/2006	Letter re: TPA	Hall Daily (Cal Tech)
H.	1/25/2006	Memo re: Contribution Limits for Selected California Cities	Center for Governmental Studies
I.		Internal Revenue Service Subsection Codes for Tax-Exempt Organizations	(distributed by Center for Governmental Studies)
J.	2/8/2006	Memo re: Ongoing Costs of Implementing Taxpayer Protection Amendment	City Attorney
K.	2/9/2006	Memo re: Preliminary Analysis of Proposed Amendments to TPA	City Attorney
L.	2/14/2005	Memo re: Potential Exclusion of Nonprofits from TPA (revised from 1/25/06 version)	City Attorney

**CHARTER  
OF THE  
CITY OF PASADENA  
CALIFORNIA**

PUBLISHED JANUARY 2004

**ARTICLE XVII  
TAXPAYER PROTECTION**

**Section 1701. TITLE.**

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



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(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 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 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 in any 12 month period.

(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.

(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 elective office said official may pursue.

(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 any other public agency, whether within or without the territorial jurisdiction of the City either as a representative or appointee of the City.

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(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.

**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.

(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.

**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.

# ***PUBLIC INFORMATION SHEET***

## **Pasadena City Charter, Article XVII Taxpayer Protection Amendment**

The Taxpayer Protection Amendment (“TPA”) is found at Article XVII of the City Charter. The City is taking steps required to implement the TPA, and on August 1, 2005, adopted Guidelines for implementation. This public information sheet generally outlines the requirements of the TPA.

### **I What actions does the TPA regulate?**

Generally, the TPA prohibits a “City public official” from exercising discretion to approve or voting to approve a “public benefit” and subsequently receiving a “personal or campaign advantage” from the person(s) who received the “public benefit” for one year from the time the City public official leaves office, or five years after conferring the “public benefit,” whichever is shorter.

- The TPA is only triggered if the vote to confer the public benefit passes, or the public benefit is actually conferred. Those decision-makers who vote “no” on the conferral of a public benefit are not prohibited from subsequently receiving a personal or campaign advantage from the public benefit recipient.
- The TPA does not apply to the award of any public benefit arising out of an emergency as provided in Pasadena Municipal Code Section 4.08.150.
- The TPA does not apply to government-to-government transactions and a narrow range of other transactions set forth in the Guidelines.

### **II Who may be a “City public official”?**

The Guidelines define City public official as the person(s) who make the final discretionary approvals which trigger the TPA, and is generally limited to the following:

- City Council members;
- Planning Commission, Board of Zoning Appeals, Design Commission, Historic Preservation Commission, Arts Commission, and Code Enforcement Commission members;
- City Manager or official designees thereof;
- Department heads and Operating Company directors or official designees thereof;
- Board Members of each of the Operating Companies;
- Fire and Police Retirement Board members.

*Excluded* from the definition of “City public official” are: (i) any Board member or employee of the Pasadena Unified School District; (ii) any person(s) making recommendations, or acting within a series of required approvals, preceding the last required approval; (iii) any hearing officers who are not City employees; and (iv) any person(s) approving as to form, content, process, or execution only.

### **III What are the “public benefits” that trigger the TPA?**

The granting of any of the following public benefits, or the aggregate of any of the following to the specified amount within one fiscal year, may trigger the TPA:

- personal services contracts in excess of \$25,000;
- the sale of material, equipment or supplies to the City in excess of \$25,000;
- the purchase, sale or lease of real property to or from the City in excess of \$25,000;
- non-competitive franchise awards with gross revenue of \$50,000 or more;
- land use variance, special use permit, or other exception to an established land use plan, where the decision has a value in excess of \$25,000;
- tax "abatement, exception, or benefit" of a value in excess of \$5,000; or
- the payment of "cash or specie" of a net value to the recipient of \$10,000.

**IV Who is the recipient of the “public benefit”?**

The recipient of the public benefit includes the applicant and anyone who is an officer in or has more than a 10% interest in the applicant entity. The TPA requires the City to ask that the recipient of the public benefit disclose to the City its trustees, directors, partners, officers, and those with a 10% equity, participation or revenue interest in the recipient. Applicants for land use approvals must disclose the name(s) of the property owners, including the names of those who have the requisite interest in the property owner (ie., if trust or corporate ownership), even if applied for by a representative. *The disclosures are public records and must be provided to the public if requested.*

**V What “personal or campaign advantages” is a “City public official” prohibited from receiving?**

After a City public official grants a public benefit, they may not receive the following from the recipient of the public benefit:

- Any gift, honoraria, emolument or personal or pecuniary benefit in excess of \$50; but excluding gift exceptions contained in the State Fair Political Practices Commission regulations (2 CCR 18940 et seq.); and excluding gifts from public agencies or gifts distributed by the City;
- Any employment for compensation; or
- Any campaign contribution 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.

**VI How does a “City public official” track compliance with the TPA?**

The City is working on the logistics of maintaining lists of persons or entities receiving public benefits from the City after May 12, 2005. City public officials have a separate, independent duty to ensure that they do not receive any personal or campaign advantages after conferring a public benefit on a particular person.

**VII What are the penalties for violation of the TPA?**

A civil action may be brought against any City public official who accepts a personal or campaign advantage in violation of the TPA, and a civil monetary penalty may be imposed. Knowing or willful violations may result in a misdemeanor charge.

CITY OF PASADENA

MEMORANDUM

**To:** Task Force on Good Government

**From:** Michele B. Bagneris, City Attorney *MBB*  
Theresa E. Fuentes, Deputy City Attorney *TF*

**Date:** November 7, 2005

**Re:** Brief Outline of Legal Issues Related to the Taxpayer Protection Amendment

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The City of Pasadena successfully argued before the Los Angeles County Superior Court in 2002 that the Taxpayer Protection Amendment (“TPA”) to the City Charter was unconstitutional. The Superior Court adopted the City’s arguments regarding the TPA’s First Amendment infirmities, set forth in the City’s Motion for Summary Judgment (“MSJ”).<sup>1</sup> The Superior Court’s decision was overturned by the Court of Appeal on procedural grounds, without discussion of the Constitutional issues (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4<sup>th</sup> 43). The following is a brief outline of legal arguments made by the City with respect to the TPA. This memo does not address concerns about the TPA related to issues such as fairness, practicality of implementation, or other related subjects.

**1. Whether the TPA’s outright ban on certain campaign contributions is supported by the requisite governmental interest.**

Political speech is accorded the “broadest possible protection” under the First Amendment. (*Buckley v. Valeo* (1976) 424 U.S. 1) The only governmental interest that has been accepted by the U.S. Supreme Court to justify a **limit** on campaign contributions (as opposed to a ban) is the government’s interest in limiting actual corruption or the appearance of corruption created by large campaign contributions to elected officials. These types of contributions are generally made by unions and large corporations. (*Id.*, at p. 26.) The TPA bans individuals or groups who receives a “public benefit” from contributing to the political campaign of any official who voted to approve that benefit. The TPA thus dramatically curtails participation in the political process within the City. The TPA’s ban does not rise to the level of potential corruption recognized in case law to justify even the lesser restriction of a contribution limit.

**2. Whether the TPA is overly broad in banning all campaign contributions.**

Pursuant to the TPA, individuals and entities who receive “public benefits” are foreclosed from participating in the local political process through campaign contributions, because

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<sup>1</sup> The Task Force is separately being provided copies of the City’s MSJ, and the Superior Court’s Order Granting Summary Judgment based on the City’s arguments.

the recipient City public official may be precluded from receiving the contribution.<sup>2</sup> Outright bans on contributions have been accepted by courts in extremely narrow situations, none of which are applicable here. Further, courts have struck down bans on contributions from persons such as lobbyists and licensees. (*See FPPC v. Superior Court* (1979) 25 Cal.3d 33; *Penn v. Louisiana* (1999) 751 So.2d 823, 828.) The TPA's ban goes beyond the bans already struck down in the cases on point, and is thus overly broad.

**3. Whether the TPA is overly broad in prohibiting campaign contributions for up to five years.**

Temporal bans on campaign contributions have been repeatedly struck down as overly broad, on the grounds that they violate the First Amendment right to free speech and association by barring the receipt of all contributions for a specified period of time, and thus reduce the ability of the candidate to effectively engage in political speech. For example, blackout dates on fundraising during the regular legislative session for candidates running for statewide office violated the candidates' First Amendment rights to free speech and association. (*Shrink Missouri Government PAC v. Maupin* (E.D.Mo 1996) 922 F.Supp. 1413). Other cases have stricken similar temporal bans, including those as short as 30 days before, and 30 days after, an election. The restrictions in the TPA extend up to five years from the time the public benefit is granted. The TPA's ban goes much further than the bans that have been overturned by the courts, and is thus unconstitutional.

**4. Whether the TPA is overly broad in banning entire categories of persons from the political process.**

Those members of the City council who vote to confer a "public benefit" are barred under the TPA from accepting campaign contributions from the recipient of the "public benefit." The TPA also bars any other City employee or volunteer member of any of the City's commissions who exercises their discretion to grant, or votes to grant, a public benefit, from receiving certain campaign contributions. The TPA also reaches into the management and ownership of the entity receiving the public benefit, and acts to bar every person with a 10% interest in the entity, its trustees, officers, partners and directors from making campaign contributions to those City officials and/or employees who exercise their discretion to grant or vote to grant a public benefit to the entity. Courts have struck down much narrower bans, such as those between candidates, or those by lobbyists. (*See Service Employees International Union v. FPPC* (9<sup>th</sup> Cir. 1992) 955 F.2d 1312; *FPPC v. Superior Court* (1979) 25 Cal.3d 33.) The reach of the TPA goes much further and is thus unconstitutional.

**5. Whether the TPA is preempted by federal and state law.**

The TPA bars contributions by a public benefit recipient to *any* campaign which a City public official who approved or voted to approve the "public benefit," thus interfering

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<sup>2</sup> This prohibition may extend to the state and federal political process if a City public official were running for such an office, and if the TPA were not found to be preempted by federal and state laws.

with a City public official's campaign for a federal or state office. The Federal Elections Commission has advised that the Federal Campaign Act (2 U.S.C. 453) occupies the field regarding campaign contribution sources, and state or local regulations of the same are not permitted. Likewise, in California, the Fair Political Practices Commission has advised that the Political Reform Act (Govt. Code §§ 81000 et seq., "PRA") occupies the field of fund raising by candidates seeking state office. To the extent the TPA interferes with federal and state campaigns, it is preempted by federal and state law, and is invalid.

**6. Whether the TPA arbitrarily forecloses rights to pursue lawful employment.**

The TPA forecloses a City public official who granted or voted to grant a public benefit from seeking lawful employment for up to five years from not only the recipient of the public benefit, but also from its trustees, directors, partners, officers, or those with more than a 10% ownership in it. This prohibition is arbitrary, and not closely drawn to rooting out corruption. Courts sustain limitations on opportunity for employment very carefully, since limitations on future employment impede achievement of economic security, "which is essential for the pursuit of life, liberty and happiness." (*Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 579. More narrowly drawn state regulations already address the concerns of the TPA. The PRA regulations on conflicts of interest and disqualification prohibit local officials from voting on matters affecting their own financial interests, acting as a lobbyist before their former agency, and requires detailed financial disclosures of a public official's economic interests. The PRA regulations narrowly target scenarios where corruption is likely to take place, if at all. The TPA takes a blanket approach in its ban of future employment with public benefit recipients, without supporting evidence of corruption. The TPA so narrows the field of potential future employers for City public officials that it trammels on the pursuit of life, liberty and happiness.

**7. Whether the TPA's focus on approval of a public benefit serves a substantial governmental interest.**

The TPA's focus on regulating those who approve or vote to approve public benefits, instead regulating those who approve or vote to approve *and* those who deny or vote to deny public benefits is not supported by an appropriate governmental interest furthered by the differential treatment. In *Harwin v. Goleta Water District* (9<sup>th</sup> Cir. 1991) 953 F.2d 488, the court overturned a water district restriction on the receipt of campaign contributions from an applicant because the water district did not show that the distinction between applicants and opponents served to prevent corruption or the appearance of corruption, and thus did not justify the discriminatory contribution limitation. Nowhere in the TPA is there justification for its sole focus on City public officials who approve public benefits. Like the water district restrictions in *Harwin*, the TPA's restriction on only those who approve public benefits is discriminatory and without justification.



**8. Whether the TPA's supporting theory that public officials are corrupt because they receive contributions from public benefit recipients falls within the definition of "corruption."**

The Ninth Circuit has opined that "it is not the existence of a financial interest that defines corruption, but rather the existence of a 'political quid pro quo from current and potential officeholders.'" (*Harwin, supra*, at p. 491, n. 5.) In direct contrast, the TPA assumes corruption, without proof, whenever any public benefit recipient contributes to a campaign, gives a gift, or offers future employment to a City public official who granted or voted to grant the public benefit. The TPA thus captures activities that fall well outside the judicially recognized parameters of "corruption" and appears to be an overly broad restriction.



## MEMORANDUM

To: Task Force Members

From: Steve Levin and Bob Stern

Date: December 20, 2005

Re: Constitutional issues presented by the Taxpayer Protection Act

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The City of Pasadena Task Force on Good Government (“Task Force”) has discussed numerous constitutional issues related to the Taxpayer Protection Amendment (“TPA”) at its previous meetings. The purpose of this memorandum is to crystallize these issues and analyze their validity. As is often the case, the state of law on these issues is not always clear; therefore, this analysis mostly remains neutral and merely presents the arguments on both sides of a given issue.

The City of Pasadena and other cities have argued the constitutionality of the TPA in Los Angeles County Superior Court in the past. This memorandum will not discuss the history of that litigation.

### **1. Whether the TPA is justified by compelling government interest**

We start with the principle that political speech is accorded the “broadest protection” under the First Amendment.<sup>1</sup> Like other campaign finance laws, the TPA impinges on public debate and is therefore subject to exacting scrutiny under the First Amendment.<sup>2</sup>

The general framework for analyzing campaign finance laws in relation to the First Amendment can be found in the seminal United States Supreme Court case *Buckley v. Valeo* and its progeny. In *Buckley*, the Court likened campaign contributions and expenditures to speech, which meant that they could not be restricted without a compelling government interest.<sup>3</sup> The Court ruled that the prevention of corruption or the appearance of corruption was the only sufficiently compelling justification for limiting contributions, but not expenditures. More recent cases have affirmed many of the principles set forth in *Buckley*.<sup>4</sup>

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<sup>1</sup> *Buckley v. Valeo*, 424 U.S. 1, 14 (1976).

<sup>2</sup> *Id.* at 18.

<sup>3</sup> *Buckley*, 424 U.S. at 26.

<sup>4</sup> See *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377 (2000) and *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003).

Section 1702(c) of the TPA (“Findings and Declarations”) states explicitly that the TPA is designed to reduce “the corruptive influence of emoluments, gifts and prospective campaign contributions on the decisions of public officials.”<sup>5</sup> By its own terms, then, (and by the entire thrust behind it), the TPA presents a sufficient government interest to justify the regulation of “advantages” (hereinafter referred to as “advantages”) from the recipients of public benefits.

However, this conclusion does not end the inquiry, because an ordinance which restricts free speech rights must also be narrowly tailored to further the government interest of preventing real or apparent corruption for it to survive constitutional scrutiny. In other words, to be constitutional and enforceable, the restrictions on advantages in the TPA must be “closely drawn to avoid unnecessary abridgment of associational freedoms.”<sup>6</sup>

## **2. Whether the TPA is narrowly tailored to further the government interest**

Determining whether the TPA is narrowly tailored to further the compelling government interest of preventing real or apparent corruption depends on a number of factors, including:

- the timing of the advantages in relation to the time the public benefit was conferred;
- the amount of the advantages;
- the type or amount of the public benefit conferred; and
- the parties involved.

One can consider each of these factors on a spectrum or sliding scale, which is to say that the more a particular factor is skewed one way or the other, the more likely the ordinance will or will not be considered narrowly tailored to further the government interest in preventing real or apparent corruption. To date, no court has created a bright-line test to determine when an ordinance is sufficiently narrow to further this government interest. Ordinances must be considered on a case-by-case basis.

### *A. Timing of advantages*

The timing of a party’s giving a advantages to a public official in relation to when the public official conferred a benefit upon the party is one of the most dispositive factors in determining whether an ordinance like the TPA is narrowly tailored because it goes to the heart of the corruption issue. Generally, a public official is more likely to be or appear to be corrupt when he or she receives a advantages from the recipient of a public benefit shortly before or after the public official confers the benefit upon the recipient. One can therefore conclude that an ordinance is more narrowly tailored to further the government interest in preventing real or apparent corruption when it restricts advantages that are made to a public official by the recipient of a public benefit shortly before or after the public official confers the benefit.

Section 1704(a) of the TPA restricts public officials from receiving advantages from the recipient of a public benefit for the earliest of the following three time periods: (1) one year after

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<sup>5</sup> Taxpayer Protection Act, § 1702(c) (2000).

<sup>6</sup> *FPPC v. Superior Court*, 25 Cal.3d 33, 45 (1979).

the expiration of the official's term; (2) one year after the official's departure from office; or (3) five years from the date the official approves or votes to approve the public benefit.<sup>7</sup>

Opponents of the TPA argue that this restriction – especially the part that applies up to five years after the official approves or votes to approve the public benefit – is too long (i.e., overly broad) and therefore not narrowly tailored to further the government interest behind the TPA. They would also argue that the ordinance unfairly discriminates against a party that wants to make a advantages to a City public official *after* the public official confers a benefit on that party, but does not affect a party that makes advantages to the City public official *before* the public official confers a benefit on the party. Supporters of the TPA, on the other hand, argue that the designated time periods are necessary to prevent the appearance of a *quid pro quo* between a City public official and the party to which he or she confers a benefit. They would also respond that as an “anti-kickback” law, the TPA is only designed to prevent parties who have received a public benefit from rewarding the City public official who has conferred the benefit *after-the-fact*.

### *B. Ban on advantages*

Like the timing of the advantages in relation to the time the public benefit was conferred, the size of the advantages made by the recipient of a public benefit can affect whether a public official is or (more likely) appears to be corrupt. One can conclude that the greater the size of the advantage from a party to a public official, the more likely real or apparent corruption is involved. Therefore, a narrowly tailored ordinance aimed at preventing corruption must restrict advantages over a certain amount – although no one can say what that amount is.

The TPA does not just limit the size of advantages from recipients of public benefits, it outright bans them.<sup>8</sup> Opponents of the initiative argue that this provision is simply too restrictive and not narrowly tailored to further the government interest in preventing corruption. They would prefer the TPA to allow advantages from parties that receive public benefits – even if they are limited – rather than ban them altogether. Supporters argue that a complete ban on campaign contributions and other advantages is necessary to achieve the government interest of preventing real or apparent corruption.

### *C. Type or amount of public benefit conferred*

Another factor determining whether an ordinance is narrowly tailored to further a government interest is the type or size of the public benefit conferred. One could only consider a public official to be corrupt if he or she confers a benefit above a certain value – but once again, the exact value of that benefit is not known.

The TPA restricts a City public official from receiving contributions from a party where the official has conferred benefits upon the party in the following amounts over a 12 month period:

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<sup>7</sup> See Taxpayer Protection Act, § 1704(a).

<sup>8</sup> See *id.* at § 1703(b)(3).

- \$25,000 (for personal services, supplies, the purchase or sale of real property, or in the case of a land use variance or special permit)<sup>9</sup>;
- \$50,000 (for business franchise)<sup>10</sup>;
- \$5,000 (for a tax abatement, exception or benefit)<sup>11</sup>; and
- \$10,000 (for cash or specie).<sup>12</sup>

Once again, opponents of the TPA argue that cities like Pasadena routinely confer public benefits in these value ranges, and that the specific values mentioned in the TPA are too insignificant to trigger any concern of corruption. In their minds, the thresholds should be larger. They therefore argue that the TPA is not narrowly tailored to further the government interest described in the Findings. TPA supporters argue that these amounts are sufficiently large to raise the question of real or apparent corruption, and that the Act is therefore narrowly tailored because it does not apply to parties that receive smaller and less significant benefits from City public officials.

#### *D. Involved parties (“the nonprofit issue”)*

Finally, one is less likely to consider the ordinance narrowly tailored to further the governmental interest of preventing real or apparent corruption when the link between the party giving the advantage to the public official and that official’s act of approving or voting to approve a public benefit to that party is more tenuous, as is the case with the director of a nonprofit organization (such as a charity) who wants to make a campaign contribution to City public official who voted to approve a contract with the nonprofit organization.

Included in the TPA’s definition of a person or entity receiving a public benefit are any individuals who own more than 10% of the entity and any individuals who are trustees, directors, partners or officers of that entity.<sup>13</sup> Opponents of the TPA argue that the initiative is overinclusive because it prohibits advantages to a City public official from individuals who are stakeholders, directors and officers in an entity that received a public benefit from the public official – even if those individuals are not directly involved in the receipt of the public benefit and do not themselves receive a financial benefit. In other words, they argue that the link between an entity receiving a public benefit from a City public official and the act of giving an advantage by some stakeholders, directors or officers of that entity is so tenuous, that the ordinance is not narrowly drawn to address the concern of corruption. In some cases, those individuals may not even *know* that the entity has received a public benefit. Supporters of the TPA argue that the ban on advantages from management and ownership of the entity is necessary to further the goals of the TPA.

## **2. Federal and state preemption**

The TPA prohibits public officials who approve or vote to approve a public benefit from accepting campaign contributions from the recipient of the public benefit for *any* elective office

<sup>9</sup> See *id.* at § 1703(a)(1), (2), (3) and (5).

<sup>10</sup> See *id.* at § 1703(a)(4).

<sup>11</sup> See *id.* at § 1703(a)(6).

<sup>12</sup> See *id.* at § 1703(a)(7).

<sup>13</sup> See *id.* at § 1703(b)(1) & (2).

that the official may pursue. Clearly this provision of the TPA does not cause any problems when the City public official runs for office in Pasadena. However, a constitutional question regarding preemption arises as to whether the TPA applies to a City public official when that official runs for state or federal office.

The Federal Election Campaign Act (“FECA”) is explicit on the subject of preemption. Section 453 of FECA provides that federal law preempts any state law with respect to election to federal office.<sup>14</sup> Therefore, it appears that the City of Pasadena may not enforce the TPA against a City public official running for federal office.

California law is less clear on the subject of preemption. The Political Reform Act of 1974 (“PRA” or “the Act”) does not contain a provision explicitly preempting local laws. The Act allows local jurisdictions to impose additional requirements as long as those requirements do not prevent a person from complying with the Act.<sup>15</sup> Local jurisdictions can and have enacted stronger contribution limits on candidates and committees, but the Act provides, and the Fair Political Practices Commission has advised, that they may not impose additional or different filing deadlines for candidates or committees other than those candidates or committees involved in races in those local jurisdictions.<sup>16</sup> To add to the confusion, Section 85703 allows local jurisdictions to create stronger contribution limits for candidates for local office, but remains silent as to local public officials running for state office. One could argue that the Legislature could have specifically preempted ordinances affecting local candidates running for state office had it so desired, but did not draft the bill this way.

From a public policy standpoint, one could construe the TPA as creating an unfair situation because City public officials who run for state office will be disadvantaged in their ability to raise campaign funds compared to state candidates who are not City public officials. Nevertheless, election and campaign finance ordinances cannot correct the many inequities that occur in election contests; for instance, a Pasadena public official running for state office may have an established set of contributors that other candidates do not have.

### **3. Equal protection/reciprocity**

Opponents of the TPA have argued that the TPA is discriminatory and therefore triggers an equal protection argument because it only regulates parties that have applied for and received a public benefit, but not parties that have opposed the public benefit. In *Harwin v. Goleta Water District*, the Ninth Circuit Court of Appeals declared unconstitutional an ordinance which restricted contributions from water permit applicants without restricting contributions from opponents of the same application.<sup>17</sup> The Court found that the distinction between applicants and proponents drawn by the ordinance did not further the purposes of the ordinance – namely, to prevent corruption or the appearance of corruption.

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<sup>14</sup> See 2 U.S.C. § 453 (2005).

<sup>15</sup> See Cal. Govt. Code § 81013 (2005).

<sup>16</sup> See Cal. Govt. Code § 81009.5 (2005); see also *In the Matter of Opinion Requested by Lance H. Olson, Esq.*, No. 0-01-112, July 9, 2001 (finding Los Angeles ordinance preempted by the PRA insofar as it imposed “additional or different” filing requirements on state party committees in areas of statewide concern).

<sup>17</sup> 953 F.2<sup>nd</sup> 488 (1991).

One could make a colorable argument that the TPA discriminates against parties that apply for and receive public benefits (as opposed to parties that oppose the grant of the public benefit) in the same way that the ordinance in the *Harwin* case did. Supporters of the TPA argue that because the TPA is an “anti-kickback law” designed to protect the decisionmaking process by insulating City public officials from parties that receive a public benefit, it only covers those parties that actually receive the public benefit – not the parties that oppose or support the grant of the public benefit. In that way, the TPA is designed much the same way as the state law that prohibits lobbyists who appear before a given public official from making a campaign contribution to that public official. Applying the TPA to parties that oppose a public benefit is also tricky because it is often difficult to determine the value of not conferring the public benefit.

### **Conclusion**

The TPA obviously raises a number of constitutional issues, including free speech rights, preemption, and discrimination; however, because the law is undefined or unclear on most of these issues (other than the federal preemption issue, which we consider quite straightforward), we will not make any definitive conclusions about the constitutionality of the TPA’s various provisions. Rather, we could only advise that the courts will have to make the ultimate determination on such issues. If the City Council make amendments to the TPA, however, we recommend that it specifically exempt local candidates running for federal office from the provisions of the TPA.

CITY OF PASADENA

MEMORANDUM

To: Task Force on Good Government

From: Michele Beal Bagneris, City Attorney  
Theresa E. Fuentes, Deputy City Attorney



Date: January 11, 2006

Re: Rough Estimate of Cost to Implement Taxpayer Protection Amendment

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The Task Force on Good Government asked that the City Attorney's Office provide an estimate of the City's costs of implementing the Taxpayer Protection Amendment (City Charter, Article XVII, "TPA"). The following is a rough estimate of the City's costs to implement the TPA from May of 2005 to January of 2006.

DEPARTMENT	COST	NOTES
City Manager/City Clerk	1. \$16,000.00 2. \$7,000.00	1. This estimate covers outside consultant costs to develop a tracking list for the City Manager and City Council. The City Council approved limit for this expenditure is \$92,150.00. 2. This estimate covers management and staff time spent on implementation.
Planning Department	\$40,000.00	At its meeting on January 9, 2006, the City Council approved an allocation of \$39,630.00 for Planning's expenses to implement the TPA, which still does not capture all Planning expenses.
City Attorneys' Office	\$31,500.00	This estimate includes staff time and expenses incurred in training, research, and other matters related to implementation.
		<b>TOTAL: \$94,500.00</b>


Note that this estimate does not include the costs of the City's other departments to track individual transactions with one contractor/person under \$25,000 that may aggregate in any 12-month period to \$25,000 or more, and thus trigger application of the TPA. This estimate also does not include City expenses incurred to support the Task Force for Good Government, such as: retention of the Center for Governmental Studies, City Clerk and City Attorney support staff, meeting space and equipment rental, or other related expenses.



**CITY OF PASADENA**

**MEMORANDUM**

**To:** Task Force on Good Government

**From:** Michele Beal Bagneris, City Attorney   
Theresa E. Fuentes, Deputy City Attorney

**Date:** January 12, 2006

**Re:** City Public Officials/Employees Representing City on Outside Public Agencies

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The Taxpayer Protection Amendment (City Charter, Article XVII, "TPA") applies to "the exercise of discretion of any such public official serving in his or her official capacity through a redevelopment agency, or any other public agency, whether within or without the territorial jurisdiction of the City either as a representative or appointee of the City." (TPA, Section 1704(b).) The Task Force on Good Government asked that the City Attorney's Office provide a list of outside public agencies which may be covered by Section 1704(b). The lists below identify the majority of those outside public agencies on which City elected officials, appointed officials, and City employees sit.

A large number of City public officials and employees actively volunteer in nonprofit organizations and professional groups, and other community activities. In addition, numerous City employees are appointed to local nonprofit organizations, professional organizations, task forces, and/or consortiums related to their job duties. The list below does not include any of these nongovernmental organizations since Section 1704(b) does not apply to them.

1. Agreement No. 16695: Agreement Between the Cities of Glendale and Pasadena Regarding a Joint Library Automated Control System
2. Area C Joint Powers Agreement
3. Burbank, Glendale, Pasadena Airport Authority
4. California Cities Home Ownership Authority
5. Foothill Air Support Team
6. Foothill Employment and Training Consortium Workforce Investment Board
7. LA IMPACT
8. Los Angeles County Economic Development Corporation
9. Los Angeles County Metropolitan Transportation Authority
10. Los Angeles County Sanitation District
11. Metro Gold Line Construction Authority
12. Metropolitan Water District
13. Multimodal Operation and Development Entity
14. Raymond Basin Management Board
15. San Gabriel Valley Council of Governments
16. Southern California Association of Governments
17. Southern California Public Power Authority
18. The Gamble House

**California Institute of Technology**  
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January 25, 2006

John Van de Kamp  
Chair, Task Force on Good Government  
City of Pasadena  
117 E. Colorado Blvd., 6<sup>th</sup> Floor  
P.O. Box 7115  
Pasadena, CA 91109-7215

RECEIVED  
06 JAN 25 AM 11:24  
CITY CLERK  
CITY OF PASADENA

Dear Mr. Van de Kamp:

I am writing on behalf of the California Institute of Technology to offer invited public comment regarding the Taxpayer Protection Amendment ("TPA") that your task force is currently studying. Although the overarching purpose of the TPA is laudable, we are concerned that it will have damaging and perhaps unintended consequences for 501(c)(3) organizations, such as Caltech, that are based in Pasadena. Specifically, Caltech is concerned about the potential impact of the TPA on the stewardship of the City's scores of such organizations.

As with other types of organizations, to operate effectively and achieve their charitable purposes, 501(c)(3) organizations require strong leadership from their governing boards and from their officers. In potentially foreclosing individuals serving in such capacities from making even small contributions to local officials seeking elective office, the TPA could seriously interfere with recruitment and retention of highly qualified individuals who--in many cases without compensation--provide the leadership that Pasadena's vibrant charitable community needs and deserves.

While practices vary among charitable organizations, many such organizations, including Caltech, do not pay compensation to members of their governing Boards. Caltech's Board is comprised of outstanding individuals from a variety of fields, who lend their time, wisdom and resources to advance the mission of the Institute without any expectation of compensation. The contributions of these individuals to the betterment and standing of Caltech cannot be overstated, and other 501(c)(3) organizations certainly have similar experience with and reliance on their trustees and directors.


John Van de Kamp  
January 25, 2006  
Page Two

The problem presented by the TPA is that it effectively confronts a trustee or director of a local charity with the prospect of having to forego making a personal campaign contribution in any amount to a local official who is seeking elective office if that official participated in a governmental decision that conferred the requisite benefit on the charity, in some cases years earlier. That may seem like an unreasonable burden to someone who is engaged in local public affairs and is freely giving his or her time and support to a local charity. In Caltech's case, a ban on such political involvement could be construed as permanent because the City in 1989 legally obligated itself (and Caltech) to compliance reviews of the Institute's campus master plan every five years.

As the largest private-sector employer in the City, which is also home to hundreds of Caltech graduates, the Institute has long encouraged civic participation by its employees and alumni. Within that broad cohort is a subset of employees, the Institute's officers, who are directly affected by TPA. Historically, members of this group have been active in civic and political affairs dating back to the early decades of the last century, as often at the invitation of City Hall as through their own initiative and often providing unique intellectual expertise along the way. Insofar as TPA creates a disincentive to such involvement, the Institute sees more harm than good resulting over time from TPA's application to non-profit organizations.

For the foregoing reasons, I urge the Task Force on Good Government to consider and recommend an appropriate exemption for 501(c) (3) organizations.

Sincerely,

*Hall Daily*  
Hall Daily 

cc: Dr. David Baltimore, President, Caltech  
Mr. Kent Kresa, Chair, Caltech Board of Trustees  
Dr. Paul Jennings, Provost and Vice President, Caltech  
Dr. Michael Alvarez, Professor of Political Science, Caltech



**MEMORANDUM**

To: Task Force Members

From: Steve Levin and Bob Stern

Date: January 25, 2006

Re: Contribution Limits for Selected California Cities

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City	Population	Contribution Limit
Berkeley	109,000	\$250/election
Escondido	133,000	\$250/election
Gardena	58,000	\$1,000/election
Hayward	140,000	<ul style="list-style-type: none"><li>• \$250/election if candidate does not accept expenditure limits</li><li>• \$1,000 if candidate accepts expenditure limits</li></ul>
Laguna Beach	23,000	\$310/election cycle
Los Angeles	3,700,000	<ul style="list-style-type: none"><li>• \$500 for city council</li><li>• \$1,000 for citywide office</li></ul>
Oakland	400,000	<ul style="list-style-type: none"><li>• \$100/election if candidate does not accept expenditure limits</li><li>• \$500/election if candidate accepts expenditure limits</li></ul>
San Francisco	777,000	<ul style="list-style-type: none"><li>• \$500/general election</li><li>• \$250/runoff election</li></ul>
San Jose	895,000	<ul style="list-style-type: none"><li>• \$100/election for city council</li><li>• \$250/election for mayor</li></ul>
Santa Monica	84,000	\$250/election
Torrance	138,000	\$1,000/election cycle
San Diego	1,223,000	<ul style="list-style-type: none"><li>• \$250/election for city council</li><li>• \$300/election for citywide office</li></ul>
Simi Valley	111,000	\$1,000/election
Walnut Creek	64,000	\$100/election cycle

## Internal Revenue Service Subsection Codes for Tax-Exempt Organizations

The following chart lists the different kinds of tax-exempt organizations and whether or not contributions to them are tax deductible. It is based on IRS Publication 557 and T.D. 8818. For more information, see IRS Publication 557 and T.D. 8818 or consult your tax advisor.

Section of Code	Description of Categories	Annual Return Required To Be Filed	Disclosure Requirements	Contributions Allowable
501(c)(1)	Corporations Organized under Act of Congress (including Federal Credit Unions)	None	None	Yes, if made for exclusively public purposes
501(c)(2)	Title Holding Corporation for Exempt Organization	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(3)	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations	Form 990 <sup>1</sup> , 990-EZ <sup>8</sup> , or 990-PF	Form 990, 990-EZ, or 990-PF Form 1023	Yes, generally
501(c)(4)	Civic Leagues, Social Welfare Organizations, and Local Associations of Employees	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No, generally <sup>2,3</sup>
501(c)(5)	Labor, Agricultural, and Horticultural Organizations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(6)	Business Leagues, Chambers of Commerce, Real Estate Boards, Etc.	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(7)	Social and Recreational Clubs	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(8)	Fraternal Beneficiary Societies and Associations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	Yes, for certain Sec. 501(c)(3) purposes
501(c)(9)	Voluntary Employees Beneficiary Associations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(10)	Domestic Fraternal Societies and Associations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	Yes, for certain Sec. 501(c)(3) purposes
501(c)(11)	Teacher's Retirement Fund Associations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(12)	Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, Etc.	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(13)	Cemetery Companies	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	Yes, generally
501(c)(14)	State Chartered Credit Unions, Mutual Reserve Funds	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c)(15)	Mutual Insurance Companies or Associations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>

501(c) (16)	Cooperative Organizations to Finance Crop Operations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c) (17)	Supplemental Unemployment Benefit Trusts	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c) (18)	Employee Funded Pension Trust (created before June 25, 1959)	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No <sup>2</sup>
501(c) (19)	Post or Organization of Past or Present Members of the Armed Forces	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No, generally <sup>7</sup>
501(c) (21)	Black Lung Benefit Trusts	Form 990-BL	Form 990-BL (except Schedule A)	No <sup>4</sup>
501(c) (22)	Withdrawal Liability Payment Fund	Form 990 or 990-EZ <sup>8</sup>	Form 990 or 990-EZ	No <sup>5</sup>
501(c) (23)	Veterans Organizations (created before 1880)	Form 990 or 990-EZ <sup>8</sup>	Form 990 or 990-EZ	No, generally <sup>7</sup>
501(c) (25)	Title Holding Corporations or Trusts with Multiple Parents	Form 990 or 990-EZ	Form 990 or 990-EZ Form 1024	No
501(c) (26)	State-Sponsored Organization Providing Health Coverage for High-Risk Individuals	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1024	No
501(c) (27) <sup>11</sup>	State-Sponsored Workers' Compensation Reinsurance Organization	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ	No
501(c) (28) <sup>12</sup>	National Railroad Retirement Investment Trust	Not yet determined	None	No
4947(a) (1)	Non-Exempt Charitable Trusts	Form 990-PF	Form 990-PF	No <sup>13</sup>
501(d)	Religious and Apostolic Associations	Form 1065 <sup>9</sup>	Form 1065 (except Schedule K-1)	No <sup>2</sup>
501(e)	Cooperative Hospital Service Organizations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1023	Yes
501(f)	Cooperative Service Organizations of Operating Educational Organizations	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1023	Yes
501(k)	Child Care Organizations	Form 990 or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1023	Yes
501(n)	Charitable Risk Pools	Form 990 <sup>1</sup> or 990-EZ <sup>8</sup>	Form 990 or 990-EZ Form 1023	Yes
521(a)	Farmers' Cooperative Associations	Form 990-C	Form 990-C	No
527	Political Organizations	Form 1120-POL <sup>10</sup> , 990, or 990-EZ <sup>8</sup>	Form 1120-POL or Form 990 or 990-EZ	No

1. For exceptions to the filing requirement see chapter 2 of Publication 557 and the general instructions for Form 990.  
 2. An organization exempt under a subsection of Code sec. 501 other than 501(c)(3) may establish a charitable fund, contributions to which are deductible. Such a fund must itself meet the requirements of section 501(c)(3) and the related notice requirements of section 508(a).  
 3. Contributions to volunteer fire companies and similar organizations are deductible, but only if made for exclusively public purposes.

4. Deductible as a business expense to the extent allowed by Code section 192.
5. Deductible as a business expense to the extent allowed by Code section 194A.
6. Application is by letter to the address shown on Form 8718. A copy of the organizing document should be attached and the letter should be signed by an officer.
7. Contributions to these organizations are deductible only if 90% or more of the organization's members are war veterans.
8. For limits on the use of Form 990-EZ, see chapter 2 of Publication 557 and the general instructions for Form 990-EZ (or Form 990).
9. Although the organization files a partnership return, all distributions are deemed dividends. The members are not entitled to **pass-through** treatment of the organization's income or expenses.
10. Form 1120-POL is required only if the organization has taxable income as defined in IRC 527(c).
11. 501(c)(27) organizations (State-Sponsored Workers' Compensation Reinsurance Organizations) do not appear on GuideStar because they are not included on the I.R.S. Business Master File (BMF).
12. There is only one 501(c)(28) organization (the National Railroad Retirement Investment Trust), which was created by an act of Congress. It is not included on the BMF and therefore does not appear on GuideStar.
13. Only the person(s) who established a 4947(a)(1) non-exempt charitable trust may contribute to it.

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**CITY OF PASADENA**

**MEMORANDUM**

**To:** Task Force on Good Government

**From:** Michele Beal Bagneris, City Attorney  
Theresa E. Fuentes, Deputy City Attorney *SB*

**Date:** February 8, 2006

**Re:** Ongoing Costs of Implementing Taxpayer Protection Amendment

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The Task Force on Good Government asked that the City Attorney's Office provide an estimate of the City's ongoing costs of implementing the Taxpayer Protection Amendment (City Charter, Article XVII, "TPA"). The following is a rough estimate of the City's current weekly costs to implement the TPA.

<b>DEPARTMENT</b>	<b>COST PER WEEK</b>	<b>NOTES</b>
City Manager/City Clerk	\$1,300	This estimate includes dedicated time by the City Manager, outside consultant time, and other staff time.
Planning Department	\$1,900	This estimate includes Director time and staff time.
City Attorneys' Office	\$500	This estimate includes City Attorney, and Assistant City Attorney and/or Deputy City Attorney time.
		<b>WEEKLY TOTAL: \$3,700<sup>1</sup></b>
		<b>YEARLY TOTAL: \$192,400</b>

Note that these costs will increase substantially if pre-contract tracking is implemented as currently proposed by the Task Force. While a firm estimate cannot be given, the increase is reasonably expected to raise costs by about 30 percent, resulting in an estimated yearly cost of approximately \$256,000.

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<sup>1</sup> This estimate does not include the ongoing implementation costs of the City's other departments.



CITY OF PASADENA

MEMORANDUM

To: Task Force on Good Government

From: Michele Beal Bagneris, City Attorney  
Theresa E. Fuentes, Deputy City Attorney

*MAB*  
*TS*

Date: February 9, 2006

Re: Preliminary Analysis of Proposed Amendments to TPA

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The City Attorney's Office of the City of Pasadena is of the opinion that the currently proposed amendments to the Taxpayer Protection Amendment (Article XVII of the City Charter, "TPA") do not adequately address the following legal and practical infirmities.

**BRIEF STATEMENT OF LEGAL INFIRMITIES**

- 1. Campaign Contributions: The TPA remains overly broad in banning all campaign contributions to candidates for City office, and in banning entire categories of persons from the political process.**

The Task Force has proposed amending the TPA to narrow its ban on campaign contributions to apply only to those running for City office, and the City Attorney's Office believes this is a good first step. However, the TPA remains constitutionally suspect because of its wholesale foreclosure of allowing individuals and entities who receive "public benefits" from participating in the local political process through campaign contributions. Outright bans on contributions have been accepted by courts in extremely narrow situations, none of which are applicable here.

In addition, the TPA remains constitutionally questionable because it prohibits City public officials who vote to confer a "public benefit" from accepting campaign contributions from the recipient of the "public benefit."

- 2. Future Employment: The TPA still arbitrarily forecloses rights to pursue lawful employment.**

The TPA remains legally troublesome for its continued ban on appointed officials and City employees from seeking lawful employment from recipients of public benefits for up to five years. While justification has been presented to the Task Force to supposedly support such a ban for elected officials (i.e., election cycles), no justification for a ban of that length for appointed officials or City employees has been presented. Courts sustain limitations on opportunity for employment very carefully, since limitations on future employment impede achievement of economic security, which courts have held is essential for the pursuit of life, liberty and happiness. More narrowly drawn state regulations in the Political Reform Act already address the concerns of the TPA. The TPA's ban comes without supporting evidence of corruption.

## OTHER ISSUES

### **1. Tracking of bids on contracts.**

The proposed expansion of the TPA to apply to all bidders on contracts will require further expenditure of taxpayer resources. The City will have to come up with a separate tracking list, train staff to understand the new prohibition, and dedicate staff time to maintaining the list.

This office has mentioned to the Center for Governmental Studies its concern that an outright ban on campaign contribution is constitutionally suspect. Thus, expanding this ban could contribute to the TPA's constitutional infirmities, instead of limiting them.

### **2. Tracking nonprofits.**

Even though the proposed amendments delete application of the TPA to trustees, directors, partners or officers of certain nonprofits, the proposed amendments would require continued tracking of these persons by the City for disclosure purposes only. To hopefully avoid confusion, the City will necessarily have to devise a separate list for this disclosure, which will require additional expenditures of taxpayer resources.

Even with separate lists, there may be confusion as to whether the TPA applies to the listed persons, and those persons may decide not to make campaign contributions for fear of at least being perceived as violating the TPA, or somehow otherwise acting improperly, thus chilling the exercise of their free speech rights. Finally, as written, the language proposing this tracking is very confusing.

### **3. Campaign Contribution Limits**

While it is lawful for the City to impose campaign contributions, it is our understanding that this issue is beyond the scope of direction given to the Task Force by the City Council. We believe the Task Force was created to address the legal infirmities already in existence in the TPA, and not to get to the question of whether there should be campaign contribution limits within the City.

### **4. Enforcement by District Attorney**

It is not clear that the District Attorney has the authority to take civil action, or that the City can delegate such authority to the District Attorney. We further question whether the City can mandate that any other public entity take criminal misdemeanor or civil enforcement action under our Charter. It may be the case that the City could request, and pursuant to contract pay for, outside enforcement by another governmental entity such as the County or State, subject to relevant state laws.

## SUGGESTED LANGUAGE CLARIFICATIONS

1. Strike the word "clerk" from sections 1703(a)(9) and 1706.5(d).
2. In section 1703(b)(2) – add a comma between (3) and (4); add a comma before the phrase "and (6)"; delete the last sentence because it confuses the issue of whether the

- TPA applies to trustees, directors or officers of nonprofits, or, if the sentence is to be retained, add the word "only" between "disclosure under".
3. As written, the phrase "unless there is reason to believe" in Section 1703(a)(8) could be unconstitutionally vague. Replace with a more concrete and specific standard, or end the sentence at "less than \$5,000."
  4. Delete the phrase proposed to be added, or rewrite the added section to 1704(b) to read:  
... jurisdiction of the City. Section 1704(a) shall apply to agencies outside the City on which a City public official sits only if the outside agency voluntarily provides to the City the information called for in Section 1703 for those public benefits granted by the outside agency.
  5. Rewrite Section 1704(c) to read:  
No person 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, until the negotiations have terminated. Once 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 Section 1002 of the City Charter.
  6. Delete Section 1706.5 or, if retained add a preamble to Section 1706.5 which reads:  
The following campaign contribution limits are in addition to the restrictions set forth in Section 1704 above.
  7. If retained, rewrite parts of Section 1706.5 to read:
    - (a) City district races: No person may make, and no person may accept, a campaign contribution of more than one thousand dollars (\$1,000) per election.
    - (b) Mayoral race: No person may make, and no person may accept, a campaign contribution of more than two thousand dollars (\$2,000) per election.
  8. Reconsider who should be the enforcement authority in Section 1707.

**CITY OF PASADENA**

**MEMORANDUM**

**To:** Task Force on Good Government

**From:** Michele Beal Bagneris, City Attorney  
Theresa E. Fuentes, Deputy City Attorney 

**Date:** February 14, 2006

**Re:** Potential Exclusion of Nonprofits from TPA  
(revised from January 25, 2006 version, to exclude citations to 26 U.S.C. § 501(c))

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The Task Force asked for a list of nonprofit organizations that had received a qualified public benefit from the City and are currently being tracked on the City's TPA lists. The City does not require a public beneficiary recipient to identify whether it is a nonprofit organization, and thus cannot identify with certainty all of the nonprofits on its lists. Nonetheless, the City can identify entities which are or appear to be nonprofits and which are currently being tracked for purposes of the TPA. The City provides this incomplete list as an information item only.

1. American Red Cross
2. California Institute of Technology
3. Fuller Seminary
4. Art Center College of Design
5. St. Philip the Apostle Church and School
6. Heritage Housing Partners
7. Union Station Foundation
8. Ecumenical Council of Pasadena Area Churches
9. Huntington Hospital
10. Community Development Block Grant Recipients:
  - a. Center for Community and Family Services, Inc.
  - b. Pasadena Development Corporation
  - c. Pasadena Enterprise Center
  - d. Ecumenical Council of Pasadena Area Churches
  - e. Housing Rights Center

- f. Institute of Popular Education (Instituto de Educacion popular del sur de California (IDEPSCA))
- g. Institute for Urban Research and Development
- h. Pasadena Neighborhood Housing Services, Inc.
- i. Center for Aging Resources
- j. Community Health Alliance of Pasadena
- k. El Centro de Accion Social, Inc.
- l. Journey House, Inc.
- m. Mother's Club Community Center, Inc.
- n. Pasadena Mental Health Association
- o. URDC Human Services corporation
- p. YWCA Pasadena-Foothill Valley
- q. Union Station Foundation
- r. Armenian Relief Society
- s. Child Care Information Services
- t. Pasadena Senior Center
- u. The Sycamores