

REPORT OF THE CITY OF PASADENA TASK FORCE ON GOOD GOVERNMENT

February 2006

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**CITY OF PASADENA
TASK FORCE ON GOOD GOVERNMENT**

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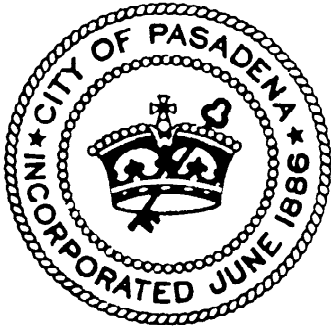
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R. Michael Alvarez
Pixie Boyden
Raphael Henderson
Al Moses
Raul F. Salinas
William E. Thomson

Consultants

Robert M. Stern
Steven M. Levin

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Agenda Report

TO: CITY COUNCIL
FROM: JOHN VAN DE KAMP, CHAIR
TASK FORCE ON GOOD GOVERNMENT
RE: FINAL RECOMMENDATIONS OF THE
TASK FORCE ON GOOD GOVERNMENT

DATE: FEBRUARY 27, 2006

RECOMMENDATIONS:

It is recommended that the City Council:

(A) Concur with the Task Force on Good Government's proposed changes to the City Charter, Article XVII, Taxpayer Protection Act, as set forth in the "redline" text shown on Exhibit 1 to accomplish the following:

(1) Non-profits

The ban on receiving personal or campaign advantages should not apply to officers and directors from 501 (c) (3), (4), and (6) organizations (other than officers and directors of political action committees or who control political action committees controlled by such organizations), except that disclosure of such persons would continue to be required. Section 1703 (b) (2).

(2) Contracts with the City

The TPA should be amended so that its provisions also cover persons who are bidding on or negotiating for contracts that are worth over \$25,000 except those who are bidding on or receiving low bid contracts. Section 1704 (c).

(3) Contribution Limitations

The TPA should be amended to apply contribution limits to Pasadena races: \$1,000 per election for City Council and \$2,000 per election for Mayor, adjusted for cost of living increases every two years, rounded off to the nearest \$100. Section 1706.5.

(4) Ballot Measure Committees

The TPA should also cover Pasadena public officials who raise money for local ballot measure committees that the official controls. Section 1703 (c) (3).

(5) Outside Election Races

The TPA should only apply to officials and candidates in city races and not elections outside of Pasadena. Section 1703 (c) (3).

(6) Enforcement

The City should authorize the City Attorney to bring criminal actions except in cases involving elected City officials in which case the City Attorney

should refer the complaint to the L.A. County District Attorney's office. The current law that allows citizens to bring private civil actions should not be changed. Section 1707 (a) and (c).

(7) Subpoena Power

The TPA should give subpoena authority to the City Attorney and where referrals are made to it, the L.A. County District Attorney. Section 1707 (d).

(8) Agencies Outside the City

The TPA should only apply to Councilmembers or other City officials serving on outside boards as City representatives (e.g., the Burbank Airport Authority), if these other agencies have reporting requirements allowing compliance with the TPA. Section 1704 (b).

(9) Thresholds

The thresholds for determining which decisions should be affected by the TPA should be the same (over \$25,000) in most instances. The only exceptions would be the grant of a tax abatement, exception or benefit, which should remain at over \$5,000 in a twelve-month period and awarding of franchises worth over \$50,000 in gross receipts. The thresholds should be adjusted for cost of living increases every five years and rounded off to the nearest \$1,000. Section 1703 (a) (7) and (9).

(10) Disclosure Implementation

The files of the City listing those persons who would be prohibited from providing personal advantages to City officials who have made a decision benefiting them should be posted on the internet so that the records are available to the public in an easy-to-use and timely manner. Section 1705 (c).

(11) Cumulation

The TPA should eliminate the need to cumulate public benefits in amounts under \$5,000 unless it is clear that the amounts will meet or exceed the thresholds. Section 1703 (a) (8).

(12) Franchises

The TPA should be clarified to require that the franchise has to be awarded by the City. Section 1703 (a) (4).

(B) It is further recommended that the City Council cause to be placed on the ballot at the next available city-wide election the Task Force on Good Government's proposed changes to the City Charter, Article XVII, Taxpayer Protection Amendment.

BACKGROUND:

In March of 2001 Pasadena's voters adopted a measure known as "The Taxpayer Protection Amendment of 2000" (TPA). The measure had been placed on the ballot through a signature gathering effort for an initiative and was virtually identical to measures approved by the voters in Santa Monica and Claremont, California.

The TPA was not implemented in Pasadena until the summer of 2005, due to litigation filed by the City challenging it on constitutional grounds. No final disposition was made of the constitutional issues, but the City has now implemented it, issuing guidelines and organizing the necessary structure for its implementation.

Because of lingering concerns with its impact, the City Council by majority votes on October 3rd and October 10th voted to establish, name, and fund a task force to “make recommendations to the City Council regarding possible modifications” to the TPA.

The Council's charge said:

The Task Force on Good Government shall make recommendations to the City Council regarding possible modifications to Article XVII of the City Charter, governing the receipt of gifts, employment and campaign contributions. In arriving at its recommendations the Task Force shall consider relevant constitutional provisions, state and federal laws, and applicable case law, and may consider laws and regulations of other jurisdictions. The Task Force's recommendations should support the Findings and Declarations in Article XVII and result in constitutional regulations that can reasonably be implemented.

In making the motion to approve the charge Councilmember Chris Holden stated it was “his preference that the charge be given to the Task Force to identify the problems within the current language, and the Task Force could recommend modifications that would be constitutional and allow for a more manageable initiative to be voted on by the voters, while at the same time protecting the original intent” of the TPA.

The following members of the Task Force on Good Government were appointed by the Council: John Van de Kamp, Chair; Stephen Acker, R. Michael Alvarez, Pixie Boyden, Raphael Henderson, Al Moses, Omel Nieves (voted Vice Chair by the Task Force), Raul Salinas, and William E. Thomson. The Task Force has been served by its consultants: Bob Stern and Steve Levin of the Center for Governmental Studies.

The original TPA is found in its entirety in Attachment A to Exhibit 2, (the Index of Materials Used by the Task Force.) Of note is its purpose: “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 in the disposition of public funds.”

In short, the TPA sponsors aimed at preventing “play for pay” situations by what seemed to be a straightforward and simple strategy: by preventing gifts, future employment, campaign contributions and other public benefits to City Council members and other City officials who approve the grant of a public benefit by the City to any individual, corporation, firm, partnership, association or other person or entity.

Fred Woocher, the attorney for The Foundation for Taxpayer and Consumer Rights, TPA's sponsor, appeared at a Task Force meeting and characterized the TPA as "an anti-kickback law" removing the possibility of "the expectations from public officials in receiving benefits from their decisions."

In approaching its charge, the Task Force heard from TPA supporters, campaign consultants, City officials including Mayor Bill Bogaard, Vice Mayor Steve Madison, Councilmembers Sid Tyler, Paul Little, and Chris Holden, City Manager Cynthia Kurtz, Director of Planning and Development Richard Bruckner, Budget Administrator Steve Mermell, City Attorney Michele Bagneris, and private citizens. The Task Force sought advice from a number of sources, including the U.S. Attorney's office, the Los Angeles District Attorney's office, and the non-profit community in Pasadena. A representative from the Pasadena Chamber of Commerce appeared before the Task Force, and Cal Tech sent a letter expressing its concerns regarding the Charter amendment.

The City Attorney's office provided memos outlining the costs incurred thus far and anticipated on-going costs. The staff estimates that implementation of the TPA could be \$192,400 annually, much of that incurred by the allocation of present City employees to meet the requirements of the TPA. The Task Force noted that the public had been advised that the TPA would have a fiscal impact by the analysis in the ballot pamphlet prepared by the City Attorney (although the City Attorney did not estimate a specific amount in the ballot pamphlet analysis.)

Over time it became clear that constitutional issues aside, the measure, while well-intended, has produced some unanticipated consequences, and in fact could be improved by providing better public protection, before some decisions were made as well as afterwards. In addition, improvements in its administration could be made that would reduce its cost to Pasadena's citizens, such as disclosure on the internet made available to the public.

For example:

The TPA does not apply to gifts or contributions or other public benefits before some decisions are made.

The TPA applies to both non-profit and for-profit organizations, as well as their officers and their boards. The result is that unpaid directors of non-profit organizations are banned from providing personal advantages, such as campaign contributions, to Councilmembers who supported the City's grants to the non-profits even though the unpaid directors receive no material benefit.

The TPA applies to Councilmembers and public officials who serve on the City's behalf on outside boards and agencies, within or outside the territorial jurisdiction of the City. Yet many of those agencies outside the City have their own rules and the City has no capacity to monitor the contracts its designees vote upon while serving in those roles in agencies beyond the City's control.

The City does not post its TPA disclosures on the internet so that public officials and citizens can easily keep track of all disclosures filed by contractors and others under the purview of the provisions of the Act.

The City does not limit contributions to Mayoral and City Council candidates, as do many other cities in California.

These are but a few of the concerns addressed by the Task Force's recommendations.

In addition, the Task Force considered some matters where it is not making any recommendations. For example, some City employees stated that the ban on future employment (up to five years after a decision is made) could discourage potential employees from coming to work for the City. The Task Force concluded it did not have sufficient evidence to support a modification of this provision [Section 1704(a)], but recommends that the City monitor this provision's impact on future recruitment and retention of employees and commissioners. If adjustments are then warranted, they should be made with the TPA's purposes in mind.

Section 1703 (b) of the TPA only applies to the person or group receiving a direct benefit from action by the City Council. It does not apply to persons or groups who may be supporting or opposing the decision even though they may receive a benefit or suffer a loss because of the decision. The Task Force debated at great length the "reciprocity" issue, i.e., whether to extend the TPA to all persons or groups affected by a Council decision. In the end, the Task Force decided against applying the TPA to all people or groups affected by a City decision because it would be too difficult to determine who was affected by City decisions and to measure the impact of those decisions on those persons and groups.

The Task Force discussed whether or not to require disqualification by elected City officials in cases where they received campaign contributions before the decision was made. Except in the case of contracts, where all parties can be easily identified, the Task Force decided not to recommend any provisions dealing with contributions before a decision was made. The proponents of the TPA testified that they did not support such a restriction, and the Task Force determined that it might be extremely difficult to determine who would benefit or be hurt by such decisions.

What follows are the Task Force recommendations and reasons for the changes to the TPA. Our goal was to improve the TPA, address what appears to be the TPA's unanticipated consequences and mitigate some of its problematic features.

REASONS FOR CHANGES TO THE TPA

1. Non-profits

Recommendation

The ban on receiving personal or campaign advantages should not apply to officers and directors from 501 (c) (3), (4), and (6) organizations (other than officers and directors of political action committees or who control political action committees controlled by such organizations), except that disclosure of such persons would continue to be required. Section 1703 (b) (2).

Background

Section 1703 (b) (2) of the Taxpayer Protection Amendment of 2000 ("TPA") bans contributions and other advantages from all directors and officers of any nonprofit that has received a benefit from the City.

Arguments in Favor of Amending the TPA

Non-profit charities should not have the contribution and other personal advantage restrictions apply to their non-paid board members and officers because it may discourage people from volunteering to serve on these boards. Directors on charitable boards should not be forced to make a decision about serving on boards or their right to make campaign contributions. People who serve on charitable boards tend to be leaders in the community and are often active contributors to local candidates. Finally, most persons who work for non-profits are not likely to make campaign contributions or provide other advantages to public officials. In the event they do, and are officers or directors, the disclosure required by the amendment will permit tracking them.

Proposed Language of Amendment

Section 1703 (b) (2) shall be amended to read:

(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).

2. Contracts with the City

Recommendation

The TPA should be amended so that its provisions also cover persons who are bidding on or negotiating for contracts that are worth over \$25,000 except those who are bidding on or receiving low bid contracts. Section 1704 (c).

Background

The TPA only prohibits campaign contributions and other advantages received after the decision is made, and the prohibition only applies to those who receive a direct benefit from the decision. Thus, a person who gives a campaign contribution or other advantage before the decision is made can receive a direct benefit from the City and is unaffected by the TPA. (Under the conflicts of interest provisions of the Political Reform Act, an official who receives a gift of \$250 or more or receives employment or other income worth \$500 or more would be disqualified from participating in a decision affecting the source of the gift or employment.)

Other Jurisdictions

Other jurisdictions, including Gardena and San Francisco, have a blackout period on contributions from persons who seek to contract with the City. It appears to work well because it is for a limited time only and applies specifically to those bidding on contracts.

Arguments in Favor of Amending TPA

The TPA, as written, would seem to encourage campaign contributions and other advantages made before the decision so that these advantages could possibly influence the decision maker. If contributions and other advantages corrupt or create the appearance of corruption, they do so before the decision is made just as much as after the decision is made.

Potential bidders on certain contracts should not be permitted to make any campaign contributions or provide any advantages to the decision makers. Once a contract is awarded, the person who receives the contract is prohibited by the proposed amendments to the TPA from providing any advantages to the decision makers for the time periods specified in Section 1704.

It is relatively easy to prohibit contributions and other advantages when applied to contracts. When an RFP issued, it can prominently mention the prohibition. The prohibition is time limited in that it only applies during the time of negotiations and during the bidding process. Once persons are no longer bidding on a contract, the persons are free to make contributions and provide other advantages as long as they have not received the contract.

Proposed Language of Amendment

Section 1704 (c) shall be added to read:

(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.

3. Contribution Limitations

Recommendation

The TPA should be amended to apply contribution limits to Pasadena races: \$1,000 per election for City Council and \$2,000 per election for Mayor, adjusted for cost of living increases every two years, rounded off to the nearest \$100. Section 1706.5.

Background

The Political Reform Act of 1974 allows cities and counties in California to impose additional requirements on local races if they do not conflict with the provisions of the Act. Gov't Code Section 81013. In the 30 years since the passage of the Act, several cities and counties have enacted limitations on campaign contributions to city or county candidate races. Such limitations are constitutional under *Buckley v. Valeo* decided by the U.S. Supreme Court, 424 U.S. 1 (1976). The TPA did not set campaign contribution limits. At the same time the Task Force submits that limitations on campaign contributions are consistent with the TPA's expressed purposes in Sections 1702 (a), (b) and (c).

Reasons for Amendment

Most contributions in Pasadena races are less than \$1,000 but campaign reports reveal a few instances of multi-thousand dollar contributions to individual candidates. Large contributions may create an appearance of corruption. The limit recommended is a high one, but its existence should mean that no contributor can dominate the candidate by virtue of their contribution. Limiting contributions may encourage more candidates to run for office since these candidates may be able to appeal to a number of small contributors, and they won't be faced with opponents who receive large contributions.

Limiting contributions addresses the concern that the TPA only covers contributions after decisions are made.

Proposed Language of Amendment

Section 1706.5 shall be added to read:

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).

4. Ballot Measure Committees

Recommendation

The TPA should also cover Pasadena public officials who raise money for local ballot measure committees that the official controls. Section 1703 (c) (3).

Background

Section 1703 (c) (3) of the TPA prohibits receipt of "any campaign contributions for any elective office said official may pursue." However, it does not prohibit contributions raised by the public official for a local ballot measure committee that he or she may control.

Arguments in Favor of Amending the TPA

If contributions raised by a public official for his or her own election campaign are prohibited because they are from a public benefit source, such contributions raised by the public official for a City ballot measure campaign controlled by the public official

should also be prohibited. To hold otherwise would result in circumvention of the TPA's purposes.

The Fair Political Practices Commission adopted a regulation that stated that contribution limitations that applied to state candidates should also apply to ballot measure committees controlled by these candidates. The same policy should be applied here.

Proposed Language of Amendment

Section 1703 (c) (3) shall be amended to read:

(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.

5. Outside Election Races

The TPA should only apply to officials and candidates in Pasadena races and not elections outside of Pasadena. Section 1703 (c) (3).

Background

Section 1703 (c) (3) extends the prohibition in the TPA to contributions to "any office said official may pursue." Thus, if a City official runs for State Assembly, county supervisor, Congress, or any other office outside of Pasadena, the TPA ban on contributions applies to those races.

It seems clear that the Federal Election Campaign Act pre-empts the TPA so that the TPA provisions applying to federal races are invalid. It is not as clear that state law pre-empts the TPA for state races.

Arguments in Favor of Amending the TPA

Since the TPA cannot affect federal races, it makes sense to specifically exclude such contests from the law.

In other races outside Pasadena, it seems unfair to penalize candidates who are from Pasadena when they run for State Assembly or other contests where all the other candidates are not subject to the same prohibitions. Mayors or Councilmembers in other jurisdictions are free to raise campaign contributions from persons they benefit since the TPA does not extend to those jurisdictions.

The Task Force noted that very few Pasadena Councilmembers have run for offices outside Pasadena. Further, given the lack of clarity as to the constitutionality of the TPA's application to these races, and the possible cost to the City and the taxpayers over litigation as to its application, the Task Force concluded that the TPA's application should be limited to City races.

Proposed Language of Amendment

Section 1703 (c) (3) shall be amended to read:

(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.

6. Enforcement

Recommendation

The City should authorize the City Attorney to bring criminal actions except in cases involving elected City officials in which case the City Attorney should send the complaint to the Los Angeles County District Attorney's office. The current law that allows citizens to bring private civil actions should not be changed. Section 1707 (a) and (c).

Background

The TPA does not specifically indicate which official may bring a criminal misdemeanor prosecution. In Pasadena, the City Attorney is given authority to bring criminal cases involving violation of City law.

Arguments in Favor of Amending the TPA

The City Attorney has an inherent conflict of interest in bringing enforcement cases against the people who hire her (the Mayor and the City Council). She is put in an awkward position in even having to investigate such cases. However, in cases involving non-elected officials, the City Attorney does not have a conflict and should bring cases if appropriate.

The Los Angeles County District Attorney has the legal authority and resources to investigate and where warranted, prosecute violations of the TPA by the Mayor or City Councilmembers.

Proposed Language of Amendments

Section 1707 (a) shall be amended to read:

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.

7. Subpoena Power

Recommendation

The TPA should give subpoena authority to the City Attorney and to the L.A. County District Attorney where applicable. Section 1705 (d).

Background

Section 1707 of the TPA has criminal and civil enforcement provisions but does not authorize anyone to issue subpoenas.

Many reform acts, including the Political Reform Act of 1974, authorize the enforcing agencies to issue subpoenas if needed.

Arguments in Favor of Amending the TPA

Subpoenas are a necessary enforcement tool to ensure that the investigators are able to obtain records and testimony.

Investigations may not be able to be completed without subpoena authority.

Proposed Language of Amendment

Subdivision (d) shall be added to Section 1707 to read:

(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.

8. Agencies Outside the City

Recommendation

The TPA should only apply to Councilmembers or other City officials serving on outside boards as City representatives (e.g., the Burbank Airport Authority), if these other agencies have reporting requirements allowing compliance with the TPA. Section 1704 (b).

Background

Section 1704 (b) of the TPA applies its provisions to all jurisdictions on which Pasadena officials serve. Many Councilmembers and City staff serve on other governmental agencies that are not within the jurisdiction of the City. None of these outside agencies, however, are required to comply with the TPA, and none have to compile the data necessary for compliance by City officials.

Arguments in Favor of Amending the TPA

It is costly and burdensome for City officials to go to outside agencies and keep track of potential prohibited sources. They are at the mercy of the outside agencies which have their own regulations and reporting requirements.

Unless the outside agency voluntarily provides the necessary information to the City, the Pasadena official serving on the agency will be in the dark, not knowing the names of officers and directors of the entities receiving benefits from that agency. Under the TPA as it stands that Pasadena official will still be held responsible for receipt of campaign contributions from those officers and directors. The Task Force recommends removing the application of the TPA to these outside agencies unless they provide the City the same kind of tracking information which the City maintains with respect to its own award of benefits.

Proposed Language of Amendment

Section 1704 (b) should be amended to read:

(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. 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.

9. Thresholds

Recommendation

The thresholds for determining which decisions should be affected by the TPA should be the same (over \$25,000) in most instances. The only exceptions would be the grant of a tax abatement, exception or benefit, which should remain at over \$5,000 in a twelve-month period and awarding of franchises worth over \$50,000 in gross receipts. The thresholds should be adjusted for cost of living increases every five years and rounded off to the nearest \$1,000. Section 1703 (a) (7) and (9).

Background

Section 1703 (a) of the TPA sets different threshold requirements for different decisions:

- (1) Personal services worth in excess of \$25,000 over a 12-month period.
- (2) Sale of materials, supplies or equipment to the City worth over \$25,000 in a 12-month period.
- (3) Purchase or sale or lease of real property to and from the City worth over \$25,000 in a 12-month period.
- (4) Award of a franchise to conduct any business activity in a territory where no other competitor is available to provide similar services if gross revenues worth over \$50,000 in a 12-month period.
- (5) Grant of a land use variance, special use permit, or other exception to pre-existing master plan or land use ordinance if worth over \$25,000.
- (6) Grant of a tax abatement, exception or benefit not generally applicable if worth over \$5,000 in a 12-month period.
- (7) Received cash or specie of a net value to the recipient worth over \$10,000 in a 12-month period.

Four of the seven thresholds are set at over \$25,000 with the other thresholds ranging from \$5,000 to \$50,000.

Arguments in Favor of Amending the TPA

Different thresholds make it more difficult to comply with the provisions of the law. In addition, two of the thresholds seem to conflict with each other. Personal services worth in excess of \$25,000 (1) seem to conflict with the last provision which sets the threshold at over \$10,000 for receiving cash or specie (7). Thus, a person receiving cash for personal services may come within the provisions at over \$10,000, not over \$25,000.

Proposed Language of Amendment

Section 1703 (a) (7) shall be amended to read:

(7) receive cash or specie of a net value to the recipient in excess of ~~\$10,000~~
\$25,000 in any 12 month period.

10. Disclosure Implementation

Recommendation

The files of the City listing those persons who would be prohibited from providing personal advantages to City officials who have made a decision benefiting them should be posted on the internet so that the records are available to the public in an easy-to-use and timely manner. Section 1705 (c).

Background

The City Clerk and City Manager and each department now maintain separate files listing those persons who would be prohibited from providing personal advantages to City officials who have made a decision benefiting them. These files are readily accessible to the public but they are not available on the internet.

Arguments in Favor of Amending the TPA

It would be easier to use a computer to look up information than having to go to one or more offices to get paper documents. The data is being collected electronically so it should be relatively simple to be converted so that the public can access it electronically.

Proposed Language of Amendment

Section 1705 (c) shall be added to read:

(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.

11. Cumulation

The TPA should eliminate the need to cumulate public benefits in amounts under \$5,000 unless it is clear that the amounts will meet or exceed the thresholds. Section 1703 (a) (8).

Background

City officials currently keep track of all expenditures made by the City in case they eventually meet the thresholds in the TPA.

Reasons for Amendment

The record-keeping of small expenditures made by the City is costly and in most cases unnecessary. The City should only be tracking large expenditures unless it has reason to believe that such expenditures will exceed the thresholds in the TPA.

Proposed Language of Amendment

Section 1703 (a) (8) shall be added to read:

(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).

12. Franchises

Recommendation

The TPA should be clarified to require that the franchise has to be awarded by the City. Section 1703 (a) (4).

Background

Section 1703 (a) states that a public benefit includes "a contract, benefit, or arrangement between the City and any individual, corporation, firm, partnership, association, or other person or entity to:

(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,"

Argument for Amending the TPA

The language of the TPA needs to be absolutely clear that the decision specified is the City awarding a franchise, not a franchise awarded to the City.

Proposed Language of Amendment

Section 1703 (a) (4) shall be amended to read:

(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,”

FISCAL IMPACT

City staff has informed the Task Force that its ongoing costs approximate \$192,400 for City departments to implement the TPA. If pre-contract tracking is implemented as recommended by the Task Force, staff estimates a yearly cost of \$256,000. The Task Force notes that most of these costs are incurred by the allocation of present City employees to meet the requirements of the TPA. There would be a one-time cost in setting up a tracking program on the internet, but by providing the tracking information on the internet, staff would save future copying, equipment and staff costs in processing public records requests for the information.

The Los Angeles Registrar Recorder/County Clerk has provided an estimate of \$122,000 to place a City measure on the June 6, 2006 State Primary ballot. Comparatively, to place a measure on the March 6, 2007 Primary Municipal ballot would cost approximately \$10,000. If the Council decides to place the proposed Charter amendments on a consolidated ballot with the June 6, 2006 State Primary Election, staff will return to Council at the March 6, 2006 Council meeting with the formal resolutions calling the election and a funding recommendation. Formal election resolutions would need to be adopted and submitted to the Registrar Recorder/County Clerk prior to the March 10, 2006 88-day legal deadline.

CLOSING COMMENTS

In reaching our conclusions, we are mindful of the fact that there has been no evidence presented of corruption in Pasadena relating to campaign contributions, expenditures, gifts or employment. We know that no set of regulations will ever work to end all possibilities of corruption or the appearance of corruption. What we offer is the possibility that if the recommended amendments are adopted that conflicts and appearance of conflicts in the decision-making process will be minimized.

Respectfully submitted,


John K. Van de Kamp, Chair
Task Force on Good Government

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 ~~\$10,000~~ \$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

	Date	Document	Author
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