

Attachment "A"

INFORMATION TO CANDIDATES FOR CITY BOARDS AND COMMISSIONS

IMPLEMENTATION OF THE OAKS INITIATIVE

The Oaks Initiative, also known as the "Taxpayer Protection Act," was adopted by Santa Monica voters on November 2000, and amends the City Charter. Its requirements affect all City-elected and appointed officials, including Council-appointed board and commission members. Related litigation on this matter recently concluded, and accordingly, the City is implementing the Initiative. The City Attorney prepared the following information about the Initiative that may affect you if you are appointed to a Santa Monica Board or Commission. Please read it carefully before completing your application.

PERSONS SUBJECT TO THE INITIATIVE

"City public officials" must comply with the Initiative. The Initiative partially defines "public official" as including any elected or appointed public official acting in an official capacity." This would include:

- City Council members
- Planning Commission members
- City Manager and Department heads and designees who confer "public benefits" (e.g., contracts, purchase orders, and discretionary permits, variances or text amendments)

WHAT THE INITIATIVE REQUIRES

The Initiative prohibits City public officials who have approved or voted to approve a "public benefit"¹ from receiving a "personal or campaign advantage"² from the recipient of 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 "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. Example 1: A Councilmember/Commissioner who voted to approve a land use

¹ "Public benefits" include:

1. Personal services contracts in excess of \$25,000 over any 12 month period;
2. Sale of material, equipment or supplies to the City in excess of \$25,000 over a 12 month period;
3. Purchase, sale or lease of real property to or from the City in excess of \$25,000 over a 12 month period;
4. Non-competitive franchise awards with gross revenue of \$50,000 or more in any 12 month period;
5. 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;
6. Tax "abatement, exception, or benefit" of a value in excess of \$5,000 in any 12 month period; or
7. Payment of "cash or specie" of a net value to the recipient of \$10,000 in any 12 month period.

² "Personal or campaign advantage" includes:

1. Any gift, honoraria, emolument, or personal pecuniary benefit of a value in excess of \$50;
2. Any employment for compensation; and
3. Any campaign contributions for any elective office a City public official may pursue.

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project valued in excess of \$25,000 cannot thereafter receive from the "recipient" employment, a gift valued at \$50 or more, or any campaign contribution for the designated time period.

Example 2: An employee of the City or an operating company who approves a contract valued over \$25,000 cannot thereafter receive a gift valued at \$50 or more for the designated period.

DUTIES OF CITY PUBLIC OFFICIALS UNDER THE INITIATIVE

The City is working on the logistics of maintaining lists of persons or entities receiving "public benefits" from the City. Tracking will be required for qualifying "public benefits" conferred after May 12, 2005. "Public officials" have the following duties under the Initiative:

- > 1. Keep track of all actions by which you confer a "public benefit." <

The City will assist with this duty by tracking the conferring of "public benefits" on list(s) maintained by the City. Appropriate staff will assist Board members in tracking this information. Public officials may also wish to maintain their own records of their actions conferring benefits.

2. Keep track of all campaign contributions for any elective office you may pursue.

Public officials should keep track of contributions for any office they pursue, including those outside the City (such as state or federal office). Since officials cannot receive campaign contributions from those upon whom they have conferred a "public benefit," they should monitor whether campaign contributors are on the list(s) of qualifying "public benefits" they have conferred. The Initiative does not prohibit receiving campaign contributions/gifts **before** officials approve or vote to approve the "public benefit."

- > 3. Return any "personal or campaign advantages" you may receive within 10 days of its receipt. <

Officials must return any of these advantages to the donor if they have also conferred a "public benefit" on the donor. For example, if an official approves purchases of \$25,000 of equipment and the vendor thereafter gives the official two \$30 tickets to a concert, the official must return the tickets in 10 days.

4. Provide, upon inquiry, the names of all recipients of "public benefits" you voted to confer or otherwise conferred.

You may provide your own list or refer the person making the request to the City Clerk or other appropriate City workers.

PENALTIES

A civil action may be brought against the City public official and a civil monetary penalty may be imposed. Knowing or willful violations may result in a misdemeanor prosecution.

Copies of the Initiative are available from the Office of the City Clerk. Questions may be directed to the City Attorney or the City Clerk.

City Clerk's Office
August 2006

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2201. Findings and declarations.

(a) The people of the City of Santa Monica (“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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2202. 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 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 2202(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.

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2203. 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 2202(a) may receive a personal or campaign advantage as defined in Section 2202(c) from a person as defined in Section 2202(b) for a period beginning on the date the official approves or votes to approve the public benefit, and ending no later than:

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

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

(b) Section 2203(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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2204. 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 2202(a) has been conferred, and to monitor personal or campaign advantages enumerated under Section 2202(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 Section 2202 and 2203.

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2205. 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 2202(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.

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2206. 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 2203. 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.

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2207. 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.

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