

MEASURE SM

CITY COUNCIL PROPOSED MEASURE TO AMEND CITY CHARTER ARTICLE XXII -THE CITY OF SANTA MONICA TAXPAYER PROTECTION AMENDMENT OF 2000 – SO AS TO EXTEND AND TO CLARIFY ITS PROVISIONS

WHEREAS, the City Council wishes to place before the voters a measure that would amend City Charter Article XXII, the City of Santa Monica Taxpayer Protection Amendment of 2000, also sometimes referred to popularly as the "Oaks Initiative", to strengthen and to better effectuate the provisions of Article XXII.

NOW, THEREFORE,

Section 1. Article XXII of the Santa Monica City Charter is amended as follows:

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: or of another entity that owns or controls the entity receiving the public benefit, excepting persons serving in those capacities as volunteers, without compensation, for organizations exempt from income taxes under Section 501(c)(3), (4), or (6) of the Internal Revenues Code. However, this exception

(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. This includes, but is not limited to: City Council members, Planning Commission members, and the City Manager and Department Heads and their designees who confer “public benefits” as defined in this section.

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) and no person or entity who has received a public benefit may confer a personal or campaign advantage upon a public official who exercised discretion to confer that public benefit 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.

(c) 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) in any geographic location, including within and outside the geographic boundaries of Santa Monica.

2206. Penalties and enforcement.

(a) In addition to all other penalties and remedies which might apply, any knowing and willful violation of this Article by a public official or a person or entity receiving a public benefit as defined in Section 2202(b) constitutes a criminal misdemeanor offense.

(b) A civil action may be brought ~~under this Article~~ against any person ~~public official who violates this article receives a personal or campaign advantage in violation of Section 2203.~~ A finding of liability shall subject the ~~public official~~ violation to one or more of 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

(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) When the City Attorney receives a complaint containing a violation of this Article from any person or entity, the City Attorney must promptly, for the purposes of assessment and prosecution, either:

(1) Refer the complaint to the Chief Deputy of the Criminal Division or another attorney in the City Attorney's Office; or

(2) Refer the complaint to an independent investigator hired by the City.

Section 2. If any section, subsection, sentence, clause or phrase of this measure is for any reason held to be unconstitutional or otherwise legally invalid by a decision of any court of competent jurisdiction, such decision shall not affect the validity and force of the remaining portions of this measure. The City Council hereby declares that it would have placed this City Charter amendment before the voters, and the voters declare that they would have adopted this Charter Amendment and each portion thereof regardless of the fact that any portion may be subsequently declared invalid.