



Joseph M. Ferguson
Inspector General

OFFICE OF INSPECTOR GENERAL *City of Chicago*

740 N. Sedgwick Street, Suite 200
Chicago, Illinois 60654
Telephone: (773) 478-7799
Fax: (773) 478-3949

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To the Mayor, Members of the City Council, City Clerk, City Treasurer, and residents of the City of Chicago:

In October 2011, the Inspector General's Office (IGO) released a public report detailing the process by which charitable entities are named as beneficiaries in City Tax Increment Financing (TIF) redevelopment agreements (RDAs) through contractual provisions known as "Public Benefits Clauses." That report found that the City's process for selecting private beneficiaries lacked transparency and accountability, which created a risk for preferential treatment. The IGO recommended that the City either discontinue its inclusion of private non-profits as recipients of public benefits clauses or take immediate steps to improve both transparency and accountability in the public benefits process. Today, the IGO releases a follow-up report that describes 10 additional, previously undisclosed public benefits clauses and details and assesses the City's actions taken in response to findings published in the IGO's 2011 report.

Earlier last month, the IGO provided the enclosed report to the Department of Housing and Economic Development (DHED) for comment. As detailed in the report, in March 2012, the Mayor's Office and DHED issued new "Tax Increment Financing Policy Guidelines" which restricted cash donations to just those private entities "integrally involved" in a TIF project. The IGO noted that while the new guideline did limit the practice, as then drafted, the guideline did not eliminate the naming of private entities as recipients of public benefits clauses and did not provide criteria or procedures for the qualification, identification, or selection of entities that are "integrally involved in the TIF-funded project." The IGO follow-up concluded that the City's 2012 guidelines neither barred the practice, nor fully addressed the transparency, accountability, and preferential treatment concerns raised in the IGO's 2011 report.

DHED was immediately responsive to the concerns noted in the IGO's follow-up report and has taken steps to address those concerns. Specifically, in its response, which is being posted with the IGO's follow-up report, DHED stated that the practice of directing cash donations to private entities through TIF agreements stopped in 2009 and that, under the current administration, the practice is not permitted. In further response, DHED has revised the TIF Guidelines to reflect the City's "true intent." Consistent with the IGO's 2011 report recommendation, the further revised TIF Guidelines affirmatively prohibit the City's practice of directing cash donations to private charities by eliminating an exception for private charities integrally involved in a TIF funded project. DHED's formal termination and prohibition of the practice effectively moots the continuing concerns noted in both of the IGO reports. The IGO has separately communicated this conclusion to the Commissioner of DHED, whom we commend for his department's responsiveness in this matter.

More generally, the IGO appreciates the City's efforts to address an issue that presented significant concerns regarding transparency and accountability in the City's TIF program. The IGO will continue to monitor the City's use of public benefits clauses and the TIF program to ensure it is administered effectively and with transparency and accountability.

As always, I welcome your ideas, suggestions, comments, and questions.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J. Ferguson', with a stylized flourish extending to the right.

Joseph M. Ferguson
Inspector General
City of Chicago

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REPORT OF THE INSPECTOR GENERAL'S OFFICE:

***FOLLOW-UP REPORT TO 2011 REVIEW OF TIF PUBLIC
BENEFITS CLAUSES AND CHARITABLE DONATIONS***

NOVEMBER 2012

866-IG-TIPLINE (866-448-4754)
www.chicagoinspectorgeneral.org

In October 2011, the Inspector General's Office (IGO) released a public report detailing the process by which charitable entities are named as beneficiaries in City Tax Increment Financing (TIF) redevelopment agreements (RDAs) through contractual provisions known as "Public Benefits Clauses."¹ Today, the IGO releases a follow-up that describes 10 additional, previously undisclosed public benefits clauses as well as the City's actions in response to the 2011 IGO report and details the IGO's continued concerns regarding the City's lack of clear criteria for the selection of public benefits clause recipients.

BACKGROUND

Although RDAs are publicly recorded and published on the City's website, the details of public benefits clauses are frequently not made public. The IGO's 2011 review of public benefits clauses revealed the following:

- Of the 73 RDAs identified by the City as including public benefits clauses from 1985 through 2009, 27 directed cash contributions to private non-profit organizations. The City provided the IGO with brief summaries of the public benefits clauses and could not say with complete certainty that the list reflected every public benefits clause, but asserted that the list was "substantially complete."
- TIF recipients interviewed by the IGO stated that, in the vast majority of cases, the recipients of public benefits were unilaterally chosen by the City.
- The City lacked clearly established policies or procedures for the selection of organizations benefiting from public benefits agreements.
- The City's selection of public benefits recipients in the TIF negotiation process lacked accountability. City employees interviewed by the IGO could not identify any specific employees ultimately responsible for the selection of public benefits clause beneficiaries and provided only the general explanation that decisions are made collectively by the Department of Housing and Economic Development (DHED), the Mayor's Office, and aldermen.

The IGO recommended that the City either discontinue its inclusion of private non-profits as recipients of public benefits clauses or take immediate steps to improve both transparency and accountability in the public benefits process. If the City chose to continue to leverage TIF subsidies to private corporations for the benefit of private non-profits, the IGO recommended that the City establish an open process, using publicly disclosed criteria, for the selection of eligible public benefits clause beneficiaries and that TIF recipients be permitted to choose which eligible private charities they wish to support as a condition of the TIF subsidy.

¹ <http://chicagoinspectorgeneral.org/publications-and-press/press-releases/igo-review-of-tif-public-benefits-clauses-and-charitable-donations/>

FOLLOW-UP

Newly discovered public benefits clauses. In the course of an unrelated investigation conducted after the release of the IGO’s October 2011 report, the IGO identified additional public benefits clauses not included in the earlier report. These additional clauses had not been provided to the IGO in response to earlier requests and had not been made publicly available. The IGO asked DHED to produce copies of the additional clauses.

As a result of the IGO’s inquiry, DHED was able to locate 10 more redevelopment agreements containing public benefits clauses previously undisclosed to the public. Those 10 RDAs are summarized in the attached Appendix A, and an updated list of all 83 City agreements containing public benefits clauses is available on the IGO’s website. Four of the 10 additional public benefits clauses committed cash contributions to private entities:

Developer Entities	Summary of Public Benefit Commitment	Year	TIF Area
Primestore 119 LLC	\$70,000 to Far South CDC, \$25,000 to Jackie Robinson West Little League, and \$25,000 to Lemuel Austin Youth Foundation	2006	119th/I-57
Jewel Food Stores, Inc.	\$25,000 to Samuel Morse Elementary School’s YMCA Program, expand high school mentoring, and expand health and nutritional programs in project store	2006	Kinzie/ Desplaines
JTA Development, Inc.	\$10,000 to After School Matters’s KidStart Program and \$10,000 to Senior Satellite Center	2006	119th/I-57
LaSalle Street Capital LLC	Create new turnstile at Clinton Green Line stop, \$100,000 to Chicago Public Schools for After School Matters’s KidStart administration, \$110,000 to City of Chicago to acquire property for public park	2007	River West

City’s actions in response to original report. DHED further reported that shortly after the issuance of the IGO’s 2011 report, the Mayor’s Office issued the following directive:

[DHED] will not enter into any agreement that requires a developer, a vendor or other private party to make a public benefit payment in the form of a cash donation to a third party charity or private entity that is not integrally involved in a TIF-funded project.

In March 2012, this directive was incorporated in the new “Tax Increment Financing Policy Guidelines” published on DHED’s website.² Those Guidelines further explain that private

² http://www.cityofchicago.org/dam/city/depts/dcd/tif/plans/Policy_Guidelines_March_2012.pdf

developers may voluntarily support third party charities separate and apart from the City-assisted project and states, “[t]he City will permit cash payments to City delegate agencies and to not-for-profit corporations providing services in their capacity as retained parties to the City-assisted project.”

With this new TIF Policy Guideline, the Mayor’s Office and DHED have restricted cash donations to just those private entities integrally involved in a TIF project. The IGO notes, however, that because the guideline does not eliminate the naming of private entities as recipients of public benefits clauses, the failure to address the IGO’s findings that the City lacks internal accountability and publicly disclosed criteria for the selection of eligible beneficiaries constitutes a continued program shortcoming.

The continued lack of transparency in the public benefits process creates the potential for apparent preferential treatment or conflicts of interest in the selection of public benefits. As reported in the IGO’s 2011 report, City employees could not identify how specific entities, whether public or private, were chosen as public benefits recipients, or which individuals were responsible for making that determination, though many reported that aldermen were closely involved in the process. Likewise, the TIF funding recipients and the beneficiaries themselves were unaware of the criteria and responsible parties for the selection of beneficiaries. This lack of transparency is not fully rectified by the new TIF Policy Guideline, which does not provide criteria or procedures for the qualification, identification, or selection of entities that are “integrally involved in the TIF-funded project,” or which entities may be selected as “retained parties to the City-assisted project,” nor do they state who should make such a determination.

Moreover, while the new guideline prohibits DHED from *requiring* payment to an entity not integrally involved in a TIF project, the guideline is framed in terms that leave the door open to permit City employees’ direct or indirect suggestion of favored recipients. Given the continuing lack of transparency and stated criteria noted above, the guideline presents a compelling need for an express prohibition on City employees or agents referring or suggesting potential recipients to developers. These concerns, however, would be greatly ameliorated by the creation of a transparent process involving specific, accountable officials, applying express and publicly stated criteria for eligibility for receipt of public benefits pursuant to public benefits clauses in RDAs.

Appendix A**All Additional Public Benefits Clauses**

Developer Entities	Summary of Public Benefit Commitment	Year	TIF Area
Board of Trustees for UIC	Provide 45% M/WBE contract participants and establish various other M/WBE program guidelines	2000	Roosevelt/Union
Raven Theatre Co.	Provide local programming to City of Chicago's Children's Workshop Series	2003	Clark/Ridge
Wheatland Tube Company	Donate \$25,000 worth of electrical conduit to Habitat for Humanity	2005	45th/Western
River Village Townhomes	Make “commercially reasonable efforts” to increase M/WBE participation above the minimum amounts	2005	Chicago/Kingsbury
Medinah Temple	Make art space available and maintain a gallery at the Tree Studios Building	2005	Ohio/Wabash
Primestore 119 LLC	\$70,000 to Far South CDC, \$25,000 to Jackie Robinson West Little League, and \$25,000 to Lemuel Austin Youth Foundation	2006	119th/I-57
Jewel Food Stores, Inc.	\$25,000 to Samuel Morse Elementary School’s YMCA Program, expand high school mentoring, and expand health and nutritional programs in project store	2006	Kinzie/Desplaines
JTA Development, Inc.	\$10,000 to After School Matters’s KidStart Program and \$10,000 to Senior Satellite Center	2006	119th/I-57
LaSalle Street Capital LLC	Create new turnstile at Clinton Green Line stop, \$100,000 to Chicago Public Schools for After School Matters’s KidStart administration, \$110,000 to City of Chicago to acquire property for public park	2007	River West
MLRP Merlin	\$10,000 to Board of Education for City of Chicago to benefit Charles A. Prosser Academy	2008	Northwest Industrial