



Tax Stabilization Policy Report & Recommendations

~ Special Committee on Ways & Means ~

October 23, 2014

Introduction & Context

Out of concern that the City had approved dozens of Tax Stabilization Agreements (TSAs) over the past two decades, yet did not have comprehensive evaluation of the effectiveness of these incentives in terms of job creation, business growth and investment, and long-term financial benefit to the city, the City Council's Special Committee on Ways & Means began an examination and review of the City's taxation policies with a focus on tax stabilization agreements.

Between January 6, 2014 and March 3, 2014, the Committee held five hearings on the subject of tax stabilization agreements. The Committee heard from several witnesses, including the City's Finance Director, Director of Economic Development, Director of Planning & Development, Internal Auditor, Deputy City Solicitor, and Director of First Source. In addition, the Director of Buildings Futures testified before the Committee concerning his organization's involvement with compliance on the City's most recent tax stabilization agreements.

During the course of the hearings the Committee received from presenters several reports and analyses concerning various issues related to tax stabilization agreements. All of these items are available as appendices to this report.

Summary of Testimony

January 6, 2014

On January 6, 2014, the Committee heard testimony from Ms. Adrienne Southgate, Deputy City Solicitor for the City of Providence. Ms. Southgate presented the committee with a presentation (See Appendix 1) that detailed the history of tax stabilizations in Providence from 1983 to present. In addition, Ms. Southgate also discussed compliance monitoring issues that currently exist, the future utilization of TSAs, and the work currently underway by the new Tax Issues Task Force.

January 30, 2014

Internal Auditor Matthew M. Clarkin, Jr. appeared before the committee on January 30, 2014. Mr. Clarkin distributed a presentation (See Appendix 2) in which he reviewed the status of the thirty-six (36) current TSAs, reviewed the City's efforts to ensure compliance, made recommendations to improve compliance, and discussed the future use of tax stabilization agreements.

Mr. Clarkin told the Committee that the review of tax stabilization agreements was difficult to complete and took longer than expected due to the disjointed nature of the City's records. In addition, the City's compliance monitoring of recipients' requirements as stated in TSAs was described by Mr. Clarkin as "non-existent or deficient at best." A major reason for the lack of compliance verification, cited by Mr. Clarkin, was the absence of a defined position in the City that is solely responsible for all compliance issues.

The presentation included instances of a lack of compliance by TSA recipients in the area of payment of taxes, affordable housing, and First Source, apprenticeship, and MBE/WBE, both during the construction phase and post-construction.

February 6, 2014

Mr. Andrew Cortes, Director of Building Futures, discussed his organization's involvement with compliance monitoring of TSA projects during the construction phase. Mr. Cortes provided the committee with a brief summary of Building Futures' history (See Appendix 3) with the City of Providence, and a description of the responsibilities his organization has in monitoring TSA projects. In addition, Mr. Cortes presented his findings concerning construction-phase compliance on several TSA projects his organization is monitoring. Finally, Mr. Cortes discussed with the committee his opinion on the importance of apprenticeship programs.

February 26, 2014

Mr. Ruben Flores-Marzan, the City's Director of Planning & Development highlighted the arguments for and against the utilization of TSAs as an economic development tool (See Appendix 4). In addition, Mr. Flores-Marzan discussed alternatives to TSAs such as Tax Increment Financing (TIF) districts and public-private partnerships.

Mr. Flores-Marzan told the committee that if the City decides to continue to utilize TSAs as an economic development tool, specific criteria should be established to ensure that all parties understand the process and its commitments. Specifically, Mr. Marzan stated that the following questions or standards should be satisfied for each project:

- Suitability: ensure project is a good match to address the circumstances affecting the proposed site and its vicinity;
- Consistency: ensure project is compatible with adopted community planning strategies, plans, programs and projects;
- Cost-benefits: ensure project is a win for both the proponent and the city;
- Performance standards: ensure community receives tangent benefits from the project (jobs, capital improvements, goods and services provided by local businesses);
- Legal requirements: ensure project complies with legally-binding terms so as to safeguard the public interest and taxpayer dollars.

Ms. Natalie Lopes, Director of First Source, also testified before the committee on February 26, 2014 to discuss her department's efforts to ensure compliance with the city's First Source ordinance during the post-construction period of a TSA project. Ms. Lopes provided a report (See Appendix 5) that explained the post-construction monitoring process, and which presented hiring results for the period October 1 – December 31, 2013.

March 3, 2014

Mr. Lawrence J. Mancini, Director of Finance, described the efforts of the Taveras Administration's *Tax Task Force*. With respect to tax stabilizations, Mr. Mancini discussed issues he found with TSAs, including:

- Commencement date – in many cases the commencement date of the TSA is unclear.
- The amount of sustained rehabilitation required and the amount actually completed is often not defined.
- Payment of current taxes – in many cases it is unclear whether a property is up to date on current taxes.
- Many TSAs are not in compliance with First Source, apprenticeship, MBE/WBE, affordable housing, construction completion, and clawback requirements.
- First Source compliance by project owners with older TSAs has been minimal or nonexistent.
- Many older TSA agreements are out of compliance to the degree that a remedy is no longer feasible.

Mr. Mancini also discussed the actions taken to improve the TSA process and administration, including:

- Consolidation all TSA documents, agreements and ordinances into one data file.
- Complete examination of the ten TSAs granted under ordinance 21-235.
- Review of tax levy and tax payment compliance.
- Working with First Source and Building Futures to ensure compliance with MBE/WBE, and apprenticeship requirements.
- Use of the "Boston Model" for greater enforcement by withholding certificates of occupancy until substantial rehabilitation, permits and inspections are complete.
- The Department of Planning and Development has been making improvements to the processes for review of applications, long-term compliance, and monitoring.

Adrienne Southgate, Deputy City Solicitor, stated that when a company is not in compliance with a TSA agreement, the City should provide an alternative approach for the company to get back into compliance. She noted that one option would be to have such companies contribute the economic value of the labor that should have been used to a fund that would provide training, transportation for training, and equipment for training.

Findings & Recommendations

Finding # 1 - The research of TSAs was made more difficult by the fact that the name of the project was not consistent throughout all documentation. Additionally, the address and/or lot identification of a project as referenced in the TSA ordinance frequently changed after the project's completion. As a result, there was not a consistent identifier for each TSA that could be used to track the agreement.

Recommendation - The tax assessor should assign an identification number to all current and future TSAs. The identification number should indicate the respective years of approval and expiration of the agreement.

Finding # 2 – In several instances, TSA applications and supporting documentation were not found in the Assessor's file of TSA recipients.

Recommendation – The Administration should consolidate and standardize all applications and documents required to complete a TSA. A proposed TSA should not be presented to the City Council without a complete package of all required documentation. In addition, it is recommended that all TSA applications and supporting documentation be available via the City Assessor's and Planning Department's web pages on the City's official website.

Finding # 3 – The commencement date of TSAs varied from agreement to agreement. In some cases, the commencement date was at the time of approval of the ordinance establishing the TSA, while in other cases, the commencement date was after a completion of the construction phase of the project.

Recommendation – The commencement date on all future TSAs should be standardized.

Finding # 4 – In many instances, it was found that the ordinance establishing a TSA did not include an actual payment schedule. Instead, the payment structure or payment schedule was included as an attachment to the ordinance. In the review of the current TSA files, it was difficult to find the actual payment schedule for a TSA.

Recommendation – Tax payment schedules or payment structures should be incorporated into the ordinance establishing the TSA, and not as an exhibit or attachment.

Finding # 5 – The Internal Auditor found at the time of his review that six recipients of active TSAs were delinquent on their taxes. Remaining current on taxes for all properties owned by a recipient is a standard requirement in all TSAs.

Recommendation – The tax collector should contact any TSA recipient that is delinquent in order to immediately collect the taxes and interest charges due to the City. If a recipient cannot pay the total due but meets the eligibility requirements for a tax payment plan, the collector may

establish such a payment plan. Moving forward, the collector should inform the Director of Planning & Development of the tax status of all TSA recipients.

Additionally, should a recipient not be eligible for a payment plan or not adhere to the agreed upon payment schedule and the requirements of a payment plan, the late payment of taxes should trigger the loss of the tax stabilization for the period in which the taxes were delinquent.

Finding # 6 – As a result of the Internal Auditor’s review of current TSAs, \$106,000 in delinquent payments to the Providence Redevelopment Agency’s Housing Trust were identified and collected. The Department of Planning & Development received and processed these and other payments to the Housing Trust, but was not proactive in sending invoices to TSA recipients.

Recommendation – The Director of Planning & Development should mail invoices annually to TSA recipients for payments due to the Housing Trust.

Finding # 7 – There is not a defined position within the City that is solely responsible for the oversight of all aspects of recipients’ compliance with the requirements of a TSA. The City Collector, City Assessor, Director of Inspection & Standards, City Solicitor, Director of Economic Development and the Director of the Department of Planning & Development may all have contact with a TSA recipient.

Recommendation – The Director of Planning & Development should be the point person responsible for ensuring compliance with all matters relating to TSAs. In addition, the Director of Planning & Development should submit to the City Council annually, beginning September 30, 2015, a status report addressing the compliance of all current TSAs with the requirements of each agreement.

Finding # 8 – Several TSAs have a requirement that a minimum of 20 percent of the rental units in a project be offered below market value. It was found that the City does not have a process in place to determine how this requirement is being adhered to by recipients.

Recommendation – The Director of Planning & Development should immediately contract with a Rhode Island licensed real estate appraiser to establish the “market rate” for each TSA property that has an affordable housing requirement and then confirm compliance with the 20 percent below-market rental requirement for each TSA that contains such a stipulation.

Finding # 9 – The Department of Planning & Development has contracted with Building Futures to ensure compliance with the TSA during the construction phase of a project. Andrew Cortes, the Director of Building Futures, testified that in many instances it was difficult for his organization to track down the appropriate person at the recipient’s company/organization. Mr. Cortes noted that, as a result, the Initial Compliance Meeting often would be held weeks after the

project's construction phase had begun, and that the recipient was not always familiar with the requirements contained in the TSA.

Recommendation – The City Council should require, prior to approval of an ordinance establishing a TSA, that a letter be submitted to the Council, confirming that an Initial Compliance Meeting took place and listing the recipient's requirements contained in the TSA. The letter should be signed by the third party company/organization hired to ensure compliance during construction (currently Building Futures), the person(s) responsible to ensure compliance with First Source and with MBE/WBE requirements, and the prospective TSA recipient.

Finding # 10 – Several TSA recipients were found to be out of compliance with the requirements in their agreements. A few of the recipients are in a situation in which achieving a reasonable level of compliance is no longer feasible.

Recommendation – The City Solicitor should submit a report to the City Council no later than June 30, 2015 outlining the actions available to the City in dealing with TSA recipients who are out of compliance with the requirements in their respective agreements.

Finding # 11 – The Internal Auditor and the Deputy City Solicitor testified that it was difficult to gather information concerning current TSAs. The information was dispersed throughout various City departments.

Recommendation – There should be one depository or keeper of the records for TSAs. It is recommended that the Tax Assessor be responsible for maintaining complete files for all current and expired TSAs. In addition, all approved TSA applications, ordinances, and tax payment schedules should be available on the Assessor's web page on the City's website.

Finding # 12 – Post-construction compliance with the city's First Source ordinance was found to be uneven. The focus of monitoring efforts by the Director of First Source has been predominantly concentrated on the ten (10) TSAs approved under Section 21-235 of the Code of Ordinances.

Recommendation – It is recommended that the Director of First Source make personal contact to establish a reporting protocol with the recipients of all active TSAs.

Finding # 13 – The review and approval workflow for proposed TSAs among departments needs to be standardized.

Recommendation – Immediately upon the submission of an ordinance establishing a TSA to the City Council for review, all subsequent changes, corrections or amendments at the request of the City Council or Council Committee to the proposed ordinance document shall be crafted by the City Solicitor's office. Imposing this level of control on the format of tax stabilizations and other tax-preference treatments ensures that individual projects reflect the City's tax policies and

incorporate all the various developer commitments (First Source, WBE/MBE, apprenticeship, “Buy Providence,” affordable housing or proxy payments, etc.) which should be included.

Finding # 14

After months of research and discussion on how to best spur economic development in Providence, the Council-created *City of Providence Task Force on Economic Development* issued a report and recommendations in April 2014. A primary recommendation in the report was to establish certainty and reliability to the TSA approval process. In order to accomplish this, the Task Force recommended that TSAs be granted via an established administrative process without mayoral or council approval.

Recommendation –The City Council should approve one or more of the options below to standardize the TSA approval process.

Option 1: Establish through ordinance an administrative process and criteria for tax stabilization agreements that would require neither mayoral nor council approval. All agreements would include the following parameters:

- (a) A fifteen-year stabilization period.
- (b) Taxes paid during the first five years would remain at the base amount owed in year one, prior to construction;
- (c) Ten-year phase in of tax on new value resulting from construction or rehabilitation, at at 10 percent (i.e. base tax+10% in year six, base tax + 20% in year seven and so on).
- (d) Properties would not be subject to revaluation, but beginning in year six, would be subject to changes in the City’s tax rate;
- (e) Eligible properties include new construction or rehabilitation of commercial or multi-family residential with construction costs the greater of \$500,000 or 50 percent of the assessed valuation prior to construction.
- (f) Compliance with MBE/WBE, apprenticeship, First Source, and Buy Providence requirements.

Option 1 is detailed in an ordinance establishing the “Property Tax Predictability Act,” which was introduced on July 2, 2014 by Council President Michael A. Solomon, and referred to the Special Committee on Ways and Means.

Option 2: Establish a hybrid tax stabilization policy, which would provide an administrative process for certain types of projects.

- (a) Utilize the administrative process recommended in Option 1, but limit to a zone that includes only the I-195 parcels, and increase construction cost threshold to \$1 million;
- (b) Incentive smaller-scale projects by creating a five-year TSA structure, also granted via an administrative process. To be eligible for this administrative TSA, the value of the new

construction (excluding land acquisition costs) would need to be reach a minimum value of \$500,000; or the rehabilitation of commercial or multi-family residential would need to reach a minimum cost of construction of at least \$500,000 and at least fifty-percent (50%) of the current assessed property valuation. This five-year TSA structure, which would sunset in 24 months after final approval by the Council and Mayor, would be available for projects throughout the city.

- (c) Projects that do not meet the requirements of (a) or (b) would be reviewed and approved by the City Council and Mayor through individual ordinances.

Finding #15 – There is a question concerning the economic impact and wisdom of granting extensions—additional years of a preferential tax payment plan—to existing Agreements.

Recommendation – The City Council should institute a moratorium through the current fiscal year on extensions to existing TSAs until the issue has been more completely studied by the City Council and incoming mayoral administration.

Finding #16 – What constitutes “compliance” when it comes to the Minority Business Enterprises and Women Business Enterprises – other than reaching the percentage goal set in the TSA – is uncertain. In most TSAs, it is required that the recipient use its “best efforts” to make awards to MBE/WBE companies. The vagueness of this language leads to confusion and uncertainty regarding what is compliance.

Recommendation – A clear definition of “best efforts” or “good faith efforts” should be established and included in all future TSAs.

Finding #17 – There have not been safeguards in place in past TSAs that would prohibit a recipient from selling a property immediately after the expiration of a TSA to a non-profit organization, which would therefore deprive the City from realizing the full economic benefit of an Agreement.

Recommendation – The City Council should require that the language (shown below) from the most recently approved TSA which prohibited the sale of a TSA property to a tax exempt entity for at least five years after the expiration of an Agreement be included in all future agreements.

“In the event that a Project Owner transfers a Project Site to a tax exempt entity within the five year period immediately following the expiration of this Ordinance, the Project Owner agrees to pay a percentage of the sale price to the City of Providence as follows: five percent (5%) of the sale price if the Project Site is sold to a tax exempt entity in the first year following expiration; four percent (4%) of the sale price if sold to a tax exempt entity in the second year; three percent (3%) of the sale price if sold to a tax exempt entity in the third year; two percent of the sale price if sold to a tax exempt

entity in the fourth year; one percent (1%) of the sale price if sold to a tax exempt entity in the fifth year.

Finding # 18 – Formal fiscal notes comparing the estimated “true tax” of a project over the period of a TSA versus the estimated tax to be paid under the terms of an Agreement were not presented to the City Council for many, if not most, TSAs.

Recommendation – The Director of Finance should provide to the City Council a comparison of the estimated true tax versus the estimated actual tax to be paid under the terms of the TSA.

Recommendations & Implementation

Recommendation	Policy (Resolution)	Ordinance
Recommendation # 1		
Tax Assessor should assign an identification number to all TSAs	✓	
Recommendation # 2		
The Administration should consolidate and standardize all applications and documents required to complete a TSA. A proposed TSA should not be presented to the City Council without a complete package of all required documentation. In addition, it is recommended that all TSA applications and supporting documentation be available via the City Assessor's and Planning Department's web pages on the City's official website.	✓	✓
Recommendation # 3		
The commencement date on all future TSAs should be standardized.		✓
Recommendation # 4		
Tax payment schedules or payment structures should be incorporated into the ordinance establishing the TSA, and not as an exhibit or attachment.	✓	
Recommendation # 5		
The tax collector should contact any TSA recipient that is delinquent in order to immediately collect the taxes and interest charges due to the City. If a recipient cannot pay the total due but meets the eligibility requirements for a tax payment plan, the collector may establish such a payment plan. Moving forward, the collector should inform the Director of Planning & Development of the tax status of all TSA recipients. Additionally, should a recipient not be eligible for a payment plan or not adhere to agreed upon payment schedule and the requirements of a payment plan, the late payment of taxes will trigger the loss of the tax stabilization for the period in which the taxes were delinquent.	✓	
Recommendation # 6		
The Director of Planning & Development should mail invoices annually for payments due to the Housing Trust to TSA recipients who are required to make such payments.	✓	

Recommendation	Policy (Resolution)	Ordinance
<p>Recommendation # 7</p> <p>The Director of Planning & Development should be the point person responsible for ensuring compliance with all matters relating to TSAs. In addition, the Director of Planning & Development shall submit to the City Council annually, beginning September 30, 2015, a status report addressing the compliance of all current TSAs with the requirements of each agreement.</p>	✓	✓
<p>Recommendation # 8</p> <p>The Director of Planning & Development should immediately contract with a Rhode Island licensed real estate appraiser to establish the "market rate" for each TSA property that has an affordable housing requirement and then confirm compliance with the 20% below-market rental requirement for each TSA that contains such a stipulation.</p>	✓	
<p>Recommendation # 9</p> <p>The City Council should require, prior to approval of an ordinance establishing a TSA, that a letter be submitted to the Council signed by the third party company/organization hired to ensure compliance during construction (currently Building Futures), the person(s) responsible to ensure compliance with First Source and with MBE/WBE requirements, and the prospective TSA recipient confirming that an Initial Compliance Meeting took place and listing the recipient's requirements contained in the TSA.</p>	✓	
<p>Recommendation # 10</p> <p>The City Solicitor should submit a report to the City Council no later than June 30, 2015 outlining the actions available to the city in dealing with TSA recipients who are out of compliance with the requirements in their respective agreements.</p>	✓	
<p>Recommendation # 11</p> <p>There should be one depository or keeper of the records when it comes to TSAs. It is recommended that the Tax Assessor be responsible for maintaining complete files for all current and expired TSAs. In addition, all approved TSA applications, ordinances, and tax payment schedules should be available on the Assessor's web page on the City's website.</p>	✓	
<p>Recommendation # 12</p> <p>It is recommended that the Director of First Source make personal contact to establish a reporting protocol with the recipients of all current TSAs.</p>	✓	

Recommendation	Policy (Resolution)	Ordinance
<p>Recommendation # 13 Immediately upon the submission of an ordinance establishing a TSA to the City Council for review, all subsequent changes, corrections or amendments at the request of the City Council or Council Committee to the proposed ordinance document shall be crafted by the City Solicitor's office. Imposing this level of control on the format of tax stabilizations and other tax-preference treatments ensures that particular projects reflect the City's tax policies and incorporate all the various developer commitments (First Source, WBE/MBE, apprenticeship, "Buy Providence," affordable housing or proxy payments, etc.) which should be included.</p>	✓	
<p>Recommendation # 14 The City Council should approve one or more of the options included in recommendations to standardize the TSA approval process.</p>		✓
<p>Recommendation #15 The City Council should institute a moratorium through the current fiscal year on granting extensions to existing TSAs until the this issue has been more completely studied by the City Council and incoming mayoral administration, and a review of the fiscal impact has been studied.</p>	✓	
<p>Recommendation # 16 A clear definition of "best efforts" or "good faith efforts" should be established and included in all future TSAs.</p>	✓	
<p>Recommendation # 17 The City Council should require that the language (shown below) from the most recently approved TSA which prohibited the sale of a TSA property to a tax exempt entity for at least five years after the expiration of an Agreement be included in all future agreements.</p>	✓	
<p>Recommendation # 18 The finance director should provide to the City Council a comparison of the estimated true tax versus the estimated actual tax to be paid under the terms of the TSA.</p>	✓	

Conclusion

Tax stabilization agreements are an important tool to incentive economic development and thus increase the City's tax base. Therefore, it is wise that the City Council and future administrations be open minded concerning development projects that will greatly benefit Providence's economy but which are not feasible without the issuance of a TSA.

Throughout this process, it became evident that the City must streamline and improve the submission and its deliberation procedure for future TSAs, in order to provide potential developers and the public with a consistent, transparent and efficient process.

In addition, it is vital that the City make significant improvements to its monitoring of existing TSAs to ensure compliance with the requirements established in these Agreements. The recommendations in this report will result in the City accomplishing these important improvements.