MEMORANDUM

DATE: June 25, 2010
TO: Whitney Benzian, Rules Committee, City of San Diego
CC: Elizabeth Maland, City Clerk, City of San Diego
FROM: Jason Everitt, Middle Class Taxpayer Association
SUBJECT: Amendments to Measures submitted for November 2, 2010 Ballot

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On June 11, 2010, following Council Policy 000-21, I had submitted three ballot measures to be considered by the Rules Committee on June 16, 2010. The discussion on my proposed ballot measures was continued to the hearing on June 30.

In response to the feedback received since I proposed these measures, I respectfully propose amendments to these three measures. The amendments are described below:

(1) Taxpayer Right-to-Know – Private Contracting

Shall the city charter be amended with to require contractors receiving public funds to the same public disclosure rules as government entities?

(see attachment 1)

Old Version:
Amend San Diego City Charter Section 2. Article XIV to add Section 215.1 that would make City contractors subject to the same public disclosure requirements that would apply if they were government entities. This would apply to public works contracts and contracts for personal services, goods, and consultants.

New Version:
Amend San Diego City Charter Section 2. Article XIV to add Section 215.1 that would make City contractors subject to the same public disclosure requirements that would apply if they were government entities. This would apply to public works contracts and contracts for personal services, goods, and consultants.
<u>This would apply to all direct outsourcing contracts. This would exempt franchise agreements, if they were not awarded through Managed Competition under Charter Section 117(c). Small businesses employing twelve or fewer employees, including the business' parent and subsidiary entities, for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, are exempt.</u>

(2) Reforming Managed Competition to Require Fair and Open Competition

Shall the city charter be amended to define Managed Competition as the competition between city departments and independent contractors, and to require Managed Competition on contracts over $250,000 annually, with city forces being required to compete with independent contractors on public works contracts?

(see attachment 2)

Old Version:

Managed Competition is the competition between city departments and independent contractors, regardless of the current provider. Every contract valued at $250,000 or more annually is subject to Managed Competition, which must be competed every 5 years, with an extension of 2 years with City Council approval.

The City may employ any independent contractor or city department when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently ~~by an independent contractor than by persons employed in the Classified Service~~ while maintaining service quality and protecting the public interest.

New Version:

Managed Competition is the competition between city departments and independent contractors, regardless of the current provider. Every *contract* valued at $250,000 or more annually is subject to Managed Competition, which must be competed every 5 years, with an extension of 2 years with City Council approval.

For the purpose of this section, *contract* shall mean contracts for services, and public works contracts, and shall exclude professional service contracts and franchise agreements that have not been awarded through Managed Competition or direct outsourcing.

The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest.

(3) People's Right to Vote – Development Subsidies

Shall the city charter be amended to require that the use of City funds to assist commercial development projects be disclosed to the public, and approved by voters for financial assistance over $500,000.

The question is amended to read:

Shall the city charter be amended to require that the use of City funds to assist commercial development projects be disclosed to the public, and approved by voters for financial assistance over **$1,000,000**.

(see attachment 3)

There are three additional changes proposed in the text of the measure:
1. In Section 229(a)(2), reference to Section 4(a) is corrected to read Section 229(a)
2. In Section 229(a)(3)(2) the definition of Major Commercial Development Project was clarified to state that commercial development does not include primarily residential or industrial uses.
3. In Section 229(a)(3)(3) all references to financial assistance of $500,000 were changed to $1,000,000.

All three proposals are attached with the changes highlighted.

I re-affirm my request that the Rules Committee support these measures and ask the City Attorney to prepare City of San Diego Charter Amendments. Please draft the language of each of the Charter amendments to ensure that if there are any conflicting measures on the ballot, and each is approved by a majority of voters, then as to the conflicting subject matter, the highest affirmative vote shall prevail.

Sincerely,

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Jason Everitt

Attachments: (amended proposals with changes highlighted)
1. Taxpayer Right-to-Know – Private Contracting
2. Reforming Managed Competition to Require Fair and Open Competition
3. People's Right to Vote – Development Subsidies

ATTACHMENT 1 (amended June 25, 2010)

The Taxpayers' Right to Know - Private Contracting

The public may request and receive copies of records and documents from the City of San Diego and its government entities under the California Public Records Act, California Government Code Sections 6250 et seq.

Currently, there is no requirement for private entities who receive taxpayer-funded contracts to provide the same information to the public because they are not required to comply with the California Public Records Act.

The **Taxpayers' Right to Know Charter Amendment** would require contractors receiving public funds to follow the same public disclosure rules as the City of San Diego and its governmental entities. Specifically, it would require them to comply with the California Public Records Act.

In enacting this Charter Amendment, the voters, mindful of the right of individuals to privacy, find and declare that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the City of San Diego. The City of San Diego spends hundreds of million of taxpayer dollars on private contracts. Currently, there is no requirement for private entities who receive taxpayer-funded contracts to provide the same information, as does g to the public. This measure will ensure that the public knows how all their taxpayer dollars are being spent, and that private entities are held to the same disclosure requirements as government entities.

The **Taxpayers' Right to Know Charter Amendment**, if approved, would allow the public to obtain the same information from a private entity (individual, firm, limited liability company, partnership, joint venture, corporation, association or any other private legal entity) as they do from the City of San Diego and its governmental entities.

Amend San Diego City Charter Section 2. Article XIV to add Section 215.1 that would make City contractors subject to the same public disclosure requirements that would apply if they were government entities. This would apply to public works contracts and contracts for personal services, goods, and consultants. This would apply to all direct outsourcing contracts. This would not apply to franchise agreements that were not awarded through Managed Competition under Charter Section 117(c). Small businesses employing twelve or fewer employees, including the business' parent and subsidiary entities, for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, are exempt. Contractors' disclosure requirements pursuant to this Charter amendment would be the same as those

applicable to a local agency as that term is defined in the California Public Records Act California Government Code Sections 6250 *et seq.* The same exemptions that apply to government agencies, as set forth in the Public Records Act and in case law thereunder, would apply to City contractors. The Charter amendment would explicitly state that it would pertain only to documents related to the City contract and would not include a private entity to make any materials public that do not relate to the receipt of public moneys for the performance of the contract with the City of San Diego government entity.

ATTACHMENT 2 (amended June 25, 2010)

REFORMING MANAGED COMPETITION TO REQUIRE FAIR AND OPEN COMPETITION

Section 1. PURPOSE:
The purpose of this measure is to clarify the intent of Section 117(c) in regards to Managed Competition, enable the city departments to compete on contracts, and to subject contracts valued at $250,000 or more to Managed Competition.

Section 2. Article VIII of the Charter is hereby amended to read:

Section 117 (c): Managed Competition
Managed Competition is the competition between city departments and independent contractors, regardless of the current provider. Every *contract* valued at $250,000 or more annually is subject to Managed Competition, which must be competed every 5 years, with an extension of 2 years with City Council approval. For the purpose of this section, *contract* shall mean contracts for services, and public works contracts, and shall exclude professional service contracts and franchise agreements that have not been awarded through Managed Competition or direct outsourcing.
The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest.
The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The core public safety services provided by police officers, firefighters, and lifeguards who participate in the City's Safety Retirement System shall not be subject to Managed Competition. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract

through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor.

Section 3. Article VII is amended to read:

Section 94: Contracts
In the construction, reconstruction or repair of public buildings, streets, utilities and other public works, when the expenditure therefore shall exceed the sum established by ordinance of the City Council, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council, on the recommendation of the Manager or the head of the Department in charge if not under the Manager's jurisdiction, shall let the same to the lowest responsible and reliable bidder not less than ten days after advertising for one day in the official newspaper of the City for sealed proposals for the work contemplated. If the cost of said public contract work is of a lesser amount than the figure established by ordinance of the City Council, the Manager may let said contract without advertising for bids, but not until the Purchasing Agent of the City shall have secured competitive prices from contractors interested, which shall be taken under consideration before said contract is let. The Council may, however, establish by ordinance an amount below which the Manager may order the performance of any construction, reconstruction or repair work by appropriate City forces without approval by Council. When such Council approval is required, the Manager's recommendation shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract. <u>City departments shall submit competitive bids under Managed Competition Section 117(c), and the city shall award bids to either an independent contractor or to the city forces, neither of which shall be subject to limitations under any type of contract in this Article.</u>

ATTACHMENT 3 (amendment dated June 25, 2010)

PEOPLE'S RIGHT-TO-VOTE ON DEVELOPMENT SUBSIDIES

SECTION I. Intent and Purpose

Private, for-profit developers sometimes receive millions of dollars in financial assistance from the City for the development, construction, renovation, or expansion of Major Commercial Development Projects. The City often fails to provide members of the public with adequate information about how their tax dollars are being used to assist and finance such projects. Moreover, taxpayers are almost never given the opportunity to decide for themselves whether or not they believe the use of City Financial Assistance for a particular Major Commercial Development Project is justified.

PURPOSE:

(a) To ensure fair and open government by requiring that all Documents relevant to any proposed City Financial Assistance for a Major Commercial Development Project be made known and available to all interested residents of the City of San Diego. Before the city provides Financial Assistance for any major for-profit commercial development project such as hotel, conference center, office building, retail store, entertainment center, warehouse, or industrial plant, all documents relevant to the project should be disclosed to the public and the voters should have a right to vote on whether or not they wish to provide such assistance.

(b) To prevent the fiscal health of the City or its residents from being threatened in any way by any unnecessary or improper expenditures, disposition of public assets, undertaking of indebtedness, tax increases, or cuts in vital services in connection with providing assistance to any Major Commercial Development Project.

(c) For these reasons, to require that any proposed use of City Financial Assistance for a Major Commercial Development Project be submitted for approval by the voters of the City of San Diego, and that an election regarding the same be held only after all relevant Documents have been disclosed.

SECTION 2. Proposed Ballot Measure

The ballot measure will add the following ordinance to the City Charter:

Section 229. PEOPLE'S RIGHT TO VOTE ON DEVELOPMENT SUBSIDIES

(a) Guarantee of a Popular Vote on City Financial Assistance for Major Commercial Development Projects:

1) Notwithstanding any other provision of the Municipal Code, a majority of voters must approve in a regular election or in a special election called by the City Council any proposed use of City Financial Assistance in connection with any

Major Commercial Development Project in the City prior to the awarding of such assistance. If the use of City Financial Assistance is not approved by a majority of voters casting ballots in the election, the City shall be prohibited from providing such assistance.

2) At least 88 days prior to any election held pursuant to Section 229(a), the City shall cause to be made available in every library in the City, and directly to any member of the public requesting copies, all Documents pertaining to the Major Commercial Development Project to be considered in the election.

3) The following definitions shall apply for the purposes of this Ordinance:

(1) "City" shall mean the City of San Diego and, to the extent permitted under state law, all awarding authorities thereof, all City commissions, departments, boards, agencies and for-profit operating companies under the jurisdiction of the City Council, including all semi-autonomous commissions, departments and agencies that derive funding or authority from the City of San Diego, including those City departments which exercise independent control over their expenditure of funds.

(2) "Major Commercial Development Project" shall mean the development, construction, renovation, or expansion of any building or structure of which a principal use shall be by a for-profit, private business, provided that the project has a total value, including public and private expenditures, of more than $4,000,000. Commercial development does not include primarily residential or industrial uses.

(3) "City Financial Assistance" shall mean:

(i) the direct or indirect expenditure of more than $1,000,000 of City funds;

(ii) the issuing of, or application of the proceeds from, City obligations or City indebtedness, including revenue bonds or any other bonds including those pursuant to Government Code Sections 70701 *et. seq.*, 54300 *et.seq.*, and 43600 *et seq.*, or tax increment revenue bonds to the extent permitted by state law, in an amount in excess of $1,000,000;

(iii) the sale, lease or granting to any entity or person (including a public agency) of city land or fixtures, for less than fair market value, for which a Major Commercial Development Project is intended, provided that such land or fixtures together have a fair market value of over $1,000,000;

(iv) the waiver, abatement, or deferral of City fees, charges, or taxes worth more than $1,000,000, or the provision of City services of that value at reduced or no charge when such services are not offered on the same basis to all other businesses.

(v) The construction of, or the funding of the construction of, public improvements including but not limited to sidewalks, roadways, landscaping, parking facilities, piers, restrooms, or other structures worth in total more than $1,000,000, one of the principal beneficiaries of which may be a Major Commercial Development Project. A Major Commercial Development Project will be deemed one of the principal beneficiaries of improvements if there is a significant possibility that these improvements will be used or enjoyed at least as often by persons connected to the

development as by the general public. Persons connected to the development include, but are not limited to, customers, visitors, employees, tenants, guests, suppliers, owners, agents, contractors, lessees, and persons having a similar relationship with any of the aforementioned persons (for example, employees of tenants). The City shall not refuse to put improvements before voters on the ground that a commercial development will not be one of the principal beneficiaries unless the City has first obtained a report from experts independent of the City and of persons connected to the development showing the lack of significant possibility described above.

City Financial Assistance shall not include, and voter approval shall not be required for, the use of City funds or personnel for the processing of applications and potential entitlements, staff reports or related analyses related thereto, or other similar work or documents which are reasonably necessary to enable the City to determine whether to approve requested entitlements for a particular Major Commercial Development Project, or the recommended conditions or mitigation measures therefor; or to negotiate the potential terms of agreements governing the use of City Financial Assistance.

(4) "Documents" shall mean all papers and records in the City's possession or control.

(b) Legal Effect

1) This Ordinance shall apply, to the fullest extent permitted by law, to any proposed use of City Financial Assistance for a Major Commercial Development Project under consideration by the City or not yet binding at the time the measure is approved.
2) This Ordinance may be amended only by the vote of the electorate.
3) If this Ordinance conflicts with any existing ordinance of the City of San Diego, the people hereby amend said ordinance in order to conform to this Ordinance, which shall supersede any conflicting Ordinance.
4) The provisions of this Ordinance shall be liberally construed to effectuate its purposes and intent.
5) Should a court of competent jurisdiction find any provision or application of this Ordinance in conflict with any provision of law, the remaining provisions and applications shall not be affected but shall remain in full force and effect, and to this end the provisions of this Ordinance are severable.
6) Any resident of San Diego shall have standing to bring an action to enforce this Ordinance and shall be entitled to recover attorney's and expert witness fees if he or she prevails.