COUNCILMEMBER DAVID ALVAREZ

City of San Diego
Eighth District

MEMORANDUM

DATE: **November 13, 2013**

TO: **Council President Pro Tem Sherri Lightner, Chair, Rules & Economic Development Committee**

FROM: **Councilmember David Alvarez**

SUBJECT: **Open and Transparent Government City Charter Reforms**

Ensuring that San Diegans have broad and open access to government documents and information is critical to protecting the democratic process. I believe we have an opportunity to make important reforms to the City Charter that help protect the people's right of access to government by placing the attached changes to City Charter sections 215, 216, and 216.1 on the June 2014 ballot for voter consideration. I would request you docket these proposed changes at the Rules and Economic Development Committee for consideration as a ballot measure for the June 2014 election.

The suggested changes in section 215 include clarification regarding what types of information are open to inspection by the public, how and why denial of access to the public can be justified by government and establishing that when the need for secrecy becomes obsolete access can no longer be justified.

The suggested changes in section 216 include making any charge for the direct cost of duplication consistent with state law.

The suggested changes in section 216.1 include language changes to reflect application to the city rather than the state, clarification that access to records includes city employees and contractors, that limiting access to meetings or records must be based on factual evidence showing why the information must be protected, re-affirming or repealing city imposed restrictions on limiting access to documents annually, and clarification regarding that no

Constitutional rights are affected by the proposed amendments, including those rights related to privacy.

I have attached a strike-out/underline version of the proposed changes for your convenience.

CC: Honorable City Councilmembers
Interim Mayor Todd Gloria
Jan Goldsmith, City Attorney
Elizabeth Maland, City Clerk

Proposed City Charter Revisions
(Clean version)

Section 215: Publicity of Records

All books, records and accounts of every office and Department of the City, or information therefrom in whatsoever medium, shall be open to inspection by any citizen at all reasonable times and under reasonable regulations established by the Council, except such information the disclosure of which to the public is either prohibited by law, or is left to the discretion of the City by law, and which the City demonstrates in terms of specific facts and circumstances would tend to defeat the lawful purpose which they are intended to accomplish. No discretionary withholding shall persist beyond such demonstrable need.

Section 216: Copies of Records

Copies or extracts, duly certified, from said books and records open for inspection, shall be given by the officer having the same in custody to any person demanding the same who shall be charged for such copies or extracts, and for certification, the charge to be fixed by the Council consistent with state law.

Section 216.1: Access to Government Information

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of City bodies and the writings of City officials, employees, contractors and agencies shall be open to public scrutiny.

(2) A statute, ordinance, regulation or other State or City authority, including those in effect on the effective date of this Section, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. An ordinance, regulation, policy or other City authority adopted after the effective date of this Section that limits the right of access shall be void unless adopted with findings of fact, supported by substantial evidence, demonstrating the interest protected by the limitation, the need for protecting that interest, and the likelihood that the limitation will be effective in protecting the interest. Limitations on the right of access to meetings and writings existing in City ordinances, regulations, policies or other authorities in effect on the effective date of this Section shall, within one year of that date and every year thereafter, be repealed by the City Council and void unless re-adopted with findings of fact, supported by substantial evidence, demonstrating the interest protected by the limitation, the need for the limitation to protect that interest, and the likelihood that the limitation will be effective in protecting the interest. For purposes of this subdivision, a policy is a position, whether or not codified, asserted with virtually total invariability, that resolves against access the discretion provided in State law to grant or deny access to a meeting of a public body or the writing of a City official, employee, contractor or agency.

(3) Nothing in this Section supersedes or modifies the right to privacy or other rights granted in the California Constitution.

Proposed City Charter Revisions
(Strikeout/Underline)

Section 215: Publicity of Records

All books, records and accounts of every office and Department of the City, or information therefrom in whatsoever medium, shall be open to inspection by any citizen at all reasonable times and under reasonable regulations established by the Council, except such ~~records and documents~~ information the disclosure of which to the public is either prohibited by law, or is left to the discretion of the City by law, and which the City demonstrates in terms of specific facts and circumstances would tend to defeat the lawful purpose which they are intended to accomplish. No discretionary withholding shall persist beyond such demonstrable need.

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Copies or extracts, duly certified, from said books and records open for inspection, shall be given by the officer having the same in custody to any person demanding the same who shall be charged for such copies or extracts, and for certification, the charge to be fixed by the Council consistent with state law.

Section 216.1: Access to Government Information

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of ~~public~~ City bodies and the writings of ~~public~~ City officials, employees, contractors and agencies shall be open to public scrutiny.

(2) A statute, ~~court rule,~~ ordinance, regulation or other State or City authority, including those in effect on the effective date of this Section, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. ~~A statute, court rule~~ An ordinance, regulation, policy or other City authority adopted after the effective date of this Section that limits the right of access shall be void unless adopted with findings of fact, supported by substantial evidence, demonstrating the interest protected by the limitation, ~~and~~ the need for ~~protecting~~ the limitation to protect that interest, and the likelihood that the limitation will be effective in protecting the interest. Limitations on the right of access to meetings and writings existing in City ordinances, regulations, policies or other authorities in effect on the effective date of this Section shall, within one year of that date and every year thereafter, be repealed by the City Council and void unless re-adopted with findings of fact, supported by substantial evidence, demonstrating the interest protected by the limitation, the need for the limitation to protect that interest, and the likelihood that the limitation will be effective in protecting the interest. For purposes of this subdivision, a policy is a position, whether or not codified, asserted with virtually total invariability, that resolves against access the discretion provided in State law to grant or deny access to a meeting of a public body or the writing of a City official, employee, contractor or agency.

Proposed City Charter Revisions
(Strikeout/Underline)

(3) Nothing in this Section supersedes or modifies ~~the right of privacy guaranteed by Section 1 of the California Constitution or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.~~ the right to privacy or other rights granted in the California Constitution.

~~(4) Nothing in this Section supersedes or modifies any provision of this Charter or the California Constitution, including the guarantees that a person may not be deprived of life, liberty or property without due process of law, or denied equal protection of the laws.~~

~~(5) This Section does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this Section, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.~~