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June 20, 2005

REPORT TO THE COMMITTEE ON  
GOVERNMENT EFFICIENCY AND OPENNESS

ENFORCEMENT OF CHARTER SECTION 225

**INTRODUCTION**

In 1992, the San Diego City Charter [Charter] was amended to add section 225 "Mandatory Disclosure of Business Interests." This section imposes a mandatory disclosure of the name and identity of any and all persons who are involved in transacting business with the City. A failure to fully disclose the required information shall be grounds for denial of any application or proposed transaction, and "may result in forfeiture of any and all rights and privileges that have been granted." The Charter section states:

**Section 225: Mandatory Disclosure of Business Interests**

No right, title or interest in the City's real or personal property, nor any right, title or interest arising out of a contract, or lease, may be granted or bargained pursuant to the City's general municipal powers or otherwise, nor any franchise, right or privilege may be granted pursuant to Section 103 or 103.1 of this Charter, unless the person applying or bargaining therefor makes a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the application or proposed transaction and the precise nature of all interests of all persons therein.

Any transfer of rights, privileges or obligations arising from a franchise, right or privilege granted under Charter Section 103 or 103.1, or any transfer of any right, title or interest in the City's real or personal property, or any right, title or interest arising out of a contract, or lease, which may be granted or bargained pursuant to the City's general municipal powers or otherwise, shall also require a full and complete disclosure as set forth above.

Failure to fully disclose all of the information enumerated above shall be grounds for denial of any application or proposed transaction or transfer and may result in forfeiture of any and all rights and privileges that have been granted heretofore.

For purposes of this Charter section, the term "person" means any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity. (Emphasis added).

According to the ballot argument, the Charter section 225 requirements arose out of concerns by the Mayor and members of the City Council that they should be given certain information with regard to persons proposing to transact business with the City. The measure passed with more than 86% of voters approving the amendment. Shortly after the enactment of Charter section 225, this Office prepared a draft Council Policy to provide guidelines on implementation. It is not clear why the policy was never formally reviewed and adopted. Nonetheless, the City has been requiring disclosure for some contracts and real property transactions but compliance does not appear to be standardized throughout the City.

## DISCUSSION

### *A. Current Compliance*

In response to a request made by Councilmember Frye at a City Council meeting, the City Manager's Office, through its Council Liaison, has been providing the City Council with information regarding the ownership of companies doing business with the City before such items of business appear on the docket. For example, a March 14, 2005, memorandum detailing the ownership information for various items appearing on the March 14-15, 2005, docket is attached for your review. (*See Attachment 1*). When one of those items (the matter of renaming the San Diego Sports Arena) came before the City Council at that meeting, supporting information from the City Manager stated that the "the naming rights entity must not be in violation of Charter Section 225 or Council Policy 000-04." A copy of the minutes from the March 14, 2005, meeting reflecting that statement is attached. (*See Attachment 2*).

Additionally, the Engineering and Capital Projects Department presently requires each company seeking to contract with the City for a public works project exceeding \$250,000 to submit a pre-qualification questionnaire disclosing a variety of information regarding officers and owners of the company. For example, in the case of corporations, the questionnaire seeks the name, position, number of years with the corporation, ownership percentage, and taxpayer identification number for every officer of the company and for every person who owns at least ten percent of the corporation's stock. The questionnaire also requires the disclosure of every company such persons have been associated with over the past five years. If the company is a subsidiary, parent, or holding company, then information regarding that business relationship must be disclosed. A copy of the pre-qualification questionnaire is attached. (*See Attachment 3*).

There also is some degree of Charter section 225 compliance with regard to contracts for the lease of City real property. Attached are excerpts from several such contracts. One contract contains language stating that "Pursuant to City Charter section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease."

Another contract states: "All assignees and sublessees will be subject [to] review by the City, in accordance with City Charter Section 225, and shall be of good moral character with no prurient interests." (See Attachment 4). Our Office has also been advised by the Real Estate Assets Department that the disclosure of information required by Charter section 225 occurs when reviewing proposals or during lease negotiations that result from the issuance of request for proposals, and that disclosure requirements become incorporated into the contract.

The above are only examples as this Office did not do a City-wide survey of compliance with Charter section 225. However, it appears that there is a lack of uniformity and guidance with regard to the scope of the requirements and the methods of obtaining compliance. For this reason, and as addressed in the following paragraphs, we recommend that the City Council adopt a Council Policy establishing appropriate guidelines for ensuring compliance with Charter section 225.

*B. 1992 Proposed Council Policy*

Shortly after Charter section 225 went into effect in 1992, our Office drafted a Memorandum of Law [MOL] in response to an inquiry from the Property Department (now the Real Estate Assets Department) with regard to how the requirements of Charter section 225 would impact real property transactions. In the MOL, our Office confirmed that in accordance with Charter section 225, the City Council must be given the name and identity of all persons involved in the proposed transaction and the precise nature of all such interests. 1992 City Att'y MOL 430. (See Attachment 5).

The MOL also identified a problem with a literal interpretation of Charter section 225. "The above language taken literally would require the disclosure of the 'name and identity' of all the stockholders of General Motors together with the 'precise nature of all interests' of such stockholders in any proposed contracts General Motors may desire to enter into with the City. Obviously, it is neither practical nor desirable to interpret the Charter section to require such information." 1992 City Att'y MOL at 431.

At that time, our Office drafted a proposed Council Policy to address concerns regarding how much information would be required of parties transacting business with the City. That draft Council Policy, which is a part of the attached 1992 MOL, proposes thresholds of financial interest that would have to be met before disclosure is required. For example, it would require disclosure from a person who owns an interest representing five percent or more of the total ownership of an entity doing business with the City if that interest was worth \$10,000 or more. It would also require disclosure from any person that could reasonably anticipate benefiting from the transaction in the amount of \$10,000 or more. Under the proposed Council Policy, the disclosures would be made for contracts of any type requiring City Council approval.

It is not clear the extent to which any action or discussion took place with regard to the language we proposed in 1992. It is clear only that it was never adopted as an official Council Policy. Nonetheless, it appears that some disclosures are being made to the City Council. To ensure consistent compliance with Charter section 225, we recommend that the procedures be formalized through a new Council Policy.

### **CONCLUSION**

Charter section 225 requires the disclosure of the name and identity of any person directly or indirectly involved in a transaction with the City. If interpreted literally, this Charter section would require an impractical amount of disclosure of individual interests, including information regarding each individual shareholder in any large company that transacts business with the City. This does not appear to be the intent of the disclosure requirements. Nonetheless, the disclosures must be made to the extent that the City Council can determine the identity of persons that have significant interests in the business transaction. The proposed Council Policy drafted by our Office in 1992 may be an appropriate starting point for discussion of these issues. This Office is ready to assist in the drafting of such guidelines and to provide advice on the appropriate level of disclosure after the committee's discussion on the Charter section requirements.

Respectfully submitted,

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City Attorney

MJA:CMB:jb  
Attachments  
RC-2005-15