

EXHIBIT NO. 1

7
12-12-09

~~18~~
~~12-8-09~~

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 2, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: ORDINANCE TO ADOPT A TEXT AMENDMENT TO THE ZONING
ORDINANCE TO REQUIRE PUBLIC DISCLOSURE OF PARTIES HAVING
AN OWNERSHIP INTEREST IN AN APPLICANT OR THE REAL ESTATE
WHICH IS THE SUBJECT OF AN APPLICATION

ISSUE: Consideration of a text amendment to require public disclosure of parties having an ownership interest in an applicant or the real estate which is the subject of an application.

RECOMMENDATION: That City Council pass the proposed ordinance (Attachment I) on first reading on December 8, 2009 and schedule it for public hearing, second reading and final passage on December 12, 2009.

DISCUSSION: This text amendment was recommended to the City Council for approval by the Planning Commission on November 5, 2009, which recommendation was approved by City Council at the public hearing on November 21, 2009. The proposed ordinance implements the City Council's approval.

ATTACHMENTS:

Attachment I – Proposed Ordinance and Cover

Attachment II – November 5, 2009 Docket Memo to the Planning Commission

STAFF:

Faroll Hamer, Director, Planning and Zoning
Barbara Ross, Deputy Director, Planning and Zoning
Bernard Caton, Legislative Director
Christopher P. Spera, Deputy City Attorney

Introduction and first reading: 12/8/09
Public hearing: 12/12/09
Second reading and enactment: 12/12/09

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to add a new Section 11-350 (REQUIRED APPLICATION DISCLOSURES), to Division A (ADMINISTRATION AND ENFORCEMENT OF ORDINANCE), Article XI (DEVELOPMENT APPROVALS AND PROCEDURES), all of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2009-0007.

Summary

The proposed ordinance amends the Zoning Ordinance to require public disclosure of parties having an ownership interest in an applicant or the real estate which is the subject of an application, as recommended to the City Council by the Planning Commission on November 5, 2009, which recommendation was approved by the City Council at public hearing on November 21, 2009.

Sponsor

Staff

Faroll Hamer, Director, Planning and Zoning
Barbara Ross, Deputy Director, Planning and Zoning
Bernard Caton, Legislative Director
Christopher P. Spera, Deputy City Attorney

Authority

§2.04(w), §9.09, Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

11/5/2009 Docket Memo to Planning Commission

ORDINANCE NO. _____

AN ORDINANCE to add a new Section 11-350 (REQUIRED APPLICATION DISCLOSURES), to Division A (ADMINISTRATION AND ENFORCEMENT OF ORDINANCE), Article XI (DEVELOPMENT APPROVALS AND PROCEDURES), all of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2009-0007.

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2009-0007, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, recommended approval to the City Council on November 5, 2009 of a text amendment to the Zoning Ordinance to require public disclosure of parties having an ownership interest in an applicant or the real estate which is the subject of an application, which recommendation was approved by the City Council at public hearing on November 21, 2009;

2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;

3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 11-350 of the Zoning Ordinance be, and the same hereby is, amended by inserting new language, as shown:

(The following is all new language)

Sec. 11-350 Required Application Disclosures.

11-351 Definitions. As used in this section 11-350:

- (A) "Business or financial relationship" means a relationship that a member of a City approving body or any member of his immediate household has, or has had within the 12-month period prior to a hearing on an application, with the applicant in the case, or with a party with an ownership interest in the applicant or the property that is the subject of the application. This relationship may be:
 - (1) a direct one;
 - (2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
 - (3) through a partner of the member or a member of his immediate household;

- 1 (4) through a corporation in which any of them is an officer,
2 director, employee, agent or attorney or holds 10 percent or
3 more of the outstanding bonds or shares of stock of a
4 particular class. In the case of a condominium, this threshold
5 shall apply only if the applicant is the title owner, contract
6 purchaser, or lessee of 10% or more of the units in the
7 condominium.
8 (5) not as an ordinary customer or depositor relationship with a
9 professional or other service provider, retail establishment,
10 public utility or bank, which relationship shall not be
11 considered a business or financial relationship.
12 (6) created by the receipt by the member, or by a person, firm,
13 corporation or committee on behalf of the member, of any
14 gift or donation having a value of more than \$100, singularly
15 or in the aggregate, during the 12-month period prior to the
16 hearing on the application from the applicant.

17
18 (B) "City approving body" means City Council, the Planning
19 Commission, the Board of Zoning Appeals, and the Boards of
20 Architectural Review.

21
22 (C) "Application" means any application for any land use or land
23 development approval submitted pursuant to this ordinance which
24 will be considered by a City approving body.

25
26 (D) "Ownership interest" in the applicant or the real estate that is the
27 subject of the application means those parties required to be
28 identified under section 11-406 (A) of this ordinance.

29
30 (E) "Immediate household" means (i) a spouse or life partner and (ii)
31 any other person residing in the same household as the member,
32 who is a dependent of the member or of whom the member is a
33 dependent. "Dependent" means a son, daughter, father, mother,
34 brother, sister or other person, whether or not related by blood or
35 marriage, if such person receives from the member, or provides to
36 the member, more than one-half of his financial support.

37
38 *11-352 Requirements.*

39
40 (A) Each application shall identify any party having an ownership
41 interest in the applicant or the real estate that is the subject of the
42 application.

43
44 (B) A party having an ownership interest in the applicant or the real
45 estate that is the subject of an application shall make full public
46 disclosure of any business or financial relationship that the party

1 has at the time of the application, or has had within the 12-month
2 period prior to the submission of the application, with any member
3 of a City approving body.
4

5 (C) A party acquiring an ownership interest in the applicant or the real
6 estate that is the subject of any application shall have an
7 affirmative duty to make full public disclosure of that as soon as is
8 reasonably possible after such acquisition, and must be disclosed
9 prior to any public hearing on the application.
10

11 (D) Any disclosure required by this section shall be in the manner and
12 on the forms provided by the director.
13

14 (E) No disclosure shall be required when the applicant is the federal
15 government, a state, or a political subdivision of the
16 Commonwealth of Virginia.
17

18 *11-353 Voting.* Any member of a City approving body who has or has had a business or
19 financial relationship subject to the disclosure requirements of section 11-350 shall be
20 ineligible to vote or participate in any way in consideration of the application. A member
21 of a City approving body who has received a campaign contribution is eligible to vote or
22 participate in consideration of the application if the contribution has been disclosed as
23 required by law.
24

25 *11-354 Violations.* Any person who knowingly and willfully violates the provisions of
26 this section 11-350 shall be guilty of a Class 1 misdemeanor.
27

28
29 *11-355 Preemption.* The provisions of this section preempt any conflicting provisions
30 of law, general or special, except that any provision of the State and Local Government
31 Conflict of Interests Act, (§ 2.2-3100 et seq.) of the Code of Virginia that is more
32 stringent than the provisions of this section 11-350 shall not be preempted.
33

34 *11-356 Validity of Actions of Approving Body.* In the event of a violation of this
35 section is discovered after a vote or decision by an approving body, the vote or decision
36 of that body shall remain a valid action thereof provided that 1) the approving body had a
37 quorum without counting the member who should have, but failed to, recuse himself
38 under this section; and 2) there were sufficient votes under the applicable bylaws or rules
39 of procedure for the approving body for it to take the action decided upon without
40 counting the vote of an member who should have, but failed to, recuse himself under this
41 section.
42

43 Section 2. That the director of planning and zoning be, and hereby is, directed to
44 record the foregoing text amendment.
45

46 Section 3. That Section 11-350, as created pursuant to Section 1 of this ordinance,

1 be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance.

2
3 Section 4. That this ordinance shall become effective on the date and at the time of
4 its final passage, and shall apply to all applications for land use, land development or subdivision
5 approval provided for under the City of Alexandria Zoning Ordinance which may be filed after
6 such date, and shall apply to all other facts and circumstances subject to the provisions of the
7 City of Alexandria Zoning Ordinance, except as may be provided in Article XII of the Zoning
8 Ordinance.

9
10 WILLIAM D. EUILLE
11 Mayor

12
13 Introduction: 12/8/2009
14 First Reading: 12/8/2009
15 Publication:
16 Public Hearing:
17 Second Reading:
18 Final Passage:
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

ORDINANCE NO. 4639

AN ORDINANCE to add a new Section 11-350 (REQUIRED APPLICATION DISCLOSURES), to Division A (ADMINISTRATION AND ENFORCEMENT OF ORDINANCE), Article XI (DEVELOPMENT APPROVALS AND PROCEDURES), all of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2009-0007.

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2009-0007, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, recommended approval to the City Council on November 5, 2009 of a text amendment to the Zoning Ordinance to require public disclosure of parties having an ownership interest in an applicant or the real estate which is the subject of an application, which recommendation was approved by the City Council at public hearing on November 21, 2009;

2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;

3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 11-350 of the Zoning Ordinance be, and the same hereby is, amended by inserting new language, as shown:

Sec. 11-350 Required Application Disclosures.

11-351 Definitions. As used in this section 11-350:

- (A) "Business or financial relationship" means a relationship that a member of a City approving body or any member of his immediate household has, or has had within the 12-month period prior to a hearing on an application, with the applicant in the case, or with a party with an ownership interest in the applicant or the property that is the subject of the application. This relationship may be:
- (1) a direct one;
 - (2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
 - (3) through a partner of the member or a member of his immediate household;
 - (4) through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or

more of the outstanding bonds or shares of stock of a particular class. In the case of a condominium, this threshold shall apply only if the applicant is the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

- (5) not as an ordinary customer or depositor relationship with a professional or other service provider, retail establishment, public utility or bank, which relationship shall not be considered a business or financial relationship.
 - (6) created by the receipt by the member, or by a person, firm, corporation or committee on behalf of the member, of any gift or donation having a value of more than \$100, singularly or in the aggregate, during the 12-month period prior to the hearing on the application from the applicant.
- (B) "City approving body" means City Council, the Planning Commission, the Board of Zoning Appeals, and the Boards of Architectural Review.
 - (C) "Application" means any application for any land use or land development approval submitted pursuant to this ordinance which will be considered by a City approving body.
 - (D) "Ownership interest" in the applicant or the real estate that is the subject of the application means those parties required to be identified under section 11-406 (A) of this ordinance.
 - (E) "Immediate household" means (i) a spouse or life partner and (ii) any other person residing in the same household as the member, who is a dependent of the member or of whom the member is a dependent. "Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the member, or provides to the member, more than one-half of his financial support.

11-352 Requirements.

- (A) Each application shall identify any party having an ownership interest in the applicant or the real estate that is the subject of the application.
- (B) A party having an ownership interest in the applicant or the real estate that is the subject of an application shall make full public disclosure of any business or financial relationship that the party has at the time of the application, or has had within the 12-month

period prior to the submission of the application, with any member of a City approving body.

- (C) A party acquiring an ownership interest in the applicant or the real estate that is the subject of any application shall have an affirmative duty to make full public disclosure of that as soon as is reasonably possible after such acquisition, and must be disclosed prior to any public hearing on the application.
- (D) Any disclosure required by this section shall be in the manner and on the forms provided by the director.
- (E) No disclosure shall be required when the applicant is the federal government, a state, or a political subdivision of the Commonwealth of Virginia.

11-353 Voting. Any member of a City approving body who has or has had a business or financial relationship subject to the disclosure requirements of section 11-350 shall be ineligible to vote or participate in any way in consideration of the application. A member of a City approving body who has received a campaign contribution is eligible to vote or participate in consideration of the application if the contribution has been disclosed as required by law.

11-354 Violations. Any person who knowingly and willfully violates the provisions of this section 11-350 shall be guilty of a Class 1 misdemeanor.

11-355 Preemption. The provisions of this section preempt any conflicting provisions of law, general or special, except that any provision of the State and Local Government Conflict of Interests Act, (§ 2.2-3100 et seq.) of the Code of Virginia that is more stringent than the provisions of this section 11-350 shall not be preempted.

11-356 Validity of Actions of Approving Body. In the event of a violation of this section is discovered after a vote or decision by an approving body, the vote or decision of that body shall remain a valid action thereof provided that 1) the approving body had a quorum without counting the member who should have, but failed to, recuse himself under this section; and 2) there were sufficient votes under the applicable bylaws or rules of procedure for the approving body for it to take the action decided upon without counting the vote of an member who should have, but failed to, recuse himself under this section.

Section 2. That the director of planning and zoning be, and hereby is, directed to record the foregoing text amendment.

Section 3. That Section 11-350, as created pursuant to Section 1 of this ordinance, be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance.

Section 4. That this ordinance shall become effective on the date and at the time of its final passage, and shall apply to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of the Zoning Ordinance.

WILLIAM D. EUILLE
Mayor

Final Passage: December 12, 2009