



DOCKET ITEM #6
Text Amendment #2009-0007
Public Disclosure

| | | |
|--|------------------------------|-------------------|
| Issue: Consideration of an amendment to add Section 11-350 to the City's 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. | Planning Commission Hearing: | November 5, 2009 |
| | City Council Hearing: | November 21, 2009 |

Staff Recommendation: Staff recommends APPROVAL of the amendments to add section 11-350 of the City's Zoning Ordinance.

Staff: Barbara Ross, Deputy Director, Planning and Zoning Barbara.ross@alexandriava.gov
Christopher Spera, Deputy City Attorney Christopher.spera@alexandriava.gov
Bernard Caton, Legislative Director Bernard.caton@alexandriava.gov

PLANNING COMMISSION ACTION, NOVEMBER 5, 2009: On a motion by Mr. Dunn, seconded by Ms. Lyman, the Planning Commission voted to initiate a text amendment to require public disclosure of relationships on land use applications. The motion carried on a vote of 6-0. Mr. Wagner was absent.

On a later motion by Mr. Dunn, seconded by Ms. Lyman, the Planning Commission voted to recommend approval of a text amendment to require public disclosure of relationships on land use applications, with the amendments in the November 5 email (attached). The motion carried on a vote of 6-0, with Mr. Wagner absent.

Reason: The Commission agreed with the staff analysis.

Speakers: Amy Slack, resident, spoke about the need for adequate notice to civic and business associations of pending text amendments. She also questioned whether staff should be protected from conflicts of interest.

Summary

Staff is recommending that the Zoning Ordinance be amended to require full public disclosure of parties having an interest in applications that are subject to approval by City Council, the Planning Commission, the Board of Zoning Appeals, or the Boards of Architectural Review with the consequence that a member of these bodies who has a business or financial relationship that is subject to disclosure will be prohibited from consideration of and voting on the application.

I. BACKGROUND

Existing disclosure requirements and voting prohibitions.

The zoning ordinance already requires applicants to disclose the names of all owners, other than *de minimis* owners, who have an interest in property which is the subject of an application for land use or development. The State and Local Government Conflict of Interests Act prohibits local elected officials and members of local advisory bodies from participating in actions which may benefit them personally.

For over 40 years, Fairfax County has required the additional types of disclosure that are being proposed here. Two years ago, Loudoun County requested and received approval from the General Assembly to require such disclosure.

Alexandria Charter Amendments.

As the 2009 City Legislative Package was being developed, three members of City Council proposed that Alexandria seek Charter amendments that would allow the City to adopt disclosure provisions similar to those of Fairfax and Loudoun Counties (See Attachment 2). The purpose of the effort was to “help us improve openness and accountability within City Hall.” Subsequently, this proposal, together with all others for the 2009 City Package, was considered at the November City Council Public Hearing on the Legislative Package and proposed Charter amendments (where no one spoke for or against the proposal), and was adopted unanimously by City Council on November 25, 2008, as part of the City’s 2009 City Legislative Package (see Attachment 3). This Charter Amendment (and another one authorizing Council to impose term limits on members of boards and commissions) was included in Senate Bill 929, which was approved by the 2009 General Assembly (Attachment 4). This zoning text amendment will implement this Charter change.

II. PROPOSAL

Under the text amendment proposed here, each application for a land use or land development approval will be required to identify any party having an ownership interest in the applicant or the real estate that is the subject of the application. That “ownership interest” is defined by reference to Section 11-406(A) of the zoning ordinance which provides that each application must include:

a clear and concise statement identifying the applicant and, if different, the owner of the property, including the name and address of each person or entity owning an interest in the applicant or owner and the extent of such ownership interest unless any of such entities is a corporation or a partnership, in which case only

those persons owning an interest in excess of ten percent in such corporation or partnership need be identified by name, address and extent of interest. For purposes of this section 11-406(A), the term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

The party with an ownership interest must disclose any business or financial relationship the party has, or had in the 12 months prior to submission of the application, with any member of City Council, the Planning Commission, the Board of Zoning Appeals, or the Boards of Architectural Review. There is a continuing obligation to disclose any such relationship created after the application is filed, as soon as reasonably possible, up to the time of the public hearing.

A member of the City Council, Planning Commission, Board of Zoning Appeals or Boards of Architectural Review identified under this program will be prohibited from taking part in any consideration of the application. There is an exception provided in the case of a relationship formed by virtue of a campaign contribution, as long as that contribution has been otherwise disclosed as legally required. In that case, the relationship must be disclosed but the Council, board or commission member is permitted to vote on the matter.

The Director of Planning and Zoning will provide forms for disclosure as part of the application package. Violations of this section will be a Class 1 misdemeanor.

III. STAFF ANALYSIS AND RECOMMENDATION

The proposed disclosure provisions will, as noted by their proponents, improve openness and accountability with respect to land use and development approvals. They should help reinforce the confidence and trust that staff believes City residents already have in the decisions of City Council, the Planning Commission, the Board of Zoning Appeals, and the two Boards of Architectural Review.

The proposed amendment is written so that the burden of compliance will fall on the applicants and property owners. Council, board, and commission members will, of course, be obliged to abstain from action on any application in which they have a conflict; this consequence, however, is a current requirement and will not be altered by the new disclosure requirements. The new disclosure provisions will, in fact, allow the public to compare potential conflicts that are reported with actual abstentions.

Staff recommends that the Planning Commission recommend approval of the text amendment.

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

- Attachments:
1. Proposed zoning text changes
 2. October 28, 2008, Memorandum, "Reform of Disclosure Requirements"
 3. November 10, 2008, Memorandum, "Addendum [Proposed Amendments to the City Charter] to Proposed City Legislative Package for the 2009 General Assembly"
 4. Charter Amendment, Chapter 539 of the 2009 Acts of Assembly

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 ~~members~~ 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.

City of Alexandria, Virginia

MEMORANDUM

DATE: OCTOBER 28, 2008
TO: THE HONORABLE MAYOR & MEMBERS OF THE CITY COUNCIL
FROM: COUNCILMEN ROB KRUPICKA, PAUL SMEDBERG & JUSTIN WILSON
SUBJECT: REFORM OF DISCLOSURE REQUIREMENTS

There are a series of reforms that we believe will help us improve openness and accountability within City Hall. Taken together, it is our belief that this package of initiatives will help reinforce the confidence Alexandrians have in the transparency that accompanies the deliberations of the City Council, the Planning Commission, the Boards of Architectural Review and the Board of Zoning Appeals.

Recently, the City Council has successfully utilized its Legislative Package to advocate for meaningful changes to the Code of Virginia relating to the timely disclosure of campaign finance information, as well as disclosure of pre-election activity by newly-formed Political Action Committees.

We request our colleagues' support of three actions:

- 1) Inclusion in our Legislative Package of a request for amendment to the City of Alexandria Charter providing that applicants before the City Council, Planning Commission, Boards of Architectural Review, and Board of Zoning Appeals must disclose all investors in their application prior to the hearing by the applicable body.
- 2) Inclusion in our Legislative Package of a request for amendment to the City of Alexandria Charter providing that individual members of the City Council, Planning Commission, Boards of Architectural Review, and Board of Zoning Appeals must disclose any current or previous (within 12 months) financial interest (excluding campaign contributions) with any of the investors in any application pending before that body.
- 3) Adoption of a City Code provision (if such authority exists) or inclusion in our Legislative Package of a request for amendment to the City of Alexandria Charter to allow the City Council to prohibit the acceptance of campaign contributions from applicants before the City Council.

As the only jurisdiction in the Commonwealth utilizing the Urban County Executive form of Government, Fairfax County is subject to the provisions of 15.2-852 of the Code of Virginia. This Code section provides that all applicants before the Board of Supervisors,

Planning Commission and Board of Zoning appeals disclose all investors in their application in advance of their hearing.

Furthermore, individual members of the body hearing that application must disclose any current or previous financial interest with investors of the application before them.

Additionally, the General Assembly adopted Senate Bill 532 during the 2008 session. This legislation imposed restrictions on Loudoun County similar to the restrictions on Fairfax County.

In July of 2008, Loudoun County adopted a new Board of Supervisors Policy to address the acceptance of campaign contributions from those that have business before the Board of Supervisors. This new provision provides that members of the Board cannot accept contributions from applicants beginning when the application is initially filed, and concluding 6 months after final action or when the application is withdrawn.

Cc: James K. Hartmann, City Manager
Ignacio B. Pessoa, City Attorney
Bernard Caton, Legislative Director
Alexandria Planning Commission
Alexandria Board of Zoning Appeals
Alexandria Boards of Architectural Review

EXHIBIT NO. 1

Attachment 3

6

11-15-08

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 10, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *JKH*

SUBJECT: ADDENDUM (PROPOSED AMENDMENTS TO THE CITY CHARTER) TO PROPOSED CITY LEGISLATIVE PACKAGE FOR THE 2009 GENERAL ASSEMBLY SESSION

ISSUE: Addendum (proposed amendments to the City Charter) to proposed City Legislative Package for the 2009 General Assembly Session.

RECOMMENDATION: That City Council receive this addendum, which includes proposed Charter amendments, to the City's 2009 Legislative Package. These Charter amendments (together with the rest of the City Package) have been scheduled for public hearing on Saturday, November 15. The entire Legislative Package will be adopted Tuesday, November 25, following Council's work session with the General Assembly delegation.

DISCUSSION: Staff presented a draft 2009 Legislative Package to Council at the October 28, 2008, Council meeting. At that time, Council added two items, both Charter amendments, to the Package.

Term Limits on Members of Boards and Commissions. The first of these would add a provision to the City Charter that would make it clear that Council has authority to set limits on the terms of members it appoints to City boards, committees, authorities, councils, task forces, work groups and commissions. This proposal came from Council's Committee on Boards and Commissions, which recommended the following in its June 19, 2008, report:

The Committee recommends that unless specified by federal, state or City legislation, after serving 10 consecutive years on any board, commission or committee, at the expiration of the current term, the incumbent would not be eligible for immediate reappointment to that group, but can apply for the next vacancy. Any incumbents as of the effective date of the ordinance would be eligible for at least one more consecutive term.

Disclosure Requirements. The second item that was added to the draft Legislative Package is actually a set of proposals that seeks to "improve openness and accountability within City Hall." These amendments, if incorporated into the Charter, would:

- Require applicants for land use or land development approvals before the City Council, Planning Commission, Boards of Architectural Review, and Board of Zoning Appeals to disclose all investors in the proposed land use or land development approval prior to the hearing by the applicable body;
- Require applicants for land use or land development approvals before the City Council, Planning Commission, Boards of Architectural Review, and Board of Zoning Appeals to disclose any current or previous (within the prior 12 months) financial interest (including campaign contributions if so requested in the proposed Charter Bill) involving the applicants, agents and/or investors, with any of the individual members of the applicable body; and

Council also said it would consider Charter language that could place limits on campaign contributions from those who have land use applications before it, but did not endorse this concept at the October 28 meeting. Staff subsequently reviewed the Fairfax disclosure requirements with Fairfax staff, and was advised that County Supervisors must disclose campaign contributions from land use applicants; the County disclosure law does not generally prohibit Supervisors from voting on applications from campaign contributors.

STAFF:

Bernard Caton, Legislative Director

ATTACHMENTS:

Attachment 1 – Report from the Council Committee on Boards and Commissions (without attachments), June 19, 2008

Attachment 2 – “Reform of Disclosure Requirements,” October 28, 2008, memorandum from Councilmen Rob Krupicka, Paul Smedberg & Justin Wilson

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11-15-08

Ignacio Pessoa/Alex
11/14/2008 02:30 PM

To wmeuille@wdeuille.com, alexvamayor@aol.com,
delpepper@aol.com, Councilmangaines@aol.com,
rob@krupicka.com, smedbergpc@aol.com,
cc Jim Hartmann/Alex@Alex, Michele Evans/Alex@Alex, Mark
Jinks/Alex@Alex, Jackie Henderson/Alex@Alex, Gloria
Sitton/Alex@Alex, Bernard Caton/Alex@Alex
bcc
Subject Draft Charter Bill provisions relating to zoning disclosure

Attached for council's possible consideration is draft language for new City Charter provisions dealing with public disclosure in the context of zoning applications.

As drafted, these provisions give council the authority and flexibility, if it so chooses, to adopt reasonable disclosure provisions tailored to the perceived needs and expectations in Alexandria, but do not mandate any action by council. Bernie and I met yesterday with representatives of the Fairfax County Attorney's Office, and Chairman Connolly's staff, to discuss practical concerns with the administration and enforcement of these types of disclosure requirements. The present draft was intended to give council the flexibility to minimize any burden from new requirements, should they be adopted.

The draft includes three substantive provisions. The first, Subsection A, includes a grant to council of the authority to require the disclosure of real parties in interest to zoning applications. Limited authority for this requirement exists today under Virginia law, but the authority under this subsection gives council more discretion, as explained with respect to subsections D and E below.

The second, Subsection B, grants authority to require the disclosure of business or financial relationships between the real parties in interest and members of the council, board or commission before whom the application is pending.

The third, Subsection C, provides authority to require the recusal of such members who have business or financial or relationships with parties in interest.

Subsections D and E give council authority to adopt appropriate definitions; classifications of different types of interests, and specify different requirements and results depending on the type of interest. Thus, the council would not be bound by the existing definitions, classifications and results which the General Assembly has mandated in the Virginia Code for Fairfax and Loudoun Counties. However, council could not adopt a local ordinance with more stringent or inclusive disclosure requirements than are applicable in those counties. In essence, there is no floor to what council could adopt, but there is a cap.

Subsections F and G provide the penalty for violation, the same as in Fairfax and Loudoun, and specify that this charter section, if adopted, would prevail over any conflicting and less stringent provisions of Virginia's general Conflict of Interests Act.

Please let me know if you have any questions at this time.

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33 E. The ordinance may establish reasonable classifications and
34 standards for the disclosures provided under subsections A and B, and
35 for the recusal provided under subsection C, provided that such
36 classifications and standards shall not be more inclusive or stringent
37 than the classifications and standards established by Section 15.2-833 of
38 the Code of Virginia, and may establish reasonable procedures for the
39 administration of the ordinance.

40

41 F. Any person who knowingly and willfully violates the provisions of
42 the zoning ordinance adopted pursuant to this section shall be guilty of
43 a Class 1 misdemeanor.

44

45 G. The provisions of this section preempt any conflicting provisions of
46 law, general or special, except that any provision of the State and Local
47 Government Conflict of Interests Act, Virginia Code Section 2.2-3100,
48 *et seq.*, which is more stringent than the provisions of any ordinance
49 adopted pursuant to this section shall not be preempted.

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 539

An Act to amend and reenact § 3.04, as amended, of Chapter 536 of the Acts of Assembly of 1950, which provided a charter for the City of Alexandria, and to add a section numbered 9.12.2 to Chapter 536 of the Acts of Assembly of 1950, relating to term limits of board and commission members; disclosures in land use proceedings.

[S 929]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 3.04, as amended, of Chapter 536 of the Acts of Assembly of 1950 is amended and reenacted and that Chapter 536 of the Acts of Assembly of 1950 is amended by adding a section numbered 9.12.2 as follows:

§ 3.04. Powers.—All powers of the city as granted in Chapter 2 of this charter and the determination of all matters of policy shall be vested in the council. Without limitation of the foregoing, the council shall have power to:

(a) Appoint and remove the city manager.

(b) Adopt the budget of the city.

(c) Authorize the issuance of bonds by a bond ordinance.

(d) Inquire into the conduct of any office, department or agency of the city and make investigation as to municipal affairs.

(e) Establish administrative departments, offices or agencies. There are hereby created the departments of finance, public works, police, fire, public health, social services, and recreation and parks, the heads of which shall be appointed by the city manager. The council by ordinance may create, change, and abolish offices, departments, or agencies. The council may not change or abolish any offices or agencies created by this charter and may not eliminate the function of any department created by this charter. The council by ordinance may assign duties or functions to the offices, departments and agencies created by this charter. When a vacancy occurs in any office to which the incumbent is elected by the council, the council is empowered to fill the vacancy, and when such vacancy occurs otherwise than by the regular expiration of the term of the incumbent, the election shall only be for the unexpired term.

(f) Appoint the members of the school board, the planning commission and the board of zoning appeals.

(g) Establish advisory boards and commissions and appoint their members.

(g-01) Notwithstanding any contrary provisions of law, general or special, establish by ordinance term limits for the members appointed by the council to any or all governmental or advisory boards or commissions.

(h) Provide for an independent audit.

(i) Provide for the number, titles, qualifications, powers, duties, and compensation of all officers and employees of the city.

(j) Provide for the form of oaths and the amount and condition of surety bonds to be required of certain officers and employees of the city.

§ 9.12.2. Disclosure by applicants.—*(a) The zoning ordinance may provide that each applicant for a land use or land development approval pursuant to such ordinance make full public disclosure of parties having an ownership interest in the real estate that is the subject of the application and of parties having any other financial interest in such application or approval.*

(b) The zoning ordinance may further provide that a party having an ownership interest in such real estate or any other financial interest in such application or approval make full public disclosure of any business or financial relationship that such party presently has, or has had within the 12-month period prior to the public hearing on the application, to each member of the planning commission, board of zoning appeals, boards of architectural review, or city council, as the case may be.

(c) The zoning ordinance may further provide that a member of the planning commission, board of zoning appeals, board of architectural review, and city council, as the case may be, who has or has had a business or financial relationship subject to disclosure under subsection B shall be ineligible to vote or participate in any way in consideration of the application; provided, however, that for purposes of this subsection, a business or financial relationship arising out of a campaign contribution, which has been disclosed as required by law, shall not render a member ineligible to vote or participate.

(d) The ordinance may establish reasonable classifications and definitions of the nature and extent of the ownership and other financial interests subject to the disclosures provided under subsections (a) and (b), provided that such classifications and definitions shall not be more inclusive or stringent than the

classifications and definitions established by § 15.2-852 of the Code of Virginia.

(e) The ordinance may establish reasonable classifications and standards for the disclosures provided under subsection (a) and (b), and for the recusal provided under subsection (c), provided that such classifications and standards shall not be more inclusive or stringent than the classifications and standards established by § 15.2-852 of the Code of Virginia, and may establish reasonable procedures for the administration of the ordinance.

(f) Any person who knowingly and willfully violates the provisions of the zoning ordinance adopted pursuant to this section shall be guilty of a Class 1 misdemeanor.

(g) 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 any ordinance adopted pursuant to this section shall not be preempted.

City of Alexandria, Virginia

Docket Item #6
TA 2009-0007

MEMORANDUM

DATE: NOVEMBER 4, 2009
TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION
FROM: FAROLL HAMER, DIRECTOR, PLANNING AND ZONING *FH*
SUBJECT: PROPOSED PUBLIC DISCLOSURE REGULATIONS, DOCKET ITEM #6

Below are a series of examples of situations that could arise under the proposed public disclosure text amendment in docket item #6, with an explanation of how they would be handled. Staff provides this information to assist with your consideration and to give the proposed regulations more context.

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| 11-351-A-1 Direct business or financial relationship | 1. Approving body member (ABM) is a law partner of the applicant. 2. ABM's spouse is owner of a business |
| 11-351-A-2 "Partnership" business or financial relationship | 2. ABM's spouse is co-owner of a business with the applicant |
| 11-351-A-3 Relationship through a partner of the ABM | 3. ABM is partner in a law firm; another firm partner represents the applicant |
| 11-351-A-4 Corporation-relationship | 4. ABM is a partner in, and holds 10% of the stock of the applicant-company; or ABM owns 3 units in a 15-unit condo with an application for a major renovation needing approval |
| 11-351-A-5 Ordinary customer | ABM has a personal checking account at Alexandria National Bank; this need not be disclosed, nor must the ABM abstain from consideration or voting on an application from this bank |
| 11-351-A-6—Receipt of a gift or donation exceeding \$100 | ABM was given two tickets to a Redskins game by an applicant, worth a total of \$250. The donation must be reported, and the ABM must abstain from consideration of or voting on the application. |
| 11-351-A-6—Receipt of a gift or donation of less than \$100 | ABM was given a ticket to a Nationals game by an applicant, worth a total of \$95. The donation does not have to be reported, and the ABM does not have to abstain from consideration of or voting on the application. |
| 11-351-A-6—Receipt of more than one gift or donation, the total of which exceeds \$100 | ABM was given a ticket to a Chamber event worth \$40 in January and a \$95 ticket to a Nationals game in July, both from the same |

November 4, 2009 Memo
Public Disclosure Text Amendment

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| | person, who became an applicant in September. Since the aggregate worth in the preceding 12 months was \$135, both donations must be reported, and the ABM must abstain from consideration of or voting on the application. |
| 11-351-A-6 and 11-353-campaign contributions | A Council member receives a \$250 contribution from Mr. Jones, who submits an application 3 months later. The contribution must be reported, but the Council member can take part in the consideration of and voting on the application. |
| 11-352-C Acquiring an ownership interest in an "application in process" | An individual purchases 20% of a project that is under consideration by one or more approving bodies. That individual must disclose this as soon as possible. |

Docket Item # 6
TA 2009-0007

Barbara Ross/Alex
11/05/2009 09:53 AM

To Kendra Jacobs/Alex@Alex
cc
bcc
Subject Disclosure Requirements Docket Item #6

Attached is a slightly revised version of the proposed Public Disclosure text for forwarding to the Planning Commission. The revisions are designed to clarify the provisions and respond to some comments received from land use attorneys who have reviewed the original draft.



Revised TA
Public
Disclosure.doc

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 ~~members~~ 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.

TEXT AMENDMENT # 2009-0007

ISSUE DESCRIPTION: Consideration of a request for an amendment to add section 11-350, to the City's Zoning Ordinance to require public disclosure of parties having an ownership interest in a applicant or the real estate which is the subject of an application.

ZONING ORDINANCE SECTION: 11-350

CITY DEPARTMENT: Planning and Zoning

PLANNING COMMISSION ACTION Initiated by Planning Commission 6-0 11/5/09
Recommended Approval 6-0 11/5/09

CITY COUNCIL ACTION 11/21/09 - CC approved PC recommendation
6-0
