



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: February 21, 2019

IBA Report Number: 19-05

**Status Update for Prior Grand Jury Report
Recommendations
First Update for Report Titled
“Stop Kicking the Can Down the Road:
San Diego's 1992 Transparency Law Must Be Enforced”**

BACKGROUND

On April 13, 2017 the San Diego County Grand Jury filed a report, titled “Stop Kicking the Can Down the Road: San Diego's 1992 Transparency Law Must Be Enforced.” This report focuses on the requirements and enforcement of San Diego City Charter section 225, “Mandatory Disclosure of Business Interests.”

The Grand Jury Report included two recommendations directed to the City Council, both of which the Council responded that the recommendation would be implemented in the future.

- Recommendation 17-20:

Collaborate with the Mayor, the Independent Budget Analyst, and other appropriate City departments to either amend the municipal code to enforce the transparency law or place a measure on the 2018 ballot to amend charter section 225.

- Recommendation 17-21:

Correct identified deficiencies in San Diego City Charter Section 225 by not ignoring advice and counsel from the Office of the City Attorney.

The City Council response to these Grand Jury recommendations indicated:

With the City Attorney’s assistance, the current City Council is working with the executive branch to develop a City ordinance that would endeavor to clarify the broad language

identified in Finding 01. The proposed ordinance is expected to be presented to the City Council's Rules Committee in the Fall of 2017.

A proposed Charter amendment is also anticipated to be developed and subsequently considered by the City Council. If the Council approves placing the proposed Charter amendment on the ballot, the City expects it would then be submitted to the electorate in 2018. The purpose of the proposed Charter amendment would be to clarify the intent of Charter section 225 or to repeal it.


STATUS UPDATE

The City Council's response cited above was delivered to the Presiding Judge of the San Diego Superior Court on October 6, 2017. Per the response to the recommendations, the City would be working toward development of a Charter amendment that would either clarify the intent of Charter section 225 or repeal it.

Subsequently, a working group, consisting of the offices of the City Attorney, Mayor, Council President/Rules Committee Chair, Council District 1, and Independent Budget Analyst, collaborated on draft ballot language that would amend Charter section 225 to provide the desired clarification that was absent in the original law. The draft language was vetted by the Rules Committee and City Council.

The resulting Charter amendment proposal approved by the Council was ultimately approved by City voters in November 2018. See attached ballot materials for Measure J, Charter Amendment Regarding Mandatory Disclosure of Business Interests, for information on the ballot measure that was passed. The Charter amendment was chaptered by the California Secretary of State and added to the City Charter effective December 24, 2018.


Lisa Byrne
Fiscal & Policy Analyst


APPROVED: Andrea Tevlin
Independent Budget Analyst

CITY OF SAN DIEGO

(This Measure will appear on the ballot in the following form.)

MEASURE J

CHARTER AMENDMENT REGARDING MANDATORY DISCLOSURE OF BUSINESS INTERESTS. Shall the City Charter be amended to: require, for certain contracts, disclosure of the names and identities of all natural persons owning more than 10% of an entity contracting with the City or receiving more than 10% of the contracted amount; require the disclosures to be provided to the Council for contracts requiring Council approval; and exempt public agencies and publicly traded companies from the requirements?

This measure requires approval of a simple majority (50% plus 1) of those voting on the measure.

OFFICIAL TITLE AND SUMMARY

BALLOT TITLE

Charter Amendment Regarding Mandatory Disclosure of Business Interests

BALLOT SUMMARY

This measure would amend the San Diego City Charter (Charter) by amending Section 225: Mandatory Disclosure of Business Interests.

If approved by voters, the Charter amendments would require that every person or entity entering into certain contracts with the City would first be required to disclose the names and identities of all natural persons who:

- (1) will receive more than 10% of the contracted amount, or
- (2) who own more than 10% of the entity contracting with the City.

This requirement would apply to contracts including, but not limited to, contracts for public works, goods, services, consultants, transfers of interests in the City's real or personal property, and franchises, that are submitted to the City Council (Council) for approval or involve money over amounts established by ordinance of the Council.

The disclosures would also be required before any transfer of such contracts, if the City has the right to approve or object to the transfer.

If voters approve the amendments, the City would retain its existing authority to reject, terminate, or rescind an existing contract if a person or entity submits false information or omits information required to be disclosed by the Charter section.

The amendments would require that the disclosures be provided to the Council prior to the meeting in which the Council will consider the contract.

In some cases, the person or entity who is contracting with the City may not be determined by the time of the scheduled Council meeting. If this occurs, the Charter amendments would require the mandatory disclosures of business interests to be provided to the Council at least fifteen days before the City awards the contract.

The Charter amendments would create exceptions for contracts between the City and other public agencies, and contracts between the City and entities that are publicly traded companies. In such cases, the specific disclosures of business interests would not be required.

BALLOT SUMMARY (CONTINUED)

The Charter amendments also clarify that section 225 does not preclude the City from requiring persons or entities contracting with the City to disclose other information as a condition of contracting with the City.

If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend San Diego City Charter (Charter) Section 225: Mandatory Disclosure of Business Interests. The measure was placed on the ballot by the City Council.

Section 225 was added to the Charter through a ballot measure submitted to voters on June 2, 1992. The section requires a contracting party to disclose "the name and identity of any and all persons directly or indirectly involved" in proposed contracts with the City, and a description of "the precise nature of all interests" of such persons. The disclosures are required for all City contracts, regardless of the amount of money involved or whether the contracts are submitted to the City Council (Council) for approval.

Section 225 does not explain what it means to be "directly or indirectly involved" in a proposed contract or identify the types of interests that must be disclosed.

If approved by voters, this measure would amend the Charter section to specify what must be disclosed. The amendments would specify that the names and identities of individuals with financial interests in the contract must be disclosed to the City if their financial interest exceeds 10% of the contracted amount, or they have more than a 10% ownership interest in the entity contracting with the City.

If approved by voters, the amendments would require such disclosures to be provided for all contracts submitted to the Council for approval, and to contracts exceeding certain dollar amounts, with the amount to later be determined by the Council.

The Charter amendments would remove the requirement that a contracting party identify "all persons directly or indirectly involved" in the contract, and the requirement that disclosures be provided for all contracts regardless of the amount of money involved.

The amendments are designed to provide the Council with the disclosures – the names and identities of the persons required – before the meeting at which the Council will consider a contract.

If the contracting person or entity will not be known by the time of the meeting, the Charter amendments would require the Council to be provided with the disclosures at least fifteen days prior to the City awarding the contract, which would give the Council the opportunity to intervene in the contract process, if it desires. The City would retain its existing authority to reject, terminate, or rescind an existing contract if a person or entity submits false information or omits information required to be disclosed.

The Charter amendments would not require the disclosures from public agencies or publicly traded companies contracting with the City. These exceptions address circumstances in which personal financial interests are precluded by law, or where corporate ownership information is publicly available. The Charter amendments would not prevent the City from requiring those who contract with the City to disclose other information, as a condition of contracting with the City.

FISCAL IMPACT ANALYSIS

This measure would amend City Charter section 225 to require, for certain contracts, disclosure of the names and identities of all natural persons owning more than 10% of an entity contracting with the City or receiving more than 10% of the contracted amount; require the disclosures to be provided to the Council for contracts requiring Council approval; and exempt public agencies and publicly traded companies from the requirements. There is no fiscal impact associated with this Charter amendment.

The full text of this measure is included in this Voter Pamphlet.

ARGUMENT IN FAVOR OF MEASURE J

Transparency in who local government does business with is essential if we are to earn the trust of residents.

The proposed changes to Charter Section 225:

1. Require the “disclosure of the names and identities of all ‘natural persons’ who will receive more than 10% of the contracted amount, or who own more than 10% of the entity contracting with the City,” when:
 - a. The City spends or receives more than an amount set by ordinance.
 - b. The City Council’s approval is required by Charter (e.g. Sections 94, 103, 103.1) or by ordinance.
2. Guarantee the timely sharing of the disclosure information with the City Council when its approval is required to form a contract.
3. Exempt public agencies and publicly traded companies from the disclosure requirements.
4. Provide that “This Section shall not preclude the City from requiring disclosure of any other information from persons or entities contracting with the City.”

In the early Nineties, the City leadership unknowingly, almost entered a real estate deal with an alleged mobster. At the June 1992 election, 86% of the voters added Section 225 to the City Charter to prevent such “near misses” from happening in the future.

Previous city attorneys pointed out flaws in the language so for 26 years enforcement of Section 225 has been inconsistent at best.

The full City Council now unanimously recommends this change to you, the voter.

The proposed revision to Charter Section 225 will enable the City leadership and public to know when they are dealing with bad actors, avoid conflicts of interest and ensure equal opportunity contracting and do what the voters intended in 1992.

Barbara Bry
President Pro Tem, San Diego City Council, District 1

ARGUMENT AGAINST MEASURE J

No argument against Measure J was filed with the City Clerk’s Office.

FULL TEXT OF MEASURE J**ARTICLE XIV****MISCELLANEOUS PROVISIONS****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.~~

Every person or entity contracting with the City shall first disclose to the City the names and identities of all natural persons who will receive more than 10% of the contracted amount or who own more than 10% of the entity contracting with the City, where the City will be expending or receiving more than the amounts established by ordinance of the City Council or where City Council approval is required by this Charter or by ordinance. Contracts subject to this Section include, but are not limited to, contracts awarded pursuant to Section 94 of this Charter, transfers of interests in the City's real or personal property, and grants or renewals of franchises pursuant to Sections 103 or 103.1 of this Charter. The same disclosure shall be made to the City by every person or entity later receiving or assuming any rights or obligations under such contracts where City approval is required to transfer such rights or obligations.

The City may reject a proposed contract, terminate a current contract, or rescind a prior contract, if any person or entity submits false information or omits information required to be disclosed by this Section.

The City shall provide the City Council with the disclosures received from every person or entity contracting with the City where City Council approval is required, prior to the City Council meeting where the contract will be considered. If the person or entity the City will be contracting with has not been determined by the date of the City Council meeting, the City shall provide the City Council with the disclosures at least fifteen days prior to awarding the contract.

This Section does not apply to public agencies, or to entities that are publicly traded companies listed on a stock exchange in the United States.

This Section shall not preclude the City from requiring disclosure of any other information from persons or entities contracting with the City.