



**PROPOSITION J: CHARTER AMENDMENT REGARDING MANDATORY
DISCLOSURE OF BUSINESS INTERESTS**

August 2018

SDCTA Position:

SUPPORT

Rationale for Position:

This measure enforces existing law regarding business disclosure, which can help reduce monitoring costs for taxpayers and promote government accountability. SDCTA has supported similar efforts to promote government transparency, such as 2014 Proposition 42.

Title: Proposition J: Amendment Regarding Mandatory Disclosure of Business Interests

Jurisdiction: City of San Diego

Type: Charter Amendment

Vote: Simple Majority

Status: On the November 6, 2018 General Election Ballot

Issue: Disclosure of Business Interests

Description: Consideration of a proposed ballot measure regarding amendments to Charter Section 225: Mandatory Disclosure of Business Interests.

Fiscal Impact: None

Background

After the City of San Diego considered a \$47 Million real estate deal for affordable housing that was linked to mafia ties, the City Council placed a ballot measure in the 1992 June primary election proposing to add a new section to the city charter requiring all city-engaged businesses to disclose the financial interests in the transaction, titled "Mandatory Disclosure of Business Interests." More than 80% of voters approved the measure, and the law went into effect July 13, 1992. Because of its overly broad language, however, the transparency law has been largely unenforceable.

Since, three city attorneys have expressed concerns over its lack of specificity and submitted unsuccessful petitions to clarify it, as four paragraphs left many details open for interpretation. An investigation by the 2016/2017 County Grand Jury¹ found that the law mandating government transparency has been largely ignored. Although the City is conducting approximately \$3 Billion of business with more than a thousand companies², it still does not provide taxpayers with information on with who it conducts its land sales, purchases, leases, franchise rights, and

¹ (2017). ["Stop Kicking the Can Down the Road: San Diego's 1992 Transparency Law Must Be Enforced." San Diego County Grand Jury.](#)

² [Racino, Brad. \(2016\). "Long-ignored transparency law would reveal who's doing billions in business with San Diego." INewsSource.](#)



contracts. Academic research shows that disclosure can help reduce the cost of monitoring to oversee that contractors do not use public assets for self-interested reasons.³

In 2014, SDCTA supported a similar measure on public information transparency, Proposition 42. As passed, the measure clarified that local government transparency is the legal and financial responsibility of each local government entity. Having an accountable government that represents the people is crucial. Despite the potential cost to taxpayers, transparency should be the priority of every local and statewide government and agency. An enforced law of full disclosure promotes transparency and prevents conflicts of interest and criminal acts.

Proposal

On July 30, 2018, the San Diego City Council voted unanimously to submit the measure proposing to amend City Charter amendment Section 225 before voters on the November 6, 2018 election. The proposed amendments to the City Charter text have been attached to the end of this report. The question to be put before voters is formatted and reads as the following:

MEASURE ____ . 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?	YES	
	NO	

If approved, this measure would require every person entering into specified contracts with the City to disclose the names and identities of all natural persons who will receive more than 10 percent of the contracted amount, or who own more than 10 percent of the entity contracting with the City, before the City Council considers the contract or fifteen days before it is awarded. This requirement would apply 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 for approval or involve money over amounts established by ordinance of the Council.⁴ The measure would also allow the City to reject, terminate, or rescind an existing contract if it is in violation of the amendment and exempt public agencies and publicly traded companies from the requirements.

³ [Mahoney, Paul. \(1995\). "Mandatory Disclosure as a Solution to Agency Problems." University of Chicago - Chicago Unbound.](#)

⁴ [City Attorney Impartial Analysis.](#)

Governance and Fiscal Impact

City officials have stated that enforcement of the law might be impacted by staff or budget limitations. At the time of its investigation, the Grand Jury did not believe that enforcement of this law was optional, nor should it be postponed or sidelined by lack of staffing or budget—and neither does the SDCTA. Disclosure helps promote accountability, potentially decreasing monitoring costs.

Moreover, this proposal showcases important issues in governance, where the San Diego City Council has ignored the advice of successive City Attorneys and not addressed the inefficiencies of this amendment for twenty-four years.

Support and Opposition

*Inewsourc*e has long criticized Section 225 for being vaguely worded and long-ignored. In 2016, the media source requested the disclosure behind thirty-eight contractors that account for more than half a billion dollars in city business. Only four disclosed the names of their board members or corporate officers, and none disclosed all of the information required under the San Diego law.⁵

No opposition has been recorded.

⁵ [Racino, Brad. \(2018\). "San Diego business transparency measure on November ballot." INewSource.](#)



APPENDIX: Proposed Text Amendments to City Charter

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 right 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.