


City of Alexandria, Virginia

Vice Mayor
Silberberg Orals
9-29-15

MEMORANDUM

DATE: SEPTEMBER 25, 2015
TO: VICE MAYOR ALLISON SILBERBERG
FROM: MARK B. JINKS, CITY MANAGER 
SUBJECT: BACKGROUND ON THE CITY POLICY FOR PUBLIC DISCLOSURE OF
INTEREST IN LAND USE APPLICATIONS

In follow up to your question to me regarding the City's policy for public disclosure requirements for land use applications, here is some background regarding the ownership disclosure requirements.

The City has had disclosure requirements in place since at least 1992. In 2009, the Alexandria City Charter was amended by text amendment at the initiative of the City Council to include section 9.12.2 (Attachment 1) regarding disclosure by applicants. Subsequently, the zoning ordinance was amended to include section 11-350 pursuant to this charter authority (Attachment 2). The purpose of this 2009 charter change and zoning ordinance amendment was to bring more public disclosure to the process by requiring applicants to disclose if they have a business or financial relationship with a member of City Council, the Planning Commission, Board of Zoning Appeals or Boards of Architecture Review.

While this charter authorization is new, the zoning ordinance has since at least 1992 included a provision that requires that applications include a clear statement of the applicant and the owner and anyone owning more than a 10% interest in the applicant or owner (Attachment 3). This provision was likely previously authorized by the general zoning authorization but the new charter change made the authorization more explicit. In practice, Planning and Zoning requires that the application include the name of the applicant and the name of the owner and if either of those entities is a corporation, then the owners of more than 10% interest in the corporation. Often the owners of more than 10% interests are corporations.

The current 10% threshold comes from balancing the need for public disclosure of who the applicant is beyond just the name of the corporation who is the applicant and/or the property owner, and the burden on the applicant of listing all possible shareholders in a corporation. Requiring a greater disclosure may add time and expense to the application process for small businesses. Fairfax County and Prince William County uses the same 10% ownership disclosure requirement. Arlington County and Loudoun requires no disclosure of shareholders for corporations with more than 500 shareholders, but disclosure of all shareholders if it has 500 or less. Montgomery County and Prince George's County have a 5% interest property threshold.

The attached table (Attachment 4) lists the ownership disclosure requirements by jurisdiction comparing Alexandria and its surrounding neighbors.

Any change to this policy (either the 10% or more ownership disclosure or 10% business or financial relationship disclosure) would require a text amendment to the zoning ordinance. If a member of Council wishes to make such a change, the member can make a motion to initiate a zoning text amendment to amend the zoning ordinance section as stated. If the motion is approved by a majority of Council, staff would bring a text amendment to the Planning Commission for its recommendation and to the City Council for its consideration. If the text amendment is approved, an ordinance would follow. If Council chooses to move forward with this, staff recommends some dialogue with the community, including members of the development community, prior to Planning Commission and City Council consideration.

I hope this explanation addresses your question. Please let me know if you would like to discuss further.

Attachments: (1) City Charter Section 9.12.2
(2) Alexandria Zoning Ordinance Section 11-350
(3) Alexandria Zoning Ordinance Section 11-406
(4) Ownership Disclosure Requirements by Jurisdiction

cc: The Honorable Mayor and Members of City Council
Emily A. Baker, Deputy City Manager
James L. Banks, City Attorney
Karl Moritz, Director of Planning & Zoning
Joanna Anderson, Assistant City Attorney

Sec. 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. (Acts 2009, Ch. 539, § 1)

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 ten 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 ten percent 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 \$100.00, 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.

(Ord. No. 4639, § 1, 12-12-09)

11-406 - Contents of preliminary site plan application.

- (A) An application for preliminary site plan approval shall be submitted by the owner, contract purchaser, lessee or other party having a legal interest in the subject property on such forms as the director shall prescribe. It shall 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.

Prepared 09/22/15

Ownership Disclosure Requirements by Jurisdiction

Jurisdiction	Requirement	Code Language
Alexandria	All ownership information and corporate shareholders who own more than a 10% share in the corporation.	11-406: Contest of Preliminary site plan application: (A) An application for preliminary site plan approval shall be submitted by the owner, contract purchaser, lessee or other party having a legal interest in the subject property on such forms as the director shall prescribe. It shall 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.
Arlington	All ownership information and corporate shareholder information for corporations with less than 500 shareholders	"complete disclosure of the equitable ownership of the real estate to be affected, including, in the case of a corporate ownership, the names of stockholders, officers and directors, and in any case, the names and addresses of all of the parties in interest, provided that the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders"
Fairfax	All ownership information including shareholders of corporations who own 10% or more of any class of stock	Shareholders of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all shareholders, and if the corporation is an owner of the subject land, all of the officers and directors of such corporation.
Prince William	All ownership information for owners of 10% or more share in the property	"record owners of the property with a ten percent or greater interest"
Loudoun	All ownership information and corporate shareholder information for	"disclosing the equitable ownership of the real estate to be affected including in the case of corporation ownership, the name of stockholders, officers, and directors and in any case, the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders,

	corporations with less than 500 shareholders	officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser or lessee if they own 10% or more of the units in the condominium.
Montgomery	All ownership information for persons owning a 5% or more share	The identity of each person who has a substantial interest in the property under the application, including any person with a share in the property amounting to 5% or more (whether held in individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trust, liens, and encumbrances. The application must also contain the names of any contract purchaser or person holding a mortgage, deed of trust, or option to purchase the property
Prince George's County	All ownership information for persons owning a 5% or more share	A statement listing the name, and the business and residential addresses of all individuals having at least a five percent (5%) financial interest in the property. If any owner is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. This statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An Owner that is corporation listed on the national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors.