

## ***Text Amendment # 2016-0003***

### ***Ownership Disclosure Requirement***

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<b>Issue:</b> Consideration of text amendment to change the ownership disclosure threshold from ten percent to three percent for each application for land use or land development review approval.	Planning Commission Hearing:	May 3, 2016
	City Council Hearing:	May 14, 2016
<b>Staff:</b> Staff recommends APPROVAL of the amendments to change the ownership disclosure threshold from ten percent to three percent.		

**PLANNING COMMISSION ACTION, MAY 3, 2016:** On a motion by Vice Chairman Macek, seconded by Commissioner Koenig, the Planning Commission voted to initiate Text Amendment #2016-0003. The motion carried on a vote of 7 to 0.

On a motion by Vice Chairman Macek, seconded by Commissioner Koenig, the Planning Commission voted to recommend approval of Text Amendment #2016-0003. The motion carried on a vote of 7 to 0.

**Reason:** Commissioners agreed with the staff recommendation to approve the proposed text amendment.

## I. BACKGROUND

### *Existing disclosure requirements*

On March 27, 2009, the General Assembly of Virginia, amended *Chapter 536 of the Acts of Assembly of 1950*, which is the Charter for the City of Alexandria, to add section 9.12.2 - *Disclosure by Applicants*. This section allows the Zoning Ordinance to require “full public disclosure of parties having ownership interest in the real estate that is the subject of the application and of parties having any financial interest in such application or approval (Sec 9.12.2a)”. Accordingly, the City Council added Sec. 11-350 to the City’s Zoning Ordinance on November 21, 2009 to require public disclosure of parties having ownership interest in an application or real estate that is the subject of an application for land use or development.

On January 30, 2016 City Council adopted Resolution NO. 2707 which addressed matters of transparency and ethics in city government. This resolution directed the City Manager to initiate a text amendment to the City’s Zoning Ordinance Section 11-406(A) - *Contents of Preliminary Site Plan Application* to require persons with an ownership interest greater than three percent in the property or the applicable project to be listed on the application forms and to make a corresponding change to Section 11-350(A)(4), which defines the term “business or financial relationship” in relation to application disclosures.

Currently, as stated below, Section 11-406(A) requires an applicant to have a legal interest in the site and requires a statement identifying the applicant and property owner listing officers and those owning an interest in excess of ten percent.

Section 11-406(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.

Other sections of the Zoning Ordinance also have similar requirements for applicants for other types of approvals such as special use permits, zoning variances, zoning special exceptions, and subdivisions therefore staff proposes making the same change to the corresponding language through-out the Zoning Ordinance.

***Ownership Disclosure Requirements of Neighboring Jurisdictions***

The City of Falls Church, Virginia and Arlington County both require disclosure of all parties having an equitable interest in the real estate to be affected. For corporate applicants or property owners, all real parties of interests, including officers, directors, and stockholders for publicly traded companies having less than 500 shareholders must be disclosed. Fairfax, Prince William, and Fauquier Counties both currently have a ten percent reporting threshold similar to the one now used in Alexandria.

**II. PROPOSAL**

The proposed text amendment would change the disclosure reporting threshold from ten percent to three percent for each application for land use or land development approval. The text amendment would affect nine sections of the zoning ordinance:

5-604 (A) (CDD Concept Plan)  
5-605(A) (CDD Preliminary Plan)  
5-606(A) (CDD Final Plan)  
11-350(A) (4) (Required Application Disclosures)  
11-406(A) (site plans)  
11-503(A) (SUPs)  
11-803 (Map Amendments)  
11-903 (Master Plans)  
11-1706(A) (Subdivisions)

The parties 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 disclosure 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 forms for disclosure are included as part of the application package. Violations of this section shall be a Class 1 misdemeanor. The proposed change will require additional disclosure by requiring owners with smaller interests in corporations to be disclosed on applications and by lowering the threshold of ownership in a corporation by a public official that would be considered a business or financial relationship. No other changes to the disclosure requirements are proposed.

### **III. RECOMMENDATION**

Reducing the disclosure threshold from ten percent to three percent for all of the land use and land development review application types will increase the amount of information provided to the public for all land use and development approvals. It will help reinforce the confidence and trust that staff believes City residents already have in the decisions of the City Council, the Planning Commission, the Board of Zoning Appeals, and the two Boards of Architectural Review.

Staff recommends approval of the text amendment.

Staff: Cedric Southerland, Urban Planner  
Alex Dambach, Division Chief – Land Use  
Joanna Anderson, Deputy City Attorney

Attachments: 1. Proposed Zoning Text Changes  
2. City Council Resolution

**ATTACHMENT #1**

**PROPOSED ZONING TEXT CHANGES**

**ARTICLE XI. - DEVELOPMENT APPROVALS AND PROCEDURES**

**DIVISION A. - ADMINISTRATION AND ENFORCEMENT OF ORDINANCE AND  
NOTICE OF PUBLIC HEARINGS**

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*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~~ three 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~~ three 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.

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*Sec. 11-400 - Site plan.*

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**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~~ **three** 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.

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*Sec. 11-500 - Special use permits.*

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**11-503 - Procedure.**

(A) Application. An application for a special use permit shall be submitted to the director on such forms as the director may prescribe and shall include the following:

- (1) A statement identifying the applicant, who shall be the owner, contract purchaser, lessee or other party having a legal interest in the subject property.

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~~ **three** percent in such corporation or partnership need be identified by name, address and extent of interest. For purposes of this section 11-503(A)(1), 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.

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*Sec. 11-800 - Zoning amendment.*

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**11-803 Application for map amendment.**

An application for a map amendment shall be filed with the director, on such forms as the director may prescribe, who may require such information to be submitted as he determines is necessary for adequate review. At a minimum, the application shall contain the following information:

- (A) A statement identifying the applicant, who shall be the owner, contract purchaser, lessee or other party having a legal interest in the subject property. 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~~ **three** percent in such corporation or partnership need be identified by name, address and extent of interest. For purposes of this section 11-803(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.

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*Sec. 11-900 - Master plan amendment.*

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**11-903 - Application for map amendment.**

An application for a map amendment shall be filed with the director, on such forms as the director may prescribe, who may require such information to be submitted as he determines is necessary for adequate review. At a minimum, the application shall contain the following information:



- (A) A statement identifying the applicant, who shall be the owner, contract purchaser, lessee or other party having a legal interest in the subject property. 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~~ three percent in such corporation or partnership need be identified by name, address and extent of interest. For purposes of this section 11-903, 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.

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#### DIVISION E. - SUBDIVISION REGULATIONS

##### *Sec. 11-1700 - Subdivisions.*

#### **11-1706 - Contents of preliminary plat application.**

- (A) An application for preliminary plat approval shall be submitted by the owner or contract purchaser of the subject property on forms the director may 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 the ownership interest. If any of those entities is a corporation or a partnership, only those persons owning an interest in excess of ~~ten~~ three percent in that corporation or partnership need be identified by name, address and extent of interest. For purposes of this section 11-1706(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.

#### ARTICLE V. - MIXED USE ZONES

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##### *Sec. 5-600 - CDD/Coordinated development district.*

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#### **5-604 - Conceptual design plan approval.**

- (A) The application for conceptual design plan approval shall be submitted, on such forms as the director may prescribe, by the owner, developer, contract purchaser, lessee or other party having a legal interest in the subject property. 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, in which case only those persons owning an interest in excess of ~~ten~~ **three** percent in such corporation need be identified by name, address and extent of interest. For purposes of this section 5-604(A), the term ownership interest shall include any legal or equitable interest held at the time of the application in the property which is the subject of the application.

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**5-605 - Preliminary development plan approval.**

(A) The application for preliminary development plan approval shall be submitted, on such forms as the director may prescribe, by the owner, developer, contract purchaser, lessee or other party having a legal interest in the subject property. 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, in which case only those persons owning an interest in excess of ~~ten~~ **three** percent in such corporation need be identified by name, address and extent of interest. For purposes of this section 5-605(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.

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**5-606 - Final development plan approval.**

(A) The application shall be submitted, on such forms as the director may prescribe, by the owner, developer, contract purchaser, lessee or other party having a legal interest in the subject property. 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 such 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, in which case only those persons owning an interest in excess of ~~ten~~ **three** percent in such corporation need be identified by name, address and extent of interest. For purposes of this section 5-606(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.

**RESOLUTION NO. 2707****TRANSPARENCY RESOLUTION**

**WHEREAS**, the citizens and officials of the City of Alexandria have long maintained the highest levels of governmental transparency and ethics; and

**WHEREAS**, best practices in municipal governance increasingly include programs for ethics education and mechanisms to provide advice for elected and appointed officials; and

**WHEREAS**, the employees of the City of Alexandria have shown leadership in adopting an ethics initiative including a code of ethics; and

**WHEREAS**, City Council desires to affirm and establish regional and national leadership in maintaining the highest of standards for elected and appointed officials;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ALEXANDRIA**

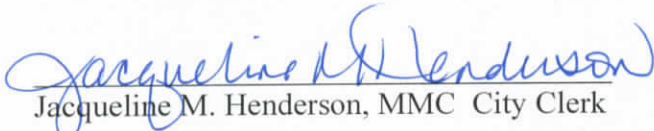
1. That there be and hereby is established an ad hoc study group to act at the direction of City Council and to be known as the "Ad Hoc Code of Conduct Review Committee."
  - a. The Committee shall consist of nine members, seven of which shall be designated individually by members of the City Council. The remaining two members will be residents of the City appointed by the City Manager and shall have special experiences and expertise in improving government transparency, accountability and ethics. The Mayor's designee shall act as the convener. This composition shall include a variety of perspectives, including those in business, law, policy and homeowners.
  - b. That the following persons shall be ineligible to serve as a member of the Committee: an officer of a political party; an elected official or current member of the Planning Commission, Board of Architectural Review, or Board of Zoning Appeals; a contractor with the City of Alexandria; or a person or private entity with a pending application, contract proposal or procurement bid for official action by the City of Alexandria; anyone holding any known direct ownership or voting interest in such an application; or an employee of the City of Alexandria;
  - c. That the Committee shall present to City Council a draft "Alexandria City Council Code of Conduct" and "Ethics Pledge" for the Mayor, City Council, and appointed officials of the City of Alexandria at the April 12, 2016 Legislative Meeting;
  - d. The Committee shall review the reports of the Virginia Commission on Integrity and Public Confidence in State Government to determine whether and to what extent the findings and recommendations thereof might be incorporated in Alexandria's law and city government practice;
  - e. Staff support for the Committee shall be provided by the City Manager's Office and City Attorney's Office as appropriate;
  - f. This Committee will be re-created shortly after the installation of each new Council to review and recommend revisions to the approved Code of Conduct;
2. The City Manager is requested to initiate a text amendment to amend 11-406(a) of the City's Zoning Code to lower the ownership threshold from ten percent to three percent. This will provide for the most stringent reporting threshold in the region.
3. Section 2.2-3711 of the Code of Virginia provides the specific legal rationale that the City Council must cite to go into executive session. Shortly after the conclusion of each fiscal year, the City Clerk is requested to publish on the City's website a report of all executive session activity in the previous fiscal year. This report shall detail the number of executive sessions, the legal rationale for each executive session, and the Council votes to initiate and certify each executive session. This report shall also be docketed each year for Council review at the first legislative meeting in September.
4. The City shall request authority from the General Assembly to enact further limits or an outright ban on the receipt of gifts by members of the City Council.

5. The City shall support and initiate efforts by the General Assembly to give The Virginia Conflict of Interest & Ethics Advisory Council the authority and responsibility to regularly audit the Statements of Economic Interests of local elected officials.

Adopted: January 30, 2016.

  
**ALLISON SILBERBERG MAYOR**

ATTEST:

  
Jacqueline M. Henderson, MMC City Clerk