



# City of Chula Vista

## Staff Report

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**File#:** 14-0466, **Item#:** 7.

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### CONSIDERATION OF PROPOSED BALLOT MEASURE TO AMEND CITY CHARTER, SECTIONS 1009, 1010 AND 1011

RESOLUTION NO. 2014-157 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA 1) AMENDING RESOLUTION 2014-120 CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014, 2) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE TO AMEND CHULA VISTA CHARTER SECTIONS 1009 (REGARDING PUBLIC WORKS CONTRACTING), AND 1010 AND 1011 (REGARDING CITY CONTRACTING GENERALLY) IN ORDER TO ENHANCE EFFICIENCY AND FLEXIBILITY IN CITY PROCUREMENT PRACTICES WHILE PRESERVING CHECKS AND BALANCES, AND 3) APPROPRIATING FUNDS THEREFOR (4/5 VOTE REQUIRED)

### RECOMMENDED ACTION

Staff recommends that the Council 1) consider the draft Charter amendments to Sections 1009, 1010, and 1011, the proposed ballot question language and related materials; 2) approve such items as presented, or with any modification Council may approve; 3) direct staff to take all necessary actions to cause this item to be presented to the voters on the November 4, 2014 ballot; and 4) appropriate \$47,000 from the available balance of the General Fund to fund the costs of such measure.

### SUMMARY

This item presents for City Council consideration of modifications to City Charter Sections 1009, 1010 and 1011; these provisions set forth procedures for awarding City public works contracts and other types of City contracts. The proposed modifications were drafted in consultation with the City's Public Works, Finance, and Economic Development departments. In general, the proposed modifications eliminate procurement practice *details* and replace them with good procurement practice *principles*. The authority for making detailed procurement rules consistent with these principles is then delegated to the City Council. The proposed changes are designed to enhance the efficiency and flexibility of the City's procurement practices consistent with "best practices" while preserving appropriate checks and balances. All proposed changes were thoroughly vetted with the Charter Review Commission. Consistent with City Council direction at the July 22, 2014, Council meeting, these modifications, along with related ballot materials, are now presented for City Council final approval for placement on the November 4, 2014 ballot.

Staff will present verbally input received from independent contractor and union contractor interests solicited as a follow-up to City Council action on July 22, 2014.

### ENVIRONMENTAL REVIEW

The City's Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity of amending

the Charter in the manner proposed is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the action proposed is not subject to CEQA.

### **BOARD/COMMISSION RECOMMENDATION**

After considering the item in concept and providing input on various drafts over the course of six (6) public meetings, on April 23, 2014, the Charter Review Commission recommended (6-0) to present the proposed Charter amendments for consideration by the City Council for placement on the November 4, 2014 ballot.

### **DISCUSSION**

Since early 2013, the City Attorney's office has been working with the Charter Review Commission, and with City departments whose activities are governed by the City Charter, to identify areas of the Charter that may warrant modification. Modifications to the Charter can become necessary or appropriate for any number of reasons, including changes in City objectives, changes in "best practices," changes in the law, or the desire to clarify ambiguous language.

#### **Public Works Contracting Provisions [Charter Section 1009].**

The first set of Charter provisions identified for critical analysis and possible modification were those dealing with public works. This was an appropriate and logical place to start for a number of reasons. First, for some number of years, staff's general sense was that the City's Charter provisions governing public works had become outdated. Most outdated were the extremely low contract amounts that triggered the requirement for formal bidding and City Council approval. Second, the Public Works department has been especially active in streamlining their many administrative processes by applying principles of "continuous improvement." Third, the Finance Department, which oversees the City's procurement processes generally, was itself looking at updating and streamlining City purchasing practices.

The Charter provisions regarding public works that are targeted for update are set forth in Section 1009. In its current form, attached hereto as **Exhibit A**, this Section requires any public works contract exceeding \$50,000 to be awarded through a formal bid process. This requires the preparation of detailed project bid documents, the advertisement for bids and a formal sealed bid process. All contracts exceeding \$25,000 must also be agendaized and presented to the City Council for approval. Combined, these processes can be time consuming and expensive. Section 1009 also contains requirements for the posting of bid bonds, standards for the acceptance and rejection of bids, alternative bid processes, and City Manager and City Engineer authority over certain aspects of these processes. Some of these provisions are very detailed. Others provisions are more vague. Both types of provision contain ambiguous and undefined terms, and are not well organized.

By contrast, staff's research revealed that none of the Charters for the other San Diego County Charter cities specify the contract amount that would trigger a formal bid process or the requirement for Council approval. Instead, such details are contained in those cities' municipal codes. As of last year, these cities had City Council approval thresholds as follows: Vista, \$75,000; Escondido, \$100,000; Carlsbad, \$175,000; Oceanside, \$175,000; and San Marcos, \$250,000. City of San Diego

triggers for Council approval are higher still, with no City Council approval required for “task order” contracts below \$1 million, “job order” contracts below \$10 million, or CIPs contracts below \$30 million when implementing a City Council approved CIP program. If Chula Vista were to set its threshold at just \$250,000, Public Works estimates an annual savings of approximately 1,100 hours in staff time (valued at \$162,000). These hours could then be redeployed towards other work. Even more staff time savings would be realized with a reduced requirement for “formal” bid processes; however, as competitive bid processes will still be employed for the vast majority of contracts (as would be specified in any implementing ordinance), the precise amount of these savings is hard to estimate.

Staff’s research also revealed that, with the exception of the City of San Diego, the public works provisions contained in the Charters of the regions other Charter cities were much less detailed than Chula Vista’s in every respect. Instead of setting forth specific purchasing rules in their Charters, our sister-cities opted for very general Charter language declaring, in effect, that public works contracting was a matter of “local control,” with specific rules to be made by ordinance. (All such provisions are attached hereto as **Exhibit B.**)

Since 1992 the City has proposed, and received voter approval of, two Amendments to Section 1009 of the City’s Charter. The first, in 1992, increased the formal bid threshold from \$25,000 to \$50,000, and the City Council approval threshold from \$10,000 to 25,000. The second, in 2000, added the ability of the City to utilize what’s commonly known as a “design-build” procurement process for public works. (Previously, only the traditional design, “bid-build” process had been allowed.)

Staff presented all of this information to the Charter Review Commission, along with other details about the City’s current purchasing practices, initially back in April of 2013. The Commission liked the concept of updating the Charter in this area to allow the City to be more efficient, and echoed staff’s emphasis on the need to preserve appropriate “checks and balances” to ensure that professional and fair practices were maintained. The Commission’s consensus was to ask staff to bring back a specific draft proposal to a future meeting. At the next Commission meeting, a draft proposal was presented, and alternative approaches to amending the Charter were presented and discussed. The initial proposal was to “clean up” language, but to otherwise keep the Charter language detailed, while increasing the “trigger” thresholds for formal bid and City council approval to amounts more in tune with current contracting costs, and the growing population and sophistication of the City. Public Works suggested a figure in the range of \$250,000. An option to index this figure to keep up with inflation was also considered. Discussions at this Charter Review Commission meeting favored the change, but consensus formed around the option of eliminating the specifics from the Charter and instead, having specific policies approved by the City Council via ordinance. Elements that would need to be included in such an ordinance would be identified in the Charter (e.g., that City Council approval and formal bid processes would still be required for “major” contracts, with awards to lowest responsive and responsible bidder, etc.), but details would be left to the City Council to be established by ordinance through an amendment to the City’s purchasing code. This was discussed as being beneficial because code revisions are much easier and less expensive to make than Charter amendments, making it easier for the City to keep up with “best practices”. Exceptions to pure competitive bidding would also be allowed by code, but only under appropriate, special circumstances. This would allow for “checks and balances” to be included in any such process. Presentations of revised drafts to the Charter Review Commission occurred at the meetings of December 11, 2013, February 5, 2014, and April 23, 2014. With excellent input from the

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Commission, this resulted in refinements and clarifications to the language. This refined language is now being presented to the City Council for consideration.

Key changes include the following:

1. Clarification that “public works” contracts do not include contracts for “routine maintenance.”
2. Conversion of language providing for detailed public works bid and award practices into purchasing practice principles to be implemented by ordinance as follows:
  - a. City Council reservation of authority to approve what it defines as “major” contracts or “special” contracts, based on factors such as contract cost, value or other relevant factors;
  - b. Competitive bid processes for all contracts, with formal advertisement for bids and sealed bids required for all “major” contracts;
  - c. The award of contracts to the lowest responsive and responsible bidder;
  - d. The ability to reject any and all bids, to readvertise for bids, or to waive minor defects in any bid, where determined by the designated contract-approving authority that such action is necessary or appropriate for the benefit of the public;
  - e. Emergency authority to waive the applicable competitive bid process requirements if the City Manager determines that the work required is of urgent necessity for the preservation of life, health or property; and
  - f. Such other provisions consistent with this section as may be necessary or appropriate to implement a Public Works procurement process that is consistent with best practices.
3. The ordinance may also provide for one or more exceptions to the approval and competitive bid processes described above if such exception is included as part of a City-wide policy or program approved and determined to be in best overall interests of the City by 4/5ths vote of the Council.

The full text of the proposed changes to Charter Section 1009, presented in underline/strikeout format is attached hereto as **Exhibit C**.

**General Purchasing Provisions [Charter Sections 1010 and 1011].**

At about the time the public works language was being finalized with the Charter Review Commission, the City Attorney’s office also engaged the Economic Development department regarding possible changes to the Charter’s language on general purchasing procedures. The existing language in Sections 1010 and 1011 has been interpreted over the years as significantly limiting alternative purchasing programs designed to advance City programs for business retention, expansion and attraction, particularly programs that could provide local companies a reasonable preference when competing for business with the City. As drafted, the current language appears to

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allow for a local preference only as a “tie-breaker” when the bids were otherwise identical in price and quality. Because of the need for a charter amendment, such programs were tabled in favor of others with no such legal impediments. With a related public works contacting Charter amendment under consideration, staff determined that the time may be right to reintroduce language that could remove such impediments. The language in the revised versions of Charter Sections 1010 and 1011 accomplishes this result, as well as clarifying ambiguous language. While no specific economic development purchasing programs are implemented by these changes, such programs would be made possible for future City Council consideration by ordinance. For reasons of enhanced efficiency and flexibility in contracting, the Charter Review Commission was also supportive of this amendment.

Key provisions of the proposed amendment to Charter Sections 1010 and 1011 are as follows:

1. Clarification that these Sections only apply to “non-public works” purchasing.
2. The addition of “leasing” and other types of “acquisition” to the kinds of contracts covered.
3. The deletion of the reference to preferences for local businesses only where quality and prices are equal.
4. Reorganization and clarification of terms, including replacing old Section 1011 regarding Competitive Bidding (now absorbed in substantial part into new Section 1010(c)), with a new version specifically regarding property storage, distribution, inventory and disposition.
5. Provisions allowing exceptions to “competitive bidding” in the City’s implementing ordinance provided that any such exception is included as part of a City-wide policy or program approved and determined to be in best overall interests of the City by 4/5ths vote of the Council. (This provision is essentially identical to the exception provision proposed for Section 1009, above, applicable to public works.)

The full text of the proposed changes to Charter Sections 1010 and 1011, presented in underline/strikeout format, is attached hereto as **Exhibit D**.

**Ballot Question**

The proposed language for the ballot question that the voters will act on is as follows:

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| Shall the City's Charter provisions regarding public works and general purpose contracting be amended to replace specific contracting procedures with more general contracting principles that would be implemented by ordinance, including the requirement for competitive bidding, City Council approval of major contracts and other best practices, and the requirement that any exceptions to standard competitive purchasing practices be approved by 4/5ths vote of the City Council with findings of public benefit? | YES |  |
|  | NO  |  |

### **Next Steps.**

In order to place a measure on the November 2014 ballot, the language of the measure, the ballot question, and related ballot documents must be provided to the County Registrar of Voters by August 8, 2014. If City Council approves this item, the City Attorney's Office will work with the City Clerk to meet this deadline. The City Attorney's Office will also prepare its Impartial Analysis of the measure for submittal to the registrar by August 18, 2014.

The City council should consider designating one or two of its members to work with staff to draft a City Council sponsored Ballot Argument in favor of the proposed amendments. On this item, staff would take the lead with the City Council designee(s) providing final review and approval. One or more City Council members could also indicate their support by signing the argument.

### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site specific; consequently, the 500 foot rule found in California Code of Regulations section 18704.2(a)(l) is not applicable to this decision. Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong & Secure Neighborhoods and a Connected Community. This amendment supports the goal of and Strong & Secure Neighborhoods by enabling the Department of Public Works to respond to and repair critical maintenance issues without costly delays. Increasing the threshold for Council approval also supports the goal of Operational Excellence by using the continuous improvement tools to streamline the process in which Public Works staff is able to strategically select qualified, cost effective and available contractors without the burden of additional administrative costs associated with submitting items to Council for approval. The proposed Charter amendment would also provide Council with the opportunity to consider policies that generally implement components of the Economic Vitality Goal; "Strengthen and diversify the City's economy

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by supporting and advancing existing businesses, ... and engaging the community to reinvest in the City. The proposed amendment specifically addresses Strategy 2.1 and 2.2; "Provide policies... that are fundamental to an economically strong, vibrant city."

### **CURRENT YEAR FISCAL IMPACT**

The amount of \$47,000 needs to be allocated to fund the placement of this Charter Amendment on the November 4, 2014 ballot. As presented this allocation would be made by appropriating the full amount out of the available balance of the General Fund reserve and into the supplies and services expenditure category of current fiscal year City Clerk's budget. As an alternative, some or all of the cost of this item could be funded using a carry forward of savings from the June 2014 election. This carry forward amount is projected to be approximately \$110,000.

If passed by the voters, some additional staff time would be required to draft and present the implementing ordinance. In terms of savings, we anticipate that by the time of implementation more than half the fiscal year will have expired with most of the public works contracts for the year already approved; therefore, first year savings are likely to be modest.

### **ONGOING FISCAL IMPACT**

It is estimated that on average the City will process about 72 Public Works contracts greater than \$25,000 and below \$250,000 each year. If this Charter Amendment is passed by the electorate, staff estimates an annual administrative savings of 1,100 hours (\$162,000) representing the effort of preparing and reviewing Agenda Items for City Council approval. Additional savings should also be realized as a result of fewer required "formal" bid processes.

### **ATTACHMENTS**

Exhibit A - Existing Charter Section 1009

Exhibit B - Public Works Charter Provisions from Other San Diego Area Charter Cities

Exhibit C -- Proposed Modifications to Charter Section 1009 (Underline Strikeout)

Exhibit D -- Proposed Modifications to Charter Section 1010 and 1011 (Underline Strikeout)

Resolution

*Staff Contact: Glen R. Googins*