

ORDINANCE NUMBER O- 19995 (NEW SERIES)

10/12

DATE OF FINAL PASSAGE OCT 18 2010

AN ORDINANCE ADOPTING THE MANAGED
COMPETITION GUIDE TO IMPLEMENT SAN DIEGO
CHARTER SECTION 117(c).

WHEREAS, on November 7, 2006, City of San Diego voters approved Proposition C to add section 117(c) to the San Diego Charter (Charter); and

WHEREAS, Charter section 117(c) provides that the City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest; and

WHEREAS, Charter section 117(c) further provides that the City Council shall by ordinance provide for appropriate policies and procedures to implement section 117(c); and

WHEREAS, by San Diego Ordinance O-19565 (Ordinance), on January 9, 2007, the City Council adopted policies and procedures to implement section 117(c), set forth at Article 2, Division 37, sections 22.3701 through 22.3716, of the San Diego Municipal Code; and

WHEREAS, Ordinance O-19565 was challenged by one of the City's recognized employee organizations, the American Federation of State, County, and Municipal Employees Local 127 (AFSCME Local 127), by the filing of an unfair practice charge, related to alleged violations of the Meyers-Milias-Brown Act (MMBA), at California Government Code (Government Code) sections 3500 through 3511, against the City with the California Public Employment Relations Board (PERB), on February 13, 2007; and

WHEREAS, the City must comply with the procedural requirements of the MMBA, regarding labor relations between public agency employers and their represented employees, pursuant to long-standing California case law authority (*see People ex rel. Seal Beach Police Officers Ass'n. v. City of Seal Beach*, 36 Cal. 3d 591 (1984)); and

WHEREAS, upon receipt of the unfair practice charge filed by AFSCME Local 127, the General Counsel of PERB issued a complaint against the City on May 21, 2007 (Unfair Practice Case No. LA-CE-352-M), alleging, in relevant part, that the City violated the MMBA by not following its impasse procedure set forth in City Council Policy 300-06, the City's Employee-Employer Relations Policy, when the City Council adopted Ordinance O-19565; and

WHEREAS, the San Diego Municipal Employees' Association (SDMEA) filed a request for joinder as a party on July 5, 2007, which was granted on August 22, 2007; and

WHEREAS, on September 10, 2007, AFSCME Local 127 filed a motion to amend its unfair practice charge, alleging that the City failed to bargain in good faith regarding a Managed Competition Guidebook, which was issued on September 7, 2007; and

WHEREAS, on September 12, 2007, SDMEA joined in AFSCME Local 127's motion, which was granted on September 24, 2007; and

WHEREAS, PERB held a hearing on the unfair practice charges on September 25-28, 2007, and October 29-31, 2007; and

WHEREAS, by decision dated August 22, 2008, the Administrative Law Judge for PERB found that the City did not exhaust the required impasse procedures when the City Council adopted Ordinance O-19565, and thus violated PERB Regulation 32603 and the MMBA, specifically Government Code sections 3503, 3505.4, 3505, and 3506; and

WHEREAS, the Administrative Law Judge for PERB also found that the City failed to meet and confer in good faith with its recognized employee organizations, in violation of Government Code section 3503, 3505, and 3506, when the City unilaterally issued the Managed Competition Guidebook; and

WHEREAS, the Administrative Law Judge for PERB ordered the City to, in relevant part: (a) cease and desist from failing to follow its own impasse procedures and failing to bargain in good faith, and (b) follow its impasse procedures with regard to the implementing ordinance for Proposition C and rescind the Managed Competition Guide issued on September 7, 2007, and bargain in good faith with AFSCME Local 127 and SDMEA about the Managed Competition Guide and its contents and effects; and

WHEREAS, as a result of the decision of the Administrative Law Judge for PERB, finding that Ordinance O-19565 was adopted by the City Council in violation of preemptive state law, the City Council hereby declares that Ordinance O-19565 is invalid and desires to repeal it; and

WHEREAS, following the August 22, 2008, decision of the Administrative Law Judge for PERB, the City's negotiating team engaged AFSCME Local 127 and SDMEA in meet and confer on the Managed Competition Guide; and

WHEREAS, following forty negotiation sessions with AFSCME Local 127 and thirty-three negotiation sessions with SDMEA, the City's Management Team reached impasse, as defined by the MMBA, specifically Government Code section 3505.4, and City Council Policy 300-06; and

WHEREAS, following an impasse meeting with AFSCME Local 127 and an impasse meeting with SDMEA, the City's Management Team remained at impasse with the two employee organizations, and, on October 27, 2009, the City Council held an impasse hearing on the merits of the dispute between the City's negotiating team and AFSCME Local 127 and SDMEA over the Managed Competition Guide; and

WHEREAS, pursuant to City Council Policy 300-06, following a hearing on the merits of the dispute over the Managed Competition Guide, the City Council resolved the impasse by a determination to not impose the Mayor's last, best, and final offer on the Managed Competition Guide, but rather to request that the City's negotiating team return to the bargaining table to revive meet and confer with AFSCME Local 127 and SDMEA; and

WHEREAS, from October 27, 2009, until March 2, 2010, the City Council noticed seven closed session meetings, as permitted by Government Code section 54957.6, to review the City's position and give instructions to the City's negotiators; and

WHEREAS, pursuant to the authority of Council Policy 300-06, the City Council determined to resolve the impasse by presenting a revised proposal regarding the Managed Competition Guide; and

WHEREAS, the City Council also desired that an implementing ordinance, adopting the Managed Competition Guide, be presented to AFSCME Local 127 and SDMEA; and

WHEREAS, from March 2010 through July 2010, meet and confer sessions were held with AFSCME Local 127 and SDMEA, and agreement has been reached on the Managed Competition Guide; and

WHEREAS, the City Council desires to adopt the Managed Competition Guide, by ordinance, as set forth in Charter section 117(c); and

WHEREAS, the City Council further desires to adopt provisions, that have been negotiated with AFSCME Local 127 and SDMEA, regarding the establishment of the Managed Competition Independent Review Board; and

WHEREAS, the City Council intends that any agreement with an independent contractor approved pursuant to Charter section 117(c) will comply with all existing state and local laws governing contracts with the City; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That the Managed Competition Guide, dated JUL 26 2010, as negotiated by the City, as a public agency employer pursuant to the Meyers-Milias-Brown Act with recognized employee organizations, the American Federation of State, County, and Municipal Employees, Local 127 and the San Diego Municipal Employees' Association, placed on file with the City Clerk as Document No. 19995 and fully incorporated herein by reference, including but not limited to the "Reservation of Rights" language contained in the Introduction Section of the Managed Competition Guide, is hereby adopted as policies and procedures to implement San Diego Charter section 117(c).

Section 2. That if any term, phrase, clause, sentence, portion, or provision in the Managed Competition Guide, placed on file with the City Clerk as Document No. 19995 and fully incorporated herein by reference, is found to be in conflict with any provision of the San Diego Charter, including but not limited to Charter section 117(c) or Charter section 28, or to be invalid for any reason, by a decision of a court of competent jurisdiction or by any other legal adjudicative process, such decision shall not affect the validity of the remaining portions of the Managed Competition Guide, which can be given effect without the invalid provision. To this end, the provisions of the Managed Competition Guide are hereby declared to be severable.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED AS TO FORM: JAN I. GOLDSMITH, City Attorney

By Joan F. Dawson
Joan F. Dawson
Deputy City Attorney

JFD:ccm
07/27/2010
Or.Dept:LRO
O-2011-26

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 12 2010

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 10.16.10
(date)

[Signature]
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor