

ORDINANCE NUMBER O- 19996 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 18 2010

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING DIVISION 37 IN ITS ENTIRETY; BY AMENDING CHAPTER 2, ARTICLE 2, BY CREATING A NEW DIVISION 37; AND BY ADDING NEW SECTIONS 22.3701 THROUGH 22.3705, ALL RELATING TO THE MANAGED COMPETITION INDEPENDENT REVIEW BOARD.

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-Miliias-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, the City Council desires to adopt provisions regarding the eligibility of and appointment of the Managed Competition Independent Review Board Members; and

WHEREAS, these provisions have been negotiated and agreed-upon by AFSCME Local 127 and SDMEA; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 37, of the San Diego Municipal Code is hereby amended by repealing Division 37 in its entirety.

Section 2. That Chapter 2, Article 2, of the San Diego Municipal Code is hereby amended by adding a new Division 37, and by adding new sections 22.3701, 22.3702, 22.3703, 22.3704, and 22.3705, to read as follows:

Division 37: Managed Competition Independent Review Board

§ 22.3701 Managed Competition Independent Review Board Advisory Role

Pursuant to San Diego Charter section 117(c), the Mayor shall establish the Managed Competition Independent Review Board to advise the Mayor whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest.

§ 22.3702 Appointment of Managed Competition Independent Review Board Members

The Managed Competition Independent Review Board shall be composed of:

- (a) Seven members appointed by the Mayor;
- (b) Three of the seven members shall be City staff including a Mayoral staff designee, a City Council staff designee, and the Chief Financial Officer or staff designee;

- (c) Four of the seven members shall be private citizens whose appointments shall be subject to City Council confirmation, and who shall serve without compensation. Each of the private citizen members shall have professional experience in one or more of the following areas: finance, law, public administration, business management, or the service areas under consideration by the Mayor, pursuant to San Diego Charter section 117(c).

§ 22.3703 Terms of Managed Competition Independent Review Board Members

To promote continuity and organizational knowledge, the terms of the initial appointees to the Managed Competition Independent Review Board shall be staggered as follows: Two private citizens shall serve an initial three-year term, and the other two private citizens shall serve two-year terms. All subsequent terms by private citizens shall be two years. A member who has served two complete terms shall be ineligible for reappointment for two years after leaving the Board. The three City staff Board members shall not be subject to the above term limits.

§ 22.3704 Qualifications of Managed Competition Independent Review Board Members

Each member of the Managed Competition Independent Review Board shall comply with all of the following provisions during his or her tenure on the Board:

- (a) No member of the Board shall make a financial contribution to, or publicly support or oppose, a candidate for or incumbent in City office.

- (b) No member of the Board is permitted to act as a lobbyist required to register with the City pursuant to Chapter 2, Article 7, Division 40 of this Code.
- (c) Board members shall not have any personal or financial interests that would create conflicts of interest with the duties of a Board member. A conflict of interest code shall be adopted by the City Council for all Board members. All Board members shall be required to complete and file statements of economic interests in accordance with the conflict of interest code.
- (d) Board members shall be prohibited from entering into a contract with or accepting employment from an independent contractor that secures a City contract through Managed Competition for the duration of the contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a member of the Board during the term of the contract with the City.
- (e) Former Board members shall not enter into a contract with or accept employment with an independent contractor that secures a City contract through Managed Competition for the duration of that contract after leaving the Board, if that Board member participated in the selection process for that contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and

immediately terminate the contract if the independent contractor enters into a contract with or employs a former Board member during the term of the contract with the City, if that former Board member participated in the selection process for that contract.

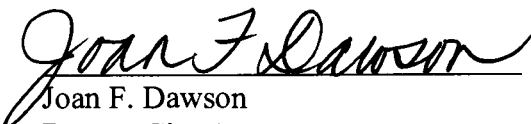
§ 22.3705 Removal of Managed Competition Independent Review Board Members

A Managed Competition Independent Review Board member subject to City Council confirmation may be removed for cause by a vote of the majority of the members of the City Council. Before the City Council may remove a member of the Board, written charges shall be made against the Board member and an opportunity afforded for a public hearing before the City Council acts upon such charges. While charges are pending before the City Council, the City Council may suspend a Board member's participation on the Board.

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.

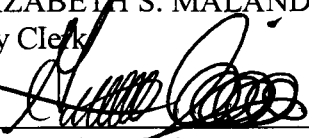
APPROVED AS TO FORM: JAN I. GOLDSMITH, City Attorney

By 
Joan F. Dawson
Deputy City Attorney

JFD:cm
07/27/2010
09/15/2010 COR. COPY
Or.Dept:LRO
O-2011-27

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 
Deputy City Clerk

Approved: 10-15-10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor