

201A
(O-2012-52) 1/30/12

ORDINANCE NUMBER O- 20126 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 30 2012

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 5, 2012, ONE PROPOSITION AMENDING THE SAN DIEGO MUNICIPAL CODE BY ADDING CHAPTER 2, ARTICLE 2, DIVISION 44, SECTIONS 22.4401, 22.4402, 22.4403, 22.4404, 22.4405, 22.4406, 22.4407 AND 22.4408, TITLED THE "FAIR AND OPEN COMPETITION IN CONSTRUCTION ORDINANCE."

WHEREAS, on September 2, 2011, proponents timely filed with the San Diego City Clerk's Office an initiative petition that would amend the San Diego Municipal Code (Municipal Code) by adding Chapter 2, Article 2, Division 44, sections 22.4401 through 22.4408, titled the "Fair and Open Competition in Construction Ordinance"; and

WHEREAS, the San Diego County Registrar of Voters conducted a legally required verification of three percent of the submitted petition signatures selected at random, and found the initiative petition to contain the valid signatures of more than 10 percent of the City's registered voters, sufficient to qualify the measure for direct submission to the voters; and

WHEREAS, in compliance with Municipal Code sections 27.1026 and 27.1027, the City Clerk presented the petition and a certification of the sufficiency of its signatures to the City Council at its meeting on September 27, 2011; and

WHEREAS, in compliance with San Diego Charter section 23 and sections 27.1034 and 27.1035 of the Municipal Code, the City Council on October 3, 2011 adopted a resolution of intention to submit the initiative measure to the voters at a special election, to be held at the same time as the next citywide primary election; and

WHEREAS, by Ordinance No. O-20125, introduced and adopted on JAN. 30, 2012, the City Council called a Municipal Special Election to be consolidated with the California State Primary Election on June 5, 2012, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council now desires to submit to the voters at the Municipal Special Election the ballot measure referenced herein, which would amend the San Diego Municipal Code by adding Chapter 2, Article 2, Division 44, sections 22.4401 through 22.4408, titled the “Fair and Open Competition in Construction Ordinance”; and

WHEREAS, pursuant to San Diego Charter sections 275(c), 295(b) and 295(d), this ordinance relating to elections may be passed by the City Council on the date of introduction, which date shall be deemed the date of final passage, and is not subject to veto by the Mayor;

NOW, THEREFORE,

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

Section 1. That one proposition that would amend the San Diego Municipal Code by adding Chapter 2, Article 2, Division 44, sections 22.4401 through 22.4408, titled the “Fair and Open Competition in Construction Ordinance,” is hereby submitted to the qualified voters at the Municipal Special Election to be held on June 5, 2012, and consolidated with the California State Primary Election to be held on the same date, with the proposition to read as follows:

PROPOSITION

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

SECTION 1: San Diego Municipal Code, Chapter 2, Article 2, is amended by adding

Division 44, to read as follows:

Article 2 Administrative Code

Division 44: Fair and Open Competition in Construction Ordinance

§22.4401 Statement of the People's Intent

The People of the City of San Diego support the enactment of this Fair and Open Competition in Construction Ordinance because they believe the City should treat union and non-union Contractors equally and not give special advantages to either. All City Construction Project job opportunities should be open equally to both union and non-union workers. Fair and open competition helps the City maximize government efficiency by getting the best quality work for the best price for the taxpayers. To promote fair and open competition for City Construction Project contracts, the City should not mandate the use of Project Labor Agreements. City Construction Project contracts should be posted online to help citizens evaluate the City's performance in promoting fair and open competition. The People believe these reforms are urgently needed and wish to enact this Ordinance as soon as possible.

§22.4402 Fair and Open Competition - Prohibition on Requiring Project Labor Agreements

Except as required by state or federal law as a contracting or procurement obligation, or as a condition of the receipt of state or federal funds, the City shall not require a Contractor on a Construction Project to execute or otherwise become a party to a Project Labor Agreement as a condition of bidding, negotiating, awarding or the performing of a contract.

§22.4403 **Fair and Open Contracts - Posting City Construction Project Contracts Online**

To help ensure City compliance with the purposes of this Ordinance, the Mayor shall post on the City's website in a searchable format the text of all Construction Project contracts entered into by the City valued at more than \$25,000 in a given fiscal year. The Mayor shall redact any proprietary, trade secret, or otherwise legally privileged or confidential information from contracts prior to posting. For each contract, the Mayor shall note the number of total bidders who competed for the contract. For any sole source contract, the Mayor shall post a written justification for the sole source determination.

§22.4404 **Definitions**

For the purpose of this Ordinance, the following definitions shall apply:

"Act" shall mean the National Labor Relations Act, Title 29 U.S.C § 151 - 169.

"City" shall mean and include the City of San Diego, its agencies, corporations, boards, commissions, organizational subdivisions, partnerships, offices, and any other entity that the City of San Diego holds a controlling interest thereof.

"Construction Project" shall mean and include any project paid for in whole or in part out of City funds for the construction, rehabilitation, alteration, conversion, extension, maintenance, repair, replacement, or improvement of any structures or real property.

"Contractor" shall mean and include an owner, developer, contractor, subcontractor, material supplier, carrier, or other person or firm engaged in the completion of a Construction Project.

“Labor Organization” shall have the same meaning ascribed to it in Section 2 of the Act (29 U.S.C. § 152).

“Ordinance” means this Fair and Open Competition in Construction Ordinance as codified in the San Diego Municipal Code Chapter 2, Article 2, Division 44.

“Project Labor Agreement” shall mean any pre-hire, collective bargaining or similar type of project specific labor agreement entered into with one or more Labor Organizations, employees or employee representatives that establishes the terms and conditions of employment on a Construction Project.

§22.4405 **Applicability**

- (a) The construction of this Ordinance shall be applied by the Mayor and City Council and interpreted judicially so as to most fully implement the Statement of the People’s Intent.
- (b) Nothing in this Ordinance shall be construed as prohibiting private parties that may perform work on Construction Projects from voluntarily entering into Project Labor Agreements or engaging in activity protected by law.
- (c) Nothing in this Ordinance shall be construed as prohibiting a Contractor from entering into any individual collective bargaining relationship, or otherwise as regulating or interfering with activity protected by applicable state or federal law, including but not limited to, the Act.
- (d) To the extent permitted by law, the provisions of this Ordinance shall be effective 30 days from approval of this proposition by the voters.
Contracts awarded before this effective date and subcontracts awarded

pursuant to such contracts, whenever awarded shall not be governed by this Ordinance.

§22.4406 **No Amendment or Repeal except by a Vote of the People**

This Ordinance shall not be amended or repealed except by a majority vote of the voters of the City of San Diego.

§22.4407 **Judicial Review and Remedy**

Any person aggrieved or injured in any way by a violation of this Ordinance shall be entitled to all appropriate legal and equitable relief, including injunctive relief in the Superior Court of the State of California, County of San Diego, as well as relief by way of an action filed pursuant to California Code of Civil Procedure Section 526a.

§22.4408 **Severability**

If any provision contained in this Ordinance is held by a court of law of competent jurisdiction to be invalid, or is superseded by a numerically superior vote as provided in Section 2 of the proposition that enacted this Ordinance, the remaining provisions of this Ordinance shall not be affected but shall remain in full force and effect, and to that end the provisions of this Ordinance are severable.

SECTION 2: Conflicting Propositions

If any other proposition, appearing on the same ballot as this proposition, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this proposition, and if each proposition is approved by a majority vote of those voting on each proposition, then as to the conflicting subject matter the proposition with the highest affirmative

vote shall prevail, and the proposition with the lowest affirmative vote shall be deemed disapproved as to the conflicting subject matter.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____. Prohibits the City from Requiring Project Labor Agreements on City Construction Projects. Should the City of San Diego be prohibited from requiring contractors to use Project Labor Agreements for City construction projects, except where required by law, and should the Mayor be required to post online all construction contracts over \$25,000?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

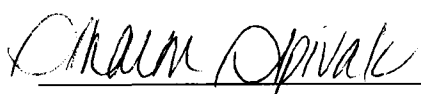
Section 7. Pursuant to San Diego Municipal Code section 27.0402, this proposition will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered

in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The City Clerk shall post notice of the specific dates that the examination period will run.

Section 8. 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 9. That, pursuant to San Diego Charter sections 275(c), 295(b) and 295(d), this ordinance relating to elections may be passed by the City Council on the date of introduction, which date shall be deemed the date of final passage, and is not subject to veto by the Mayor.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Sharon B. Spivak
Deputy City Attorney

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Or.Dept:City Clerk
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