

#604 a  
07/25/2022

(O-2023-14)  
COR. COPY 2

ORDINANCE NUMBER O- 21510 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 29 2022

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, ONE MEASURE AMENDING THE SAN DIEGO MUNICIPAL CODE CHAPTER 2, ARTICLE 2, DIVISION 44, SECTIONS 22.4401 THROUGH 22.4406, AND 22.4408 RELATING TO THE USE OF PROJECT LABOR AGREEMENTS ON CITY CONSTRUCTION PROJECTS.

WHEREAS, on June 5, 2012, City of San Diego voters passed Proposition A, codified in Chapter 2, Article 2, Division 44 of the San Diego Municipal Code (Municipal Code), which prohibits the City from using project labor agreements except when required as a contracting or procurement obligation or as a condition of state or federal funding for City infrastructure projects; and

WHEREAS, Chapter 2, Article 2, Division 44 of the Municipal Code can only be amended by a vote of the people of the City of San Diego; and

WHEREAS, Public Contract Code sections 2502 and 2503 prohibit a charter city from receiving state funding or financial assistance for any construction project if a charter provision, initiative, or ordinance restrains or limits that city from using a project labor agreement that includes the taxpayer protection provisions of Public Contract Code section 2500; and

WHEREAS, proponents of this measure contend that the amendments to the Municipal Code ensure eligibility for state funding or financial assistance, ensure the City does not lose future state funding by restoring the City's ability to use project labor agreements, expands public disclosure of contracts, and implements accountability measures; and

WHEREAS, Councilmember Raul Campillo and Councilmember Stephen Whitburn brought this proposed measure to the City Council's Rules Committee on July 14, 2021, and December 8, 2021, as part of the Council Policy 000-21 process in which the public can propose ballot measures to be considered for placement on the November 2022 ballot; and

WHEREAS, on December 8, 2021, the Rules Committee advanced the proposal to the full Council for consideration; and

WHEREAS, by San Diego Ordinance No. O- 21506, introduced and adopted on JUL 25, 2022, the Council has called a Municipal Special Election to be consolidated with the California State General Election to be held November 8, 2022, for the purpose of submitting to the qualified voters of the City one or more ballot measures; and

WHEREAS, the Council now desires to submit to the voters of the City of San Diego, at the Municipal Special Election to be consolidated with the California State General Election to be held on November 8, 2022, one ballot measure that would amend Chapter 2, Article 2, Division 44, of the Municipal Code by amending sections 22.4401 through 22.4406, and 22.4408; NOW, THEREFORE,

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

Section 1. One measure to amend the San Diego Municipal Code, Chapter 2, Article 2, Division 44, by amending sections 22.4401 through 22.4406, and 22.4408 is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 8, 2022, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

**MEASURE**

**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~~ City supports the enactment of this Fair and Open Competition in Construction Ordinance because ~~they believe~~ the City should treat union and non-union ~~Contractors~~ contractors equally and not give special advantages to either. All City ~~Construction Project~~ 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.~~

Public Contract Code sections 2502 and 2503 prohibit a charter city from receiving state funding or financial assistance for any construction project if a charter provision, initiative, or ordinance restrains or limits that city from using a project labor agreement. Proposition A, enacted by the voters in 2012, amended the City's Municipal Code to prohibit the City from using a project labor agreement for a City construction project except when the state requires its use as a condition of funding. The City is at risk of losing state funding for infrastructure projects as a result of provisions in the Municipal Code that restrict the City's use of project labor agreements.

This Division ensures state funding eligibility for City construction projects. Loss of state funding for construction projects will result in lost jobs and local revenues. This Division further strengthens accountability and oversight over City

public works contracting that is critical to ensure public funds are spent wisely and eliminate waste, fraud, and abuse.

§ 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.~~

The City may use, enter into, or require *contractors* to enter into, a *project labor agreement with labor organizations for construction projects*. The following taxpayer protection provisions shall be included in any *project labor agreement*:

- (a) A non-discrimination clause prohibiting discrimination in hiring and dispatching workers for the *construction project* based on race, gender, gender expression, gender identity, national origin, religion, ethnicity, sexual orientation, age, disability, political affiliation, or membership in a *labor organization*.
- (b) A provision inviting all qualified *contractors* and subcontractors to bid on and be awarded work on the *construction project* without regard to whether they are parties to collective bargaining agreements with a *labor organization*.
- (c) An agreed-upon protocol concerning drug testing for workers who will be employed on the *construction project*.

- (d) Guarantees against work stoppages, strikes, lockouts, and similar disruptions of the *construction project*.
- (e) A dispute resolution clause that requires disputes arising from the *project labor agreement* to be resolved by a neutral arbitrator.
- (f) Enforcement provisions for noncompliance with *project labor agreement* terms and conditions.

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

- (a) To help ensure City compliance with the purposes of this ~~Ordinance~~Division, the Mayor shall post on the City's website in a searchable format the text of all ~~Construction Project~~ *construction project* contracts entered into by the City valued at more than ~~\$25,000~~10,000 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 total 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.
- (b) The City shall post on the City's website the following demographic information for all workers dispatched to a *construction project* under a *project labor agreement*: race, ethnicity, gender, permanent residence zip code, *construction project* hours worked, apprenticeship program affiliation, trade classification, and union affiliation. This information shall be updated monthly for transparency and to allow tracking of local hire requirements.

§ 22.4404 Definitions

For the purpose of this ~~Ordinance~~Division, 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 Pproject”~~ shall mean and include any project paid for in whole or in part out of ~~City~~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~~ as in Section 2 of the National Labor Relations Act (29 U.S.C. §§ 1521-166).

~~“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 Citizens' Construction Project Oversight Board

- (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.~~

Upon adoption of this Division, the City Council shall establish a Charter section 43(a) citizens' advisory board named the Citizens' Construction Project Oversight Board, or modify any existing citizen's advisory board, to review construction projects for compliance with this Division. The City Council shall establish procedures for how the board will receive, respond, and report on allegations of fraud, abuse, waste, and construction project performance metrics.

§ 22.4406 **No Amendment or Repeal ~~e~~Except by a Vote of the People**

This ~~Ordinance~~ Division shall not be amended or repealed except by a majority vote of the voters of the City of San Diego, except that the City Council may amend the Division without voter approval as follows:

- (a) Amend section 22.4402 in the event the voters of the State of California amend or repeal California Constitution, article I, section 31.
- (b) Amend section 22.4402 to comply with California state law requirements for receiving state funding for construction projects.

Any amendments made by the City Council shall be consistent with this Division, and the measure adopting it, to authorize the City to enter into project labor agreements or to ensure state funding eligibility for City construction projects.

§ 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.~~ If any section or part of this Division is held unconstitutional for any reason or invalidated by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of this Division, which will remain in full force and effect.

**END OF MEASURE**

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Section 2. The measure 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:

<b>CONTRACTING UPDATES. PROJECT LABOR AGREEMENTS FOR STATE FUNDING ELIGIBILITY:</b> Shall the San Diego Municipal Code be amended to provide that the City of San Diego may preserve its ability to receive State infrastructure funding by allowing the use of Project Labor Agreements on City Construction Projects; requiring provisions in the agreements to prohibit employment discrimination and ensure open competition; expanding public disclosure; tracking local hiring requirements; and establishing a Citizens' Oversight Board?	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 measure. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the measure.

Section 5. Passage of this measure 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 Council.

Section 7. In compliance with San Diego Municipal Code section 27.0402, this measure 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. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 9. This Ordinance may be passed by the Council on the date of introduction pursuant to Charter section 275(c) and shall take effect upon final passage pursuant to San Diego Charter section 295(a) and 295(d).

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Bonny Hsu  
Bonny Hsu  
Deputy City Attorney

BH:cw  
07/19/22  
07/20/22 COR. COPY  
08/15/22 COR. COPY 2  
Or.Dept: Council Districts 3 and 7  
Doc. No. 3035756\_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 25 2022.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

(See attached memo and signature page.)

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

(619) 533-5800

**DATE:** August 15, 2022  
**TO:** Office of the City Clerk  
**FROM:** City Attorney  
**SUBJECT:** Correction Memo for (O-2023-14 COR. COPY 2)

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The ordinance described above is bolded in the ballot question for the safeguard measure. A correction has been made so that only the text before the colon is bolded.

No other changes have been made to the ordinance.

If you have additional questions, please do not hesitate to contact our office.

BH:cw

Doc. No.: 3059306

cc:

Luz Anaya Luna, Legislative Assistant

Diana Fuentes, Assistant City Clerk, [Dfuentes@san Diego.gov](mailto:Dfuentes@san Diego.gov)

Section 8. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 9. This Ordinance may be passed by the Council on the date of introduction pursuant to Charter section 275(c) and shall take effect upon final passage pursuant to San Diego Charter section 295(a) and 295(d).

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Bonny Hsu  
Bonny Hsu  
Deputy City Attorney

BH:cw  
07/19/22  
07/20/22 COR. COPY  
Or.Dept: Council Districts 3 and 7  
Doc. No. 2924784

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 25 2022.

ELIZABETH S. MALAND  
City Clerk

By Connie Patterson  
Deputy City Clerk

Approved: 7/29/22  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 25 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 29 2022.

AUTHENTICATED BY:

(Seal)

TODD GLORIA  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JUL 25 2022, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California  
Ordinance Number O- 21510