

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

**MEMORANDUM
MS 59**

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DATE: August 24, 2021
TO: Councilmember Vivian Moreno, Council District 8
FROM: City Attorney
SUBJECT: Legislative History of San Diego Municipal Code Section 22.3105

INTRODUCTION

During the June 14, 2021 City Council meeting, Councilmember Moreno asked about the legislative origins of San Diego Municipal Code section 22.3105 (Municipal Code section 22.3105) which allows the use of City forces on a public works project that exceeds \$100,000 only if the City Council approves. The question arose during Item 601 - Fiscal Year 2021 Capital Improvements Program (CIP) Year-End Budget Monitoring Report and CIP Budget Revisions. As a part of that action, the Engineering & Capital Projects Department (E&CP) sought approval to use City forces on thirty-nine public works projects, each valued over \$100,000. Councilmember Moreno requested background information about Municipal Code section 22.3105, which is provided below.

QUESTION PRESENTED

What are the legislative origins of Municipal Code section 22.3105?

SHORT ANSWER

Since 1931, the San Diego Charter section 94 has required City contracts to be awarded to “the lowest responsible and reliable bidder . . .” but the Charter also allowed the City Council to approve work done by City forces when it could be done more economically and faster. This exception was codified in Municipal Code section 22.3105 in 1978. Today, use of City forces can be authorized by the City Manager without City Council approval up to \$100,000. Anything above this amount requires City Council approval.

ANALYSIS

I. SAN DIEGO CHARTER SECTION 94 REQUIRES CONTRACTS TO BE COMPETITIVELY BID.

The history of Municipal Code section 22.3105 begins with Charter section 94 and the general rule that all contracts must be competitively bid. In 1931, the San Diego Charter provided:

Section 94. CONTRACTS. In the construction, reconstruction, or repair of public buildings, streets, utilities and other public works, and in furnishing any supplies, materials, equipment or contractual services for the same, or for other use by the City, when the expenditure therefor shall exceed the sum of one thousand dollars, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council on the recommendation of the Manager or the head of the Department in charge, if not under the Manager's jurisdiction, *shall let the same to the lowest responsible and reliable bidder.* (emphasis added.)

Since 1931, the use of City forces, as an exception to competitive bidding, has also always been considered. Following the language above, Charter section 94 further provided:

[T]he Council upon the recommendation of the Manager and by a vote of five of its members may order the performance of any such construction and reconstruction or repair work by the appropriate *City forces when the estimates submitted as part of the Manager's recommendations indicate that the work can be done by the City force more economically than if let by contract.* (emphasis added.)

Charter section 94 amendments in 1945, 1947, 1953, 1964, 1975, and 1976 largely followed the language from 1931 without relevant change. Unfortunately, there are no historical documents discussing the original 1931 language or its purpose; although the express language of Charter section 94 indicated cost was the consideration when determining whether to use City forces. Additionally, later documentation indicates that certain sized projects could be done faster and more economically by City forces, rather than requiring a competitive, public process.

II. IN 1978, THE CITY CODIFIED THE ABILITY TO USE CITY FORCES IN THE SAN DIEGO MUNICIPAL CODE.

Prior to 1978, public works projects could use City forces only if approved by the City Council. It was the 1977 amendment to Charter section 94, which, for the first time, discussed adding an ordinance to the San Diego Municipal Code allowing use of City forces without City Council approval.

An implementing ordinance was passed in 1978 and codified as Municipal Code section 22.0210.2. The original ordinance allowed for use of City forces, without City Council approval, up to a cost of \$5,000. Additional amendments in 1989 and 1998 renumbered the section and raised the monetary value first to \$15,000 in 1989, and then to \$100,000 in 1998. A 2012 amendment made non-substantive language changes but did not alter the \$100,000 monetary authorization. The current language governing use of City forces is contained in Municipal Code section 22.3105 and states:

22.3105. Use of City Forces

- (a) City forces shall not be used on a public works project if the cost of using City forces exceeds \$100,000 unless the City Council has approved use of City forces on the project. When City Council approval is required, the City Manager shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.
- (b) The City Manager may exercise his or her discretion of the use of City forces on a public works project when the cost of using City forces does not exceed \$100,000.

With the dearth of historical documents, it is difficult to pinpoint the exact motives of City officials at the time, but the documents available indicate that the City wanted an exception to the competitive bid process when that would make sense economically and to ensure important, smaller projects were not delayed. The best reference located was contained within the November 13, 1989 City Council Docket and stated:

CITY MANAGER SUPPORTING INFORMATION: Section 94 of the City Charter states, “. . . The Council may, however, establish by ordinance an amount below which the Manager may order the performance of any construction, reconstruction or repair work by appropriate City forces without approval by Council. When such Council approval is required, the Manager’s recommendation shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract . . .”

Section 22.0210.2 of the Municipal Code set the Manager’s limit for City forces authorization at \$5,000. This limitation has been in effect for over eleven years. In consideration of inflation and the need for immediate responses for smaller construction or repair projects, it is recommended that this level be raised to \$15,000. This proposal to raise the upper limit of City force work was discussed with the construction industry. Their members indicated no opposition to this proposal, given assurances that this process would not be abused in that work amounting to more than \$15,000 would not be constructed in a piecemeal manner thereby circumventing this dollar limitation. Additionally, such work would not represent construction at

