

Article 2: Administrative Code

Division 44: Fair and Open Competition in Construction Ordinance

(“Fair and Open Competition in Construction Ordinance” added 7-10-2012 by O-20126 N.S.)

§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.

(“Statement of the People’s Intent” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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.

(“Fair and Open Competition - Prohibition on Requiring Project Labor Agreements” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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.

(“Fair and Open Contracts - Posting City Construction Project Contracts Online” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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*.

(“Definitions” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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*.

(“*Applicability*” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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.

(“*No Amendment or Repeal except by a Vote of the People*” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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.

(“*Judicial Review and Remedy*” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)

§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.

(“*Severability*” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)