

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 City supports the enactment of this Fair and Open Competition in Construction Ordinance because 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. 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.

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

(Amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)

§22.4402 Fair and Open Competition

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.

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

(Retitled from “*Fair and Open Competition – Prohibition on Requiring Project Labor Agreements*” to “*Fair and Open Competition*” and amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)

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

- (a) To help ensure City compliance with the purposes of this Division, 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 \$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 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.

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

(Amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)

§22.4404 Definitions

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

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 as in Section 2 of the National Labor Relations Act (29 U.S.C. §§ 151-166).

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.)

(Amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)

§22.4405 Citizens' Construction Project Oversight Board

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.

*(“Applicability” added 1-30-2012 by O-20126 N.S.; effective 7-10-2012.)
(Retitled from “Applicability” to “Citizens’ Construction Project Oversight Board” and amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)*

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

This Division shall not be amended or repealed except by a majority vote of the voters of the City, 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*.

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

(Retitled from “No Amendment or Repeal except by a Vote of the People” to “No Amendment or Repeal Except by a Vote of the People” and amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)

§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 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.

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

(Amended 7-29-2022 by O-21510 N.S.; effective 12-12-2022.)