

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: August 12, 2022
TO: City Clerk
FROM: City Attorney
SUBJECT: Title, Summary, and City Attorney Impartial Analysis for Ballot Measure – Amendments to San Diego Municipal Code sections 22.4401 through 22.4406 and 22.4408 allowing project labor agreements on City construction projects in accordance with California law to allow state funding eligibility

The City Council directed the City Attorney to prepare a ballot title, summary, and impartial analysis of a measure that would amend San Diego Municipal Code sections 22.4401 through 22.4406 and 22.4408 to allow the use of project labor agreements on City of San Diego (City) construction projects, and voted to place the measure on the November 8, 2022, Municipal Special Election ballot. (*See* San Diego Resolution R-314249 (July 25, 2022).) The City Council also adopted San Diego Ordinance O-21510 (July 25, 2022), to submit the ballot measure to the voters on the November 8, 2022, Municipal Special Election ballot.

BALLOT TITLE

Amendments to San Diego Municipal Code sections 22.4401 through 22.4406 and 22.4408 related to the use of project labor agreements on City of San Diego construction projects.

BALLOT SUMMARY

In 2012, City of San Diego (City) voters passed Proposition A, the “Fair and Open Competition in Construction Ordinance,” which enacted Chapter 2, Article 2, Division 44 of the San Diego Municipal Code (Municipal Code). Proposition A prohibited the City from requiring a contractor to enter into a project labor agreement (PLA) as a condition of bidding, negotiating, or being awarded a City construction project, unless required by state or federal law as a contracting or procurement obligation, or as a condition for receiving state funding or financial assistance. A PLA is a prehire, collective bargaining, or similar type of project specific labor agreement between a contractor and a labor organization establishing terms and conditions of employment for a specific construction project or projects. Proposition A can only be amended by a vote of the people of the City.

State law prohibits a charter city, like the City, from receiving state funding or financial assistance for any construction project if the charter city adopted a law that prohibits or limits use of a PLA drafted to include provisions that prohibit discrimination; permit qualified contractors to bid and win contracts whether or not the contractor is party to a collective bargaining agreement; and require protocols concerning drug testing, guarantees against work stoppages and other disruptions, and dispute resolution by a neutral arbitrator.

This measure will amend the Municipal Code to allow the City to use PLAs for construction projects and makes the City eligible for state funding and financial assistance. The measure requires the City to post construction contracts valued at over \$10,000 and demographic information for PLAs on its website, and establishes a citizens’ advisory board to review construction contracts. The measure also allows City Council to amend the Municipal Code language if state law changes in the future.

CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend the San Diego Municipal Code (Municipal Code) to allow the City of San Diego (City) to use project labor agreements (PLA) on construction projects. The Municipal Code defines a PLA as any prehire, collective bargaining, or similar type of project specific labor agreement entered into with one or more labor organizations, employees, or employee representatives that establishes terms and conditions of employment for a specific construction project or projects. This measure would affect City projects involving construction, rehabilitation, alteration, conversion, extension, maintenance, repair, replacement, or improvement of any City structures or land.

State law does not allow state funding or financial assistance for local construction projects in charter cities, like the City, if a local law prohibits that city from using or considering the use of a PLA. By repealing PLA restrictions which some have equated to a PLA ban, the City will be eligible for state funding for construction projects. Under state law, PLAs must include provisions that prohibit discrimination; permit qualified contractors to bid and be awarded contracts regardless of whether it is party to a collective bargaining agreement; address drug testing; guarantee against work stoppages, strikes, lockouts, and disruptions; and provide for dispute resolution by a neutral arbitrator. In 2012, City voters approved Proposition A, a citizens' initiative titled "Prohibits the City from Requiring Project Labor Agreements on City Construction Projects." Proposition A amended the Municipal Code to prohibit the City from requiring a PLA on City construction projects except when a PLA was required by state or federal law or as a condition of the City receiving state or federal funds. This measure would clarify any ambiguity, uncertainty, or potential conflict between the Municipal Code and

California law by making clear that the City may use PLAs on City construction projects in accordance with California law, and that the City is eligible for state funding.

As adopted by Proposition A, the Municipal Code currently requires the City to post all City construction contracts valued at more than \$25,000 on the City's website. This measure would increase reporting requirements by requiring the City to post on its website all City construction contracts valued at more than \$10,000 as well as demographic information for workers on a construction project that utilizes a PLA.

The measure also directs City Council to create a citizens' advisory board to review construction projects for compliance with the Municipal Code amendments proposed by this measure.

The measure can only be repealed by a majority of City voters. The measure allows the City Council to amend the Municipal Code to comply with changes in the California Constitution or state law concerning use of PLAs. All other amendments must be approved by a majority of City voters.

This measure was proposed by members of the City Council, which voted to place it on the ballot. If approved, the Municipal Code amendments would take effect after the City Council certifies the results of the election in a resolution.