

**CITY OF SAN DIEGO**

**Proposition A**

(This proposition will appear on the ballot in the following form.)

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**PROP A**

**Prohibits the City from Requiring Project Labor Agreements on City Construction Projects.**

Should the City of San Diego be prohibited from requiring contractors to use Project Labor Agreements for City construction projects, except where required by law, and should the Mayor be required to post online all construction contracts over \$25,000?

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This proposition requires approval by 50% of the voters voting on the proposition.

Full text of this proposition follows the arguments.

**OFFICIAL TITLE AND SUMMARY**

**PROHIBITS THE CITY FROM REQUIRING PROJECT LABOR AGREEMENTS ON CITY CONSTRUCTION PROJECTS.**

Should the City of San Diego be prohibited from requiring contractors to use Project Labor Agreements for City construction projects, except where required by law, and should the Mayor be required to post online all construction contracts over \$25,000?

**CITY ATTORNEY'S IMPARTIAL ANALYSIS**

This proposition would amend the San Diego Municipal Code to prohibit the City from requiring a Project Labor Agreement (PLA) on City construction projects, except where required by state or federal law as a contracting or procurement obligation, or as a condition of the receipt of state or federal funds. This proposition would affect projects that are paid for "in whole or in part out of City funds." It would affect such projects involving "the construction, rehabilitation, alteration, conversion, extension, maintenance, repair, replacement or improvement of any structures or real property."

A PLA is generally defined as a collective bargaining agreement between a contractor and a labor organization setting terms and conditions of employment for a given project. PLAs can cover a variety of terms, and may address issues such as strikes, lockouts and similar disruptions, as well as wages and benefits.

If the proposition passes, the City could not require a Contractor on a construction project to enter into a PLA "as a condition of bidding, negotiating, awarding or the performing of a contract" for City construction projects unless an exception applies.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

One exception would allow the City to require a PLA on a given project if required by state or federal law as a contracting or procurement obligation.

Another exception would allow the City to require a PLA on a given project if a PLA is required as a condition of the project's receipt of state or federal funds.

A new California law, effective after signatures were gathered for this ballot measure, affects funding of municipal projects if consideration of a PLA is prohibited. The law, California Public Contract Code section 2502, states: "If a Charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a project labor agreement that includes all the taxpayer protection provisions of Section 2500 for a project to be awarded by the city, or prohibits the governing board from considering whether to allocate funds to a city-funded project covered by such an agreement, then state funding or financial assistance shall not be used to support that project."

As of the deadline for publication, it is unclear whether the proposition, if approved, would affect future state funding of City construction projects. It will be up to the California Attorney General, and possibly the courts, to determine whether state funding will be affected for City construction projects.

The proposition would not restrict contractors and labor organizations from voluntarily entering into PLAs.

The proposition also would require the Mayor to post online all City construction contracts valued at more than \$25,000 in a given fiscal year.

The proposition can be amended or repealed by a majority vote of City voters, but cannot be amended or repealed by the City Council.

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## FISCAL IMPACT ANALYSIS

The ballot measure states that except as required by State or federal 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 participate in a Project Labor Agreement (PLA) as a contract condition. It is uncertain whether the City would lose State assistance for City construction projects as a result of voter approval of this ballot measure. California Public Contract Code, Section 2502 prescribes that if a governing body, such as the City Council, is prohibited from *considering* a PLA for a City construction project, then State funding or financial assistance shall not be used for the project.

A legal interpretation of Section 2502 would be required to determine whether the City's receipt of State funds for construction projects will be affected by the ballot measure. State funding for the City varies from year to year. Major State funding awarded to the City in fiscal years 2010 and 2011 was approximately \$36 million and \$158 million, respectively.

The requirement of the ballot measure to post the text of all construction project contracts over \$25,000 in a given year (including redacting proprietary information and presenting certain other information) is preliminarily estimated to cost **\$450,000** annually, in addition to **\$500,000** in set-up costs.

Whether the use of a PLA on a construction project would add to the cost of a project is a widely debated matter. Some studies indicate that PLA's increase project costs, while others dispute the analysis and the conclusions of such studies.

## ARGUMENT IN FAVOR OF PROPOSITION A

Proposition A will enact the **FAIR AND OPEN COMPETITION** in Construction Ordinance. This reform package brings Fairness, Openness, and Accountability to City Contracting.

Proposition A is **FAIR** because it gives all construction workers — union and non-union — an equal opportunity to compete for jobs on city construction projects. It prevents politicians from imposing unfair project labor agreements on these projects. Construction workers will not be forced to affiliate with a union to work on taxpayer-funded city projects.

Proposition A makes contracting **OPEN** and transparent because it mandates that City construction contracts be posted online in a searchable format for easy public access. These reforms will ensure transparency and help citizen watchdogs and the press monitor City Hall.

Proposition A makes city government more **ACCOUNTABLE** because it requires the Mayor to explain online why any sole source contract was awarded without competitive bidding. This measure shines a bright light on the City contracting process.

Proposition A is your opportunity to reform your Charter City's municipal contract policy to efficiently manage your municipal construction services. **FAIR AND OPEN COMPETITION SAVES TAXPAYER DOLLARS.** National University System's Institute for Policy Research confirmed construction costs are 13 to 15% higher when school districts construct a school under a project labor agreement.

Proposition A was written to protect the City's access to state construction funds. Beware of the Sacramento politicians' scare tactics. Why are they afraid of fair and open construction contracts posted online in a transparent process?

Please join the San Diego County Taxpayer's Association, the Associated General Contractors of San Diego who represent both union and non-union contractors, and citizens who want a transparent and accountable city government.

You can learn more at [www.██████████.com](http://www.██████████.com). Thank you for considering our views on this important package of reforms.

### **Please Vote Yes on A.**

JIM RYAN  
Executive Vice President  
Associated General Contractors  
of America, San Diego

JACQUI GAMBOA-GAANO  
Manager, San Diego  
Contractors & Builders

CESAR JACOBO  
Construction Worker (Electrician)

RICHARD RIDER  
Citizen Taxpayer Advocate

LANI LUTAR  
President & CEO  
San Diego County Taxpayers Association

## ARGUMENT AGAINST PROPOSITION A

There are serious implications to Prop A. Read the law.

**1. California Public Contract Code Section 2500 already requires that Project Labor Agreements be "fair and open."**

Specifically Section 2500 states:

- PLAs must allow both union and non-union contractors to compete.
- PLAs must prohibit discrimination of any kind (including discrimination based upon non-union or union membership).
- PLAs require drug testing of workers.

Law: <http://www.> [REDACTED]

**2. Prop A's prohibition of PLAs could cost the City hundreds of millions of dollars.**

- Specifically, CPC Code 2502 provides that if a City prohibits its council from considering PLAs the city shall be disqualified from state construction funding.
- According to the *Independent Budget Analyst*, the City received **\$158 million** in state construction funding in 2011.
- Prop A unnecessarily risks the loss of these funds without providing any taxpayer benefit.

IBA analysis, see last page at: <http://www.> [REDACTED]

[REDACTED].pdf

Law: <http://www.> [REDACTED]

**3. PLAs are NOT mandatory in San Diego. They are an option that can provide important additional taxpayer protections.**

- PLAs are an effective risk management tool used by both private and public sector managers to control construction costs on large projects.
- PLAs are critical tools for assisting veterans re-entering the civilian workforce.

**4. Prop A's Internet Posting language actually reduces transparency.**

- City policy already requires the posting of all contract details on the Internet. Prop A requires the deletion of selected company information at taxpayer expense (see *Independent Budget Analysis*).

IBA cost analysis, see last page at:

<http://www.> [REDACTED].pdf

Current Policy:

<http://> [REDACTED].PDF

## ARGUMENT AGAINST PROPOSITION A (CONTINUED)

We have carefully read the law and Prop "A". We recommend a "NO" vote on Prop A.

MATTHEW P. CAULFIELD  
Major General, US Marine Corps (Ret)

SCOTT BARNETT  
President, San Diego  
Taxpayers Advocate

SHAD JEFFERIES, J.D.  
Professor of Business &  
Real Estate Law

DONNA FRYE  
Business Owner/Former  
Councilmember

### CITY OF SAN DIEGO

### PROPOSITION A

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

**SECTION 1: San Diego Municipal Code, Chapter 2, Article 2, is amended by adding Division 44, to read as follows:**

#### **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 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.

##### **§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.

## PROPOSED ORDINANCE (CONTINUED)

### §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.

### §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.

### §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.

## PROPOSED ORDINANCE (CONTINUED)

### **§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.

### **§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.

### **§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.

### **SECTION 2: Conflicting Propositions**

If any other proposition, appearing on the same ballot as this proposition, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this proposition, and if each proposition is approved by a majority vote of those voting on each proposition, then as to the conflicting subject matter the proposition with the highest affirmative vote shall prevail, and the proposition with the lowest affirmative vote shall be deemed disapproved as to the conflicting subject matter.

**END OF PROPOSITION**