



CITY COUNCIL AGENDA STATEMENT



December 3, 2019

File ID: 19-0554

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA: (A) AMENDING RESOLUTION NO. 2019-196 CALLING A GENERAL ELECTION TO BE HELD ON MARCH 3, 2020; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE TO REPEAL AND REPLACE CHULA VISTA MUNICIPAL CODE CHAPTER 2.59; (C) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURE; (D) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND (E) APPROPRIATING FUNDS ACCORDINGLY (4/5 VOTE REQUIRED)

RECOMMENDED ACTION

Council take such action as it deems appropriate.

SUMMARY

Chula Vista Municipal Chapter 2.59, entitled "Fair and Open Competition in Contracting," was approved by the voters pursuant to a citizens' initiative ("Proposition G") in 2010. Proposition G made it illegal for the City to enter into or fund a public works contract requiring labor union oriented provisions commonly associated with project labor agreements ("PLAs"). Since that time, the state Legislature has adopted two Senate Bills which operate to disqualify cities with anti-PLA laws from receiving state funding for public works. In light of these state law enactments this proposed item for the March 2020 ballot asks voters to repeal Proposition G and to replace it with an ordinance that would give the City the discretion to consider PLAs for its public works consistent with state laws and locally established "best practices".

ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project," as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to State Guidelines Section 15060(c)(3), the activity is not subject to CEQA. Therefore, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

Voter Approval and Impacts of Proposition G

Chapter 2.59 was proposed by a citizens' initiative which sought the adoption of an ordinance entitled, "Fair and Open Competition in Contracting." The ordinance was placed on the ballot and adopted by the electorate in June 2010. It established certain limitations on City public works projects (defined as all construction projects paid for, in whole or in part, by City funds, including, but not limited to, "any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public safety facility").

Specifically, Chapter 2.59 prohibits the City from funding, or entering into, any public works contract that requires a party to:

- i. execute, comply with, or become a party to an agreement between a Labor organization, on the one hand, and the City, the Contracting Party, or any third party on the other;
- ii. become a signatory to a collective bargaining agreement;
- iii. be required to make payments on behalf of employees to union benefit plans or other trust funds;
- iv. require its employees to be represented by a Labor organization; or
- v. encourage or discourage employees of a contracting party to have representation by a Labor organization.

Although Chapter 2.59 doesn't expressly refer to Project Labor Agreements, the banned activities listed above are the very activities typically addressed within Project Labor Agreements (aka PLAs). Thus, the summary effect of Chapter 2.59 is to prohibits the City from requiring or funding PLAs in its public works contracting.

PLAs are, in effect, pre-hire agreements that establish the terms and conditions of employment for construction projects. They are entered into before workers are hired, and typically determine the wages, benefits and other terms of employment for the construction workers. The terms of the PLA apply to all workers hired, including union workers, or non-union workers who are hired through a labor organization that represents the workers. PLAs also typically include provisions for dispute resolution, with contract workers agreeing to finish the job without striking are similar work disruptions or stoppages. Accordingly, PLAs are also sometimes referred to as "Labor Peace" agreements.

State Law Enactments Supporting PLAs

In October 2011, the Legislature passed Senate Bill 922, "Public Contracts: Public Entities: Project Labor Agreements" ("SB 922"). SB 922 authorized local governments to enter into, or require contractors to enter into, PLAs for construction projects, only if the agreement contains certain "taxpayer protection provisions," including: guarantees against work stoppages, arbitration clauses, and allowances for all qualified contractors and subcontractors to bid and be awarded work, regardless of collective bargaining agreements. While SB 922 does not require PLAs, it prohibits ordinances, initiatives, and charter provisions which prevent public entities, other than charter cities, from entering into them.¹

¹ Cal. Pub. Cont. Code §§2500-2501.

With respect to charter cities, SB 922 allows the state to withhold state funding for certain projects. If a charter city has a charter provision or ordinance that prohibits PLAs that meet the taxpayer protection provisions of SB 922, it provides that state funding or financial assistance shall not be used to support a city-funded project covered by such an agreement. For charter cities that had such a provision in effect prior to November 2011, this section of SB 922 did not become effective until January 1, 2015.²

The California Legislature passed Senate Bill 829 in 2012 (“SB 829”). SB 829 extended the reach of SB 922 by providing that “[i]f a charter provision, initiative, or ordinance of a charter city prohibits, limits, or constrains in any way the governing board’s authority or discretion to adopt, require, or utilize a project labor agreement that includes all the taxpayer protection provisions of Section 2500 for some or all of the construction projects to be awarded by the city, then state funding or financial assistance shall not be used to support any construction projects awarded by the city.” Like the charter city provision of SB 922, SB 829 became effective on January 1, 2015 for those charter cities that had PLA bans in place prior to November 2011.³

The City has been able to maintain its “qualified” status with the state for public works funding based on a letter from the City Attorney to the state that argues the state laws and Proposition G can be reconciled. Significant legal ambiguities continue to exist, however. Accordingly, if the City Council wants to ensure that the City will not be disqualified in the future from receiving state public works funding as a result of Proposition G, or if it simply wants the option to be able to enter into PLAs on its own terms. Some action to repeal and/or replace Chapter 2.59 would be appropriate.

City Council Referral and Proposed Action

At the November 19, 2019 City Council meeting, the City Council directed the City Attorney to prepare a ballot measure for potential placement on the March 3, 2020 ballot, to repeal and replace Chapter 2.59. The resolution presented for Council’s consideration would: allow for the placement of the measure on the March ballot, authorize the Mayor to submit the ballot argument if favor of the measure, and direct the City Attorney to prepare an impartial analysis of the measure.

The proposed ballot measure would repeal Chapter 2.59 and would require the City Council adopt policies and procedures to replace the Chapter. Specifically, the Council would be required to act within 180 days to adopt policies and procedures to include: (a) all of the taxpayer protection provisions required by California Public Contract Code section 2500; (b) such other provisions as may be necessary to be consistent with applicable state law; (c) provisions for transparency, accountability and compliance in the contracting process; and (d) such other provisions as may be approved by the City Council consistent with state law and “best practices” as determined by the City Council. Finally, the measure provides that, in the interim, the City will comply with California Public Contract Code sections 2500, *et seq.*

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov’t Code § 87100, *et seq.*).

² Cal. Pub. Cont. Code §2502.

³ Cal. Pub. Cont. Code §2503.

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

The estimated cost of placing the measure on the ballot is approximately \$120,000. There will be an appropriation from the General Fund based on better than anticipated Property Tax – Vehicle License Fee revenues in the current fiscal year. Therefore, there is no anticipated General Fund reserve impacts.

ONGOING FISCAL IMPACT

There is no direct on-going fiscal impact from this action. Voter approval of the proposed initiative would make more certain the continuation of state funding for city public works projects under SB 922 and 829.

ATTACHMENTS

None.

Staff Contact: Jill Maland, Assistant City Attorney