



COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS

2010 JUL 9 AM 7 57

THOMAS J. PASTUSZKA  
CLERK OF THE BOARD  
OF SUPERVISORS

**BILL HORN**  
VICE-CHAIRMAN  
SUPERVISOR, FIFTH DISTRICT  
SAN DIEGO COUNTY BOARD OF SUPERVISORS

**AGENDA ITEM**

**DATE:** July 13, 2010 and August 3, 2010  
**TO:** Board of Supervisors  
**SUBJECT:** Ensuring Fair and Open Competition in County Contracting (Districts: All)

**SUMMARY:**

**Overview**

Free and open competition in government contracting is conducive to production, economic growth, and efficient use of limited resources. It is in the public interest, especially when public contracts and tax dollars are concerned, to fairly consider all qualified and capable contractors and workers for public contracts.

On February 23, 2010 the Board of Supervisors adopted SECTION 428 of the Administrative Code prohibiting the County from requiring Project Labor Agreements on County construction projects. Since that time, the voters of Oceanside have passed Proposition K, which makes the city a Charter City and allows for more flexibility in contracting decisions. In Chula Vista, voters passed Proposition G, prohibiting the city from imposing Project Labor Agreements (PLAs). Support for these measures in the second and third largest cities in the region demonstrates the public desire to be given the chance to ensure fair and open competition in contracting for future generations.

This action is the consideration of placing a Charter Amendment on the November 2, 2010 ballot regarding fair and open competition in county contracting. The county currently encourages open competition by ordinance, but the public desire to vote on such measures is evident and warrants putting this measure before the voters.

**Recommendation(s)**

**VICE-CHAIRMAN HORN:**

1. Consider the following recommendations regarding a proposed Charter Amendment:
  - a. Adopt a Resolution which would place on the November 2, 2010 ballot the proposed Charter amendment relating to the fiscal reform and open competition in the County of San Diego.
  - b. Approve the introduction (first reading), read title, and waive further reading of the Ordinance:

SUBJECT: Ensuring Fair and Open Competition in County Contracting (Districts: All)

AN ORDINANCE CALLING A SPECIAL ELECTION AND ORDERING CONSOLIDATION WITH THE STATEWIDE GENERAL ELECTION FOR THE PURPOSE OF SUBMITTING A COUNTY CHARTER AMENDMENT TO THE VOTERS RELATING TO FAIR AND OPEN COMPETITION IN COUNTY CONTRACTING.

- c. Authorize up to two (2) members of the Board to file a ballot argument (and any rebuttal) on behalf of the Board in support of the proposed amendment to the County Charter, and further authorize the designated Board member(s) to determine which other voters or associations may join in signing the argument/rebuttal.

If the Board approves the action requested in Recommendation 1, then on August 3, 2010, consider the following recommendation:

- 2. Submit the Ordinance for further Board consideration and adoption (second reading).

**Fiscal Impact**

Placing this initiative measure on the November 2, 2010 ballot will result in an increase of approximately \$100,000 in the County's share of costs for this election and no additional staff years. Funds for this request are included in the Registrar of Voters' Fiscal Year 2009-11 Adopted Operational Plan. The funding source is General Purpose Revenue.

**Business Impact Statement**

Unless required by State or federal law, PLAs would be prohibited from being made a requirement of the award of County construction contracts. The restriction would not prohibit contractors that are awarded County contracts from independently negotiating PLAs. The proposed action will not, accordingly, prevent any business, whether they use PLAs or not, from being awarded County contracts.

**Advisory Board Statement**

N/A

**BACKGROUND:**

**Board Direction on February 9, 2010**

On February 9, 2010, the Board of Supervisors directed the Chief Administrative Officer and County Counsel to (1) draft a ballot measure to the voters of San Diego County on June 8, 2010 that would, if approved by a majority of voters, amend the County Charter to prohibit all requirements to include PLAs or similar agreements in County Public Contracts beyond what State and Federal law require; and (2) draft an Ordinance that prohibits all requirements to

include PLAs or similar agreements in County Public Contracts beyond what State and Federal law require; and return to the Board with both documents at the next Board meeting.

**Board Direction on February 23, 2010**

On February 23, 2010, the Board directed the Chief Administrative Officer to return to the Board in 180 days with a report on County contracting, competition and privatization including practices that could be formalized by policy, ordinance or voter approval; approved the introduction read title, and waived further reading of the following Ordinance: AN ORDINANCE ADDING SECTION 428 TO THE ADMINISTRATIVE CODE PROHIBITING THE COUNTY FROM REQUIRING PROJECT LABOR AGREEMENTS ON COUNTY CONSTRUCTION PROJECTS and submitted the Ordinance for further Board consideration and adoption on March 2, 2010.

The primary difference between the ordinance adopted and the proposed Charter amendment, is that a Charter amendment requires voter approval whereas an ordinance adding to the Administrative Code can be enacted or reversed by a vote of the Board of Supervisors.

**June 8, 2010 Primary Election**

On June 8<sup>th</sup>, 2010 the cities of Chula Vista and Oceanside took steps to reduce or eliminate requirements to use the PLA, following the actions of the County of Orange in late 2009. The voters of Oceanside passed Proposition K, which makes the city a Charter City and allows for more flexibility in contracting decisions. In Chula Vista, voters passed Proposition G, prohibiting the city from imposing Project Labor Agreements (PLAs).

**San Diego County Grand Jury**

On June 3, 2010 the San Diego County Grand Jury Report recommended that voters in the City of San Diego approve a ballot measure that would reform and preserve managed competition practices for future generations. This recommendation lends credence to the belief that voters can and should be given the chance to save taxpayer dollars by ensuring open and competitive bidding for municipal contracts. The Grand Jury made this recommendation after confirming that the County of San Diego had saved at least \$80 million by using open and fair competition practices.

**Description of Project Labor Agreement**

In Executive Order 13502 issued by President Barack Obama on February 6, 2009, a PLA is defined as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes terms and conditions of employment for a special construction project and is an agreement described in 29 U.S.C. 158(f).” Section 158(f) of Volume 29 of the United States Code carves out an exception to unfair labor practices otherwise prohibited by the National Labor Relations Act for agreements negotiated between an employer engaged primarily in the building and construction industry and a labor organization covering workers who are or will be engaged on a construction project.

Compliance with PLAs can be made a condition of the award of government contracts or the

receipt of government funding. Following the adoption of Executive Order 13502, compliance with PLAs may now be required as a condition of the award of federal contracts and receipt of federal grant funds for construction projects valued at \$25 million or more. In California, Public Contract Code section 20133 requires counties wishing to award design-build contracts to implement either a labor compliance program or use a PLA. PLAs on public projects frequently seek a guarantee from labor organization(s) against strikes, lockouts, and similar job disruptions. In exchange for agreeing not to disrupt work, labor organization(s) routinely seek terms in PLAs requiring the use of union labor, binding procedures to resolve labor disputes and concessions regarding work place conditions. There is concern that these additional requirements may reduce competition for government contracts and increase project costs.

The State and the Federal government require a PLA in certain circumstances. For example, the State currently allows certain public works projects to be built using a design-build contract, but requires a PLA or similar agreements as part of the contract. Despite these requirements, local jurisdictions can enact or ask voters to approve ordinances or charter amendments that limit or prohibit requirements to use a PLA beyond what the State and Federal government require.

#### **Summary of Proposed Actions**

In accordance with the Board's policy of allowing all qualified contractors an opportunity to bid on County construction projects, the documents necessary to seek voter approval on November 2, 2010 for an amendment to the County Charter to add a new Section 705.4 are attached. The attached Resolution proposes the actual language for the San Diego County Charter amendment that limits or prohibits requirements to use a PLA beyond what the State and Federal governments require. The attached Ordinance, if approved, would call a special election for the purpose of presenting to the voters a proposed San Diego County Charter amendment that limits or prohibits requirements to use a PLA beyond what the State and Federal governments require.

This Ordinance is presented to your Board on July 13, 2010 for approval of its introduction (first reading). If the Board approves the introduction of the Ordinance, the Ordinance will be submitted to the Board on August 3, 2010 for consideration and adoption (second reading).

#### **Linkage to the County of San Diego Strategic Plan**

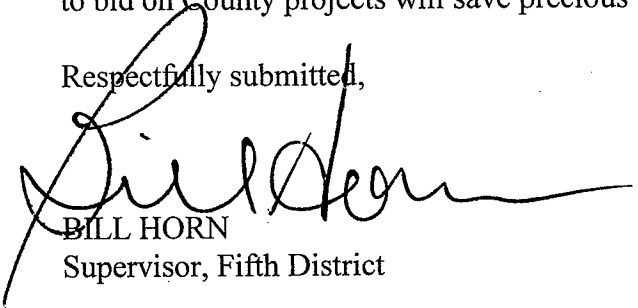
The County's mission as identified in the Strategic Plan is to "to efficiently provide public services that build strong and sustainable communities." Part of efficiently providing public services is ensuring that County construction projects to provide libraries, roads, flood control facilities, airports, and other public improvements are completed at the least expense possible to the taxpayer. Reducing or avoiding contract requirements that may restrict competition among contractors and potentially increase project costs meets this objective.

Artificial increases in project costs reduce the value of taxpayer dollars by limiting the number of public works projects that can be performed and indirectly constrain other agencies of local government by creating budgetary pressure. Free and open competition is conducive to production, economic growth, and efficient use of limited resources. It is in the public interest, especially when public contracts and tax dollars are concerned, to fairly consider all qualified and capable contractors and workers for public contracts. This Board Letter therefore recommends that voters be given the chance to protect the County of San Diego's fair and open bidding

SUBJECT: Ensuring Fair and Open Competition in County Contracting (Districts: All)

processes for future generations. Ensuring that all qualified contractors receive a fair opportunity to bid on County projects will save precious taxpayer dollars and resources for years to come.

Respectfully submitted,



BILL HORN  
Supervisor, Fifth District

**ATTACHMENTS**

- Attachment A: Resolution re: County Charter Amendment
- Attachment B: Ordinance re: County Charter Amendment

AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

COUNTY COUNSEL REVIEW

Written Disclosure per County Charter  
Section 1000.1 Required

Yes

Yes

No

GROUP/AGENCY FINANCE DIRECTOR

Yes

N/A

CHIEF FINANCIAL OFFICER

Requires Four Votes

Yes

N/A

Yes

No

GROUP/AGENCY INFORMATION  
TECHNOLOGY DIRECTOR

Yes

N/A

COUNTY TECHNOLOGY OFFICE

Yes

N/A

DEPARTMENT OF HUMAN RESOURCES

Yes

N/A

Other Concurrence(s):

ORIGINATING DEPARTMENT: Vice Chairman Bill Horn

CONTACT PERSON(S):

Chris Champine

Name

(619) 531-5555

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Fax

Mail Station

E-mail

Name

Phone

Fax

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AUTHORIZED REPRESENTATIVE:

RESOLUTION OF THE BOARD OF SUPERVISORS  
 PROPOSING AMENDMENTS TO THE SAN DIEGO COUNTY CHARTER  
 PROHIBITING THE COUNTY FROM REQUIRING PROJECT LABOR AGREEMENTS  
 ON COUNTY CONSTRUCTION PROJECTS

On motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, the following resolution is adopted:

IT IS RESOLVED AND ORDERED by the Board of Supervisors of the County of San Diego pursuant to the provisions of Section 3 of Article XI of the Constitution of the State of California and Articles 2 and 3 (commencing at section 23720) of Chapter 5, Division 1, Title 3 of the Government Code, that the San Diego County Charter be amended by adding provisions to the Charter, as hereinafter set forth, and that the proposed amendment be submitted to the qualified electors of the County of San Diego for ratification or rejection at a special election to be consolidated with the statewide general election held on November 2, 2010, in the County of San Diego, State of California.

IT IS PROPOSED that the San Diego County Charter be amended by adding the following Section to the County Charter:

**Section 705.4: Prohibition on Requiring Project Labor Agreements.**

- (a) For the purposes of this Section, the following definitions shall apply:
- (1) "Contractor" shall mean and include a contractor, subcontractor, material supplier, carrier or other person or firm engaged in the completion of a construction project;
  - (2) "Construction project" shall mean and include any project for the construction, rehabilitation, alteration, conversion, extension, maintenance, repair, or improvement of any structures or real property;
  - (3) "Project labor agreement" shall mean any pre-hire, collective bargaining or similar type of 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.
- (b) 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 County 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.
- (c) Nothing in this Section shall be construed as prohibiting private parties that may perform work on County construction projects from entering into project labor agreements or engaging in activity protected by law.

IT IS FURTHER RESOLVED AND ORDERED that the Registrar of Voters of the County of San Diego be and is hereby ordered and directed to cause to be printed upon the official ballot to be used at said special election to be held in the County of San Diego on November 2, 2010, the proposition for said proposed amendment to the San Diego County Charter as follows:

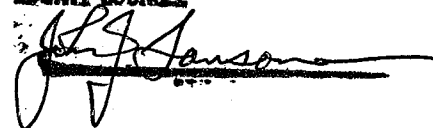
PROPOSED SAN DIEGO COUNTY CHARTER AMENDMENT TO ENSURE FAIR AND OPEN COMPETITION FOR COUNTY CONSTRUCTION CONTRACTS		
Shall the San Diego County Charter be amended to prohibit the County from requiring the use of project labor agreements on County construction projects except where required by State or federal law?	YES	
	NO	

IT IS FURTHER RESOLVED AND ORDERED that the Clerk of this Board shall forthwith cause a certified copy of this resolution to be forwarded to the Registrar of Voters and that the Registrar of Voters shall cause the complete text of the amendment to the San Diego County Charter as proposed herein to be printed and, pursuant to Elections Code section 13303, mailed to each qualified elector in the County no more than 40 days nor less than 21 days prior to the November 2, 2010, election.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Diego, State of California, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL



ORDINANCE NO. \_\_\_\_\_ (NEW SERIES)

AN ORDINANCE CALLING A SPECIAL ELECTION AND ORDERING CONSOLIDATION WITH THE STATEWIDE GENERAL ELECTION FOR THE PURPOSE OF SUBMITTING A COUNTY CHARTER AMENDMENT TO THE VOTERS RELATING TO FAIR AND OPEN COMPETITION IN COUNTY CONTRACTING.

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. A special election is hereby called to be consolidated with the statewide general election held on Tuesday, November 2, 2010, for the purpose of submitting to the qualified electors of the County of San Diego the following proposition amending the San Diego County Charter:

PROPOSED SAN DIEGO COUNTY CHARTER AMENDMENT TO ENSURE FAIR AND OPEN COMPETITION FOR COUNTY CONSTRUCTION CONTRACTS		
Shall the San Diego County Charter be amended to prohibit the County from requiring the use of project labor agreements on County construction projects except where required by State or federal law?	YES	
	NO	

The complete text of the proposed amendment to the San Diego County Charter is set forth in the Resolution adopted by the Board of Supervisors on July 13, 2010, Board Order No. \_\_\_\_\_, a copy of which is on file with the Clerk of said Board, and a complete text of such proposed amendments of the San Diego County Charter will be mailed to each qualified elector in the County by the Registrar of Voters not more than 40 nor less than 21 days prior to November 2, 2010.

Section 2. Pursuant to Part 3 (commencing at § 10400) of Division 10 of the Elections Code, the special election to amend the County Charter to be held in the County of San Diego on November 2, 2010, shall be and is hereby ordered consolidated with the statewide general election to be held on said date.

Section 3. Within the County of San Diego, the election precincts, polling places therein and precinct board members and election officers for each such precinct for the special election hereby called shall be the same as those provided for the statewide general election to be held November 2, 2010, and said election shall be held in all respects as if there were only one election and one form of ballot, namely the form of ballot used at such statewide primary election shall be used.

Section 4. For the purposes of such consolidation, the proposition (which may be abbreviated on the ballot pursuant to Section 13247 of the Elections Code) shall appear on the ballot substantially as set forth in Section 1 of this ordinance.

Section 5. This ordinance shall become effective immediately upon adoption and shall, before the expiration of 15 days after its passage, be published one time, with the names of the members voting for and against the ordinance, in the \_\_\_\_\_, a daily newspaper, printed, published and circulated in the County.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL

