

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHAPTER 2.59 AND ADDING CHAPTER 2.71, “PROJECT
LABOR AGREEMENTS” REGARDING PROJECT LABOR
AGREEMENTS FOR CERTAIN PROJECTS CONSTRUCTED
ON CITY OWNED PROPERTY AND AFFORDABLE HOUSING
PROJECTS RECEIVING SIGNIFICANT CITY SUBSIDY

WHEREAS, Chula Vista Municipal Code (“CVMC”) Chapter 2.59, “Fair and Open Competition in Contracting,” was adopted by the electorate in June 2010 (“Prop G”); and

WHEREAS, Section 4 of Prop G provided that the ordinance codified as Chapter 2.59 could be amended or repealed by a majority vote of the City’s electorate; and

WHEREAS, the repeal and replacement of CVMC Chapter 2.59 was adopted by the electorate in March 2020 (“Measure E”); and

WHEREAS, the City of Chula Vista (the “City”) has a proprietary interest in projects constructed by private parties on City owned property and financial interest in affordable housing projects in which the City is providing significant subsidy (the “Covered Projects”); and

WHEREAS, the City Council desires to limit the risk of labor disputes on Covered Projects, including but not limited to work stoppages and economic interference, by requiring that Project Labor Agreements (“PLAs”) be utilized, where such Covered Projects satisfy the criteria set forth in this ordinance; and

WHEREAS, PLAs increase the likelihood that construction projects will be completed on time and without delay; and

WHEREAS, the PLA requirements set forth in this ordinance are important tools to protect the City’s interest in the Covered Projects; and

WHEREAS, pursuant to the Charter of the City of Chula Vista, the City Council has the full power and authority to make and enforce all laws and regulations with respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State; and

WHEREAS, at a general election held on March 3, 2020, the voters of the City of Chula Vista adopted Measure E to allow the use of project labor agreements within the City; and

WHEREAS, through this Ordinance, the City Council intends to consider and take action upon local policies and procedures to allow the City’s use of project labor agreements.

NOW, THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Chapter 2.59 is hereby amended to read as follows:

Chapter 2.59
REPEALED AND REPLACED BY INITIATIVE

2.59.010 Replacement

The City Council of the City of Chula Vista shall, within 180 days of the effective date of the resolution codified in this chapter, consider and take action upon local policies and procedures that allow City's use of project labor agreements ("PLAs"), and related provisions commonly associated with PLAs, in public works contracting. The policies and procedures acted upon pursuant to this section (the "PLA Policies") shall 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 and accountability 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.

[Section 2.59.020 is deleted]

Section II. Chapter 2.71 "Project Labor Agreements" is hereby added as follows:

Chapter 2.71
PROJECT LABOR AGREEMENTS

2.71.010 Title

This chapter is known as the "Project Labor Agreement Ordinance," may be cited as such, and will be referred to herein as "this chapter."

2.71.020 Purpose and Intent

The purpose of this chapter is to reduce the risk of labor disputes on certain projects in which the City has a proprietary or financial interest by requiring Project Labor Agreements be entered into on such projects. Nothing in this chapter shall be construed to limit the City's ability to enter into or otherwise require PLAs in other circumstances.

2.71.030 Definitions

When used in this chapter, the following words and phrases shall have the meanings ascribed to them below. Words and phrases not specifically defined below shall have the meanings ascribed to them elsewhere in this Code, or shall otherwise be defined by common usage. For definitions

of nouns, the singular shall also include the plural; for definitions of verbs, all verb conjugations shall be included.

“City” means the City of Chula Vista.

“City-Owned Property” refers to real property and includes property that is owned in fee by the City and property to which the City holds an easement or public right-of-way interest. City-Owned Property does not include property that is otherwise part of a private development project that will be dedicated to the City pursuant to a condition of approval for the private development project.

“Code” means the City of Chula Vista Municipal Code.

“Covered Project” means 1) a project constructed by a Developer on City-Owned Property with a construction cost of \$1,000,000 or more at the time of construction contract award or 2) a Subsidized Housing Project receiving \$5,000,000 or more in City or Housing Authority of the City of Chula Vista directed funds, including grants, loans and other funding mechanisms, to be applied to development of such project.

“Developer” means a Person undertaking the development of land for the purpose of new construction or renovation of a Covered Project.

“Labor Organization” means an organization of any kind, or an agency or employer representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work of employees at a construction project or development in the City, including but not limited to a building and construction trades council consisting of affiliated building and trade unions.

“Negotiating Parties” means a Developer and a Labor Organization, engaged in the negotiation of a Project Labor Agreement.

“Person” means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination of Persons acting as a unit.

“Project Labor Agreement” has the meaning given to such term in the California Public Contract Code, Section 2500(b)(1), as may be amended by the Legislature.

“Subsidized Housing Project” means the construction of new, or renovation of existing, housing that is deed restricted to individuals with income equal to or less than 140% of the area median income, as established by the County of San Diego.

2.71.040 Project Labor Agreement Required

All Persons constructing Covered Projects shall enter into a Project Labor Agreement, except that this requirement shall not apply to projects being funded in whole or in part by any government entity that prohibits the use of Project Labor Agreements.

The requirements of this section may be met by either signing onto a citywide Project Labor Agreement or, in the alternative, negotiating a project-specific Project Labor Agreement. All Project Labor Agreements shall include terms required by California Public Contracts Code Section 2500(a), as may be amended, and shall comply with all applicable federal and state laws, as well as all applicable City policies. The City Council may establish policies setting forth additional minimum requirements for privately-negotiated Project Labor Agreements.

For Covered Projects on City-Owned Property, submittal to the City of an executed Project Labor Agreement pursuant to this chapter shall be a condition precedent to whichever occurs first: either the commencement of construction or the close of escrow on the purchase or lease of such property. For Subsidized Housing Projects, entering into a Project Labor Agreement pursuant to this chapter shall be a condition precedent to transferring subsidy funds. The City Council may, with approval of the City Attorney, approve transactions with alternative mechanisms for ensuring submittal of an executed Project Labor Agreement prior to commencement of construction.

All Project Labor Agreements submitted to the City pursuant to this chapter shall be considered public records.

2.71.050 Inability to Negotiate a Project Labor Agreement

In the event that there is no applicable citywide Project Labor Agreement in effect, and a Developer constructing a Covered Project is unable to negotiate a Project Labor Agreement with Labor Organizations that are performing work on the Covered Project as required by this chapter, then, within sixty (60) days of either Negotiating Party's written request to the other for mediation, the Negotiating Parties shall submit the dispute to a mutually agreed upon mediator to assist the Negotiating Parties in reaching a reasonable Project Labor Agreement. Each Negotiating Party shall bear its own costs incurred in mediation, and the cost of the mediator shall be equally split between the Person constructing the Covered Project and the Labor Organization(s).

In the event that the Developer and Labor Organization are unable to reach a reasonable Project Labor Agreement through mediation, the mediator shall prepare a report to the City Council within thirty (30) days of conclusion of the mediation, and the Developer may submit the dispute to the City Council who may, in its sole and absolute discretion, conditionally or unconditionally waive any or all of the requirements of this chapter. Further, if a Labor Organization does not agree to participate in mediation, the Developer may submit the dispute to the City Council, who may, in its sole and absolute discretion, conditionally or unconditionally waive any or all of the

requirements of this chapter. Information submitted to the City Council under this section shall be considered a public record.

2.71.060 Limitations

A. This chapter is not intended to, and shall not be interpreted to, conflict with federal law, or matters of statewide concern under state law, and shall be interpreted to be compatible with federal and state enactments, not limited to those dealing with employee/employer and labor relations, and in furtherance of the public purposes which those enactments encompass.

B. This chapter does not require any Developer to be unionized or to recognize a particular Labor Organization, or any particular recognition process, nor does it mandate that employees unionize.

C. This chapter does not require any Developer to make any particular promise in order to secure a Project Labor Agreement. The terms of any Project Labor Agreement are to be negotiated directly by the Negotiating Parties, subject to the minimum requirements of this chapter.

D. This chapter is not intended to, and shall not be interpreted to, favor any particular outcome in the determination of whether employees are represented and, if so, by which Labor Organization.

E. Nothing in this chapter permits or requires the City or any Developer to enter into any agreement in violation of the National Labor Relations Act of 1935, approved July 5, 1935 (49 Stat. 449; 29 U.S.C.S. § 151 et seq.).

F. There shall be no criminal or administrative penalty for violation of this chapter.

2.71.070 Effective Date

A. This chapter shall apply to Covered Projects on City-Owned Property, for which the City enters into a purchase agreement, lease agreement, license agreement, or otherwise makes a binding written commitment on or after January 1, 2024.

B. This chapter shall apply to Subsidized Housing Projects, for which the City Council has taken action to authorize the disbursement of subsidy funds on or after January 1, 2024.

Section III. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this

Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section IV. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section V. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section VI. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Tiffany Allen
Assistant City Manager

Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney