



CITY COUNCIL STAFF REPORT



August 8, 2023

ITEM TITLE

Labor Relations: Report on Implementation of Recommendations from the City Council Ad-Hoc Subcommittee on Labor Relations and Request for Direction

Report Number: 23-0206

Location: No specific geographic location

Department: City Manager

Environmental Notice: This activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act (“CEQA”) State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Recommended Action

Accept a report on implementation of recommendations made by the City Council Labor Relations Ad Hoc Subcommittee and provide direction.

SUMMARY

On May 9, 2023, the City Council Labor Relations Ad Hoc Subcommittee issued a report on findings and recommendations to the City Council. A referral was made to the City Manager for consideration, implementation, negotiation, and a report back to the City Council within 90 days on the recommendations of the Ad Hoc Subcommittee. This item provides a report responsive to the referral and requests that the City Council provide direction.

ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with 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 Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

On March 28, 2023, the City Council approved the establishment of a Labor Relations Ad Hoc Subcommittee comprised of Deputy Mayor Jose Preciado and Councilmember Andrea Cardenas (the “Labor Relations Subcommittee”). The Labor Relations Subcommittee held a series of meetings with various stakeholders to discuss issues relating to safety conditions and enhancements for traffic control workers, the potential need for a contractor transparency ordinance, and the process to adopt a citywide project labor agreement (“PLA”). On May 9, 2023, the Labor Relations Subcommittee issued a report and recommended that the City Council refer the following to the City Manager’s Office (Attachment 1):

1. Draft a municipal code amendment to address safety conditions and enhancements impacting traffic control workers.
2. Develop a labor transparency ordinance to be consistent with similar policies across the County of San Diego, and identify City needs for ordinance enforcement.
3. Formally engage in the process to develop a citywide Project Labor Agreement with input from the San Diego Building and Construction Trades Council.

The City Council supported the recommended referral at its May 9, 2023 meeting and directed the City Manager to return with a report on implementation within 90 days.

An overview of each component of the May 9 referral is provided below, including progress to date.

Traffic Control Workers Wage Disparity and Potential Safety Issues

On January 6, 2023, the Mayor and City Council received a letter from Laborers’ International Union of North America (“LiUNA”) Local 89 San Diego, relating to wage disparities and safety hazards affecting workers performing traffic control duties (included in Attachment 1). LiUNA’s letter identified a wage disparity issue in the subset of traffic control workers, relative to others within the industry, whether union represented or non-represented. In addition, LiUNA raised concerns regarding potential safety issues in the traffic control industry. LiUNA requested that the City Council consider a municipal code amendment to address the identified wage disparity issue, while increasing the safety of workers that perform work in the right-of-way. Specifically, LiUNA requested that the City Council adopt a municipal code amendment establishing a minimum wage for traffic control workers in the public right of way, not less than the general prevailing wage set for such work by the State of California for traffic control.

Following the May 9, 2023 referral on this item from the City Council, staff began researching similar efforts in the County and City of San Diego. At that time, the County of San Diego had adopted Ordinance No. 10828, requiring payment of a wage equivalent to prevailing wage for all traffic control workers. The City of San Diego is expected to consider a similar ordinance on August 1st. Staff began drafting an ordinance for presentation to the City Council, using the County of San Diego ordinance as an exemplar and considering the implementation of such an ordinance. The most significant challenge identified was enforcement, which would require the creation of a new minimum wage enforcement program in the City. As a result, staff initiated an informal conversation with the County of San Diego regarding potentially contracting with the County for enforcement of the City’s ordinance, should one be adopted. As these conversations were ongoing, the City received notice that a lawsuit was filed on May 8, 2023 in federal court by HP Communications, Inc. against the County of San Diego, calling for the County’s Ordinance No. 10828 to be declared preempted by

the National Labor Relations Act under the Supremacy Clause of the U.S. Constitution and therefore, void and unenforceable.

Next Steps

It is the advice of the City Manager's Office and City Attorney's Office that the City pause in further action on this portion of the referral until the HP Communications case has been resolved.

Staff will continue to work with LiUNA and other members of the labor community in the interim, with the intent to present a draft ordinance to the City Council for consideration upon the resolution of the pending litigation.

Contractor Transparency Ordinance

The May 9, 2023 referral on this item directed staff to look at contractor transparency ordinances adopted throughout San Diego County to protect workers and promote transparency in relation to construction and right-of-way projects. Staff conducted a best practices review on this issue, both in San Diego County and nationally. A draft ordinance was prepared using the City of San Diego adopted ordinance as a guide, with modifications based on the best practices review. The draft ordinance was then shared with representatives of the Building Industry Association ("BIA"), the City's Development Oversight Committee, LiUNA, the Southwest Mountain States Regional Council of Carpenters Local 619 San Diego (the "Carpenters Union"), and the Communication Workers of America District 9 ("CWA"). Negotiations related to the ordinance language are ongoing, but the current draft of the ordinance is being provided with this item for the Council's review and preliminary feedback (Attachment 2).

If adopted, the draft ordinance would add Chapter 2.71 "Construction Contractor and Subcontractor Reporting" to Title 2 (Administration and Personnel) of the Chula Vista Municipal Code ("CVMC") (the "Contractor Reporting Ordinance"). The Contractor Reporting Ordinance would apply to all building, mechanical, plumbing, electrical, demolition, land development, grading, construction, utility, or fire permits issued for projects of a certain size.

Impacted projects would be limited to residential or mixed-use development consisting of twenty (20) or more dwelling units or non-residential developments that propose 20,000 square feet or more of tenant improvements or additional new gross floor area. The ordinance would also apply to utility permits in the City right-of-way. The Contractor Reporting Ordinance would not apply to an individual constructing an ADU, adding on-to or altering their home, modifying their driveway, etc.

For those projects subject to the ordinance, and those permits applicable to those projects, the permittee would have an affirmative duty to provide the following information to the City, under penalty of perjury:

1. The identity of each Contractor and Qualifying Subcontractor that will perform work subject to a permit inspection, whether a sole proprietor, independent contractor, company, or other entity.
2. For each Contractor and Qualifying Subcontractor so identified:
 - a. State contractor's license number, license category, and license expiration date.
 - b. City business license number and expiration date.
 - c. State and federal tax identification numbers.

- d. Valid worker's compensation insurance information, including policy number and expiration date.
- e. Any previous and/or pending enforcement actions resulting from violations of state or federal labor law, along with any penalties paid, criminal convictions, or judgments related to the provisions of the California Labor Code or the Federal Labor Standards Act.
- f. Scope of Inspected Work to be performed.

The permittee will also be required to update the information reported to the City, should it change. The permittee will have 72 hours to notify the City after they become aware of the change. Such changes will be made online using the City's online permitting system.

Where the draft ordinance significantly varies from the City of San Diego ordinance is in the enforcement mechanism. Rather than shutting down the entirety of a project or issuing a misdemeanor citation as contemplated in the City of San Diego ordinance, enforcement of the proposed ordinance will be folded into the regular daily operations of the Development Services Department ("DSD"). This has been accomplished by tying the reporting requirement to permitted work that is subject to inspection by the City. As part of their regular inspection process, DSD inspectors will be able to view the Contractor and Subcontractor information reported for the permitted work they are inspecting, and if the reporting is incorrect or incomplete, they will fail that specific inspection. Work on that item will cease until the inspection can be rescheduled, and the permittee will be charged a re-inspection fee.

For example, if the permittee on 50-unit multifamily project were to call for a pipe install inspection, and the inspector were to find that the plumbing subcontractor had not yet been reported to the City, then the inspector would assign a "fail" to the inspection and leave the site. The permittee would then have to provide the missing information and reschedule the failed inspection. Similarly, if the inspector were to find that the reported plumbing subcontractor's state contractor's license had been suspended or expired, the inspector would assign a "fail" to the inspection. The subcontractor would have to resolve their license status with the state, or the permittee would have to hire and report a new plumbing subcontractor to the City, before inspection could resume. In each example, the permittee would also have to pay a reinspection fee of at least \$140 to cover associated staff costs.

Should more than one violation of the ordinance occur on the same permit within a consecutive 12-month period, the Director of Development Services would have the authority to issue a stop work notice on that particular permit, to be lifted when the violation is remedied.

Should additional violations occur on the same permit within a consecutive five-year period, the Director of Development Services would have the authority to revoke that permit. Once the violations were remedied, the permit would be eligible for reissuance.

In order to allow time to complete stakeholder outreach and the systems programming needed to implement the proposed ordinance, an effective date of January 1, 2024 is currently contemplated. A 6-month safe harbor period, in which no enforcement action is taken is recommended. If adopted, enforcement would begin on July 1, 2024.

Unresolved Terms

The builder community, utility companies, and labor have agreed on the draft ordinance language, with the following exceptions:

1. Applicability of the ordinance to Utility Permits. These are permits issued to utility companies (SDG&E, AT&T, Verizon, Otay Water District, Sweetwater Water District, etc.) for work done in the City right-of-way. This work typically involves trenching; installation, replacement, or repair of wet and dry utilities; and resurfacing of the roadway. Labor proposes that the ordinance include these permit types. Staff has shared the draft ordinance with the various utility companies, but additional time is needed to understand potential impacts and to make a recommendation for the City Council to consider.
2. Reporting Enforcement Actions. Labor has requested that the City's ordinance include a requirement that the applicant/permittee report "*Any previous and/or pending enforcement actions resulting from violations of state or federal labor law, along with any penalties paid, criminal convictions, or judgements related to the provisions of the California Labor Code or the Federal Labor Standards Act.*" The developer/builder community does not support including this requirement, as this information is already reported to, and tracked at, the state level.

Next Steps

Staff requests Council provide any feedback they may have on the draft ordinance and unresolved terms. Staff will continue stakeholder engagement and return with an ordinance for City Council consideration.

Project Labor Agreement (PLA)

The May 9, 2023 referral directed staff to engage in the development of a citywide PLA. Based upon comments made on the dais at the May 9, 2023 meeting and subsequent clarification from members of the Ad Hoc Subcommittee, staff understands that referral to include the following direction:

1. Negotiate a PLA with the San Diego Building and Construction Trades Council, applicable to all City capital improvement projects exceeding a specified a construction cost (at time of award) (the "Citywide PLA").
2. Draft an ordinance (the "PLA Ordinance") requiring PLAs for projects exceeding a specified construction cost (at time of award), that are either:
 - a. Constructed by others on City owned property; or
 - b. Affordable housing projects, receiving City construction funds in excess of a specified amount.

Based upon this understanding, staff began researching PLAs, developed recommended PLA terms and language, and initiated negotiations with the San Diego Building and Construction Trades Council and the Carpenters Union. This work effort is ongoing.

To follow is a brief overview of PLAs in general, potential benefits and possible consequences of adopting a Citywide PLA or PLA Ordinance, and a discussion of potential terms to be included in a Citywide PLA or PLA Ordinance, should they be adopted by the City Council.

Introduction to PLAs

Sometimes called Community Benefit Agreements, Master PLAs, Government Mandated Labor Agreements, Project Stabilization Agreements, Community Workforce Agreements, or Working Families Agreements, PLAs were historically collectively bargained contracts that established working conditions and management rights for a given construction project. They have been used by both public and private entities since the 1930s and are established under federal law. Traditionally, PLAs were intended to address specific problems between contractors and construction workers either created or left unresolved by local area collective bargaining agreements with individual craft workers. They were usually negotiated between construction contractors and one or more building trade unions in advance of submitting a bid for a project, and before anyone is hired to perform the work, with a mutual goal of adjusting work practices to offer a competitive bid.

More currently, global PLAs (or Master PLAs) are being adopted by government agencies to cover multiple public projects. Similar goals are identified for these agreements, including establishing and stabilizing wages, hours, and working conditions for the workers employed on capital improvement program (“CIP”) projects and creating a collaborative relationship with labor and management that leads to efficient and economical completion of public projects. These Master PLAs are approved prior to the project(s) and once executed, are applied to all public works projects that fit set criteria (construction budget, CIP type, etc.). In addition to restricting signatory unions from striking or taking collective action against the public project or contractor working on it, these agreements also seek to improve opportunities to use local, publicly funded projects to provide job training and employment opportunities for local disadvantaged workers and businesses.

PLAs are negotiated contracts pertaining to construction workforce and labor relations and are allowed in the construction industry per Section 8(f) of the National Labor Relations Act (Title 29, Chapter 7, Subchapter II, United States Code). The main tenets of typical PLAs for public works projects are that the public entity gets assurance of labor peace and participating unions get broad application of terms of collective bargaining agreements.

Historically, contractors and unions have used project labor agreements for major projects of extended duration that require large numbers of many different skilled workers. PLA use on federal sector construction projects dates as far back as 1938 when a PLA was signed for the construction of the Grand Coulee Dam in Washington State. In 1940, a similar agreement was used during the construction of the Shasta Dam in Northern California. Other major public infrastructure projects built under PLAs include atomic facilities in Oak Ridge, Tennessee and Hanford, Washington; the Nevada Test Site; Mississippi Test Facility (John C. Stennis Space Center); and NASA’s Cape Canaveral Launch Operations Center (Kennedy Space Center).

While there is variation among the provisions in PLAs for projects covered by them (the “Covered Project”), the terms and conditions in most PLAs generally:

1. apply to all work performed on a specific project or at a specific location;
2. require recognition of the signatory union(s) as the exclusive collective bargaining representatives for Covered Project workers, whether or not the workers are union members;
3. supersede all other collective bargaining agreements;

4. prohibit strikes and lockouts;
5. require hiring through union referral systems (hiring halls);
6. require all contractors and subcontractors on the Covered Project to become signatory to the agreement;
7. establish standard work rules, hours and dispute resolution procedures;
8. establish wages and benefits; and
9. require new employees, within a certain period of time, to pay dues to the union for representing their interests before the employer or contractor. When the Covered Project is completed, the employer and the union(s) have no further obligations to each other under the agreement.

History of PLAs in Chula Vista

As part of the Chula Vista Bayfront development proposal by Gaylord Entertainment Company in 2005, citizen groups participating in the project's review supported a PLA for the development. In 2007, Gaylord withdrew their proposed project citing an inability to come to terms with the local building and construction trades council on a labor agreement.

In reaction to the Gaylord project outcome, a citizens group in 2007 began discussing circulation of a ballot measure regarding the application of PLAs on public works projects in Chula Vista. The resulting measure called for a process that would provide fair and open competition for public works projects funded in whole or in part with public funds; that would aid in lowering the cost of public works projects; and that would ensure that all workers, both union and non-union, had a fair and equal opportunity to work on public works projects. Carried by almost 56% of the vote on June 8, 2010, the approved Measure (Proposition) G resulted in City Council's adoption of an ordinance including the below provisions that in effect, banned PLAs in the City.

In contracting for the construction, maintenance, repair, improvement or replacement of public works projects, the City shall not fund, in whole or in part, or enter into, any contract which contains a requirement that a contracting party (1) 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; (2) become a signatory to a collective bargaining agreement; (3) be required to make payments on behalf of employees to union benefit plans or other trust funds; (4) require its employees to be represented by a labor organization; or (5) encourage or discourage employees of a contracting party to have representation by a labor organization.

Subsequently, new State PLA laws were enacted. Senate Bill ("SB") 922 in 2011 and SB 829 in 2012 added California Public Contract Code Sections 2500 through 2503, addressing the use of PLAs on public works projects throughout California. These new laws, generally: (1) authorized cities to use PLAs for public works, so long as specified taxpayer protections were included in the agreement; and 2) disqualified cities from receiving state funding for city infrastructure projects if they prohibit or limit the ability to use PLAs on city public works. As a result, the application of these new laws to the voter approved Measure G ordinance provisions could have potentially jeopardized the City's ability to receive state funding for local infrastructure.

Despite the law change, the City was able to maintain its "qualified" status with the State for public works funding based on the City's written position that the State and City's Proposition G laws could be reconciled.

Legal ambiguities, however, continued to exist. On December 3, 2019, the City Council agreed to place a ballot measure (“Measure E”) on the March 3, 2020 election to repeal the Proposition G ordinance provisions that prohibited PLAs. Measure E was approved, with 67% of the voters in favor of repealing the PLA restrictions. The primary argument in favor of repealing was that a yes vote would preserve the City’s opportunities for future State infrastructure funding.

Project Labor Agreement Scope

Several local agencies have adopted a form of Master PLA for CIP Public Work projects, including the City of San Diego (Pure Water project), County of San Diego (Working Families Ordinance), National City, SANDAG, Southwestern College, San Diego Unified School District, and Chula Vista Elementary. Most agencies, when approving a PLA, identified both Covered Projects’ scope (construction contract amount, project complexity or location); public benefits (cost and schedule savings, provision of skilled and trained workforce for projects, no strikes or labor disputes allowed); and community benefits (local hire for project workforce, apprenticeship training for local workforce, disadvantaged business preference, etc.) as the reasons for support of the PLA.

More recently, on February 4, 2022, President Biden issued Executive Order 14063, which requires Federal agencies’ “large scale” (\$35 million or greater) construction projects to include in their bid solicitation and construction contracts a provision requiring the prime contractor (and their subcontractors) to negotiate PLAs as a condition of receiving the contract. This order does provide discretion to exempt construction projects from the PLA requirements when: (1) the project has a short duration and lacks operational complexity; (2) the project will involve only one craft or trade; (3) the project will involve specialized construction work that is available from only a limited number of contractors or subcontractors; or (4) the agency’s need for the project is so urgent that a PLA would be impracticable. In details being included as part of implementing guidance, workers in each craft or trade on each project must be paid the highest applicable wage whether union or non-union employed. The highest of Federal or State minimum wage, a State’s required prevailing wage, or the wage established in a trade’s collective bargaining agreement must be used. The conversion of the cost of required benefits into equivalent wages to meet this highest wage requirement (which California Prevailing Wage Law permits) is not being allowed under this Federal order. The same justification cited for local PLA approvals is being used in support of this new Federal PLA requirement – to promote economy and efficiency in the administration and completion of publicly funded construction projects.

Recommendation: Limit Citywide PLA scope to projects with a construction cost (at time of award) of \$1,000,000 or greater.

Limit PLA Ordinance scope to:

1. projects constructed on City property with a construction cost (at time of award) of \$1,000,000 or greater; or
2. affordable housing projects receiving City construction funds of \$5,000,000 or greater.

Citywide Project Labor Agreement Terms

While many Master PLAs have similar categories of terms, there are no set requirements or criteria for a Master PLA. Several major elements that could be negotiated and included in the Citywide PLA are discussed below, along with identified benefits and potential impacts.

1. No Strike or Collective Action. Often identified as the biggest benefit of PLAs, this term is imposed through an agreement by all signatories not to strike or take other collective action against the project or contractors working on it during the Covered Project's construction. This PLA provision is most often cited as being important to complex, multi-trade, and multi-contractor projects with a critical schedule to reduce construction delay and labor shortages. Opponents of PLAs note that very few construction projects without PLAs have strikes or collective actions taken against them and, thus, is not a critical element. Chula Vista CIP projects have not had any labor actions or related collective action impacts. The more recent labor challenges that have occurred are on private development projects during the discretionary permitting and California Environmental Quality Act (CEQA) review process. In these cases, where labor unions file lawsuits, typical settlement terms have been a project specific PLA between the private developer/contractor and the union challenging the project. This has occurred on several private development projects within the last 5 years in Chula Vista.

Recommendation: Staff recommends a No Strike or Collective Action term be included in the Citywide PLA.

2. Compliance with Collective Bargaining Agreement(s). This is a typical term, which requires any contractor working on the Covered Project (whether it is signatory to a collective bargaining agreement or not) to abide by terms of each relevant trade's existing collective bargaining agreement in performance of Covered Project work, unless superseded by the PLA. Having uniformity in workers benefits and job requirements, whether in a union or not, is identified by some as a positive aspect of these agreements that improve communication and coordination across the public project. Others maintain that existing collective bargaining agreements define union jurisdictional boundaries that can limit the scope of work allowed to be performed by a skilled trade. Some workers may be competent in more than one skill and without the jurisdictional restriction could provide a more efficient work process because they can perform their core function plus added assignments that they have been trained for but that are considered to be outside their union defined core trade. This could limit, some argue, competitive bidding and the potential cost saving benefit of multi-skilled workers to a Covered Project.

Recommendation: Staff recommends that the Citywide PLA require, at minimum, benefits as established by State prevailing wage law and that benefits required by prevailing wage law (health insurance, paid time off, sick leave, etc.) be provided by the contractor to the covered project worker and not be converted into an equivalent additional wage and added to the required prevailing wage for that craft or trade as otherwise allowed by prevailing wage law. Union employees on the Covered Project should receive benefits consistent with existing collective bargaining agreements for each trade. Other work conditions such as work hours, overtime parameters should be consistent with existing collective bargaining agreements.

3. Dispute Resolution. Most PLAs include agreed upon processes to streamline resolution of labor disputes and conflicts, including jurisdictional disputes between unions arising during a CIP project. Opponents of PLAs note that CIP project contracts that are part of any CIP also include project construction dispute resolution provisions so the PLA provisions on the same topic are redundant. PLA proponents maintain that a consistent and predictable conflict resolution process helps maintain project schedules and project worker productivity.

Recommendation: Staff recommends including a dispute resolution process that includes mutually agreed upon mediators in the Citywide PLA.

4. Wages and Benefits. Most PLAs refer to compliance with prevailing wage law for wages and benefit payment amounts, as in general, public works projects over \$1,000 are already subject to this State requirement. Prevailing wage law allows the minimum required benefit payment amount (roughly 1.9% of wages) to be directly contributed into approved benefit plans or paid in cash directly to employees. Benefit provisions in PLAs vary but can include requirements for contribution to union-sponsored fringe benefit and pension funds. PLAs can also require extra pay for overtime work, travel, subsistence, shift work, holidays, “show-up” pay, and various other premiums beyond what is required by law.

Those that disagree with PLAs identify the requirement that open shop contractors pay contributions into union benefit and multiemployer pension plans (MEPPs) for their non-union employees as problematic, because their employees often do not vest in the plan and lose those benefit contributions at the end of the project. To address this, non-union contractors claim they often double pay pension and health insurance fringe benefits into both existing company plans and union plans if their employees are permitted to work under short-term projects covered by a PLA. In addition, like many public pension plans, a number of the MEPPs may struggle to meet their pension obligations¹. The last recession contributed to this problem, as contractors participating in MEPPs went bankrupt and did not pay their share of liability to a MEPP, which is now a liability for the MEPP’s remaining participants. Businesses are, therefore, concerned about being required to contribute to MEPPs because it may expose their business to future unknown pension liabilities. In general, unionized construction firms use a defined benefit MEPP retirement model, while non-union contractors typically provide defined contribution plans such as a portable 401(k) retirement plans that follow the worker.

Recommendation: Staff recommends that the Citywide PLA require wages consistent with prevailing wage law for both union and non-union workers. Benefits should be per staff’s recommendation for Item No. 2 above. The provision of premium wages beyond what is required by law should be left to union and open shop contractors to determine as part of their desire to participate in an open and competitive bidding process.

¹ According to the American Academy of Actuaries, roughly 1,400 MEPPs cover workers employed in an array of unionized industries, including retail, service, construction, manufacturing, mining, transportation, and entertainment. About 100 of these plans have been classified, in accordance with the Multiemployer Pension Reform Act (MPRA), as in “critical and declining” status—meaning they are projected to have insufficient assets in the fund to pay full benefits within the next 20 years. [Hanna, C., & Goldman, T. (2017, June 27). *Issue Brief - Overview of Multiemployer Pension System Issues*. American Academy of Actuaries. <https://www.actuary.org/sites/default/files/files/publications/IB-Multiemployer.06.27.2017.pdf>]

5. Term. Most individual, project specific PLA terms coincide with the Covered Project’s construction period. Master PLAs covering multiple projects have longer durations (e.g., SANDAG’s PLA has a five-year term) with automatic extensions unless cancelled by the agency.

Recommendation: Staff recommends an initial five-year term for the Citywide PLA, with one optional five-year extension at City Council’s discretion.

6. Community Benefit. Many PLAs identify hiring goals or standards as a community benefit. These include job readiness programs, apprenticeship standards, disadvantaged worker hiring goals, disadvantaged business inclusion opportunities, targeted worker goals, and local hire goals.

The following are typical definitions used in PLAs for these community benefit groups:

- a. “Disadvantaged Business” typically means a business that has been certified by the California Department of Transportation and or any other CALTRANS-approved California certifying agency as a Disadvantaged Business Enterprise pursuant to 49 C.F.R §26.5; or a business that has been certified by the California Office of Small Business and DVBE Services as a Small Business, a Small Business for the Purpose of Public Works, or a Disabled Veteran Business Enterprise.
- b. “Disadvantaged Worker” typically means an individual domiciled in a “Disadvantaged Area” meaning a zip code that contains a census tract for which the average household income is no more than 80 percent of the average household income for the Metropolitan Statistical Area as designated by the U.S. Office of Management and Budget, in which that census tract is located, or a Veteran residing anywhere. “Domiciled” is per section 349(b) of the California Election Code, indicating a fixed address with intent of continued residency.
- c. “Local Hire” typically means a permanent resident of the City entering into the PLA, at the time of initial employment on a Covered Project or a veteran residing anywhere.
- d. “Targeted Worker” typically means any individual that fits one or more of the following (a) is a Veteran; (b) is an Apprentice with less than fifteen percent of the work hours required for completion of the Apprenticeship Program; (c) has no high school diploma or general education diploma (GED); (d) is homeless or has been homeless within the last year; (e) is a former foster youth; (f) is a custodial single parent; (g) is experiencing protracted unemployment (defined as receiving unemployment benefits for at least three months); (h) is a current recipient of government cash or food assistance benefits; (i) has a documented income at or below 100 percent of the Federal Poverty Level; (j) is formerly incarcerated; or (k) is a graduate of an apprenticeship readiness program; (l) is a Local Targeted worker, meaning a local resident or a Disadvantaged Worker whose primary place of residence is within the local county.

Hiring targets are then established for these various categories in the PLAs. For example, the City of San Diego’s PLA includes an overall goal of 10% of the craft hours worked on each Covered Project be performed by Targeted Workers, and a goal of 35% of all craft hours on a Covered Project be performed by Local Hires. SANDAG’s Community Benefit Agreement includes an overall goal of 10% of the craft hours worked on each Covered Project be performed by targeted workers and a goal of 30% of all craft hours on a Covered Project

be performed by Disadvantaged Workers. Both have a hiring inclusion allowance for Disadvantaged Businesses that are not signatory to a local master labor agreement and are under defined subcontract dollar thresholds.

Recommendation: Staff recommends the Citywide PLA set a hiring goal of fifty percent (50%) of the total construction craft hours on the Covered Project being performed by Local Hires, with an initial priority for residents of Chula Vista, then expanding to all residents of San Diego County if there are not sufficient Chula Vista residents to meet the 50% goal. Staff further recommends that the Citywide PLA set a hiring goal of thirty percent (30%) of the total construction craft hours on the Covered Project being performed by Disadvantaged Workers, with Disadvantaged Workers in this context meaning an individual domiciled in a Disadvantaged Area that has no high school diploma or general education diploma (GED), is homeless or has been homeless within the last year, is a former foster youth, is a custodial single parent, is experiencing protracted unemployment (defined as receiving unemployment benefits for at least three (3) months), is a current recipient of government cash or food assistance benefits, has a documented income at or below 100 percent of the Federal Poverty Level, is formerly incarcerated, or a Veteran residing anywhere.

All of the above should be characterized as goals, not requirements. The PLA should also establish a process to be followed, should those goals be demonstrably unachievable on an individual project.

PLA Benefit Studies

Experts continue to debate study methodologies and the overall value and cost implications of government-mandated PLAs on public work construction projects. Below is a sampling of evaluations that have been referenced in published articles both in support of, and in opposition to, the use of PLAs.

No impact on Number of Bidders or on Construction Bid Price: A PLA study from January 2017, *Project Labor Agreements and Bidding Outcomes, The Case of Community College Construction in California*², by authors from the University of California Berkely and sponsored by a grant from the Marin County Building Trades Council, reviewed 263 California community college projects built between 2007 and 2016. Of the projects reviewed, 88 were built under PLA arrangements. The study concluded that in comparison to non-PLA projects, controlling for the size of the project and when it was put out for bid, PLAs did not decrease the number of bidders nor did PLAs raise prices relative to the engineer's estimates.

Increased Construction Cost: A PLA study from 2021 by the RAND Corporation, *The Effects of Project Labor Agreements on the Production of Affordable Housing*³, examined a \$1.2 billion public housing bond measure in Los Angeles (Proposition HHH). The study concluded that an initiative-wide PLA requirement resulted in an estimated 14.5% increase in construction costs for residential units

² Philips, P., & Waitzman, E. (2017). Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California. UC Berkeley: Center for Labor Research and Education. <https://escholarship.org/uc/item/6kb1836w>

³ Ward, J. (2021). The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH. RAND Corporation. https://www.rand.org/content/dam/rand/pubs/research_reports/RR1300/RR1362-1/RAND_RRA1362-1.pdf

funded by Proposition HHH, reducing the number of units that were ultimately built by an estimated 11%. The study also found that establishing a threshold for the application of the PLA requirement, in this case, the construction of 65-units or more, led to developers disproportionately proposing housing projects that fell below that threshold in an effort to avoid being subject to the PLA requirement.

Increased Construction Cost and Reduction in Eligible Bidders: A January 2022 report, *Impact of Working Families Ordinance*⁴, prepared for the County of San Diego by economic consultant DTA, concluded that the County's new ordinance imposing a skilled and trained workforce requirement (that matches current State skilled and trained workforce provisions) and a sick leave requirement on public works projects with budgets over \$1.0 million, would result in potential cost increases for construction contracts, from bidders passing on the added cost of providing additional sick leave, in the bid price. They also identified potential reductions in the number of contractors bidding on County contracts and in the number of eligible subcontractors as additional outcomes of the new ordinance.

No Impact to Construction Cost: In a PLA study from 2015, *Did PLAs on LA Affordable Housing Projects Raise Construction Costs?*⁵, professors from the University of Utah studied 130 affordable housing projects constructed in the County of Los Angeles between 2008 and 2012, nine of which were constructed under a PLA. The authors concluded that the PLA projects were not more expensive to build than comparable projects not governed by project labor agreements.

Next Steps

Staff requests City Council feedback on the above Citywide PLA and PLA Ordinance recommendations. With that feedback, staff will continue negotiating a Citywide PLA with the San Diego County Building and Construction Trades Council and the Carpenters Union, as well as drafting a Citywide Ordinance for City Council consideration.

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.).

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

CURRENT-YEAR FISCAL IMPACT

There is no current-year fiscal impact as a result of receiving this report or approving the Ordinance. If approved, all staff costs associated with implementing the Ordinance will be recovered through permit

⁴ DTA. (2022). County of San Diego: Impact of Working Families Ordinance.

https://www.sandiegocounty.gov/content/dam/sdc/olse/RES_PWFOrdinance_EconomicAnalysis.pdf

⁵ Philips, P. & Littlehale, S. (2015). Did PLAs on LA Affordable Housing Projects Raise Construction Costs? University of Utah: Department of Economics. https://economics.utah.edu/research/publications/2015_03.pdf

inspection fees, resulting in no net fiscal impact to the General Fund or Development Services Fund as a result of this action.

ONGOING FISCAL IMPACT

All staff costs associated with implementing the Ordinance will be recovered through permit inspection fees, resulting in no net fiscal impact to the General Fund or Development Services Fund as a result of this action.

ATTACHMENTS

1. Labor Relations Ad Hoc Subcommittee Report
2. Draft Construction Contractor and Subcontractor Reporting Ordinance

Staff Contact: Tiffany Allen, Assistant City Manager