

BOARD of SUPERVISORS



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MEMORANDUM

TO: Mohammed Nuru, Director, Public Works
Naomi Kelly, City Administrator, Office of the City Administrator
Joaquin Torres, Director, Office of Economic and Workforce Development
Ben Rosenfield, City Controller, Office of the Controller

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: November 13, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Mayor London Breed:

File No. 181043

Ordinance amending the Administrative Code to require a citywide project labor agreement applicable to certain types of public work or improvement projects with projected costs over the threshold amounts (ranging from \$1,000,000 to \$5,000,000 depending on the year in which the advertisement for bid is released; or \$10,000,000 if the project is funded by a source other than a general obligation bond) or where delay in completing the project may interrupt or delay services or use of facilities that are important to the City's essential operations or infrastructure.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
Lynn Khaw, Office of the City Administrator
J'Wel Vaughan, Office of Economic and Workforce Development
Ken Rich, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development
Todd Rydstrom, Office of the Controller

[Administrative Code - Citywide Project Labor Agreement - Public Work or Improvement Projects]

Ordinance amending the Administrative Code to require a citywide project labor agreement applicable to certain types of public work or improvement projects with projected costs over the threshold amounts (ranging from \$1,000,000 to \$5,000,000 depending on the year in which the advertisement for bid is released; or \$10,000,000 if the project is funded by a source other than a general obligation bond) or where delay in completing the project may interrupt or delay services or use of facilities that are important to the City’s essential operations or infrastructure.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Article II of Chapter 6 of the Administrative Code is hereby amended by adding Section 6.27, to read as follows:

SEC. 6.27 CITYWIDE PROJECT LABOR AGREEMENT ORDINANCE.

(a) Short Title. This Section 6.27 shall be known and may be cited as the Citywide Project Labor Agreement Ordinance.

(b) Findings and Purpose.

(1) Certain public work and improvement projects can involve numerous contractors and employees in different trades, have critical timelines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a proper and timely manner. To avoid

1 costly delays and additional expense to the City, it is essential that construction on such projects
2 proceed without the labor disruptions that can occur on long-term projects, both from external labor
3 relations problems and from the frictions that often arise when a large number of contractors and their
4 employees and subcontractors work in proximity to one another on a job site.

5 (2) Additionally, in a complex and highly developed urban environment such as San
6 Francisco, many smaller projects can be of substantial importance to City residents, whether through
7 provision of basic services or through the establishment or maintenance of conditions for economic,
8 physical, or emotional well-being, such that it is highly desirable and even essential to avoid the delay
9 in their completion that might result from labor disruptions.

10 (3) In the private sector, project labor agreements have been used for many years on
11 numerous construction projects to achieve satisfactory performance and the economic benefits that
12 result from having a guaranteed source of skilled workers and from avoiding work disruptions.

13 (4) In San Francisco, project labor agreements have been and are being used
14 successfully by public entities including the San Francisco Public Utilities Commission, the San
15 Francisco Community College District, the San Francisco Unified School District, the Transbay Joint
16 Powers Authority, and the United States General Services Administration, as well as by many private
17 entities, for construction in both large and small scale projects, including hospitals, reservoirs, water
18 treatment and transmission facilities, schools, offices, and residences, and for the retrofit and remodel
19 of existing buildings and facilities. Such agreements have been a major factor in producing quality
20 construction work and projects completed on time, within budget, without labor strife or disruptions.

21 (5) Beyond San Francisco, throughout the Bay Area and Northern California, project
22 labor agreements have been used successfully on numerous public and private construction projects,
23 and public entities such as the County of Contra Costa, the Bay Area Rapid Transit District, the
24 Oakland Unified School District, the City of Berkeley, and others, maintain Project Labor Agreement
25 Ordinances and Policies requiring the use of project labor agreements on their publicly funded

1 construction projects. The same is true of the San Francisco International Airport, a City entity
2 located in the County of San Mateo.

3 (6) The cyclical nature of our economy has led and will lead to high levels of
4 unemployment and underemployment of San Francisco residents, particularly in certain neighborhoods
5 and communities. Statistics also indicate that high levels of unemployment or underemployment
6 correlate to a higher number of families living at or near the poverty line and to a higher crime rate. As
7 a result, it is the policy of the City to increase and improve the employment of persons living in San
8 Francisco in an attempt to counteract the grave economic and social ills associated with the
9 unemployment and underemployment levels that have existed and will exist within San Francisco.

10 (7) There is a need to provide San Francisco residents with more opportunities to
11 participate in workforce development and pre-apprenticeship programs that include life skills training
12 and job readiness training, and to this end the City has funded the CityBuild Academy established by
13 the Office of Economic and Workforce Development. Such pre-apprenticeship programs increase the
14 capacity of San Francisco residents to succeed later in formal apprenticeship programs and hence
15 reduce unemployment and underemployment and accompanying poverty and crime conditions.

16 (8) The construction crafts that work on City-funded projects require a supply of new
17 apprentices to perpetuate the crafts into the future. Through their apprenticeships, these crafts provide
18 genuine opportunities for long-term, well-paid careers in the construction industry. Entry into and
19 employment through these apprenticeships can be facilitated by formal understandings between the
20 City and the labor organizations affiliated with the San Francisco Building and Construction Trades
21 Council.

22 (9) In addition, large numbers of returning veterans will be seeking employment on
23 City-funded construction projects and training opportunities for entrance into the construction
24 industry. Such training opportunities are available through a program known as "Helmets to
25

1 Hardhats," a program that current City project labor agreements require contractors and
2 subcontractors to use.

3 (10) The use of project labor agreements has proven to be a valuable vehicle for
4 accomplishing all of the goals set out above.

5 (c) Definitions. For purposes of this Section 6.27, the following definitions shall apply:

6 "Core Employee" means an employee of a Contractor who has not previously had a
7 relationship with the Unions who demonstrates the following qualifications: (1) possesses any license
8 required by state or federal law for the Project work to be performed; (2) has worked a total of at least
9 1,000 hours in the construction craft during the prior three years; (3) has been on the Contractor's
10 active payroll for at least 500 hours in the calendar year immediately prior to the contract award; and
11 (4) has the ability to perform safely the basic functions of the applicable trade

12 "Cost" means the amount of money the Department Head estimates the City will spend on
13 construction work. "Cost" does not include money the Department Head projects the City will spend
14 on City employees, project managers, program managers, construction managers, and design teams
15 (including, but not limited to, architects and engineers, or any other consultant employed by a City
16 Department and their respective sub-consultants, and other employees of professional service
17 organizations, unless performing craft work)

18 "Covered Project" means a project involving Public Work or Improvement as defined in
19 Administrative Code Section 6.1, if either: (1) the project is funded in whole or in part by a General
20 Obligation Bond and the Department Head estimates the Cost of the project to exceed the following
21 threshold amounts: \$5,000,000 for Covered Projects where the Advertisement for Bid is released in the
22 first year after the City and Unions sign a Project Labor Agreement, \$3,000,000 for Covered Projects
23 where the Advertisement for Bid is released in the second year after the City and Unions sign a Project
24 Labor Agreement, and \$1,000,000 thereafter, or (2) the project is funded by a source other than a
25 General Obligation Bond and the Department Head estimates the Cost of the project to exceed

1 \$10,000,000, or (3) the Department Head has determined that delay in completing the project may lead
2 to interruption or delay of services or use of facilities that are important to the essential operations or
3 infrastructure of the City. Notwithstanding the foregoing sentence, "Covered Project" does not include
4 any Public Work or Improvement projects undertaken by the San Francisco International Airport, the
5 San Francisco Public Utilities Commission, the Port of San Francisco, or the San Francisco Municipal
6 Transportation Agency. "Covered Project" also does not include any Public Work or Improvement
7 project where application of the citywide PLA would violate the conditions of a state, federal, or other
8 public funding source.

9 "Project Labor Agreement" or "PLA" means a multi-craft collective bargaining agreement
10 between the City and the relevant trade councils and craft and labor unions that will refer workers to
11 Covered Projects, and which governs the construction services on the Covered Project.

12 "Subcontractor" means any person, firm, partnership, owner-operator, limited liability
13 company, corporation, joint venture, proprietorship, trust, association, or other entity providing
14 services to a Contractor or other Subcontractor in fulfillment of the Contractor's or other
15 Subcontractor's obligations arising from a contract with the City for construction work on a Covered
16 Project.

17 "Unions" means the San Francisco Building and Construction Trades Council and its affiliated
18 local unions. These affiliated local unions are listed in a document that is on file in Board of
19 Supervisors File No. _____ and incorporated by reference as if set forth herein, and the City
20 Administrator and San Francisco Building and Construction Trades Council may update the list by
21 mutual agreement at any time.

22 (d) Project Labor Agreement Requirement. Not later than January 1, 2020, the City
23 Administrator shall negotiate with the Unions and sign on behalf of the City, a citywide Project Labor
24 Agreement that shall apply to all Covered Projects. For all Covered Projects advertised after January
25 1, 2020, each Department Head shall set as a precondition to the award of the contract that the

1 Contractor and its Subcontractors sign an agreement to be bound by the citywide Project Labor
2 Agreement. The Contractor shall execute the Project Labor Agreement on file with the City
3 Administrator. Nothing in this provision shall impact or otherwise impair the terms of any existing
4 Project Labor Agreement. The City is not bound by the requirements of subsection (e) unless and until
5 the City and all Unions have executed a final Project Labor Agreement.

6 (e) Required Terms for citywide Project Labor Agreement. The citywide Project Labor
7 Agreement shall include the following terms:

8 (1) The Project Labor Agreement is binding on all Contractors and Subcontractors
9 at all tiers of a Covered Project, except as provided in subsection (e)(10);

10 (2) Unions, Contractors, and Subcontractors are bound by the requirements of
11 Administrative Code Chapters 6, 12B, 14B, 82 and 83, as they may be amended from time to time,
12 including but not limited to the provisions addressing Local Hire and Local Business Enterprise;

13 (3) Contractors will condition the engagement of each Subcontractor on the
14 Subcontractor agreeing to be bound by and comply with all the terms of the Project Labor Agreement;

15 (4) Contractors and Subcontractors to whom construction services are awarded for
16 a Covered Project will use the hiring halls operated by signatory Unions for all labor on the Covered
17 Project except for (A) the services provided by non-craft managerial, executive, and clerical
18 employees, (B) supervisory employees above the level of general foreman; (C) at least two Core
19 Employees per Covered Project, as further determined in Project Labor Agreement negotiations, or (D)
20 LBEs that meet the requirements set forth in subsection (e)10;

21 (5) Contractors and Subcontractors will hire apprentices indentured in the State-
22 approved joint apprenticeship program for the applicable craft or trade for work on the Covered
23 Project in accordance with the apprentice ratios contained in California Labor Code Section 1777.5,
24 as it may be amended from time to time;

1 (6) Unions will use the "Helmets to Hardhats" Program to assist returning veterans
2 in obtaining employment and training opportunities on the project;

3 (7) Within three years of the effective date of the ordinance in Board of Supervisors
4 File No. _____ creating this Section 6.27, all of the Unions shall enter into agreements, or modify
5 existing agreements, with CityBuild Academy to ensure graduates of CityBuild Academy have a
6 pathway for direct entry into the Union's membership;

7 (8) a mechanism for the expedited resolution of jurisdictional disputes between
8 Unions;

9 (9) an agreement by all Unions to refrain from strikes, picketing, and other labor
10 disruptions related to the Covered Project, and that Union members will continue work on a Covered
11 Project despite the expiration of any applicable collective bargaining agreement;

12 (10) the PLA does not apply to Contractors performing work on Covered Projects
13 that are certified as Local Business Enterprises (LBEs) under Administrative Code Chapter 14B.3, until
14 the LBE has received the value of contracts awarded for work on Covered Projects in an amount
15 exceeding \$5,000,000 cumulatively over the entire duration of the PLA;

16 (11) the PLA's coverage does not extend to the Contractors' or Subcontractors'
17 parent companies, subsidiaries, or affiliates;

18 (12) the PLA does not apply to any work performed on or near or leading to or into
19 the Covered Project site by federal, state, local, or other governmental entities or their contractors or
20 subcontractors, or by utilities or their contractors or subcontractors, or by the City or its contractors
21 or subcontractors if that work that is not part of the Covered Project; and

22 (13) a prohibition against discrimination on any and all bases that City, state or
23 federal law prohibits.

24 (f) Annual Reporting. Beginning two years from the effective date, the Office of the
25 Controller shall conduct annual reviews of the PLA to evaluate whether the PLA has promoted the

1 efficient, economical, and timely completion of Covered Projects, the costs of Covered Projects, and
2 the PLA's impact on LBEs and the local workforce.

3 (g) The Project Labor Agreement shall automatically expire 20 years from the date it is
4 initially signed by the City and the Unions, at which point the City and Unions shall no longer be
5 bound by the citywide Project Labor Agreement, except on Covered Projects for which contracts are
6 awarded before expiration of the Project Labor Agreement.

7 (h) Severability. If any subsection, sentence, clause, phrase, or word of this Section 6.27, or
8 any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
9 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
10 portions or applications of the Section. The Board of Supervisors hereby declares that it would have
11 passed this Section and each and every subsection, sentence, clause, phrase, and word not declared
12 invalid or unconstitutional without regard to whether any other portion of this Section or application
13 thereof would be subsequently declared invalid or unconstitutional.

14 (i) No Conflict with Federal or State Law. Nothing in this Section 6.27 shall be interpreted
15 or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

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17 Section 2. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21
22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 

25 RUTH M. BOND
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Citywide Project Labor Agreement for Public Work or Improvement Projects]

Ordinance amending the Administrative Code to require a citywide project labor agreement applicable to certain types of public work or improvement projects with projected costs over the threshold amounts (ranging from \$1,000,000 to \$5,000,000 depending on the year in which the advertisement for bid is released; or \$10,000,000 if the project is funded by a source other than a general obligation bond) or where delay in completing the project may interrupt or delay services or use of facilities that are important to the City's essential operations or infrastructure.

Existing Law

There is no existing legal requirement for the City to use a Project Labor Agreement ("PLA") on its public work and improvement projects. Currently, City departments negotiate PLAs for certain large public work projects on a case-by-case basis, when the department determines that a PLA will protect the City's proprietary and fiscal interests.

Amendments to Current Law

The proposed Ordinance would amend the Administrative Code to add Section 6.27 to require the City to negotiate with organize labor a master PLA to apply to all City public work and improvement projects with estimated project costs over certain threshold amounts. These threshold amounts will begin at \$5,000,000 in the first year after the City and Unions sign the PLA, \$3,000,000 in the second year and \$1,000,000 thereafter for General Obligation Bond-funded projects and \$10,000,000 for projects funded through sources other than a General Obligation Bond. The proposed Ordinance would exempt projects under the jurisdiction of the San Francisco Airport, the San Francisco Public Utilities Commission, the Port of San Francisco, and the San Francisco Municipal Transportation Agency from the PLA. In addition, the PLA would not apply to a particular project if its application would violate the conditions of a local, state, or federal funding source for that project.

The proposed Ordinance would require that no later than January 1, 2019, the City Administrator negotiate with the relevant trade councils, craft and labor unions, and sign on behalf of the City, a PLA that shall: (1) apply to all contractors and subcontractors on a project and be a bidding prerequisite; (2) incorporate San Francisco Administrative Code Chapters 6, 12B, 14B, 82 and 83; (3) require the use of hiring halls, joint apprenticeship programs, and the Helmets to Hardhats program; (4) prohibit work stoppages; (5) establish a method to resolve jurisdictional disputes between trade unions that are parties to the PLA; (6) permit the use of at least 2 core employees per Covered Project outside the hiring halls operated by the signatory Unions; and (7) specify that the City is not bound by the provisions

of the Ordinance unless and until the City and all signatory Unions execute a final PLA. Under the Ordinance, local business enterprises would not be covered by the PLA unless they perform more than \$5,000,000 worth of work on PLA projects. Finally, City Department heads could apply the PLA to projects under the threshold amounts in their discretion.

Background Information

The purpose of the citywide PLA under the proposed Ordinance is to avoid costly delays and additional expenses associated with public works and improvement projects that involve numerous contractors and employees in different trades, have critical timelines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a timely manner. Similar PLAs have been used in both the public and private sector to achieve the economic benefit that results from long-term projects proceeding without labor disruptions.

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