



# City of Stockton

## Legislation Text

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**File #: 16-2896, Version: 1**

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### **CONSIDER IMPLEMENTATION OF A COMMUNITY WORKFORCE TRAINING AGREEMENT FOR THE CITY OF STOCKTON**

#### RECOMMENDATION OF THE LEGISLATION/ENVIRONMENTAL COMMITTEE

It is recommended that the Council consider the revised Community Workforce Training Agreement (Agreement).

#### Summary

The Council previously adopted the Agreement put forth by the Legislation/Environmental Committee on November 17, 2015. The Council further directed the City Manager to work with the coalition of stakeholders to discuss the administration of the Agreement and to provide a recommendation for the final agreement. The attached Agreement (Attachment A) is a project labor agreement (PLA) that generally provides for union recognition and the use of union hiring halls for City public works projects with a contracted value at \$1 million or more. Additionally, the Agreement would preclude strikes or stoppages on contracted public works projects subject to the Agreement. The term of the Agreement is three years. The Agreement was sponsored by the San Joaquin Building and Construction Trades Council.

Significant modifications have been made to the previously adopted version to address drafting errors, clarifications required for administration and concerns raised by stakeholders. Consistent with Council's prior action staff did not negotiate the underlying policy, rather staff worked with the sponsors to clarify issues necessary to administer the Agreement.

However, stakeholders raised concerns regarding the potential exclusionary effect of the Agreement on local small businesses and the inability of the sponsoring unions to effectively recruit traditionally underrepresented and disadvantaged individuals from Stockton. The sponsors held separate meetings with stakeholders to discuss alternative language and relieve concerns. Additional policy changes are included in this version that are aimed at improving opportunities for Stockton businesses and residents.

The City Attorney's Office also completed a review of the Agreement. A number of legal issues have been addressed as part of correcting the drafting errors and clarifying issues related to the administration of the Agreement. It is important to note, that legal concerns remain regarding the application of a single PLA to multiple public works projects of relatively small size. Historically, PLAs have been used to coordinate multiple trades and large numbers of workers on very large projects, such as the Prudhoe Bay Agreement, which covered the construction of large industrial modules in Stockton. It is unclear if the Agreement, which would apply to all public works projects for three years, would be upheld by the courts. Although Southern California school districts, Alameda County, Sonoma County, and the Port of Oakland have implemented PLAs similar to the Agreement, they

have not been challenged. Therefore, open legal questions remain. The sponsors were responsive to these concerns and edited the findings (Whereas clauses) to bolster the arguments in favor of the Agreement. Notwithstanding these edits, adoption of the attached Agreement includes the acceptance of some degree of legal uncertainty.

The proposed Agreement addresses a number of issues related to working conditions for public works and improvement contracts, including:

- limitations on work delays and stoppages;
- arbitration procedures and arbitrators;
- preconstruction conferences for coordination;
- prohibitions on discrimination;
- recognition of union(s) as the sole bargaining representative;
- requirements for contractors and employers to utilize union referral systems;
- agreement to pay wages and benefits as specified by the union;
- grievance processes;
- apprentice programs to develop adequate numbers of competent workers;
- programs to transition from the military to the trades;
- drug and alcohol testing requirements;
- a core worked allowance to benefit Stockton businesses;
- a local hire program.

The costs and benefits of PLAs are very difficult to quantify and it is often unclear whether any gains are the result of the PLA or other contractor, labor and owner actions. Ultimately, the decision to implement a PLA is policy without a clear benefit or detriment.

As noted above, the underlying policy of the Agreement was not renegotiated as Council had already adopted the draft Agreement proposed by the Legislation/Environmental Committee. Although many fruitful discussions occurred with the sponsors, staff recommends additional changes to preserve the Council's sole discretion to maintain regular business operations should unintended consequences arise. The additional recommendations include the following, and Council has the option to adopt one, both or neither of the proposed additional amendments.

1. Clarify that in addition to the right to select any qualified bidder, the City may also rebid, without the Agreement requirements, any contract where there are fewer than two proposals received in response to a bid.
2. Add a provision allowing the Council to terminate the Agreement for any reason on 60 days written notice.

## DISCUSSION

### Project Labor Agreements

In 1959, the National Labor Relations Act was amended to include provisions to allow the use of PLAs in the construction industry. PLAs are specific to the construction industry because of its unique conditions, including the short-term nature of employment that makes post-hire collective bargaining

difficult. A frequent reason cited for using PLAs by all parties involved in the agreement has been the reduction of risk, primarily due to labor cost savings and predictability of work flow.

However, PLAs are not universally regarded as positive and there have been numerous legal challenges to their use. Both the United States Supreme Court and the California Supreme Court have upheld the ability of public agencies to require PLAs subject to certain criteria. Federal policy has vacillated regarding the use of PLAs, and recent California law prohibits bans on PLAs in General Law cities and limits state funding for all cities that implement such a ban, including Charter cities.

### Prevailing Wage

The prevailing rate is determined by the California Department of Industrial Relations (DIR). DIR regulations state that the “prevailing rate shall be the single rate paid the greatest number of workers in a particular craft in a locality”. It is typically a collectively bargained / union rate. The DIR maintains extensive lists of rates for various crafts for various locations in the state. All information is available on their website. The City already utilizes these wage rates in the bid documents for contracts that require prevailing wage, which includes construction projects that are over \$25,000, as well as contracts for alteration, demolition, repair or maintenance that are over \$15,000. In addition to these threshold requirements, there are other factors that must be applied to each project to make a final determination on whether or not a project may exempt a contractor from paying prevailing wages.

### Present Situation

The Council previously adopted the Agreement put forth by the Legislation/Environmental Committee on November 17, 2015. At that time, the Council further directed the City Manager to work with the coalition of stakeholders to discuss the administration of the Agreement and to provide a recommendation for the final agreement. The attached Agreement is a project labor agreement (PLA) that generally provides for union recognition and the use of union hiring halls for City public works projects with a contracted value at \$1 million or more. Additionally, the Agreement would preclude strikes or stoppages on contracted public works projects subject to the Agreement. The term of the Agreement is three years. The Agreement also includes provisions to improve local hiring, the hiring of veterans and requires the City to conduct a Community Career Fair with the San Joaquin Building and Construction Trades Council.

A stakeholder meeting was held March 17, 2016 and all parties that expressed interest in the Agreement by attending a meeting of the Legislation/Environmental Committee or the Council were invited. In addition to the sponsors and union supporters, the African American Chamber of Commerce, the Stockton Branch of the National Association of Colored People, and the Associated Builders and Contractors Northern California Chapter attended. Concerns were raised that the previously adopted Agreement would create barriers for Stockton businesses and residents. It was noted that unions were not representative of traditionally underrepresented and disadvantaged groups, African Americans in particular. Additionally, stakeholders noted that Agreement requirements would discourage non-union contractors from competing for City projects. Specifically, the requirement to participate in union benefit programs for employees without regard for benefit contributions already provided under existing employer programs would increase costs.

Several meetings were also held with the San Joaquin Building and Construction Trades Council, the sponsors of the Agreement, to discuss particular language and issues related to the administration of the Agreement. The original draft Agreement included many provisions common to PLAs. The proposed Agreement includes sections that address the following topics:

- limitations on work delays and stoppages;
- arbitration procedures and arbitrators;
- preconstruction conferences for coordination;
- prohibitions on discrimination;
- recognition of union(s) as the sole bargaining representative;
- requirements for contractors and employers to utilize union referral systems;
- agreement to pay wages and benefits as specified by the union;
- grievance processes;
- apprentice programs to develop adequate numbers of competent workers;
- programs to transition from the military to the trades;
- drug and alcohol testing requirements, and
- a local hire program.

As a result of discussions with the sponsors and the sponsor's discussions with other stakeholders, numerous changes have been made to the November 2015 draft Agreement originally recommended by the Legislation/Environmental Committee. Although the underlying policies adopted by the Council were not renegotiated, changes were made to address drafting errors, clarifications required for administration and concerns raised by stakeholders. A strike through and underline version of the Agreement is attached to facilitate comparison of the prior and current versions.

- The findings were improved to more clearly state the Council's reasoning and the City's interest in implementing the Agreement consistent with legal tests imposed by the Courts. These changes are improvements but do not alleviate all legal concerns.
- The Agreement is clear that bids may be accepted from any contractor regardless of whether the contractor's employees are unionized contingent upon fulfilling the requirements of the Agreement.
- Many changes were made to the Agreement consistent with the City's existing Local Hire Ordinance. It is important to note that the Agreement sets out goals for local hire and requires reporting and monitoring, but maintains the hire hall rules employed by the unions and success in achieving these goals will be determined by union practice.
- A Core Worker provision was included to allow contractors to utilize existing employees for City projects. A contractor may request one existing employee for every employee referred from the union hall for up to five existing employees. Certain requirements must be met and this allowance only applies to existing employees that are Stockton residents.
- The Agreement was amended to clarify that it only applies to contracted construction projects and does not apply to work performed by City employees or employees of private or public utilities.
- The effective date was modified for clarity and to provide for an effective transition period for implementation.

- Additional provisions were added to prohibit application of the Agreement when federal or State law or federal or State funding limitations preclude its use.

A number of issues that contribute to some degree of legal uncertainty remain in the Agreement. This PLA would apply to all City projects with a contracted value of \$1 million or more, and has a long list of covered work functions. While such a broad PLA precipitates a number of legal questions founded in prior decisions by the United States Supreme Court and the California Supreme Court, it is unclear what would happen if it were challenged. In fact, a number of local agencies have adopted PLAs with similar provisions, including: Alameda County, Sonoma County and the Port of Oakland. Additionally, Southern California school districts have used similar PLAs for a longer period of time. Provisions that contribute to remaining legal uncertainty include the following:

- The economic threshold of projects exceeding \$1 million, or \$250,000 by mutual agreement in one year, may not constitute projects that warrant the coordination of a large number of workers and or multiple trades. Similar thresholds are in place in other local agencies, and courts have upheld the use of PLAs by school districts where individual contracts are part of a larger facilities program similar to the City's Capital Improvement Plan.
- The Agreement scope includes work performed offsite. To the extent these workers do not have regular interface with many workers at the job site, the need for these functions to be covered could be questioned. However, unions have successfully included such provisions in other PLAs.

As noted above, staff did not renegotiate policies included in the original Agreement adopted by Council and focused on issues related to administration of the Agreement. Additional policy changes were made at the behest of stakeholders interested in the Agreement. Staff does recommend additional changes to the Agreement to preserve the Council's sole discretion to maintain regular business operations should unintended consequences arise. As discussed in November, the City does not monitor whether contractors employ unionized or non-unionized labor. Consequently, there is no Stockton specific data to develop an estimate of the potential impact to local businesses. Thus, recommended edits are included that would preserve Council's ability to return to current practice. These edits are not necessary to implement the Agreement, and the proposed edits are included as a separate attachment. The proposed edits would:

1. Clarify that in addition to the right to select any qualified bidder, the City may also rebid without the Agreement requirements, any contract where there are fewer than two proposals received in response to a bid. This was discussed with the sponsors, but additional changes were not accepted.
2. Add a provision allowing the Council to terminate the Agreement for any reason on 60 days written notice. As written, the Agreement would bind the City for a term of three years to these requirements. If unanticipated consequences arise, the City would not be able to discontinue use of the PLA. Including a provision to allow the Council to unilaterally terminate the Agreement maintains the ability to utilize its sole discretion.

## FINANCIAL SUMMARY

Because of existing prevailing wage requirements a significant change in costs is not predicted as a result of implementing the Agreement. However, there is a lack of clear information to predict the

economic and financial impact of implementing a PLA. Many anecdotes and case studies regarding the cost implications of PLAs have limited value because they do not control for other variables or are selected specifically by advocates to justify a particular position. True comparative studies that control for variables such as site conditions, the complexity of construction projects and geography are few. It is fundamentally difficult to isolate and quantify the impact of the PLA as compared to other factors such as geography, environment, scope or regulations. The benefits of PLAs are very difficult to quantify and it is often unclear whether any gains are the result of the PLA or other contractor, labor and owner actions. Ultimately, the decision to implement a PLA is policy without a clear benefit or detriment.

Attachment A - July 26, 2016 Version of the Agreement

Attachment B - Redline Comparison of November 2015 and July 2016 Versions

Attachment C - Redline Comparison of July 2016 Version and Additional Staff Recommendations