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Title: *BILL NO. B-38 - (Intro. August 28, 2014) (For adoption) - Repealing Section 4-111 of the Fresno Municipal Code and adding Section 4-111 to the Fresno Municipal Code relating to Project Labor Agreements

Sponsors: Office of Mayor & City Manager

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Attachments: 1. ORDINANCE.pdf

Date	Ver.	Action By	Action	Result
9/25/2014	1	City Council	continued	Pass

REPORT TO THE CITY COUNCIL

September 25, 2014

FROM: BRUCE RUDD, City Manager
City Manager's Office

SUBJECT

***BILL NO. B-38 - (Intro. August 28, 2014) (For adoption)** - Repealing Section 4-111 of the Fresno Municipal Code and adding Section 4-111 to the Fresno Municipal Code relating to Project Labor Agreements

RECOMMENDATION

Staff recommends that City Council approve the ordinance repealing and replacing Section 4-111 of the Fresno Municipal Code (FMC) relating to Project Labor Agreements. The recommended action will allow the City to remain eligible to receive state grant and loan funding and other financial assistance for public utilities and public works capital projects after December 31, 2014.

EXECUTIVE SUMMARY

The proposed ordinance repeals FMC Section 4-111 prohibiting project labor agreements, and replaces it with a revised FMC section 4-111 allowing City Council, by majority vote to use, enter into or require contractors to enter into a project labor agreement for construction projects on a project specific basis. The ordinance is intended to comply with state law so that the City will remain eligible

for state grant and loan funding and other financial assistance for public utilities, public works, or public transportation related capital projects after December 31, 2014.

BACKGROUND

In March 2000, the City Council adopted FMC Section 4-111 (formerly 3-109.2) prohibiting the City from requiring a project labor agreement for any City public works project. California Senate Bills 922 and 829 (“Senate Bills”) were signed into law in 2011 and 2012, adding sections 2500-2503 to the Public Contract Code. Sections 2502 and 2503 require charter cities to allow governing boards to have the discretion to consider the use of project labor agreements on a project by project basis. Further, charter cities may not have a charter provision, ordinance or initiative that prohibits, limits or constrains their governing board from adopting, requiring or utilizing a project that prohibits, limits or constrains their governing board from adopting, requiring or utilizing a project labor agreement for some or all construction projects awarded by the city.

Charter cities have until January 1, 2015, to comply with Public Contract Code sections 2500 et seq. (“Section 2500”). If the City does not repeal Section 4-111 prohibiting project labor agreements and replace it with a new Section 4-111 that complies with Section 2500, the state will consider the City ineligible to receive state grants, loans and other financial assistance for public utilities, public works or public transportation related capital projects. The Senate Bills only require that a city’s governing board have the discretion to consider whether to use a project labor agreement on a project specific basis, and does not require governing boards to enter into project labor agreements. On February 20, 2014, a lawsuit was filed challenging the constitutionality of the Senate Bills, and that lawsuit is pending in the trial court.

ENVIRONMENTAL FINDINGS

This is not a “project” for the purposes of CEQA pursuant to CEQA Guidelines, section 15378(b)(5), as it is an administrative activity that will not result in direct or indirect physical changes to the environment.

LOCAL PREFERENCE

Local preference was not considered because this ordinance does not include a bid or award of a construction or services contract.

FISCAL IMPACT

There will be a significant fiscal impact to the City if the State deems that the City is ineligible to receive state grants, loans, and other financial assistance for public utilities, public works, or public transportation capital projects.

For example, on June 26, 2014, the Council awarded a construction contract to W.M. Lyles Co. for the construction of the Tertiary Treatment and Disinfection Facility (TTDF), and an associated Solar Energy Facility, at the Fresno-Clovis Regional Wastewater Reclamation Facility. This project is a key

element of the City's long-term water supply management strategy to reduce the over drafting of the groundwater aquifer. Also in June, the City was notified by the California State Water Resources Control Board ("CSWRCB") that the construction contract awarded to W.M. Lyles Co. was eligible for approximately \$40 million dollars in low-interest loan funding. The proposed term of the loan is 30 years, and the anticipated interest rate is 1.9 percent. The most recent revenue bond issued by the Department was in 2010, with a term of 30 years and an average interest rate of 4.5 percent. When comparing the CSWRCB low-interest loan financing for \$40 million to conventional revenue bond financing, the total estimated savings in principal and interest payments for the CSWRCB low-interest loan is in excess of \$21 million to the City's rate payers.

Additional benefits of the CSWRCB low-interest loan include reduced loan origination fees (1 to 2 percent) versus conventional revenue bonds (10 percent); interest for the CSWRCB low-interest loan does not begin accruing until after construction is complete; and the first loan payment is not due the CSWRCB until 1 year after construction is complete. Similar costs savings should be expected for state grants, loans, and financial assistance provided for roadway projects and parks projects.

Attachment: Ordinance