

Attachment D to Agenda File No. 2019-0442

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RECOMMENDATION APPROVED;
RESOLUTIONS 19-8419 & 19-8420 ADOPTED
CITY OF LOS ANGELES RECEIVED BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's

Report to the

Board of Harbor Commissioners

2019 FEB -8 PM 3:22

January 24, 2019

CIV. BR. HARBOR DIV.
CITY ATTORNEY'S OFFICE

AMBER M. KLESGES
Board Secretary

FILE

DATE: JANUARY 17, 2019

FROM: LABOR RELATIONS & WORKFORCE DEVELOPMENT

SUBJECT: RESOLUTION NO. 19-8419 - ADOPTION OF RESOLUTION
ADHERING TO CITY OF LOS ANGELES ORDINANCE NO. 185356

SUMMARY:

Staff requests adoption of a resolution that would require the Harbor Department to adhere to City of Los Angeles (City) Ordinance No. 185356, which amended Ordinance No. 171004 (the Service Contractor Worker Retention Ordinance).

In 1999, the Board of Harbor Commissioners (Board) adopted Resolution No. 5771 where it agreed to adopt City of Los Angeles Ordinance No. 171004, the Service Contractor Worker Retention Ordinance, as a policy of the Harbor Department. On December 5, 2017, the Los Angeles City Council adopted Ordinance No. 185356, which amended the Service Contractor Worker Retention Ordinance. The proposed resolution adopts Ordinance No. 185356 as a policy of the Harbor Department to ensure that the Harbor Department follows the most current provisions of the Service Contractor Worker Retention Ordinance as its policy.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(m) of the Los Angeles City CEQA Guidelines;
2. Approve the proposed resolution whereby the Harbor Department would adopt City of Los Angeles Ordinance No. 185356 as a policy of the Harbor Department;
3. Authorize the Board Secretary to certify the adoption of the Resolution; and
4. Adopt Resolution No. 19-8419 + 198420

CSB

DATE: JANUARY 17, 2019

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SUBJECT: ADOPTION OF RESOLUTION ADHERING TO CITY OF LOS ANGELES ORDINANCE NO. 185356

DISCUSSION:

Background: At the January 13, 1999, Board Meeting, the Board adopted Resolution No. 5771, where the Board adopted as a policy of the Harbor Department the provisions of the, then recently adopted, City of Los Angeles Service Contractor Worker Retention Ordinance (Ordinance No. 171004). The ordinance required that when a City contract is terminated and will be replaced by a new contractor for the same services, the outgoing contractor must provide the successor contractor with a list of employees who meet certain requirements. The successor contractor has obligations regarding the hiring of these listed employees during a 90-day transition period.

The requirements of this ordinance were then incorporated into appropriate Harbor Department agreements, including contracts for the provision of personal services and container terminal permits.

Need for Resolution: Since adoption of Board Resolution No. 5771, the Harbor Department's policy is to adhere to the Service Contract Worker Retention Ordinance. On December 5, 2017, the Los Angeles City Council passed Ordinance No. 185356, which amended the Service Contractor Worker Retention Ordinance. The Los Angeles City Council amended the ordinance to clarify certain terms and confirm the ordinance's application to public leases or licenses. On January 26, 2018, Ordinance No. 185356 went into effect.

As the Board previously adopted a resolution for the Harbor Department to comply with the original Service Contractor Worker Retention Ordinance, staff seeks adoption of the proposed Resolution so that the Harbor Department will have adopted the most current version of the Service Contractor Worker Retention Ordinance adopted into law in January 2018.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a resolution to adopt Ordinance No. 185356, which is the adoption of an ordinance that does not result in impacts on the physical environment. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(m) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed resolution is not anticipated to have a financial impact on the Harbor Department.

DATE: JANUARY 17, 2019

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SUBJECT: ADOPTION OF RESOLUTION ADHERING TO CITY OF LOS ANGELES ORDINANCE NO. 185356

CITY ATTORNEY:

The proposed resolution has been prepared and approved as to form and legality by the City Attorney's office.

TRANSMITTALS:

1. Proposed Resolution adopting City of Los Angeles Ordinance No. 185356.

FIS Approval: MB
CA Approval: CB



AVIN SHARMA
Director of Labor Relations &
Workforce Development



DAVID J. LIBATIQUE
Deputy Executive Director
Stakeholder Engagement

Approved:


FOR

EUGENE D. SEROKA
Executive Director

RESOLUTION NO. 19-8420

A RESOLUTION of the Board of Harbor Commissioners of the City of Los Angeles ("Board") adopting the provisions of City of Los Angeles Ordinance No. 185356.

WHEREAS, the Board of Harbor Commissioners administers certain tide and submerged lands granted by the State of California to the City of Los Angeles in trust for the accommodation and promotion of commerce, navigation and fisheries; and

WHEREAS, the Los Angeles City Charter grants to the Board of Harbor Commissioners the power to order and contract for the expenditure of all funds derived from the sale of harbor improvement bonds and of the monies in the Harbor Revenue Fund; and

WHEREAS, on January 13, 1999, the Board of Harbor Commissioners adopted Resolution No. 5771 whereby the Harbor Department would adhere to City of Los Angeles Ordinance No. 171004 known as the Service Contractor Worker Retention Ordinance; and

WHEREAS, on December 5, 2017, the Los Angeles City Council adopted Ordinance No. 185356, which amended the Service Contractor Worker Retention Ordinance, and that ordinance went into effect on January 26, 2018;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Harbor Commissioners agrees to adopt the provisions of City of Los Angeles Ordinance No. 185356, attached hereto as Exhibit 1, so that the Harbor Department can continue its policy to adhere to the Service Contract Workers Retention Ordinance.

BE IT FURTHER RESOLVED that, upon the effective date of this Resolution, Resolution No. 5771 is inapplicable to future agreements made by the Harbor Department, but shall remain effective as to Harbor Department agreements into which it had been previously incorporated and accepted.

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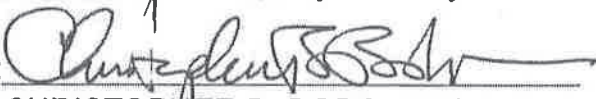
I HEREBY CERTIFY that the foregoing Resolution was
adopted by the Board of Harbor Commissioners of
the City of Los Angeles at its meeting held on
January 24, 2019.



AMBER M. KLESGES
Board Secretary

APPROVED AS TO FORM AND LEGALITY

January 31, 2019
MICHAEL N. FEUER, City Attorney

By: 
CHRISTOPHER B. BOBO, Assistant

185356

An ordinance amending Chapter 1, Article 10 of Division 10 of the Los Angeles Administrative Code to incorporate public leases or licenses into the definition of Contractor and other technical changes.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Chapter 1, Article 10 of Division 10 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

CHAPTER 1, ARTICLE 10

WORKER RETENTION

Sec. 10.36. Findings and Statement of Policy.

The City awards many contracts to private firms to provide services to the public and to City government. The City also leases its property or grants licenses to enter onto its property and these lessees and licensees often perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to other firms for the purpose of economic development or job growth. At the conclusion of the term of a service contract, lease or license with the City or with those receiving financial assistance from the City, a different firm often receives the successor contract to perform the same City services or to lease or license the same City property.

The City obtains benefits achieved through the competitive process of entering into new contracts. It is the experience of the City that reasons for change do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed.

The City has a proprietary interest in the work performed by employees of City contractors, lessees and licensees and by the employees of firms receiving City financial assistance. The success or failure of City operations may turn on the success or failure of these firms, and the City has a genuine stake in how the public perceives the services rendered by these firms. Replacement of existing employees can adversely impact the performance by these firms and thereby hinders the opportunity for success of City operations.

Incumbent workers have invaluable existing knowledge and experience with the work schedules, practices and clients. Replacing these workers with workers without these experiences decreases efficiency and results in a disservice to the City and City financed or assisted projects.

Retaining existing workers when a change in firm occurs reduces the likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to City constituents and visitors who receive services provided by the City, the City's lessees or licensees, or by City financed or assisted projects.

Contracting decisions involving the expenditure of City funds should avoid a potential effect of creating unemployment and the consequential need for social services. The City, as a principal provider of social support services, has an interest in the stability of employment under contracts, leases and licenses with the City and by those receiving financial assistance from the City. The retention of existing workers benefits that interest.

Sec. 10.36.1. Definitions.

The following definitions shall apply throughout this article:

(a) **"Awarding Authority"** means the governing body, board, officer or employee of the City or City Financial Assistance Recipient authorized to award a Contract and shall include a department which has control of its own funds if the department adopts policies consonant with the provisions of this article.

(b) **"City"** means the City of Los Angeles and all Awarding Authorities thereof.

(c) **"City Financial Assistance Recipient"** means any person who receives from the City in any 12-month period discrete financial assistance for economic development or job growth expressly articulated and identified by the City totaling at least \$100,000; provided, however, that corporations organized under Section 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501 (c)(3), with annual operating budgets of less than \$5,000,000, or that regularly employ homeless persons, persons who are chronically unemployed, or persons receiving public assistance, shall be exempt.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan at market rate shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the

extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d) and 7872(f). A recipient shall not be deemed to include lessees and sublessees. Contracts for economic development or job growth shall be deemed providing such assistance once the \$100,000 threshold is reached.

(d) **"Contract"** means:

(1) a contract let to a Contractor by the City or a City Financial Assistance Recipient primarily for the furnishing of services to or for the City or City Financial Assistance Recipient (as opposed to the purchase of goods or other property) and that involves an expenditure or receipt in excess of \$25,000 and a contract term of at least three months; or

(2) a Public Lease or License as those terms are defined in Los Angeles Administrative Code Section 10.37.1(k) but only if the lessee or licensee is subject to the Living Wage Ordinance and not otherwise exempt from its provisions.

(e) **"Contractor"** means any person that enters into a Contract with the City or a City Financial Assistance Recipient. Governmental entities, including public educational institutions and public hospitals, are not Contractors and are not subject to this article.

(f) **"Designated Administrative Agency (DAA)"** means the Department of Public Works, Bureau of Contract Administration, which shall bear administrative responsibilities under this article.

(g) **"Employee"** means any person who expends any of his or her time working for a Contractor or Subcontractor earning no more than twice the hourly wage without health benefits available under the Living Wage Ordinance, Los Angeles Administrative Code Section 10.37 *et seq.*, whose primary place of employment is in the City on or under the authority of a Contract. Employee does not include a person who is a managerial, supervisory or confidential Employee. An Employee must have been employed by a terminated Contractor for the preceding 12 months or longer.

(h) **"Person"** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity that may employ individuals or enter into contracts.

(i) **"Subcontractor"** means any person not an Employee who enters into a contract with a Contractor to assist the Contractor in performing a Contract and who employs Employees for such purpose. A Subcontractor includes a sublessee or sublicensee.

(j) **"Successor Contract"** means a Contract where the service to be performed is substantially similar to the Contract recently terminated. The meaning also includes a Contract that is a Public Lease or License substantially similar to a Public Lease or License recently terminated. Termination includes, but is not limited to: (1) the completion of the Contract; (2) early termination of the Contract in whole or in part; or (3) an amendment that reduces services provided under the Contract, in whole or in part.

Sec. 10.36.2. Transition Employment Period.

(a) Within ten days of learning that a Contract is to be terminated, the Contractor shall provide to the Successor Contractor, the Awarding Authority and the DAA, the name, address, date of hire, and employment occupation classification of each Employee of the terminated Contractor and Subcontractor working pursuant to the Contract. If the terminated Contractor has not learned the identity of the Successor Contractor, the Contractor shall request the identity from the Awarding Authority. If a Successor Contract has not been awarded by the end of the ten-day period, the Contractor shall provide the employment information referred to earlier in this subsection to the Awarding Authority and the DAA. Where only a subcontract of a Contract has been terminated, the terminated Subcontractor shall for purposes of this Article be deemed a terminated Contractor.

(1) If multiple Contracts providing similar services are terminated, the Awarding Authority shall consult with the DAA to determine whether to pool the Employees, ordered by seniority within job classification and provide a pool list to the Successor Contractor. The Successor Contractor shall provide written notice to the Awarding Authority and the DAA that the Awarding Authority's pool list will be used. The notice must include the following:

- (A) the total number of Employees required under the Successor Contract;
- (B) a breakdown of the number of Employees required within each job classification and seniority within each class; and
- (C) an indication as to which Employees within each job classification shall be offered employment under this article.

The written notice must be provided no later than ten days after the Successor Contractor receives the listing of the terminated Contractor's Employees.

(2) Where the use of Subcontractors has occurred under the terminated Contract or where the use of Subcontractors is to be permitted under the Successor Contract, or where both circumstances arise, the Awarding Authority shall pool, when applicable, the Employees, ordered by seniority within

job classification, under such prior Contracts or subcontracts where required by, and in accordance with, rules promulgated by the DAA. The Successor Contractor or Subcontractor shall provide written notice to the Awarding Authority and the DAA that the Awarding Authority's pool list will be used.

(b) If work-related requirements for a particular job classification under the Successor Contract differ from the terminated Contract, the Successor Contractor (or Subcontractor, where applicable) shall give notice to the Awarding Authority and the DAA and provide an explanation including:

- (1) the different work-related requirements needed; and
- (2) the reason why the different work-related requirements are necessary for the Successor Contract.

(c) Within ten days of receipt of the list of Employees from the terminated Contractor, the Successor Contractor shall make written offers for a 90-day transition employment period to the eligible Employees by letters sent certified mail. The letters shall ask an Employee to return the offers to the Successor Contractor with the Employee's signature indicating acceptance or rejection of the offer of employment. The letters shall state that if an Employee fails to return a written acceptance of the offer within ten days of the date of mailing of the Successor Contractor's certified letter, then the Employee will be presumed to have declined the offer.

The Successor Contractor shall provide copies of the letters offering employment to the Awarding Authority and proof of mailing.

(d) A Successor Contractor shall retain Employees for a 90-day transition employment period. Where pooling of Employees has occurred, the Successor Contractor shall draw from the pools in accordance with rules promulgated by the DAA. During such 90-day period, Employees so hired shall be employed under the terms and conditions established by the Successor Contractor (or Subcontractor) or as required by law.

(e) If at any time the Successor Contractor determines that fewer Employees are required to perform the new Contract than were required by the terminated Contractor (and Subcontractors, if any), the Successor Contractor shall retain Employees by seniority within job classification. The Successor Contractor shall give notice to the Awarding Authority and the DAA and provide an explanation including:

- (1) the reason that fewer Employees will be needed;
- (2) the total number of Employees required under the Successor Contract;

(3) a breakdown of the number of Employees required within each job classification;

(4) a listing of the terminated Contractor's Employees by job classification and seniority within each class; and

(5) an indication as to which Employees within each job classification will be offered employment under this article.

The notice must be provided no later than ten days after the Successor Contractor receives the list of the terminated Contractor's Employees pursuant to Section 10.36.2(a).

Letters offering employment shall be made by seniority within each job classification. If an Employee in a job classification declines an offer of employment or fails to respond within ten days pursuant to Section 10.36.2(a), the Successor Contractor shall issue a letter offering employment to the next Employee in that job classification. The Successor Contractor shall continue to offer employment in this manner until all required positions are filled for the Successor Contract or until all Employees have been offered employment.

(f) During the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the Successor Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire additional Employees, if needed.

(g) During the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this article. "Cause" for this purpose shall mean fair and honest reasons, regulated by good faith on the part of the Contractor or Subcontractor, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual.

(h) At the end of the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to this article. If the Employee's performance during the 90-day period is satisfactory, the Successor Contractor (or Subcontractor) shall offer the Employee continued employment under terms and conditions established by the Successor Contractor (or Subcontractor) or as required by law.

(i) If the City or a City Financial Assistance Recipient enters into a Contract for the performance of work that prior to the Contract was performed by the City's or the City Financial Assistance Recipient's own Employees, the City or the City Financial Assistance Recipient shall be deemed to be a terminated Contractor within the meaning

of this article and the Contractor shall be deemed to be a Contractor with a Successor Contract within the meaning of this article.

Sec. 10.36.3. Enforcement.

(a) An Employee who has been discharged in violation of this article by a Successor Contractor or its Subcontractor may bring an action in the Superior Court of the State of California against the Successor Contractor and, where applicable, its Subcontractor, and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the Employee from the terminated Contractor during the last three years of the Employee's employment in the same occupation classification; or

(B) The final regular rate paid by the terminated Contractor to the Employee.

(2) Costs of benefits the Successor Contractor would have incurred for the Employee under the successor Contractor's (or Subcontractor's, where applicable) benefit plan.

(b) If the Employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(c) Compliance with this article shall be required in all Contracts and shall provide that violation of this article shall entitle the City to terminate the Contract and pursue all legal remedies.

(d) If the DAA determines that a Contractor or Subcontractor violated this article, the DAA may recommend that the Awarding Authority take any or all of the following actions:

(1) Document the determination in the Awarding Authority's Contractor Evaluation required under Los Angeles Administrative Code Section 10.39, *et seq.*;

(2) Require that the Contractor or Subcontractor document the determination in each of the Contractor's or Subcontractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Section 10.40, *et seq.*;

(3) Terminate the Contract;

(4) Recommend to the Awarding Authority to withhold payments due to the Contractor or Subcontractor.

(e) Notwithstanding any provision of this Code or any other law to the contrary, no criminal penalties shall attach for any violation of this article.

Sec. 10.36.4. Exemption for Contractor or Contractor's Prior Employees.

(a) An Awarding Authority may allow a Successor Contractor or Subcontractor to fill a position under a Contractor with a person who has been employed by the Contractor or Subcontractor continuously for at least 12 months prior to the commencement of the Successor Contract working in a position similar to the position to be filled in the Successor Contract. The Successor Contractor or Subcontractor shall first obtain written approval of the Awarding Authority by demonstrating that: (a) the person would otherwise be laid off work; and (b) his or her retention would be helpful to the Contractor or Subcontractor in performing the Successor Contract.

(b) Nothing in this article shall limit the right of the DAA to waive the provisions herein with respect to a Contractor if it finds it is not in the best interest of the City.

Sec. 10.36.5. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an Employee's right to bring legal action for wrongful termination.

Sec. 10.36.6. Expenditures Covered by this Article.

This article shall apply to the expenditure, whether through Contracts let by the City or by City Financial Assistance Recipients, of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds. City Financial Assistance Recipients shall apply this article to the expenditure of non-City funds for Contracts to be performed in the City by complying with Section 10.36.2(i) and by contractually requiring their Contractors with Contracts to comply with this article. Such requirement shall be imposed by the recipient until the City financial assistance has been fully expended.

Sec. 10.36.7. Promulgation of Implementing Rules.

The DAA shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article.

Sec. 10.36.8. Severability.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by positing for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
 DANIA MINASSIAN
 Deputy City Attorney

Date 9/14/17

File No. _____

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I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR





Ordinance Passed 12/05/2017

Approved 12/18/2017

Published Date: 12/27/2017