

# BRIGHTLINE DEFENSE PROJECT

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July 8, 2009

Hon. Dennis Herrera  
City Attorney, City and County of San Francisco  
City Hall, Room 234  
San Francisco, CA 94102

Re: *Local Hiring in San Francisco*  
*Safe Streets and Road Repair Bond*

Dear City Attorney Herrera:

I write to request your assistance in re-evaluating the City of San Francisco's position with respect to local hiring on city-funded public works projects and San Francisco local hiring policy generally.

Last week Brightline wrote to the Mayor and Supervisors requesting a provision in the City's proposed \$368 million Safe Streets and Road Repair Bond that would guarantee work for San Francisco's residents, specifically qualified economically disadvantaged residents. I was immediately encouraged by the efforts of the Mayor's Office, Department of Public Works, and CityBuild to reach out to address these concerns within the framework of San Francisco's First Source Hiring Program.

Your office stressed, however, that our request for a local hiring goal or mandate within the bond measure itself would potentially subject the bond and all of its benefits for the city to a legal challenge under case law that appears to undermine local hiring.

In fact, your office also confirmed that Chapter 6, Section 6.22 of the Administrative Code, which requires contractors to take steps to ensure a workforce made up of at least 50% San Francisco residents on public works projects, has been removed from the City's public works contracts for some time. I understand that your office is concerned that the 1984 Supreme Court case United Building and Construction Trades Council of Camden County v. Mayor and Council of the City of Camden and a 2002 district court decision against the City of Worcester operate against a firm local hiring policy statement such as that which is technically still on the books in Administrative Code Chapter 6, a policy statement that First Source can serve as a tool to implement.

I would like to tell you about what the City of Cleveland has done.

In June 2003 Cleveland passed the Fannie M. Lewis Cleveland Resident Employment Law ("Lewis Law"), which requires all city construction contracts to be performed by a workforce made up of at least 20% Cleveland residents and no less than 4% low income residents. The law notes that these levels are "intended as minimum requirements" and the city's goal is to far exceed 20%.

The legality of the Lewis Law was challenged under the same case law that your office appears to rely upon in taking a reserved approach to local hiring. On November 21, 2007, however, the U.S. Court of Appeals for the 6th Circuit wrote in the case of City of Cleveland v. State of Ohio, 2007 WL 4123743 that Cleveland's local hiring law worked *around* the Privileges and Immunities Clause concern laid out in the Supreme Court's Camden decision. The Court of Appeals found that "by excluding from the definition of 'construction worker hours' all work performed 'by non-Ohio residents,' Cleveland, Ohio Codified Ordinances § 188.01(c), the City has limited the impact of the Lewis Law to Ohio residents alone."

Therefore, the court held that "although the legality of local hiring preferences that discriminate against interstate employers has been undermined by the Supreme Court's decision in United Building and Construction Trades Council v. City of Camden, discussed earlier, the Lewis Law does not fall within that prohibition, and it is not clear that Congress would condemn it."

We believe that the Lewis Law and the City of Cleveland case warrant your attention.

In fact, Cleveland Mayor Frank G. Jackson wrote to President Obama on February 26 of this year to highlight the fact "that cities *can* apply resident hiring goals such as Cleveland's Lewis Law" and to offer Cleveland's experience as "an example of the impediments that local governments can face when attempting to provide their residents with direct benefits from taxpayer-supported investments in their communities." Mayor Jackson's letter is attached and we believe that San Francisco should join Cleveland in calling national attention to the importance of community-based opportunities and benefits on government-funded projects.

Community advocates will work with the Department of Public Works and CityBuild through the door that they have opened and we ask you to work with the Mayor and Supervisors to craft language that can serve as a citywide local hiring policy. We propose a goal of 50% San Franciscans on city-funded projects, with a mandatory minimum of 35% and an emphasis on opportunities for qualified economically disadvantaged San Franciscans.

It is our hope that by the time construction contracts are being signed to implement this November's important Safe Streets and Road Repair Bond your office will have opined that Administrative Code Chapter 6 has been sufficiently amended to be included in those contracts, furthering the cause of community-based employment opportunities for San Francisco residents.

Very truly yours,



Joshua Arce  
Executive Director

Enclosure

CC: Mayor Gavin Newsom, Board of Supervisors, Office of Economic and Workforce Development, CityBuild, Department of Public Works, Human Rights Commission

Mayor Frank G. Jackson, Cleveland City Council



## City of Cleveland

Frank G. Jackson, Mayor

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February 26, 2009

The Honorable Barack Obama  
President  
United States of America  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Re: American Reinvestment and Recovery Act

Dear President Obama:

Thank you for hosting mayors of American cities last week at the White House to inform us on the American Reinvestment and Recovery Act (ARRA). It is clear from that meeting those mayors throughout the country and I will play an important role in terms of making certain that implementation of these dollars do what they are intended to do – help people in our communities.

I share your belief that the Act will help save existing jobs, generate a substantial number of new jobs, create business growth and enhance the vitality of local economies throughout America. However, I am concerned that our goal of directly connecting people to these opportunities will be unrealized without provisions to ensure that local governments can direct the dollars into their local economies.

Accordingly, I am respectfully requesting that your administration enhance the ARRA, via either Executive Order or by implementing regulations, by requiring that expenditures of these federal funds are subject to:

1. Participation of minority business enterprises and female business enterprises;
2. Participation of local businesses; and,
3. Participation of local residents in all work performed with these federal funds.

Without these requirements, we may lose the greatest opportunity we will ever have to expand the number of beneficiaries of federally funded projects.

Over the years I have worked to create the means to ensure that opportunities that come to Cleveland have equitable local participation. These efforts, in the past, have been limited by the federal government, as in

the case of Fannie M. Lewis Cleveland Resident Employment Law (Lewis Law). The Lewis Law allows the City of Cleveland to mandate that a percentage of work performed on qualifying construction projects be performed by City of Cleveland residents.

However, in the summer of 2004, the Federal Highway Administration withdrew federal funding approval from a Cleveland construction project based on concerns over the Lewis Law and subsequently has consistently required the following condition in all federally-funded construction projects:

“The LPA (Local Public Authority) is prohibited from imposing any geographical hiring preference on any bidder in the LPA’s bid documents or on any successful contractor in the LPA’s award or contract for the construction of the Project.”

Since then, however, the Federal Courts have acknowledged that cities *can* apply resident hiring goals such as Cleveland’s Lewis Law under certain conditions on federally-funded construction projects. In the past, this court decision has been widely ignored. I have explained the court ruling in more detail in separate correspondence to your Secretary of Transportation, Ray LaHood (copy enclosed).

I offer this as an example of the impediments that local governments can face when attempting to provide their residents with direct benefits from taxpayer-supported investments in their communities.

By spearheading Congress’s adoption of the American Reinvestment and Recovery Act within a month of your inauguration, you have taken the most important step in federal economic stimulation since the Franklin D. Roosevelt Administration. I encourage you to maximize the opportunity by ensuring that the full job and business growth potential of the Act is achieved in an equitable fashion respectful of local, social and economic goals.

Thank you for your vision, courage and willingness to serve at this difficult time in our history.

Sincerely,



Frank G. Jackson  
Mayor

cc: All Members of the Northeast Ohio Legislative Delegation  
Rahm Emmanuel, White House Chief of Staff  
Valerie Jarrett, Sr. Advisor to the President for Intergovernmental Affairs  
Ken Silliman, Chief of Staff, City of Cleveland  
Valarie J. McCall, Chief of Government Affairs, City of Cleveland  
All Members of Cleveland City Council