

# CITY OF LOS ALAMITOS

3191 Katella Avenue  
Los Alamitos, CA 90720

## **REVISED - AGENDA CITY COUNCIL SPECIAL MEETING Friday, April 5, 2013 – 1:30 P.M.**

I, Warren Kusumoto, as Mayor of the City of Los Alamitos, do hereby call a special meeting of the City Council of the City of Los Alamitos, to be held at the time and place listed above to discuss the matters listed below:



Warren Kusumoto, Mayor of the City of Los Alamitos

### NOTICE TO THE PUBLIC

This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the City Clerk's Office or on the City's website at [www.cityoflosalamitos.org](http://www.cityoflosalamitos.org) once the agenda has been publicly posted.

Any written materials relating to an item on this agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 3191 Katella Ave., Los Alamitos CA 90720, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact the City Clerk's Office at (562) 431-3538, extension 220, 48 hours prior to the meeting so that reasonable arrangements may be made. Assisted listening devices may be obtained from the City Clerk at the meeting for individuals with hearing impairments.

Persons wishing to address the City Council on any item on the City Council Agenda should complete a blue "Request to Speak" card and will be called upon at the time the agenda item is called or during the City Council's consideration of the item and may address the City Council for up to three minutes.

1. **CALL TO ORDER**
  
2. **ROLL CALL**
  - Council Member Edgar
  - Council Member Grose
  - Council Member Murphy
  - Mayor Pro Tem Graham-Mejia
  - Mayor Kusumoto

3. **CLOSED SESSION**

A. **PUBLIC EMPLOYEE APPOINTMENT**

Title: City Attorney  
Authority: Government Code Section 54957

4. **SPECIAL ORDERS OF THE DAY**

A. **Legislative Opposition – SB 7**

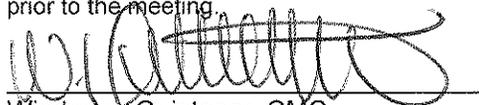
The League of California Cities requests an opposition letter for proposed legislation.

Recommendation: Authorize the submittal of the attached letter in opposition to SB 7.

5. **ADJOURNMENT**

<b>2013 City Council Meeting Schedule</b>	
<b>Meetings begin at 6:00 p.m.</b>	
Monday, April 15	Monday, August 19
Monday, May 6 - Special	Monday, September 16
Monday, May 20 – Special (5:00 p.m.)	Monday, October 21
Monday, May 20	Monday, November 18
Monday, June 17	Monday, December 16
Monday, July 15	

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 24 hours prior to the meeting.



Windmera Quintanar, CMC  
City Clerk

4/4/13  
Date

# City of Los Alamitos

## Agenda Report Special Orders of the Day

April 5, 2013  
Item No: 4A

**To:** Mayor Warren Kusumoto & Members of the City Council  
**Via:** Gregory D. Korduner, Interim City Manager  
**From:** Steven A. Mendoza, Director of Community Development  
**Subject:** Legislative Opposition – SB 7

**Summary:** The League of California Cities requests an opposition letter for proposed legislation.

**Recommendation:** Authorize the submittal of the attached letter in opposition to SB 7.

### Background

The League of California Cities regularly solicits support or opposition of proposed legislation that makes its way through the California Assembly or the California Senate.

### Discussion

The League of California Cities is requesting that the City of Los Alamitos issue a letter of opposition to Senate Bill 7 (Steinberg), which would set a precedent on charter cities and local control. SB 7 (Steinberg) would prohibit a charter city from receiving or using State funding or financial assistance for a construction project if the city has a voter-approved charter provision or ordinance that authorizes a contractor to not comply with State prevailing wage requirements on local construction projects funded by (non-State) city funds.

The League's opposition to this measure rests on the fundamental principle of local control and the constitutional limits on State authority over charter cities. Moreover, this measure would establish a disturbing framework for future State micromanaging of charter city laws and policies by the tactic of withholding State funds as political leverage to attempt to force changes to city charters and ordinances.

This measure tries to leverage a different outcome than the Court's ruling by withholding vital State construction funds, derived from all of the State's taxpayers, from charter

cities that fail to adopt prevailing wage requirements for projects they build with *local* funds.

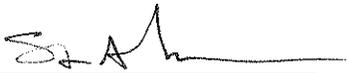
The threat posed by this measure to local charter authority is much broader. If this framework is authorized, there will be no end to efforts to leverage compliance with other State laws, while ignoring the constitutional legitimacy of the doctrine of municipal affairs.

### **Fiscal Impact**

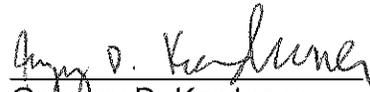
None.

Submitted By:

Approved By:



Steven A. Mendoza  
Community Development Director



Gregory D. Korduner  
Interim City Manager

- Attachments:*
- 1. Draft Letter of Opposition from City of Los Alamitos*
  - 2. League of California Cities and the Howard Jarvis Taxpayers Association joint-letter*
  - 3. Legal Opinion*

April 5, 2013

The Honorable Darrell Steinberg  
Senate President Pro Tem  
State Capitol, Room 205  
Sacramento, CA 95814

**RE: Opposition to SB 7 (Steinberg) Charter Cities: Unlawful Conditions on State Funding**

Dear Senator Steinberg:

The City of Los Alamitos regrets to inform you of our opposition to your SB 7 (Steinberg), which would prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with state prevailing wage requirements on local construction projects funded by (non-state) city funds.

This measure violates the fundamental principle of local control and the constitutional limits of state authority over charter cities, as recently held by the Court in the *Vista* decision. This measure conflicts with *Vista* by attempting, via the Legislature, to leverage a different outcome than the Court's ruling by withholding vital state construction funds, derived from all of the state's taxpayers, from charter cities that fail to adopt prevailing wage requirements for projects built with local funds. Such a condition is unlawful because the state is seeking to leverage outcomes it lacks the legal authority to compel.

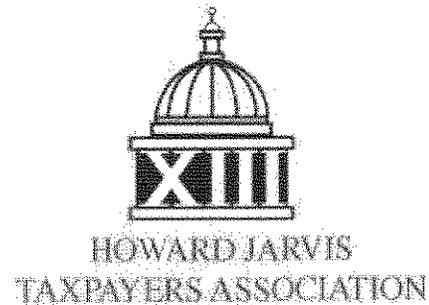
While the City of Los Alamitos has established policy to require the payment of prevailing wages for city funded projects, we have grave concerns that this legislative tactic will be used in the future to erode other local flexibility that is important to our community. Thus, we oppose this measure due to its undercutting of local charter authority. The state should respect the Court decision in *Vista* and stay out of the matter.

This measure would establish a disturbing framework for future state micromanaging of charter city laws and policies by the tactic of withholding state funds as political leverage to attempt to force changes to city charters and ordinances.

For these reasons, the City of Los Alamitos opposes this legislation.

Sincerely,

Warren Kusumoto  
Mayor



March 13, 2013

The Honorable Darrell Steinberg  
Senate President Pro Tem  
State Capitol, Room 205  
Sacramento, CA 95814

RE: **Senate Committee Referral of SB 7 (Steinberg)**

Dear Senator Steinberg:

Given your role as Chair of the Senate Rules Committee, this letter is intended to respectfully support a concern raised earlier today before the Senate Committee on Labor and Industrial Relations that the subject matter of SB 7 should also be referred to the Senate Committee on Governance and Finance.

A principal policy and legal issue with SB 7 is whether the construct proposed by SB 7 to leverage compliance with prevailing wage laws, by withholding state funding and financial assistance from all construction projects undertaken by a charter city including those funded solely with their own funds, is a valid exercise of legislative authority over the municipal affairs of a charter city.

The referral of SB 7 to the Senate Committee on Labor and Industrial Relations, which has background and policy expertise on labor and prevailing wages is understandable and appropriate. Yet, it is unclear, however, why this is the sole policy committee of reference in the Senate, especially on a matter that could have such a massive impact and precedent on the Constitutional doctrine of municipal affairs.

The Senate Governance and Finance Committee has jurisdiction and long-standing expertise on matters of local government policy, including charter city authority. A hearing in that committee would allow the issues revolving around the *Vista* decision and the doctrine of municipal affairs to be more thoroughly examined and vetted. Also supporting such a double referral is the previous Senate actions to refer the two bills listed in the Senate Committee on Labor and Industrial Relations analysis of SB 7, as "prior legislation." Legislative history reflects that both SB 922 (Steinberg) of 2011, and

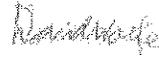
SB 829 (Rubio) of 2012, were both referred to Senate Governance and Finance Committee.

Thank you for your consideration of the procedural concerns raised. If you have any questions, or if we can be of any assistance, please call Dan Carrigg of the League at (916) 658-8222, or David Wolfe of HJTA at (916) 444-9950.

Sincerely,



Daniel Carrigg  
Legislative Director  
League of California Cities



David Wolfe  
Legislative Director  
Howard Jarvis Taxpayers Assoc.

Cc: Chair and Members, Senate Committee on Labor and Industrial Relations  
Senator Anthony Canella  
Members of the Senate Committee on Rules  
Senator Lois Wolk, Chair, Senate Committee on Governance and Finance  
Brian Weinberger, Consultant, Senate Committee on Governance and Finance  
Gareth Elliott, Legislative Affairs Secretary, Office of Governor Jerry Brown



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April 2, 2013

To: Executive Committee, League of California Cities Board of Directors  
Bill Bogaard, President  
Jose Cisneros, First Vice-President  
Tony Ferrara, Second Vice-President  
Mike Kasperzak, Immediate Past President  
Chris McKenzie, Executive Director

From: City Attorneys' Department, League of California Cities

Re: **SB 7 (Steinberg)**

As requested by the Executive Committee, the City Attorneys' Department has prepared the following analysis of SB7 (Steinberg) with respect to current constitutional law as interpreted by the California Supreme Court and the United States Supreme Court. The City Attorneys' Department consists of the city attorney and assistant or deputy to the city attorney for each League Member City. The Officers of the City Attorneys' Department appointed a working group of very experienced and senior city attorneys representing both charter cities and general law cities to assist in drafting this analysis. The result represents a consensus of the working group and has been reviewed and approved by the Department Officers. The Department appreciates the opportunity to assist the League of California Cities in understanding the broader constitutional implications of this important piece of legislation.

### **Executive Summary**

1. The State legislature may condition the award of construction funding to a charter city on compliance with the prevailing wage rate law (PWRL) in the contract for which the state funding is awarded.
2. The State legislature may not condition the award of state construction funding to a charter city to achieve an unconstitutional result.
3. A charter city's expenditure of its own funds to pay the wages of contract workers on public works projects is a municipal affair protected from State legislative interference by Article XI, §5(a) of the California Constitution.<sup>1</sup>

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<sup>1</sup> *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547.

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4. The State legislature may not condition the award of state construction funding to a charter city on compliance with the PWRL in exclusively city-funded construction contracts because such a condition violates the municipal affairs authority of a charter city. Such a condition is unlawful because it seeks to achieve an unconstitutional result.
5. Those provisions of SB 7 (Steinberg) that condition state funding to a charter city on compliance with the PWRL in exclusively city-funded construction contracts are unconstitutional because they interfere with a charter city's municipal affairs authority.

### **SB 7 (Steinberg)**

The bill adds Labor Code § 1782 to the State's PWRL to provide:

1. A charter city may not receive or use state funding or financial assistance for a *construction project*<sup>2</sup> if the city has a charter provision or ordinance that authorizes a contractor not to comply with the PWRL.
2. A charter city may not receive or use state funding or financial assistance for a *construction project* if the city has awarded within the current or prior two calendar years a public works contract without requiring the contractor to comply with PWRL. This prohibition applies to contracts awarded after January 1, 2014.
3. A charter city may receive or use state funding or financial assistance for a *construction project* if the charter city has adopted a local prevailing wage ordinance that includes requirements that in all respects are equal to or greater than PWRL.

SB 7 (Steinberg) is based upon the following findings:<sup>3</sup>

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<sup>2</sup> Note that although "public works contract" is defined by Labor Code § 1720 (as modified by proposed Section 1782(d)(1)), "construction project" is an undefined term, and potentially a term of broader applicability than "public works contract." The bill seems to prohibit a charter city from receiving state funding for any construction project (even if it is not a "public works project") if the charter city does not comply with PWRL.

<sup>3</sup> "The Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern. A court will exercise its independent judgment as to that issue giving great weight to legislative statements of purpose where they exist" (*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63.)

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1. It is a matter of statewide concern that California has an available workforce of skilled construction workers. An in-state workforce of skilled construction workers benefits the state's economy. The PWRL promotes the creation of a skilled construction workforce. Payment of prevailing wages encourages contractors to hire the most skilled workers and to invest in their training.
2. Incentives for formal apprenticeship training<sup>4</sup> in state-approved programs provide the financial support and necessary opportunities to train next generation of skilled construction workers. The PWRL provides necessary on-the-job training opportunities for the more than 50,000 apprentices enrolled in state-approved apprenticeship programs.
3. PWRL has substantial benefits that go beyond the limits of the city since many workers do not live in the city where the project is located.

### **PWRL and Charter Cities**

When a statute purportedly applying to charter cities is challenged, the court will apply the following four-step inquiry:

1. Does the city ordinance regulate a "municipal affair?"
2. Is there an actual conflict between local and state law?
3. Does the state law address a "matter of statewide concern?"
4. Is the state law reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance?

If the court is persuaded that the subject of the statute is a "matter of statewide concern" and that the statute is reasonably related to its resolution and not unduly broad in its sweep, then the Legislature is not prohibited by Article XI, section 5(a) from addressing the statewide issue.<sup>5</sup>

*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4<sup>th</sup> 547 recently held that:

1. The construction of a city-operated facility for the benefit of a city's inhabitants with city funds (e.g. two fire stations by City of Vista) is quintessentially a municipal affair.

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<sup>4</sup> 8 CCR § 230.1 requires contractor on "public works contract" to hire persons in the State's apprenticeship program (unless an exemption for a different type of apprenticeship program is available through Labor Code 1777.5).

<sup>5</sup> *California Federal Savings and Loan v. City of Los Angeles* (1991) 54 Cal.3d 1.

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2. The state cannot require a charter city to exercise its purchasing power in the construction market based upon "some indirect effect [of the charter city's purchasing power] on the regional and state economies."

*Vista* made it clear that the legislature may not require a charter city to comply with the PWRL. In response, SB 7 chose to condition state funding on compliance with the PWRL.

### Analysis

SB 7 places two conditions on state funding for charter city construction projects: (1) State funding may not be used if a charter city has a charter provision or ordinance that prohibits payment of prevailing wages on construction contracts<sup>6</sup>; and (2) State funding may not be used for a construction project if a city has awarded a public works project within the prior two years without requiring the contractor to comply with the PWRL.<sup>7</sup>

- **Authority to Impose Conditions on State Funding**

The Legislature may impose conditions upon grants or other financial assistance that dictate how the recipient uses state funding. Therefore, legislation requiring a charter city to comply with the PWRL on a public works contract for which it receives state funding would be lawful. An example of this type of requirement is found in Public Contracts Code § 2502, which requires a charter city to enter into a project labor agreement for public works contracts for which it receives state funding.<sup>8</sup> But this authority to impose conditions may not be used to achieve an unconstitutional result.<sup>9</sup>

Immediately following the approval of Proposition 13, the legislature distributed surplus state funds to local agencies to make up for the reduction of property tax revenues to those agencies. However, the legislature prohibited the distribution of funds to any local agency granting its employees a cost-of-living wage or salary increase for the 1978-1979

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<sup>6</sup> Proposed Section 1782(a) at page 4, lines 10-14.

<sup>7</sup> Proposed Section 1782(b) at page 4, lines 15-24. An exception is provided for a charter city that adopts a local prevailing wage ordinance that includes the requirements equal to the PWRL.

<sup>8</sup> This conclusion was mentioned indirectly in *Vista* when the Court noted that the State could "use its own resources to support wages and vocational training in the State's construction industry." Note, however, that section Public Contracts Code § 2503, enacted one year following the enactment of § 2502, suffers from the same Constitutional infirmity as SB 7 (Steinberg). To be eligible to receive State funding for a public works contract, Public Contracts Code § 2503 requires a charter city to enter into project labor agreements for public works contracts funded exclusively with charter city funds.

<sup>9</sup> *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 319 citing *Western Union Telegraph Co. v. Foster* (1918) 247 U.S. 105, 114; and *Caulfield v. U.S. Department of Agriculture* (5<sup>th</sup> Cir. 1961) 293 F.2d 217, 221 ("SCOPE".)

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fiscal year that exceeded the increase provided for state employees. In addition, the statute declared null and void any agreement by a local agency to pay a cost-of-living increase in excess of that granted to state employees. In *Sonoma County Organization of Public Employees v. County of Sonoma* ("SCOPE"), the Sonoma County Organization of Public Employees argued that these conditions were unconstitutional for two reasons:

- A condition invalidating agreements granting cost-of-living wage increases to local agency public employees is invalid as an impairment of contract in violation of both the state and federal Constitutions.<sup>10</sup>
- A condition limiting the authority of a charter city or charter county to determine the compensation of their employees is an invalid interference with the municipal affairs authority of charter cities and the authority of charter counties to provide for the compensation of their employees in violation of the state Constitution.<sup>11</sup>

The Court acknowledged that the state was not under any obligation to distribute state funds to local agencies to assist them in resolving whatever fiscal problems were contemplated in the wake of Proposition 13. However, having taken on the obligation, the State must respect the Constitution. The Court invalidated the conditions because they violated the contracts clauses of the United States and Californian Constitution and because they interfered with the rights of chartered cities and counties to determine the compensation of their employees. The Court explained:

It is too well established to require extensive citation of authority that, while the state may impose conditions upon the granting of a privilege, including restrictions upon the expenditure of funds distributed by it to other governmental bodies (citations omitted), 'constitutional power cannot be used by way of condition to attain an unconstitutional result' (*Western Union Telegraph Co. v. Foster* (1918) 247 U.S. 105, 114).<sup>12</sup>

Acts generally lawful, such as imposing conditions on state funding, may become unlawful when done to accomplish an unlawful end.<sup>13</sup>

The payment of contract workers on public works projects by a charter city exclusively with its own funds is a municipal affair. The legislature cannot adopt a statute that requires a charter city to comply with the PWRL because such a requirement would be an unconstitutional interference with the municipal affairs authority of a charter city. SB 7 (Steinberg) conditions the receipt of state funds on a charter city's compliance with the

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<sup>10</sup> U.S. Const., art. I, § 10; Cal. Const. art. I, § 9.

<sup>11</sup> Cal. Const. art. XI, § 4 and 5.

<sup>12</sup> SCOPE at p. 319.

<sup>13</sup> *Western Union Telegraph Co. v Foster* (1918) 247 U.S. 105, 114.

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PWRL on public works contracts that are funded exclusively with charter city funds. The legislature cannot use its constitutional power to impose a condition on state funding to attain the unconstitutional result of overriding the municipal affairs authority of a charter city.

- **Authority to Impose Conditions on Federal Funding**

Much like the municipal affairs doctrine protects charter cities from unlawful state interference into their affairs, the 10<sup>th</sup> Amendment to the United States Constitution protects States from unlawful federal interference into their affairs.<sup>14</sup>

Congress may use its authority under the Spending Clause<sup>15</sup> to grant federal funds to the States and may condition such grants upon the States taking certain actions that Congress could not otherwise require them to take. The conditions imposed by Congress ensure that the funds are used by the States to provide for the general welfare in the manner Congress intended.<sup>16</sup> At the same time, the courts recognize limits on Congress's power under the Spending Clause: Congress cannot condition the use of federal funds to require the States to govern according to Congress' instructions. If it could, Congress would be using the Spending Clause to implement federal policy that it could not impose directly under its enumerated powers.<sup>17</sup>

Under the federal Patient Protection and Affordable Care Act, a State that opted out of the Act's expansion in health care coverage stood to lose all existing federal Medicaid funding. In their challenge to the Act, the States argued that this provision crossed the line distinguishing encouragement from coercion in the way the funding was structured. Instead of simply refusing to grant the new funds to the States that will not accept the new conditions, Congress also threatened to withhold those States' existing Medicaid funds. The States claimed that this threat served no purpose other than to force unwilling States to sign up for the expansion in health care coverage effected by the Act. The United States Supreme Court agreed.

Congress may condition the receipt of federal funds on the States' complying with restrictions on the use of those funds because that is the means by which Congress ensures that the funds are spent according to its view of the general welfare. But conditions that do not govern the use of the funds cannot be justified on that basis. The Court concluded that "when...such conditions take the form of threats to terminate other

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<sup>14</sup> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." U.S. Const. Amendment X.

<sup>15</sup> U.S. Const., Art. I, § 8, cl.1.

<sup>16</sup> *New York v. United States* (1992) 505 U.S. 144, 166.

<sup>17</sup> *National Federation of Independent Business v. Sebelius* (2012) 132 S.Ct. 2566, 2603.

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significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes.”<sup>18</sup>

Congress cannot override the States' protection under the 10<sup>th</sup> Amendment by coercing States into conduct by conditions imposed on grants of federal money. Likewise, the State legislature cannot override charter cities' protection under the municipal affairs doctrine by coercing charter cities into conduct by conditions imposed on grants of state funds.

### **Conclusion**

The *Vista* decision made it clear that the State legislature may not enact a statute requiring a charter city to comply with the State's Prevailing Wage Rate Law. This is because the expenditure of city funds by a charter city to pay contract workers on a public works project is a municipal affair. The State Constitution protects charter cities from legislative interference into municipal affairs.

In order to receive state funds for a public works contract, SB 7 (Steinberg) requires a charter city to comply with the State's Prevailing Wage Rate Law on all of its public works contracts, even those that are funded exclusively with charter city funds.

The Legislature cannot accomplish indirectly what it is unable to accomplish directly.

c: Patrick Whitnell, General Counsel

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<sup>18</sup> *Id.*