



Legislation Text

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AN ORDINANCE REQUIRING APPRENTICESHIPS AND PROJECT LABOR AGREEMENTS ON CERTAIN PUBLIC CONSTRUCTION CONTRACTS AND CONSTRUCTION CONTRACTS FOR WHICH TAX ABATEMENT HAS BEEN GRANTED.

Ordinance vetoed by the Mayor May 29, 2012

Invitation: Business Administrator/ Corporation Counsel, June 6, 2012

Deferred 6SF-a 060712

WHEREAS, the City of Newark has a compelling interest to ensure that construction contracts with a total cost equal to or exceeding \$10 million, excluding land acquisitions costs, that receive a tax abatement pursuant to the Long Term Tax Exemption Law N.J.S.A 40 A:201 et. seq., are executed at responsible costs with the highest degree of quality; and

WHEREAS, the city of Newark has a compelling interest in ensuring that Public Construction Contracts in excess of \$5 million are undertaken at responsible costs and with the highest degree of quality; and

WHEREAS, THE CITY OF Newark has a compelling interest in ensuring that workers on Public Construction Projects and Tax Abated Projects are paid appropriate wages and that their families receive appropriate benefits, and

WHEREAS, a highly skilled workforce ensures the efficient, economical and safe completion of contracts as described above, and

WHEREAS, the employment of apprentices in such contracts can maintain reasonable costs while providing valuable and rewarding work opportunities for new workers; and

WHEREAS, the City of Newark also seeks to ensure that job opportunities generated by contracts as described above are also utilized to help low-income, minority and women workers gain access to careers in the construction trades; and

WHEREAS, poverty, unemployment and underemployment are significant social problems in the City of Newark, and the City seeks to promote meaningful job opportunities for its citizens; and

WHEREAS, the benefits received by contractors regulated by this ordinance will create opportunities to employ a substantial number of apprentices from Newark, thus ensuring that those projects will expand access to living wage careers in the

construction trades for a new generation of Newark workers; and

WHEREAS, Union-affiliated apprenticeship programs offer access to large numbers of long-term living wage careers in the construction trades, and

WHEREAS, the City of Newark has a compelling interest in having labor disputes in connection with contracts as described above resolved without the disruptions of strikes, lock-outs or slowdowns; and

WHEREAS, the successful completion of construction contracts expands the City's tax base and advances economic and budgetary stability of all its citizens, and

WHEREAS, Project Labor Agreements make legally enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lock-outs or slowdowns; and

WHEREAS, Project Labor Agreements also provide for peaceful, orderly and mutually binding procedures for resolving labor disputes; and

WHEREAS, Project Labor Agreements provide the City of Newark with a guarantee that contracts as described above are completed with a highly skilled workforce; and

WHEREAS, Project Labor Agreements provide the City of Newark with assurances that contracts as described above are completed with a diverse workforce.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF NEWARK, NEW JERSEY, THAT:

Section1. Definitions

Apprentice means a worker who participates in a Federal apprenticeship Program.

Apprenticeship Program means an apprenticeship program operated by a Labor Organization and registered by the Bureau of Apprenticeship and Training of the US Department of Labor.

City of Newark means the City or the Business Administrator or his designee.

Developer means the recipient of a tax exemption for a Tax Abated Project or the awardee of a public construction contract for a Public construction Project.

Labor Organization means an organization which represents, for purposes of collective bargaining, employees involved in the performance of Public Construction project or Tax Abated project that has the present ability to refer, provide or represent

sufficient numbers of qualified employees to perform the contracted work and has an Apprenticeship Program.

Project Completion means the determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives its final Certificate of Occupancy.

Project Labor Agreement means a contract between a Labor Organization and a Developer that contains at a minimum the requirements set forth in this Ordinance.

Public Construction Project means any construction contract entered into by the City using public funds, the total cost of which is equal to or exceeds \$5 million, exclusive of any land acquisition costs.

Tax Abatement Project means a project that has a total construction cost that is equal to or exceeds \$10 million, exclusive of any land acquisition costs, for which the City has granted a tax abatement pursuant to the Long Term Tax Exemption Law J.J.S.A. 40A:10-1 et seq. However, any project that is being undertaken by a not for profit organization or which shall contain more than 50% affordable housing shall be excluded.

SECTION II. Project Labor Agreements Required for Certain Projects

All Tax Abated Projects and all requests for proposals, specifications and final contracts for Public Construction Projects shall require the execution of a Project Labor Agreement that complies with the requirements of this ordinance, unless the Business Administrator determines, taking into consideration the nature, size and complexity of the project such as the height of the buildings, the presence of elevators and the utilization of steel, that a Project Labor Agreement is not appropriate. In all cases, the Project Labor Agreement must advance the interests of the City of Newark, including cost, efficiency, quality, time, time lines and need for a skilled labor force and safety.

SECTION III. General Requirements

The Project Labor Agreements shall contain the following terms:

A guarantee that there will be no strikes, lock-outs or other similar actions.

Procedures to insure the effective, immediate and mutually binding resolutions of jurisdictional and labor disputes arising before the completion of the work.

A provision to bind all contractors and subcontractors on the project in all relevant documents.

Evidence that each contractor and subcontractor working on the project has a local Federally registered Apprenticeship Program.

A requirement that twenty percent (20%) of the labor hours required shall be performed by Apprentices and that one hundred percent (100%) of the Apprentices shall be Newark residents. However, if it can be demonstrated that fulfilling this requirement is not possible because there are not enough Apprentices available, the required percentages of Apprentices will be decreased accordingly.

Conformity with all statutes, regulations and City ordinances regarding the implementation of our goals for women and minority owned businesses.

A requirement that Developers and Labor Organizations complete the following "Pre-Construction Actions":

A. Pre-Construction Meeting: not less than 90 days prior to the commencement of construction, the developer will meet with the Business Administrator and the Labor Organization to present workforce needs, which will include the job description of the positions to be filled and the duration of the project. In addition, the Developer will provide the construction schedule. The Labor Organization will present the Developer and the City with the projected availability and trades of eligible Apprentices who are projected to be available to work on the project.

B. Advertisement: not less than 60 days prior to the commencement of construction, the Labor Organization will advertise in two newspapers regularly published and distributed in Newark and outreach via other media, such as cable television, the web, and/or radio. The advertisement will solicit apprenticeship applications for the Labor Organization's Apprenticeship Program, describe the basic requirements for admission, describe the job training and set for the range of salaries.

C. Job Fairs: Developer and the Labor Organization will jointly participate in at least two (2) job fairs to be held at a location to be provided by the City in order to explain the Apprenticeship Programs and solicit applications from attendees. Each participating Developer shall pay a pro rata share of the costs of each job fair.

SECTION IV: Reports and Records

The Project Labor Agreement shall require the submission of the following reports to the Business Administrator on the 15th day of each month for the previous month, for each year of construction until Project Completion.

Manning Report:

The Developer's report will accurately reflect the total hours in each construction trade or craft, and will list separately the work hours performed by such employees of the Contractor and each of its Subcontractors during the previous quarter.

Certified Payroll Report

The Developer's report that will specify the residence, gender and ethnic/racial origin of each worker, work hours and the rate of pay and benefits provided.

Equal Employment Opportunity Reports

The Labor Organization's Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the US commission of Equal Employment Opportunity Commission by the Labor Organization.

Apprenticeship Report

The Report of the Labor Organization that shall list the names, addresses and contact information of all persons who were accepted to the Apprenticeship Program. The report shall also list the names, address and contact information of all persons who were rejected for admission to the Apprenticeship Program with the reasons for their rejection and, for those who failed to finish the program, the reasons why they failed to complete the program.

Other Reports

The Developer or Labor Organizations shall furnish such reports or other documents to the City as the City may reasonably request from time to time in order to carry out purposes of the ordinance.

Records

Records to support the work hours stated in the above reports must be maintained for a period of three (3) years after Project Completion. All records shall be made available to the City upon ten (10) days prior written notices.

Site Access

Representatives of the City shall be permitted to have appropriate access to all work sites in order to monitor compliance.

SECTIION V: Remedies

In the event of default, the Developer shall be provided with a written notice of default allowing the Developer ten (10) days to cure the default. Should the Developer

fail to cure, then in addition to any other remedies available at law or in equity including termination, the City shall be permitted to seek the following remedies for the failure to comply with this ordinance, which remedies shall also be included in the Project Labor Agreement.

For Public Construction Projects:

Suspend the Public Construction Contract for failure to complete any of the Preconstruction Actions described in Sections III, A; B and C:

Complete the contract with a substitute contractor or subcontractor and require the contractor or subcontractor to pay all the damages and costs incurred:

Require the refunding of payments made by the City to the Developer prior to the suspension or termination and/or

Liquidated damages in the following amounts: three percent (3%) of the total price of the construction contract for each breach and up to ten percent (10%) of the total price of the construction contract for multiple breaches or for a single breach that is unabated for a period of 6 months.

For Tax Abated Projects:

Suspend the tax abatement financial agreement until the date of cure (during which period 300% of conventional real estate taxes shall be assessed and collected) for during any period that the Developer fails to complete any of the Preconstruction Actions described in Section III, A and C hereof: or

Provided the City is not in default of its obligations under this Ordinance, liquidated damages in the following amounts:

Late filing of any Report required under Section IV hereof; a payment of \$1,000 per day for each day that the report is late for up to 14 days. After 14 days, the remedy in the Section below, shall apply.

Failure to provide a required report or record or to allow work place access: an amount equal to two percent (2%) of the estimated annual payment in lieu of taxes for each month or part thereof the records or work place access is not provided.

A material breach of any other term of this Ordinance, an amount equal to two percent (2%) of the estimated annual payment tin lieu of taxes for each month or part thereof the breach continues.

SECTION VI. Pre-apprenticeship Training Program

Inter Agency Cooperation. The city will solicit the support of the Newark Board of

Education, the Essex County Community College, the Essex County Vo-Tech School, the Newark Housing Authority and other community-based organizations to maximize participation in the apprenticeship Program among eligible City residents.

Preparatory services. The City shall be responsible for the development of a program to provide all necessary preparatory services for enrolled pre-apprentices, including assistance with GED preparation, obtaining driver's license, mentoring and other supportive services for pre-apprentices. The pre-apprenticeship program shall be operated in such a manner that its successful graduates will be equipped and eligible for entry into the apprenticeship program of a Labor Organization.

Mentoring. The City shall be responsible for the supervision of pre-apprenticeship programs that may be operated by labor organizations sponsoring apprenticeship programs and shall retain authority to review and approve the curriculum and procedures used to recruit and select participants.

All Ordinances or portions of Ordinances inconsistent herewith are hereby repealed to the extent of their inconsistency only.

If any part of this Ordinance shall be declared to be invalid or inoperative such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance.

The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Newark Code.

This Ordinance shall take effect upon passage, approval and publication as required by law.

The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this Ordinance reveals a conflict between those numbers and the existing Code, in order to avoid confusion and possible accidental repeals of existing provisions.

STATEMENT

An ordinance requiring project labor agreements and apprentices from the City of Newark for public construction contracts and projects for which tax abatements have been granted.

