Legislation Details (With Text)

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Title:	AN ORDINANCE AMENDING TITLE II, ADMINISTRATION, CHAPTER 4, GENERAL ADMINISTRATION, ARTICLE 2, CONTRACTS WITH THE CITY, SECTION 22D, REQUIRING APPRENTICESHIPS AND PROJECT LABOR AGREEMENTS, ON CERTAIN PUBLIC CONSTRUCTION PROJECTS AND CONSTRUCTION PROJECTS FOR WHICH FINANCIAL INCENTIVES OR BENEFITS HAVE BEEN GRANTED, BY AMENDING THE TITLE, THE DEFINITIONS OF DEVELOPER AND REDEVELOPMENT PROJECT, AMONG OTHER THINGS, AND INCREASING THE SCOPE OF PROJECTS SUBJECT TO THE ORDINANCE. Deferred 6PSF-e (s) 082019 Deferred 6PSF-i 090519				
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Date	Ver.	Action By	Action	Result
10/2/2019	2	Municipal Council	Close on Public Hearing and Adopt	Pass
9/18/2019	1	Municipal Council	maintained on public hearing and adopted as amended	Pass
9/18/2019	1	Municipal Council		
9/18/2019	1	Municipal Council	Motion to amend	Pass
9/5/2019	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
8/20/2019	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
8/7/2019	1	Municipal Council	Advance and Adopt on First Reading as 6F-	Pass

AN ORDINANCE AMENDING TITLE II, ADMINISTRATION, CHAPTER 4, GENERAL ADMINISTRATION, ARTICLE 2, CONTRACTS WITH THE CITY, SECTION 22D, REQUIRING APPRENTICESHIPS AND PROJECT LABOR AGREEMENTS, ON CERTAIN PUBLIC CONSTRUCTION PROJECTS AND CONSTRUCTION PROJECTS FOR WHICH FINANCIAL INCENTIVES OR BENEFITS HAVE BEEN GRANTED, BY AMENDING THE TITLE, THE DEFINITIONS OF DEVELOPER AND REDEVELOPMENT PROJECT, AMONG OTHER THINGS, AND INCREASING THE SCOPE OF PROJECTS SUBJECT TO THE ORDINANCE.
Deferred 6PSF-e (s) 082019
Deferred 6PSF-i 090519

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

SECTION 1. The City of Newark Revised Ordinance 2:4-22D, is hereby amended as follows:

Editors' Note: Additions to the ordinance are reflected as **Bold and Underlined** and deletions as ~~strikethroughs~~.

2:4-22D. REQUIRING APPRENTICESHIPS AND PROJECT LABOR AGREEMENTS ON CERTAIN PUBLIC CONSTRUCTION PROJECTS AND CONSTRUCTION PROJECTS FOR WHICH ~~TAX ABATEMENT~~ ~~HAS~~ FINANCIAL INCENTIVES OR BENEFITS HAVE BEEN GRANTED ("PLA ORDINANCE").

2:4-22D.1. Definitions.

As used in this Section:

Affordable Housing shall mean housing that is restricted for occupancy and affordable to households with incomes no greater than eighty (80%) percent of Area Median Income by family size as established by the U.S. Department of Housing and Urban Development (HUD) including, but not limited to housing that is funded by HUD, Section 42 of the Internal Revenue Code or which is covered and regulated by the Council of Affordable Housing.

Apprentice shall mean a worker who participates in a Federal Apprenticeship Program and receives benefits and pay not less than those received by an apprentice.

Apprenticeship Program shall mean a registered apprenticeship program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprentice able trade, and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the Bureau.

City of Newark shall mean the City or the Business Administrator and/or his designee.

Community Development Block Grant (CDBG) means a form of Redevelopment Area Financing, which provides monies that can be used to revitalize neighborhoods, expand affordable housing and economic opportunities, and/or improve community facilities.

Developer shall mean **an entity that is engaged in a Redevelopment Project or Public Works Project as defined herein or** ~~the recipient of a tax exemption or abatement for a tax abated project or~~ **the awardee of a public construction contract for a public construction project, and/or their contractors/agents.**

Labor Organization shall mean an organization, which represents, for purposes of collective bargaining, employees involved in the performance of Public Works Projects or **Redevelopment Projects** and eligible to be paid prevailing wages under the "New Jersey Prevailing Wage Act," P.L. 1963, c. 150 (C.34:11-56.25 et seq..) and has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work, in a manner consistent with this section and the enabling statute (N.J.S.A. 52:38-1 et seq.) and any plan mutually agreed upon by the labor organization and the City of Newark or the Developer, as relevant to the situation.

Not-for-Profit shall mean any entity that is organized as a nonprofit or not-for-profit entity, corporate or otherwise or a governmental entity.

Project Completion shall mean 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 shall mean a pre-hire collective bargaining agreement between a Labor Organization and the City of Newark or a Developer, as the situation dictates, that contains at a minimum the requirements set forth in this **Section**.

Public Works Project shall mean any public works contract for the construction, reconstruction, demolition, **hazardous materials abatement** or renovation of buildings entered into by the City using public funds, for which:

1. It is required by law that workers be paid the prevailing wage determined by the Commissioner of Labor pursuant to the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963 c. 150 (C.34:11-56.25 et seq.); and

2. The total cost of the project, exclusive of any land acquisition costs, will equal or exceed Five Million Dollars and Zero Cents ($5,000,000.00). (N.J. Stat. Ann. §52:38-2)

Redevelopment Project shall mean a project, including demolition and hazardous materials abatement, that has an estimated total construction cost that is equal to or exceeds Twenty-Five Million Dollars and Zero Cents ($25,000,000.00), exclusive of any land acquisition costs, for which the City has (1) granted a tax exemption pursuant to N.J.S.A. 40A:20-1, et seq. (the "Long Term Tax Exemption Law") or a tax exemption pursuant to N.J.S.A. 40A:21-1, et seq. (the "Five Year Exemption and Abatement Law"); and (2) is a recipient of an additional form of Redevelopment Area Financing such as, but not limited to, Redevelopment Area Bond ("RAB") pursuant to N.J.S.A. 40A:12A-64, et seq., capital financing pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., a Community Development Block Grant ("CDBG"), a grant and/or gap financing drawn from the City's Affordable Housing Trust Fund or other comparable municipal redevelopment funds, UEZ capital financing/funding, a direct payment to the Developer by the City in the form of rent or any other form of municipal financing/funding.

~~Tax abatement project shall mean a project that has an estimated total construction cost that is equal to or exceeds twenty-five million ($25,000,000.00) dollars, exclusive of any land acquisition costs, for which the City has granted a tax abatement pursuant to the Long Term Tax Exemption Act, N.J.S.A. 40A:20-1, et seq.~~ However, any project that is being undertaken by a not for profit organization or which shall contain more than fifty percent (50%) affordable housing units shall be excluded.

(Ord. 6PSF-C, 10-3-12 §1)

Redevelopment Area Bond means a form of Redevelopment Area Financing whereby the City sells bonds pursuant to N.J.S.A. 40A:12A-64, et seq. (the "RAB Law") in order to fund infrastructure improvements and other Project costs.

Redevelopment Area Financing ("RAF") Project shall mean a project that has a Total Construction Cost that is equal to or exceeds Twenty-Five Million Dollars and Zero Cents ($25,000,000.00), exclusive of any land acquisition costs, and receives (1) a tax exemption pursuant to N.J.S.A. 40A:20-1, et seq. (the "Long Term Tax Exemption Law") or a tax exemption pursuant to N.J.S.A. 40A:21-1, et seq. (the "Five Year Exemption and Abatement Law"); and (2) is a recipient of an additional form of financing such as, but not limited to, Redevelopment Area Bond ("RAB") pursuant to N.J.S.A. 40A:12A-64, et seq., capital financing

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pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., a Community Development Block Grant ("CDBG"), a grant and/or gap financing drawn from the City's Affordable Housing Trust Fund or other comparable municipal redevelopment funds, UEZ capital financing/funding, a direct payment to the Developer by the City in the form of rent or any other form of municipal financing/funding.

Total Construction Cost means all costs, including infrastructure, demolition and hazardous materials abatement, excluding only land acquisition costs, incurred to construct a project through the date of completion, that is, the date the Final Certificate of Occupancy is issued. Total Construction Cost shall generally be determined in accordance with the industry standard of Marshall and Swift Valuation, but including the cost of piling and soil compaction. Total Construction Cost must include any construction cost constituting as an element of Total Project Cost under N.J.S.A. 40A:20-3(h)(4).

2:4-22D.2. Project Labor Agreements Required for Certain Projects.

All Redevelopment projects and all requests for proposals, specifications and final contracts for Public Works Projects shall require the execution of a Project Labor Agreement that complies with the requirements of this Section, unless the Business Administrator determines, taking into consideration the amount of City financial resources required and the increased cost and feasibility challenges that would result to the Project, the nature, phasing, size and complexity of the project, including the height of the buildings, the presence or absence of elevators and the utilization or non-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. (Ord. 6PSF-C, 10-3-12 §2)

2:4-22D.3. General Requirements.

The Project Labor Agreements shall contain the following terms pursuant to this Section and in accordance with N.J.S.A. 52:38-1 et seq. (P.L. 2202, C.44):

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

B. Set forth effective, immediate and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work.

C. A provision to bind all contractors, and subcontractors on the project in all relevant documents, including bid specifications.

D. Evidence that each contractor and subcontractor working on the project has an Apprenticeship Program.

E. A requirement that twenty (20%) percent of the labor hours required shall be performed by Apprentices and that one hundred (100%) percent of the Apprentices shall be Newark residents. However, if the Labor Organization can demonstrate that it made good faith efforts to increase enrollment of Newark residents in their apprenticeship programs, but that despite those good faith efforts that fulfilling this requirement is not possible because there are not enough Apprentices available, the required percentages of Apprentices will be decreased accordingly. Upon written request of the City, the Labor Organization will provide the City with a list of all Newark residents enrolled in their apprenticeship programs.

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F. Conformity with all statutes, regulations, executive orders and applicable City ordinances regarding the implementation of affirmative action requirements for women and minority owned businesses, the obligation to comply with which shall be expressly provided for in the Project Labor Agreement.

G. State that contractors and subcontractors need not be a party to a Labor Agreement with the applicable labor organization other than for the project covered by the Project Labor Agreement.

H. If applicable, require that each contractor agree to be monitored by a New Jersey State and Federal agency to ensure that minorities, women or economically disadvantaged persons are afforded the opportunities to participate in apprenticeship programs, which result in the placement of apprentices on the project.

I. State that any and all Newark residents, who are already in any signatory union or an apprenticeship program, shall be referred to contractors or subcontractors who request them.

J. Include a publicly available plan regarding the shares of employment and apprenticeship positions in the Public Works Project or Redevelopment Project for minority group members and women, which is in full conformance with the requirements of all applicable statutes, regulations, executive orders and local ordinances and is mutually agreed upon by the participating labor organizations and the City or the Developer, which will own the facilities, which are built, altered or repaired, provided that any shares mutually agreed upon pursuant to this Subsection shall equal or exceed the requirements of other statutes, regulations, executive orders or local ordinances.

K. Require the contract to provide whatever resources may be needed to prepare for apprenticeship a number of women and minority members sufficient to enable compliance with the plan agreed upon pursuant to paragraph j. of this Section and provide that the use of those resources be administered jointly by the participating labor organizations and the City, or the developer or the community-based organizations selected by the City or the Developer.

L. Require the City to monitor, or arrange to have a State agency monitor, the amount and share of work done on the project by minority group members and women and the progression of minority group members and women into apprentice and journey worker positions and require the City to make public, or have the State agency make public, all records of monitoring conducted pursuant to this Subsection.

M. Include demolition and hazardous materials abatement work.

A requirement that Developers and Labor Organizations complete the following "Preconstruction Actions":

2. A. Preconstruction Meeting: Not less than ninety (90) days prior to the commencement of construction, the developer will meet with the Business Administrator and/or his designee 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 sixty (60) days prior to the commencement of construction, the Labor Organization will advertise in two (2) 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: The 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.

3. A requirement for Local/Minority Hiring Goals providing that for each contractor or subcontractor performing work on a Covered Project, the Project Labor Agreement shall provide that at least thirty (30%) percent of all project work hours will be performed by Newark residents and at least thirty (30%) percent of all project work hours will be performed by minorities and/or women. A contractor shall not be subject to enforcement actions for violations of this Section if that Contractor can demonstrate that it made Good Faith Efforts to comply. For the purpose of this Section, Good Faith Efforts for a developer shall at a minimum include compliance with the following:

(a) Entry into a PLA and obtaining Letters of Assent from each Contractor/Subcontractor.

(b) Convene pre-bid and pre-construction meetings to educate construction managers and subcontractors about the Local/Minority Hiring Goals.

(c) Cooperate with City Representative. The Contractor shall cooperate with a City representative designated by the City. The City Representative shall provide services in support of the Contractor's Local Minority Hiring Goals. Among other things, the City representative will:

(1) Establish a point of contact to provide information about available job opportunities;

(2) Develop and maintain an up-to-date list of qualified Local Residents by trade and confirm local residency;

(3) Assist Contractors with reporting by working with Contractors and the City where appropriate;

(d) Regularly contacting and documenting of contact with City Representative, and providing certified payroll and other records on a regular basis to the City Representative;

(e) Use and documenting use of City-approved Craft Request Forms sent to both unions and City Representative. Craft Request Form means a document through which contractors shall request workers from Unions;

(f) Requesting local, minority and women hires from union hiring halls;

(g) Documenting reasons for not hiring referred candidates from target populations, if applicable;

(h) Allowing City Representative prompt and willing access to documentation of all of the above activities and to the work site if requested.

(Ord. 6PSF-C, 10-3-12 §3)

2:4-22D.4. 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

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until Project Completion.

a. *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 City residents, including a list of minority resident and women resident workers in each trade or craft, by such employees of the Contractor and each of its Subcontractors during the previous quarter.

b. *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.

c. *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 U.S. Commission of Equal Employment Opportunity Commission by the Labor Organization.

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

e. *Other reports.* The Developer or Labor Organization 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 the purposes of the Section.

f. *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.

g. *Site Access.* Representatives of the City shall be permitted to have appropriate access to all work sites and to all applicable records in order to monitor compliance with the provisions of this Section.

(Ord. 6PSF-C, 10-3-12 §4)

2:4-22D.5. City Remedies.

a. 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.

1. Suspending or terminating the contract, grant, subsidy agreement or tax abatement agreement in question.

2. For public construction projects, debarring the Developer, Contractor or Subcontractor from eligibility for future City contracts.

3. Such other remedies available at law or in equity.

(Ord. 6PSF-C, 10-3-12 §5)

2:4-22D.6. Pre-Apprenticeship Training Program.

a. *Inter-Agency Cooperation.* The City and the Labor Organization will solicit the support of the

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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.

b. *Preparatory Services.* The City and the Labor Organization 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 licenses, 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 programs.

c. *Mentoring.* The City shall have the right to supervise 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.

(Ord. 6PSF-C, 10-3-12 §6)

2:4-22D.7 Implementation.

a. The City shall include language in all financial agreements or other documents approved by the Municipal Council providing a tax abatement requiring compliance with this section.

b. Any advertisement for a public works project published sixty (60) days or more following the effective date of this section shall contain provisions conditioning the award of any contract on compliance with this section.

c. Any tax abatement where the tax abatement application is filed after the effective date of this section shall be subject to compliance with this section, if applicable.

(Ord. 6PSF-C, 10-3-12 §7)

Section 2. Effective Date. This ordinance shall become effective upon final passage and publication in accordance with New Jersey Law.

Section 3. Severability. If any provision of this ordinance is deemed unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

STATEMENT

Ordinance amending Title II, Administration, Chapter 4, General Administration, Article 2, Contracts With The City, Section 22D, by requiring certain apprenticeships and Project Labor Agreements on Certain Public Construction Contracts and Construction Contracts for which financial benefits or incentives have been granted.

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