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Matrix Development Group
Fidelco Realty Group

MATRIX DEVELOPMENT GROUP and
FIDELCO REALTY GROUP,

Plaintiffs,

vs.

CITY OF NEWARK, NEW JERSEY,

Defendant.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Civil Action No.:

Document Electronically Filed

PLAINTIFFS' COMPLAINT

In support of their Complaint, Plaintiffs Matrix Development Group (“Matrix”) and Fidelco Realty Group (“Fidelco”), allege as follows against Defendant City of Newark, New Jersey (“Defendant” or “the City of Newark”):

INTRODUCTION

1. Through this lawsuit Plaintiffs, who are real estate developers with properties and potential projects in the City of Newark, seek to challenge Defendant’s adoption of an ordinance, Chapter 304, Section 2:4-22D *et seq.* (the “Ordinance”), that violates the United States and New Jersey Constitutions and federal law when applied under certain circumstances. The Ordinance, which applies to certain proscribed redevelopment projects, purports to impose specific requirements, including a Project Labor Agreement (“PLA”) and Apprenticeship Program that exponentially increase the costs of the projects falling within its purview and conflict with federal law.

The Ordinance was modeled after an ordinance adopted by Jersey City. That ordinance, which applied to redevelopment projects exceeding twenty-five million (\$25,000,000) in which the city provided a tax incentive to the developer was struck down as unconstitutional in the case of Associated Builders and Contractors, Inc. N.J. Chapter v. City of Jersey City, NJ, 836 F.3d 412 (3d Cir. 2016). Specifically, in Associated Builders and Contractors, the court found that the ordinance in that case, and the requirement of a PLA it imposed was preempted by NLRA and violative of the Supremacy Clause of the United States Constitution because the city had no proprietary interest in such projects, and was therefore acting as a “market regulator” rather than a “market participant.”

2. Upon information and belief, in response to that decision, the City of Newark amended the Ordinance to apply to Redevelopment Projects that: (a) exceed \$25,000,000; (b) receive a tax abatement from the City of Newark; and (c) receive certain additional forms of financing, such as a Redevelopment Area Bond (“RAB”), Community Development Block Grant (“CDBG”) or UEZ capital funding. However, because the City of Newark lacks a proprietary interest in a number of these forms of financing, it remains a “market regulator” and the application of the Ordinance is still in violation of state and federal law when applied under such circumstances.

3. As set forth below, the Ordinance and the requirements it imposes dramatically increases the costs associated with developing the projects that it covers. In the absence of the relief sought, Plaintiffs will be deterred or prohibited from developing such projects in the City of Newark.

THE PARTIES

4. Matrix is a business organized under the laws of the State of New Jersey. Matrix has its principal place of business located at Forsgate Drive CN 4000, Cranbury, New Jersey 07901. Matrix is a business engaged in the development of real estate.

5. Fidelco is a business organized under the laws of the State of New Jersey. Fidelco has its principal place of business located at 225 Millburn Avenue Suite 202, Millburn, New Jersey 07041. Fidelco is a business engaged in the development of real estate.

6. The City of Newark is a municipal corporation organized under the laws of the State of New Jersey, with its principal place of business located at 920 Broad Street, Newark New Jersey 07102.

BACKGROUND

7. On October 2, 2019, the City of Newark enacted the Ordinance: “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.” A true and correct copy of the Ordinance is attached to the Complaint as Exhibit A.

8. Section 2:4-22D.2 of the Ordinance states:

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.

9. The Ordinance defines a Redevelopment Project as:

[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), exclusive of any land acquisition costs, for which the City has (1) granted a tax abatement pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:20-1 et seq., and (2) granted some form of Redevelopment Area Financing, such as but not limited to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64, et seq. (the “RAB Law”), 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 direct payment by the City in the form of rent or any other municipal or UEZ capital financing/funding.

10. Further, the Ordinance defines a Redevelopment Area Financing Project as a project “that has a Total Construction Cost that is equal to or exceeds Twenty-Five Million Dollars . . . exclusive of any land acquisition costs, which receives (1) a tax exemption pursuant to N.J.S.A. 40A:20-1 et seq. or N.J.S.A. 40A:21-1 and (2) receives some form of Redevelopment Area Financing such as an Affordable Housing Trust Fund Grant, a Community Development Block Grant, or a Redevelopment Area Bond.”

11. It should be noted that “Redevelopment Project” only references a tax abatement pursuant to N.J.S.A. 40A:20-1, while “Redevelopment Area Financing” references tax abatements pursuant to both N.J.S.A. 40A:20-1 and N.J.S.A. 40A:21-1.

12. The Ordinance imposes certain requirements on Redevelopment Projects that fall within its purview, including a Project Labor Agreement (“PLA”) and Apprenticeship Program.

13. A PLA “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.”

14. A portion of the relevant minimum requirements for a qualifying PLA are as follows:

- 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. . . .
- 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.

. . .

15. The Ordinance defines an Apprentice as “a worker who participates in a Federal Apprenticeship Program and receives benefits and pay not less than those received by an apprentice.” While an Apprenticeship Program means “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 . . . and registered by the Bureau of Apprenticeship

and Training of the U.S. Department of Labor and meeting the standards established by the Bureau.”

16. Finally, Section 2:4-22D.5 permits the City of Newark to seek the following remedies if a Developer fails to comply with the Ordinance:

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.

17. The PLA requirement contained in the Ordinance imposes significant obstacles to the Plaintiffs’ ability to pursue and construct redevelopment projects subject to the Ordinance in that it imposes substantial additional costs that leave Plaintiffs on an uneven playing field with unionized contractors in that the Plaintiffs:

1. Do not have established collective bargaining relationships;
2. Would experience a 20% or more increase in labor costs;
3. Would be required to hire employees through a union hiring hall, and in accordance with hiring hall rules and not their own standards; and
4. Would be restricted in the hiring of subcontractors, inasmuch as subcontractors would also be required to adhere to the PLA.

18. Matrix regularly purchases and develops properties in Newark, New Jersey. Matrix has been or will be deterred from purchasing properties and pursuing redevelopment projects on the properties it currently owns that are subject to the Ordinance because of the

PLA requirement. As a result, in the absence of the relief sought, Matrix has been and will be harmed as a result of the unlawful portions of the Ordinance.

19. Fidelco regularly purchases and develops properties in Newark, New Jersey. Fidelco has been or will be deterred from purchasing properties and pursuing redevelopment projects on the properties it currently owns that are subject to the Ordinance because of the PLA requirement. As a result, in the absence of the relief sought, Fidelco has been and will be harmed as a result of the unlawful portions of the Ordinance.

20. Plaintiffs are ready, willing, and able to purchase properties for redevelopment projects and to construct redevelopment projects on the properties they currently own to which the Ordinance has been or will be applied, but have been or will be deterred from doing so because, *inter alia*, the Ordinance would require them to: (i) recognize a labor organization as the collective bargaining representative of their respective employees without their employees' consent; (ii) assent to a project labor agreement requiring them to be bound by any collective bargaining agreement; and (iii) agree to a collective bargaining agreement containing numerous onerous requirements.

21. The requirements of the Ordinance have and will continue to deter Plaintiffs from purchasing properties for redevelopment projects and proposing redevelopment projects on properties they currently own, or otherwise participating in, major, private construction projects for which tax abatement applications have or will be filed, including those in which the City of Newark has no property or proprietary interest, and is therefore not acting as a "market participant."

22. Additionally, the requirement that all apprentices on projects subject to a PLA be residents of the City of Newark impacts the employment of Plaintiffs' employees. Upon

information and belief, there is no factual basis for enactment of the Ordinance's residential hiring requirement.

23. The requirement that all Developers participate in and provide a federally "registered apprenticeship program . . . by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the Bureau," adversely affects Plaintiffs' commercial construction opportunities for projects covered by the Ordinance. This requirement further purports to compel Plaintiffs to provide an employee benefit program covered by ERISA to their employees in a manner inconsistent with and preempted by federal law.

24. Plaintiffs bring this suit against the City of Newark for violating their rights under controlling federal and state laws, as further specified below.

JURISDICTION AND VENUE

25. This action seeks declaratory relief and judgment that Defendant, a municipal corporation, may not interfere with Plaintiffs' rights under the National Labor Relations Act ("NLRA"), 29 U.S.C. § 151, *et seq.*, the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1144, the Fourteenth Amendment to the United States Constitution, and the Supremacy, Privileges and Immunities, and Commerce Clauses of the Constitution. Specifically, Plaintiffs are seeking a declaration that: (i) the requirements of a PLA in those instances in which the City of Newark has no direct proprietary interest are preempted by the NLRA and the Supremacy Clause of the United States Constitution; (ii) the requirement imposed by the Ordinance that all Apprentices be residents of the City of Newark violates the Privileges and Immunities Clause; (iii) the requirement in the Ordinance of an Apprenticeship Training Program is preempted by ERISA; and (iv) the Ordinance violates Plaintiffs' civil

rights under the United States Constitution, New Jersey Constitution, and federal law, including 42 U.S.C. § 1983.

26. Jurisdiction is based on 29 U.S.C. § 1331 and 42 U.S.C. § 1983. The federal court has supplemental jurisdiction over Plaintiffs' closely related state court claims under 28 U.S.C. § 1367.

27. The events giving rise to this claim occurred in Essex County, New Jersey. Thus, venue is proper in the above captioned Court in accordance with 28 U.S.C. § 1391.

FIRST CAUSE OF ACTION

(NLRA Preemption under the Supremacy Clause)

28. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 28 of the Complaint as if fully set forth herein at length.

29. Local regulations like the Ordinance are preempted where their subject matter is arguably subject to Section 7 or Section 8 of the NLRA, or where it concerns those aspects of labor-management relations that Congress intended to be controlled by the free play of economic forces. See San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 244 (1959); see also Machinists v. Wisconsin Emp't Relations Comm'n, 427 U.S. 132, 140 (1976).

30. Section 7 of the NLRA guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities." 29 U.S.C. § 157.

31. While Section 8(a)(1) states that it shall be an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the right guaranteed in section 157.” 29 U.S.C. §158(a)(1).

32. The Ordinance infringes on Plaintiffs’ rights protected under Sections 7 and 8 and concerns aspects of labor-management relations that Congress intended to be controlled by the free play of economic forces by requiring Plaintiffs to assent to a PLA that binds them to area-wide collective bargaining agreements, and by requiring Plaintiffs to assent to a PLA containing mandatory terms that are normally the product of collective bargaining.

33. However, not all portions of the Ordinance are invalid. The Ordinance is preempted, and therefore invalid, in those instances in which the City of Newark is acting as a “market regulator” as opposed to a “market participant.” The Third Circuit has developed a two-part test to determine whether a state or locality acts as a “market participant.” Associated Builders and Contractors, 836 F.3d at 418. First, the Court asks whether “the challenged funding condition . . . serve[s] to advance or preserve the state’s proprietary interest in a project or transaction, as an investor, owner, or financier.” Ibid. (citation omitted). Second, the Court asks whether “the scope of the funding condition [is] specifically tailored to the proprietary interest, or, put another way, whether the action is so broad as to be considered, in effect, regulatory.” Ibid. (citation and quotation omitted). “Only if both conditions are met is a government acting as a market participant.” Ibid.

34. A government can demonstrate a proprietary interest when it “owns or manages property subject to the project or it hires, pays, and directs contractors to complete the project, . . . when it provides funding for the project . . . or when it purchases or sells goods or services.” Ibid.

35. Based on the foregoing, the Ordinance is overly broad in that it imposes the requirements of a PLA even when the City of Newark is acting in a merely regulatory capacity and not as a “market participant.”

36. For example, under the Ordinance “a direct payment by the City in the form of rent” would qualify it as a “market participant” since the City of Newark would be providing direct funding for the project.

37. On the other hand, it is established precedent of this Circuit that a tax abatement, standing alone, will not transform a municipality into a “market participant.” Associated Builders and Contractors, 836 F.3d at 419.

38. The issuance of a Redevelopment Area Bond (“RAB”), a situation in which the City of Newark’s funds are not being used, also does not transform the City of Newark into a “market participant” that would allow the imposition of a PLA. At bottom, RABs are not an obligation of the City of Newark. Pursuant to the Local Redevelopment and Housing Law, a municipality may issue RABs and pledge to the repayment of those RABs payments in lieu of taxes (“PILOT”). N.J.S.A. 40A:12A-1 to -89. The municipality will enter into a financial agreement with the redeveloper to affix what portion of the PILOTs can be pledged to the amortization of the RAB. Ibid. As a practical matter, RABs help finance redevelopment projects where traditional funding sources such as equity and conventional debt may not suffice.

39. RABs are not direct city funding:

[B]onds issued pursuant to this section may be issued as non-recourse obligations, and unless otherwise provided for by a separate action of the municipality to guarantee such bonds or otherwise provide for a pledge of the municipality’s full faith and credit shall not, except for such action, be considered to be direct

and general obligations of the municipality, and, absent such action, the municipality shall not be obligated to levy and collect a tax sufficient in an amount to pay the principal and interest on the bonds when the same become due and payable.

[N.J.S.A. 40A: 12A-67].

40. Thus, RABs are non-recourse obligations unless a municipality pledges its full faith and credit to back the bond. Unless that is done, a municipality does not assume any financial or economic risk through the issuance of a RAB and is not “providing funding for the project.”

41. In these circumstances, the City of Newark has no proprietary interest in the project and is acting as a regulator; as such, the Ordinance is preempted by the NLRA. For similar reasons, the use of other forms of financing in which the City of Newark is not a “market participant,” such as CDBG or UEZ capital financing, violate the NLRA.

42. Thus, those provisions of the Ordinance where the City of Newark issues a tax abatement and additional Redevelopment Area Financing in which it lacks a proprietary interest are preempted by the NLRA.

SECOND CAUSE OF ACTION

(Violation of the Privileges/Immunities and/or Commerce Clause)

43. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 43 of the Complaint as if fully set forth herein at length.

44. Article IV, Section 2 of the United States Constitution states, in relevant part, “[t]he Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the Several States.”

45. The Ordinance’s requirement that all apprentices on covered projects owned by private developers must be residents of the City of Newark violates the Privileges and

Immunities Clause because it unlawfully discriminates against out-of-town individuals and those entities, such as Plaintiffs, who employ out-of-town individuals who have the requisite skill, knowledge, experience, and education to efficiently work and complete privately owned construction projects in the City of Newark.

46. In United Bldg. and Constr. Trades Council of Camden Cty. v. Mayor and Council of City of Camden, 465 U.S. 208, 210 (1984), the Supreme Court held that a Camden ordinance requiring, on publically funded projects, 40% of the labor force to be Camden residents violated the Privileges and Immunities Clause. The Court held that the Privileges and Immunities Clause applied with equal force to municipal action. Ibid. Further, the Court held that the market regulator-market participant distinction does not apply to Privileges and Immunities violations. Id. at 220.

47. The Ordinance's residential hiring requirement also violates the Commerce Clause as to those provisions where the City of Newark is acting as a regulator rather than a "market participant."

48. As a result of the foregoing, the Ordinance's residential hiring requirement is unconstitutional.

THIRD CAUSE OF ACTION

(ERISA Preemption)

49. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 49 of the Complaint as if fully set forth herein at length.

50. As demonstrated above, the Ordinance requires developers to maintain and participate in unionized training programs as a condition of performing work on private tax abated projects. In order to comply with this provision, Plaintiffs must incur substantial

obligations to contribute to a separate fund maintained by jointly held apprenticeship trusts sponsored by the unions and subscribing unionized contractors. Such a requirement applicable to private construction projects is inconsistent and preempted by ERISA.

51. Apprenticeship and training programs are employee welfare benefit plans expressly covered by ERISA. 29 U.S.C. § 1002(1). Pursuant to 29 U.S.C. § 1144(a), ERISA “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . .” The Ordinance’s apprenticeship mandate plainly “relates” to an employee welfare benefit plan within the meaning of 29 U.S.C. § 1002(1).

52. ERISA preemption “share[s] the same threshold requirement before [its] constraints are triggered: that the allegedly unlawful act by the state or local government be *regulatory* in nature.” Associated Builders and Contractors, 836 F.3d at 417.

53. Thus, the Ordinance is preempted by ERISA where the City of Newark is acting as a regulator as opposed to “market participant.”

FOURTH CAUSE OF ACTION

(New Jersey Civil Rights Act and Constitution)

54. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 54 of the Complaint as if fully set forth herein at length.

55. The New Jersey Civil Rights Act protects Plaintiffs’ substantive due process and equal protection rights, privileges and immunities secured by the United States Constitution, New Jersey State Constitution, and laws of the United States and State of New Jersey.

56. Defendant has deprived Plaintiffs of their substantive due process rights, equal protection rights, and privileges and immunities protected by the United States Constitution, New Jersey Constitution, and federal law.

FIFTH CAUSE OF ACTION

(42 U.S.C. § 1983)

57. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 57 of the Complaint as if fully set forth herein at length.

58. 42 U.S.C. § 1983 (Section 1983) states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . .

59. All of the previously detailed Constitutional violations are actionable under Section 1983.

60. Further, the City of Newark's Ordinance is an act under color of law that deprives Plaintiffs of their federally protected rights: (i) to not be forced or required to enter into an agreement with a labor organization; (ii) to recognize and bargain with a labor organization of their employees' choosing, or to refrain from doing so; and (iii) to be free from threats, coercion, or restraint in the exercise of rights conferred by the NLRA.

SIXTH CAUSE OF ACTION

(Declaratory Judgment)

61. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 61 of the Complaint as if fully set forth herein at length.

62. There is an actual controversy between Plaintiffs and Defendant; namely, whether the Ordinance is enforceable or invalid.

63. Pursuant to 28 U.S.C. § 2201, this Court may determine the rights and relations of any party in interest seeking a declaration as to those rights, whether or not other relief could be sought.

64. Plaintiffs seek a declaration that those portions of the Ordinance in which the City of Newark is acting as a regulator, as opposed to a “market participant,” be held invalid.

65. Plaintiffs seek a further declaration that the Ordinance’s residential hiring preferences violates both the Privileges and Immunities Clause, and Commerce Clause, of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant as follows:

(a) Enjoining and restraining Defendant from requiring the execution and enforcement of a PLA on any tax abated project that falls within the scope of the Ordinance in which the Defendant is acting as a “market regulator” as opposed to a “market participant”;

(b) Declaring that those portions of the Ordinance which require the execution and enforcement of a PLA on any tax abated project, in which the Defendant is acting as a “market regulator” as opposed to a “market participant,” are unconstitutional.

(c) Declaring that Defendant’s requirement of a PLA on tax abated projects, that fall within the scope of the Ordinance, including residential hiring requirements and apprenticeship mandates, is preempted by federal law;

- (d) Declaring that Defendant's actions in mandating a PLA on tax abated projects, including residential hiring requirements and apprenticeship mandates, violates federal law;
- (e) Awarding Plaintiffs compensatory and punitive damages;
- (f) Awarding Plaintiffs their reasonable attorneys' fees and costs in accordance with 42 U.S.C. § 1983, 42 U.S.C. § 1988, and N.J.S.A. 10:6-2(f); and
- (g) Awarding such other and further relief as the Court deems just and equitable.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Plaintiffs
Matrix Development Group &
Fidelco Realty Group

Dated: March 23, 2020

By: s/ A. Ross Pearlson
A. ROSS PEARLSON

LOCAL RULE 11.2 CERTIFICATION

I certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Plaintiffs
Matrix Development Group &
Fidelco Realty Group

By: /s/ A. Ross Pearlson
A. ROSS PEARLSON

Dated: March 23, 2020

Exhibit A

6PSF-f 091819
FORM ORD. 2-5000-241b, 25% Rag Bond

6PSF-i 090519

6PSF-e (s) 082019

6F-f 080719

8-b 080719

No. 6.F.F. 1st Reading
AUG 07 2019

No. Public Hearing
OCT 02 2019
No. 6.P.S.F.F. 2nd Rdg. and Final Passage

No. Reconsidered
Approved as to Form and Legality on Basis of Facts Set Forth

[Signature]
Corporation Counsel

Ordinance
of the
City of Newark, N.J.

OCT 03 2019
Date to Mayor 6PSF-f 100219
Date Returned ..OCT..08..2019.
Date Resubmitted
to Council
Date Advertised
1st Reading ... AUG 13 2019

Final Reading
Factual contents certified by
[Signature]
Title

Council member O. Osborne presents the following Ordinance:

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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.

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.

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3 **Developer shall mean an entity that is developing a project that has a Total**
4 **Construction Cost that is equal to, or in excess of Twenty-Five Million Dollars and**
5 **Zero Cents (\$25,000,000.00), exclusive of any land acquisition costs, and has**
6 **received (1) a tax exemption pursuant to N.J.S.A. 40A:20-1 et seq. (the Long-Term**
7 **Tax Exemption Law) or a tax exemption pursuant to N.J.S.A. 40A:21-1, et seq.,**
8 **(the Five-Year Exemption and Abatement Law) and (2) is a recipient of some form**
9 **of Redevelopment Area Bond ("RAB") pursuant to N.J.S.A. 12A-64 et seq. or any**
10 **other form of municipal financing/funding such as an Affordable Housing Trust**
11 **Fund Grant, a Community Development Block Grant ("CDBG"), a direct payment**
12 **to the Developer by the City in the form of rent, or (3) the recipient of a tax**
13 **exemption or abatement for a tax-abated project or the awardee of a public construction**
14 **contract for a public construction project, and/or their contractors/agents.**

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

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

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

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

38
39 **Public Works Project shall mean any public works contract for the construction,**
40 **reconstruction, demolition, hazardous materials abatement or renovation of buildings**
41 **entered into by the City using public funds, for which:**

42
43 1. It is required by law that workers be paid the prevailing wage determined by the
44 Commissioner of Labor pursuant to the provisions of the "New Jersey Prevailing Wage
45 Act," P.L. 1963 c. 150 (C.34:11-56.25 et seq.); and

46
47 2. The total cost of the project, exclusive of any land acquisition costs, will equal or
48 exceed Five Million Dollars and Zero Cents (\$5,000,000.00). (N.J. Stat. Ann. §52:38-2)

49
50 **Redevelopment Project shall mean a project, including demolition and hazardous**
51 **materials abatement, that has an estimated total construction cost that is equal to**
52 **or exceeds Twenty-Five Million Dollars and Zero Cents (\$25,000,000.00), exclusive**
53 **of any land acquisition costs, for which the City has (1) granted a tax abatement**
54 **pursuant to the Five-year Exemption and Abatement Law, N.J.S.A. 40A:20-1 et**
55 **seq., and (2) granted some form of Redevelopment Area Financing, such as but**
56 **not limited to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64,**
57 **et seq. (the "RAB Law"), capital financing pursuant to the Local Redevelopment**
58 **and Housing Law, N.J.S.A. 40A:12A-1, et seq., a Community Block Development**
59 **Grant (CDBG), a direct payment by the City in the form of rent or any other**
60 **municipal or UEZ capital financing/funding.**

61
62
63
64 ~~Tax-abatement project shall mean a project that has an estimated total construction cost~~
65 ~~that is equal to or exceeds twenty-five million (\$25,000,000.00) dollars, exclusive of any~~
66 ~~land acquisition costs, for which the City has granted a tax abatement pursuant to the~~
67 ~~Long Term Tax Exemption Act, N.J.S.A. 40A:20-1 et seq. However, any project that is~~
68 ~~being undertaken by a not for profit organization or which shall contain more than fifty~~
69 ~~(50%) percent 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 means 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, which and receives (1) a tax exemption pursuant to N.J.S.A. 40A:20-1 et seq. or N.J.S.A. 40A:21-1, et seq., and (2) receives some form of Redevelopment Area Financing such as an Affordable Housing Trust Fund Grant, a Community Development Block Grant, or a Redevelopment Area Bond.

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

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2
3 explain the Apprenticeship Programs and solicit applications from attendees. Each
4 participating Developer shall pay a pro rata share of the costs of each job fair.
5

6 3. A requirement for Local/Minority Hiring Goals providing that for each contractor
7 or subcontractor performing work on a Covered Project, the Project Labor Agreement
8 shall provide that at least thirty (30%) percent of all project work hours will be performed
9 by Newark residents and at least thirty (30%) percent of all project work hours will be
10 performed by minorities and/or women. A contractor shall not be subject to enforcement
11 actions for violations of this Section if that Contractor can demonstrate that it made
12 Good Faith Efforts to comply. For the purpose of this Section, Good Faith Efforts for a
13 developer shall at a minimum include compliance with the following:
14

15
16 (a) Entry into a PLA and obtaining Letters of Assent from each
17 Contractor/Subcontractor.
18

19 (b) Convene pre-bid and pre-construction meetings to educate construction
20 managers and subcontractors about the Local/Minority Hiring Goals.
21

22 (c) Cooperate with City Representative. The Contractor shall cooperate with a
23 City representative designated by the City. The City Representative shall provide
24 services in support of the Contractor's Local Minority Hiring Goals. Among other things,
25 the City representative will:
26

27 (1) Establish a point of contact to provide information about available job
28 opportunities;
29

30 (2) Develop and maintain an up-to-date list of qualified Local Residents by
31 trade and confirm local residency;
32

33 (3) Assist Contractors with reporting by working with Contractors and the
34 City where appropriate;
35

36 (d) Regularly contacting and documenting of contact with City Representative,
37 and providing certified payroll and other records on a regular basis to the City
38 Representative;
39

40 (e) Use and documenting use of City-approved Craft Request Forms sent to
41 both unions and City Representative. Craft Request Form means a document through
42 which contractors shall request workers from Unions;
43

44 (f) Requesting local, minority and women hires from union hiring halls;
45

46 (g) Documenting reasons for not hiring referred candidates from target
47 populations, if applicable;
48

49 (h) Allowing City Representative prompt and willing access to documentation of
50 all of the above activities and to the work site if requested.
51

52 (Ord. 6PSF-C, 10-3-12 §3)
53

54 **2:4-22D.4. Reports and Records.**
55

56 The Project Labor Agreement shall require the submission of the following reports to the
57 Business Administrator on the 15th day of each month for the previous month, for each
58 year of construction until Project Completion.
59

60 a. *Manning Report*: The Developer's report will accurately reflect the total hours in each
61 construction trade or craft, and will list separately the work hours performed by City
62 residents, including a list of minority resident and women resident workers in each trade
63 or craft, by such employees of the Contractor and each of its Subcontractors during the
64 previous quarter.
65

66 b. *Certified Payroll Report*. The Developer's report that will specify the residence,
67 gender and ethnic/racial origin of each worker, work hours and the rate of pay and
68 benefits provided.
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No. 6 P.S.F.-F.

Page 6

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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, debaring 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 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.

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FORM OF ORDINANCE

6PSF-f 090519

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No. 6PSF-F

Page 2

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(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..

CERTIFIED TO BY ME THIS
OCT 08 2019

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE					RECORD OF COUNCIL VOTE FOR RECONSIDERATION									
Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador	✓				Osborne <i>M</i>	✓				Amador				
Gonzalez	✓				Quintana <i>vice President</i>	✓				Gonzalez				
James	✓				Ramos, Jr.	✓				James				
McCallum, Jr.	✓				Crump President	✓				McCallum, Jr.				
McIver	✓									McIver				

✓ - Indicates Vote

AB - Absent

NV - Not Voting

Adopted on first reading at a meeting of the Council of the City of Newark, N.J., on AUG 07 2019

Adopted on second and final reading after hearing on OCT 02 2019

Approved _____ Mayor
 Rejected By _____ Council President
 _____ City Clerk