

**O-18-07**  
**02/14/18**

**AN ORDINANCE AMENDING AND SUPPLEMENTING THE REVISED GENERAL ORDINANCES OF THE CITY OF BAYONNE, CHAPTER 33, PLANNING AND DEVELOPMENT**

**WHEREAS**, The City of Bayonne has seen unprecedented new development over the last several years resulting in construction projects for residential and commercial buildings; and

**WHEREAS**, the pace of new construction will likely increase in the foreseeable future; and

**WHEREAS**, the City of Bayonne has a compelling interest to ensure that development projects with a total estimated cost equal to or exceeding \$15 million, excluding land acquisitions costs, that receive a tax abatement pursuant to the Long Term Tax Exemption Act, N.J.S.A 40A:20-1 et. seq., are completed at responsible cost with the highest degree of quality; and

**WHEREAS**, the City of Bayonne has a compelling interest in ensuring that workers on such development 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 Bayonne 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**, the City seeks to promote meaningful job opportunities for all of its citizens; and

**WHEREAS**, the benefits received by contractors impacted by this ordinance will create opportunities to employ a substantial number of apprentices from Bayonne, thus ensuring that those projects will expand access to living wage careers in the construction trades for a new generation of Bayonne 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 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 provide the City of Bayonne with a guarantee that contracts as described above are completed with a highly skilled and diverse workforce.

**WHEREAS**, in Hotel Emples. & Rest. Emples, Union. Local 57 v. Sage Hospitality Res., LLC., 390F.3d 206 (2004); the Court held that a City cannot impose labor restrictions on a private developer's project as a condition of that developer accepting a tax incentive if the City is merely acting as a market regulator, but, if a City acts as a market participant, meaning that the City has a proprietary interest in the developer's project, such as if the City is a financial investor in the project, then the City could impose labor restrictions as a condition of the developer accepting a tax incentive; and

**WHEREAS**, the Court in Hotel Emples. & Rest. Emples. Union, Local, 57 v Sage Hospitality Res., LLC., 390F.3d 206 (2004), held that the City of Pittsburgh, PA could require, by ordinance, that a private developer building a hotel in the City enter into an agreement with a union because the City of Pittsburgh, through its Redevelopment Authority, had helped to finance the developer's project with municipal bonds thus making the City of Pittsburgh a participant in the project; and

**WHEREAS**, it is therefore in the City's best interest to ensure that the City's policy of requiring Project Labor Agreements on certain tax abated projects is consistent with the Court's ruling in both Associated Builders & Contractors v City of Jersey City and Hotel Emples. & Rest. Emples. Union, Local 57 v. Sage Hospitality Res., LLC, and require Project Labor Agreements only for those projects with a Total Construction Cost that is equal to or exceeds fifteen million dollars (\$15,000,000.00), exclusive of any land acquisition costs, and which receive (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) receive some form of Redevelopment Area Financing such as an Affordable Housing Trust Fund Grant, a Community Block Development Grant, or a Redevelopment Area Bond; and

**WHEREAS**, it is also in the City's best interest to require that all future Project Labor Agreements include firm local hiring goals in order to ensure that City of Bayonne residents are actually hired to work on projects subject to Project Labor Agreements only for those projects with a Total Construction Cost that is equal to or exceeds fifteen million dollars (\$15,000,000.00), exclusive of any land acquisition costs, and which receive (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) receive some form of Redevelopment Area Financing such as an Affordable Housing Trust Fund Grant, a Community Block Development Grant, or a Redevelopment Area Bond; and

**WHEREAS**, the City finds that that twenty percent (20%) of the total Labor-Person Hours performed by the Labor Organizations on such Project Labor Agreement related projects should be performed by residents of the City of Bayonne; and

**WHEREAS**, it is in the City's best interest to establish clear compliance and reporting benchmarks as well as establish remedies for non-compliance; and

**WHEREAS**, these benchmarks should be expressed in a model Project Labor Agreement and in a Memorandum of Understanding with the Hudson County Building and Construction Trades Council, both of which are to be drafted and approved by legal counsel;

**NOW, THEREFORE, BE IT ORDAINED**, by the Municipal Council of the City of Bayonne, as follows:

**Section 1.** That the Revised General Ordinances of the City of Bayonne **Chapter 33, Planning and Development**, is hereby amended and supplemented by adding **ARTICLE 19, Construction Project Labor Agreements**, as set forth below in its entirety:

## **Article 19 Construction Project Labor Agreements**

### **33-19.1 Definitions.**

To effectuate the purposes of this Article, these terms shall have the following meanings:

1. APPRENTICE means a worker who participates in a program registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor, ("DOL") or an apprenticeship equivalent program either approved and funded by the New Jersey Department of Labor as of January 1, 2003, who takes a construction, apprenticeship test, and receives benefits and pay not less than those received by an apprentice.
2. AFFORDABLE HOUSING GRANT means a form of Redevelopment Area Financing involving a disbursement of monies from the City's Affordable Housing Trust Fund to a Developer, given in order to ensure the inclusion, of on-site affordable housing at the Developer's Project, for the duration of the tax exemption.
3. APPRENTICESHIP PROGRAM means an apprenticeship program and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor or an apprenticeship equivalent program as that term is used by the State of New Jersey in the Abbot Project Labor Agreement either approved or funded by the New Jersey Department of Labor as of January 1, 2003.
4. CITY OF BAYONNE means the Mayor, the Municipal Council, the Law Director, and/or the Business Administrator of the City of Bayonne, or any of their designees.
5. 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.
6. CRAFT EMPLOYEE means a person employed in a Trade as defined herein at either the Apprentice or Journeyman level.
7. DEVELOPER means an entity that is developing a project that has a Total Construction Cost that is equal to, or in excess of, fifteen million dollars (\$15,000,000.00), exclusive of any land acquisition costs, and has received (1) a tax exemption pursuant to N.J.S.A. 40A:20-1 et. seq. (the Long-Term Tax Exemption Statute) or a tax exemption pursuant to N.J.S.A. 40A:21-1, et seq., (the Five-Year Tax Exemption Statute) and (2) is a recipient of some form of Redevelopment Area Financing (RAP) such as, but not limited to, a Redevelopment Area Bond ("RAB") pursuant to N.J.S.A. 40A:12A-64, et seq. or any other form of municipal financing/funding such as an Affordable Housing Trust Fund Grant, a Community

Development Block Grant (CDBG), a direct payment to the Developer by the City in the form of rent, or (3) if the entity is the recipient of a construction contract awarded by the City for a Public Construction Project.

8. FINAL CERTIFICATE OF OCCUPANCY means the certificate that is issued by the Office of the Construction Official from the Building Department upon completion of the project indicating that the structure is ready for occupancy.

9. JOURNEYMAN means a skilled worker who is a member of a Labor Organization and who has successfully completed an official apprenticeship qualification in a building trade or craft.

10. LABOR ORGANIZATION means an organization which represents, for purposes of collective bargaining, employees trained in a particular Trade, involved in the performance of a public construction project or RAP 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.

11. LABOR PERSON HOURS means the number of hours worked multiplied by the number of employees performing such work.

12. PRINCIPAL means any officer; director, or individual who directly or indirectly holds any beneficial interest in or ownership of the securities of the business and/or any employee of the business who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services, or supplies whatsoever involving an expenditure of \$ 1,000.00 or greater.

13. 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.

14. PROJECT LABOR AGREEMENT (PLA) means a contract between a Labor Organization and a Developer for construction jobs that contains, at a minimum, the requirements set forth in this Chapter.

15. 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 five million dollars (\$5,000,000.00), exclusive of any land acquisition costs.

16. 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.

17. REDEVELOPMENT AREA FINANCING ("RAF") PROJECT means a project that has a Total Construction Cost that is equal to or exceeds fifteen million dollars (\$15,000,000.00), 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) some form of Redevelopment Area Financing such as an Affordable Housing Trust Fund Grant, a Community Block Development Grant, or a Redevelopment Area Bond.

18. RESIDENT means any person who currently lives in the City of Bayonne and who has lived in the City for the previous twelve (12) months.

19. SUBSTANTIAL COMPLETION means any construction project that is not completed but is near completion by virtue of the project receiving a Temporary Certificate of Occupancy from the Office of the Construction Official.

20. TEMPORARY CERTIFICATE OF OCCUPANCY means a certificate that is issued by the Office of the Construction Official when a project has been substantially completed provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

21. TOTAL CONSTRUCTION COST means all costs, including infrastructure, 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).

22. TRADE means a skilled job, typically one requiring manual skills and special training, such as carpentry, masonry, and plastering that are primarily concerned with the construction and finishing of buildings.

### **33-19.2 Project Labor Agreements required; General Terms.**

All Redevelopment Area Financing (RAF) Projects as defined herein and all requests for proposals, specifications and final contracts for Public Construction Projects exceeding five million dollars (\$5,000,000.00), exclusive of any land acquisition costs, shall require the execution of a Project Labor Agreement that complies with the requirements of this Article. The Business Administrator may, having taking into consideration the nature, size and, complexity of the project, determine that a Project Labor Agreement is not required. In all cases where a Project Labor Agreement is utilized, it must advance the interests of the City, including cost, efficiency, quality, time lines, and need for a skilled labor force and safety.

All Project Labor Agreements shall contain the following terms:

1. A guarantee that there will be no strikes, lock-outs, or other similar actions;
2. Procedures to insure the effective, immediate, and mutually binding resolutions of jurisdictional and labor disputes arising before the completion of the work;
3. A provision, to bind all contractors and subcontractors on the project in all relevant documents;
4. Evidence that each contractor and subcontractor working on the project has a local Federally-registered apprenticeship program;
5. Conformity with all statutes, regulations and City ordinances regarding the implementation of the City's goals for the hiring of local residents. Specifically, that twenty percent (20%) of the total Labor-Person Hours performed by the Labor Organizations are performed by residents of City of Bayonne. Included in this 20% shall be Craft Employees of all skill levels including Apprentices and Journeymen.
6. A requirement that Developers and Labor Organizations complete the following "Pre-Construction Actions":

A. INITIAL MEETING. Prior to a Financial Agreement being executed between the City and the Developer, and prior to a Project Labor Agreement being executed between the Developer and the Labor Organizations, the Developer, the General Contractor, and a representative from the Labor Organizations must all meet with the Tax Assessor and Business Administrator (1) to assess the General Contractor's respective workforce needs, (2) to discuss the General Contractor's construction and procurement schedule, and (3) for the Tax Assessor to specify any and all procedures necessary and proper in carrying out the enlisted requirements within this Article.

B. PRE-CONSTRUCTION MEETING. Prior to the commencement of construction, the Developer, the General Contractor, and a representative from the Labor Organizations must all meet with the Business Administrator and

Tax Assessor 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 and/or the General Contractor must provide the Business Administrator and Tax Assessor their construction and procurement schedules. The Labor Organizations must present the Developer and the City with the names, addresses, and trades of all eligible apprentices who are available to work on fee project. Additionally, the Business Administrator and/or Tax Assessor shall specify any and all procedures necessary and proper in carrying out the enlisted requirements within this Article.

C. ADVERTISEMENT. Not more than sixty (60) days after the Initial Meeting, each Labor Organization must advertise for prospective apprentices within their respective trade. These advertisements .from each Labor Organization must do the following: (1) solicit apprenticeship applications for their respective apprenticeship program, (2) describe the basic requirements for admission into their-respective apprenticeship program, (3) describe the job training associated with their apprenticeship program, (4) state the date or dates for their respective apprenticeship tests, and (5) set forth the range of salaries. All apprenticeship applications and advertisements must meet the following requirements:

**Application Requirements**

1. All apprenticeship applications shall include a provision that the names and contact information of all applicants shall be listed in a job-seekers database maintained by the Office of Diversify and Inclusion;
2. Applications must be made available online and must be able to be filled out and submitted digitally via a mobile browser and via a personal computer/laptop browser;
3. Applications must be able to be downloaded and printed and applications must be made available to be picked up and submitted in person at a physical location during reasonable business hours (9 A. M. to 5 P.M., Mondays through Fridays).

**Advertising Requirements**

1. Advertisements must be posted both online and in all newspapers regularly distributed and/or circulated within the City of Bayonne;
2. Online advertisements, when clicked, must either direct the user to a web address to learn more or link directly to the online application form;
3. Advertisements must provide both a physical location and a web address to learn more;
4. All online advertisements must include relevant keywords (e.g. electrician, plumbing, etc.) to ensure that the targeted audience sees the advertisement;
5. Advertisements must be posted directly on LinkedIn, Indeed and GlassDoor, via sites such as ZipRecruiter or WorkConnect;
6. Advertisements posted through Google search ads and Google display ads or on any advertising network with similar reach, and any advertisements posted on Facebook, Twitter and Pandora, must be targeted to the City of Bayonne zip code;
7. All advertisements must run at least fourteen (14) days prior to the apprenticeship application deadline;

8. All proposed advertisements, regardless of whether they are in digital or in print format, must be approved by the Business Administrator fourteen (14) days in advance of publication.

At the conclusion of the application period, the results of the Labor Organization's advertising campaign (including, but not limited to, the total number of page -views, clicks, number of application submissions, etc.) must be submitted to the Business Administrator on forms issued by the City of Bayonne.

D. JOB FAIRS. The Labor Organizations must conduct job fairs once every three months, thus four times annually. The job fairs are to be held at a location to be provided by the City in order for the Labor Organizations to explain the apprenticeship programs and solicit applications from attendees.

### **33-19.3 Exemptions.**

Any residential project which shall maintain more than fifty (50%) percent of the entire project's gross square footage as Affordable Housing shall be exempt from the requirement of a Project Labor Agreement.

In the event an application for a RAF Financing Project contains an estimate of Total Project Cost of less than fifteen million dollars (\$15 million), but upon Project Completion is determined to have a Total Construction Cost equal to or exceeding fifteen million dollars (\$15 million), then the project Service Charge shall be increased as follows:

A. LONG TERM TAX EXEMPTION. By an additional two (2%) percent of Total Project Cost, or five (5%) percent of Annual Gross Revenue, as applicable; or

B. FIVE YEAR TAX EXEMPTION. The phase-in for each year shall be increased by an. additional ten (10%) percent or, if applicable, the improvement assessment increased by five (5%) percent.

The above increases shall be retroactive to the date of Substantial Completion and shall apply for each and every year of the entire term of the RAF Financing Project.

### **33-19.4 Reports and Records.**

A. All Developers of RAF Projects, whether subject to a Project Labor Agreement or not, shall submit a detailed certification, of the estimated Total Construction Cost with the application for any tax exemption, which shall be made available to the public.

B. In the event construction permits are issued more than twelve (12) months from the date of the adoption of the Ordinance approving the RAF Financing or have otherwise expired, the Developer shall be required to re-submit a current estimate of Total Construction Costs to ensure that the Total Construction Costs do not exceed fifteen million dollars (\$15,000,000,00) or a Project Labor Agreement shall be required.

C. No later than ninety (90) days following Project completion, the Developer shall submit a certification of actual Total Construction Cost certified to the City by the Project's Architect and Engineer. Total Construction Cost is subject to review by the City at the time of application and audit by the City, upon project completion.

D. The Project Labor Agreement shall require the submission of the following reports to the Business Administrator on the fifteenth (15) day of each month for the previous month in a format provided by the City of Bayonne, for each year of construction until Project Completion:

1. MANNING REPORT. This report which is provided by the Developer's General Contractor must accurately reflect the total work hours in each construction trade or craft and the number of hours worked by minorities and/or women in each trade or craft, and will list separately the work hours performed by such employees of the General Contractor who are actually performing work on the site and each of its subcontractors during the previous quarter.

2. CERTIFIED PAYROLL REPORT. This certified report, which is to be provided by the Developer's General Contractor, must specify the residence, gender and ethnic/racial origin of each worker, broken down by Trade, along with their respective work hours and the rate of pay and benefits provided,

3. EQUAL EMPLOYMENT OPPORTUNITY REPORTS. The Labor Organizations must provide copies of each of their local union reports (EEO-3) and each of their apprenticeship information reports (EEO-2), as required to be filed with the United States Commission of Equal Employment Opportunity Commission.

4. APPRENTICESHIP REPORT. This report from all of the Labor Organizations, which must be provided each month, shall list the names, addresses, and contact information of all persons who were accepted into each Labor Organization's apprenticeship program. The report shall also list the names, addresses, and contact information of all City residents who were rejected for admission into each Labor Organization's apprenticeship program along with the reasons for their rejection. For those City residents who failed to finish the program, the report must provide the reasons why they failed to complete the program.

5. MEMBERSHIP REPORT. Every month, each Labor Organization shall provide an accurate, up-to-date number of its current membership throughout the State and a list of all of their current members, journeymen and apprentices who live in Bayonne, along with each member/journeyman/apprentice's name, address, and contact information.

6. OTHER REPORTS. The Developer and/or Labor Organizations shall furnish to the City any and all 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 this Ordinance.

7. 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 notice.

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

### **33-19.5 Pre-Apprenticeship Training Program**

1. INTER AGENCY COOPERATION. The City will solicit the support of the Bayonne Board of Education, Hudson County Community College, Hudson County Vo-Tech School, Bayonne Economic Opportunity Foundation, Bayonne Housing Authority, and other community-based organizations in order to maximize participation in the apprenticeship program among eligible City residents.

2. 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 drivers 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 programs of a Labor Organization.

3. MONITORING. The City shall be responsible for the selection, operation and supervision of pre-apprenticeship programs that may be operated by private entities (e.g. the Bayonne Economic Opportunity Foundation); and shall retain authority to review and approve the curriculum and procedures used to recruit and select participants.

### **33-19.6 Enforcement**

1. The Business Administrator shall be the primary office authorized to implement and enforce this Ordinance, including (1) documentation and recordkeeping requirements, (2) monitoring and compliance activities, (3) project and/or contract coverage determinations, (4) designated referral sources, (5) bid and contract documents implementing the Ordinance, and (6) other matters related to implementation of this Ordinance.

2. The Business Administrator assesses compliance monthly during construction and for all ongoing obligations post-construction;

3. If the Business Administrator determines that a Project is not compliant, then the Business Administrator will issue a recommendation for appropriate corrective action.

4. The Developer and all Labor Organizations affiliated with the Project shall demonstrate to the City compliance with this Ordinance. It shall not be a defense to any enforcement action taken by the City that the Developer or the Labor Organization could not obtain any item or information from any other party to the Project Labor Agreement. This Ordinance does not limit the Developer or the Labor Organization's ability to assess qualifications of prospective workers, to make final hiring and retention decisions. No provision of this Ordinance shall be interpreted so as to require a Developer, a Labor Organization, a General Contractor or a subcontractor to hire or retain a worker who lacks the necessary qualifications for the position in question, or to employ any particular worker regardless of qualifications.

### **33-19.7 Remedies**

In the event that either the Developer and/or the Labor Organization should violate this Ordinance, the City may seek any and all remedies available to it at law or equity. Such remedies include, but are not limited to, compelling the Developer and/or the Labor Organization to (a) complete a remedial

employment action plan, (b) pay liquidated damages or (b) electing to terminate the RAF and/or the tax exemption.

### **33-19.8 Severability**

If any provision of this Chapter, or application thereof, to any person or circumstance is judged unconstitutional or otherwise invalid, the invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

**Section 2. Consistency.** That the city's codifier, in consultation with the City Clerk and Director of Law, be and is hereby authorized and directed to make such changes in the Revised General Ordinances of the City of Bayonne as may be needed to make the provisions of any and all other Chapters consistent with the terms of this Chapter 33, Planning and Development.

**Section 3. Severability.** 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.