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Title: A Local Law to amend the administrative code of the city of New York, in relation to the establishment of community hiring and compensation standards for city assisted housing development projects

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Int. No. 910

By Council Members De La Rosa, Won, Cabán, Stevens, Menin, Hanif, Brooks-Powers, Hanks, Ossé, Williams, Banks, Marte, Farías, Avilés and Restler

A Local Law to amend the administrative code of the city of New York, in relation to the establishment of community hiring and compensation standards for city assisted housing development projects

Be it enacted by the Council as follows:

Section 1. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 36 to read as follows:

CHAPTER 36

COMMUNITY HIRING AND COMPENSATION STANDARDS ON CITY ASSISTED HOUSING

DEVELOPMENT PROJECTS

§ 26-3601 Definitions. For the purposes of this chapter, the following terms have the following meanings:

City economic development entity. The term “city economic development entity” means a not-for-profit organization, public benefit corporation, or other entity that provides or administers economic development benefits on behalf of the city, as described by paragraph b of subdivision 1 of section 1301 of the charter.

City financial assistance. The term “city financial assistance” means loans, grants, or land conveyances for less than appraised value that are provided to a developer for the development of real property by the city on a discretionary basis and that at the time the developer enters into an agreement with the city are expected to have a total present financial value of one million dollars or more. City financial assistance includes only loans, grants, or land conveyances for less than appraised value that are provided by the department and does not include any tax exemptions or abatements, any as-of-right assistance or benefits or any lease at below-market lease rates. Where city financial assistance takes the form of land conveyances for less than appraised value that are provided to a developer, the value of the assistance shall be determined based on the difference between the value of the land conveyance provided to developer by the city and the appraised market value of the land being conveyed.

Comptroller. The term “comptroller” means the comptroller of the city of New York.

Construction. The term “construction” has the same meaning as set forth in section 3302.1 of the New York city building code.

Construction employer. The term “construction employer” means any person, corporation, limited liability company, or association employing a construction worker.

Construction worker. The term “construction worker” means a person who is employed to perform construction, demolition, hazardous remediation, or manual labor on a housing development project.

Demolition. The term “demolition” has the same meaning as set forth in section 3302.1 of the New York city building code.

Department. The term “department” means the department of housing preservation and development.

Developer. The term “developer” means an individual, sole proprietorship, partnership, joint venture,

corporation, or other entity that receives city financial assistance for a housing development project.

Essential benefits. The term “essential benefits” means payments made by a construction employer other than wages that directly benefit the construction worker, including medical or dental insurance, retirement accounts, and annuities.

Housing development project. The term “housing development project” means construction or demolition of any residential building, residential facility, or residential structure, including any commercial and community components of such building, facility, or structure (1) that creates or preserves at least 100 or more dwelling units with project construction costs of three million dollars or more; and (2) that is funded in whole or in part by city financial assistance.

Manual labor. The term “manual labor” means the type of physical work the performance of which classifies a natural person as a “manual worker” in accordance with section 190 of the labor law and the rules and regulations adopted thereunder.

Target population. The term “target population” means a resident of a zip code where at least 15% of the individuals in such zip code are below the federal poverty rate or a resident of a New York city housing authority development.

Wage. The term “wage” means gross earnings paid to construction workers for labor or services rendered that are taxed under the Federal Insurance Contribution Act, but not inclusive of essential benefits or other supplemental benefits paid on behalf of construction workers.

§ 26-3602 Community hiring. a. Each developer receiving city financial assistance on a housing development project shall make a best faith effort to ensure that no less than 30 percent of the hours worked by construction workers on such housing development project are worked by construction workers from the target population.

b. Prior to receiving city financial assistance for a housing development project, the developer shall submit to the comptroller a hiring plan describing how the developer plans to recruit construction workers to

meet the hiring goals as described in this chapter.

§ 26-3603 Wage requirements. a. No construction employer shall pay a construction worker on a housing development project less than \$40 per hour in combined wages and essential benefits with the exception of construction workers who are participants in a New York State-certified apprenticeship program.

b. Essential benefits shall be paid to or on behalf of construction workers, but no less than \$25 per hour of the combined minimum wage and benefit package shall be paid in wages.

c. In addition to wage notifications under subdivisions 1 and 2 of section 195 of the labor law, construction employers must provide in writing, to each construction worker, an explanation of all essential benefits that will be paid on behalf of the construction worker when such construction worker starts work on a housing development project. A new notification shall be issued to a construction worker if there is a change to the essential benefits being paid on such construction worker's behalf.

d. Nothing in this chapter shall be construed to supersede any federal or state statute or regulation requiring construction workers earn in excess of the wages and essential benefits established in this section.

e. On December 31, 2025, and annually thereafter, the comptroller shall post a new combined wage and essential benefit amount for construction workers on housing development projects. Such amount shall be based on the current combined wage and essential benefit amount for construction workers on housing development projects increased by a percentage determined by the comptroller with the result rounded to the nearest 5 cents. The wage portion of the combined wage and essential benefit amount for construction workers on housing development projects may not be calculated at less than sixty-two and one half percent of the combined wage and essential benefit amount for construction workers on housing development projects. The annual percentage increase determined by the comptroller pursuant to this section shall be calculated by the comptroller by increasing the combined wage and essential benefit amount for construction workers on housing development projects by the rate of inflation for the most recent 12 month period, ending in June of that calendar year, based on the consumer price index for urban wage earners and clerical workers for the New York

-New Jersey-Pennsylvania metropolitan area (CPI-W), or a successor index as calculated by the United States department of labor;

f. In the event the index utilized by the comptroller to calculate the combined wage and essential benefit amount for construction workers on housing development projects reflects a negative annual increase, the combined wage and essential benefit amount for construction workers on housing development projects shall not decrease.

§ 26-3604 Reporting requirements. a. The department shall maintain a publicly searchable database available online of all construction projects subject to this chapter. Projects shall be added to such database as often as needed to keep it current, but no less than quarterly. The database shall include but not be limited to:

1. The address, and any proposed addresses, of the housing development project;
2. The type and amount of city financial assistance related to the housing development project awarded to a developer;
3. The name and address of each developer that is receiving city financial assistance related to the housing development project;
4. The agency with primary project oversight of the housing development project; and
5. A copy of the developer's community hire plan.

b. For each housing development project, each developer shall report to the department, and the department shall publish on its website no less than quarterly, the following information:

1. The name and address of each construction employer, or any other entity that employs construction workers, on the housing development project;
2. The number of construction workers employed on the construction project; and,
3. The number of construction work hours worked on the construction project, disaggregated by those hours worked by the categories of workers described in the target population.

c. For each housing development project with a project value of thirty million dollars or more, each

developer shall additionally report to the department, and the department shall publish on its website no less than quarterly, the following information:

1. The number of construction work hours worked on the housing development project, disaggregated by those hours worked by the categories of workers described in the target population, the overall percentage of construction hours worked by the categories of workers described in the target population, the percentage of construction hours worked by the categories of workers described in the target population for each construction employer; and

2. The number of hours worked on a housing development project, disaggregated by workers' compensation classification code.

c. By December 31 of each year, the department shall submit to the speaker of the council, and make public online, a report on the status of covered housing development projects and the enforcement of this chapter. The report shall include details on enforcement actions taken by the department, or a city economic development entity, disaggregated by housing development project, developer, and construction employer, including any violations issued, findings, settlements, and penalties.

§ 26-3605 Notice posting, recordkeeping, and retaliation. a. No later than the day on which work begins at a site subject to the requirements of this chapter, the construction employer shall post in a prominent and accessible place at every such work site and provide each employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which employees are entitled under this chapter. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising employees that if they have been paid less than the combined wage and essential benefits amount they may notify the comptroller and request an investigation. Such notices shall be provided in all of the designated citywide languages. The comptroller shall make publicly available sample written notices explaining the rights of employees and covered employers' obligations under this chapter.

b. Each construction employer shall maintain original payroll records for each of its employees

reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked, and shall retain such records for no less than 6 years after the work is performed. No later than the end of each fiscal quarter, as determined by the comptroller, a construction employer shall provide a certified original payroll record reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked by each construction worker on a housing development project in the manner of electronic recording determined by the comptroller. A failure to maintain or provide such records as required shall create a rebuttable presumption that the covered employer did not pay its employees the wages and benefits required under this section. Upon the request of the comptroller or the city, the covered employer shall provide within 5 days such documents, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, as may be deemed necessary to adequately enforce the provisions of this chapter, including, but not limited to, notices required under subdivisions 1 and 2 of section 195 of the labor law or copies of the notification of essential benefits required by this chapter. Any person who willfully fails to file such records with the comptroller within the time specified in this section shall be subject to a civil penalty of \$1,000 per day.

c. It shall be unlawful for any construction employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this chapter, for seeking or communicating information regarding rights conferred by this chapter, for exercising any other rights protected under this chapter, or for participating in any investigatory, administrative, or court proceeding relating to this chapter. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of this chapter. Taking adverse employment action against an employee or his or her representative within 60 days of the employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any employee subjected to any action that violates this paragraph may pursue administrative remedies or bring a civil action as authorized pursuant to this chapter in a court of competent jurisdiction.

§ 26-3606 Enforcement. a. The comptroller shall monitor compliance with the requirements of this chapter. Whenever the comptroller has reason to believe there has been a violation of this chapter, or upon a complaint in writing from a construction worker or their representative claiming a violation of this chapter, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the same investigatory, hearing, and other powers as are conferred on the comptroller by sections 234 and 235 of the labor law.

b. At the start of an investigation conducted pursuant to this section, the comptroller may, in a manner consistent with the withholding procedures established by subdivision 2 of section 235 of the labor law, request that the department or city economic development entity, or any other relevant agency, withhold any payment due to the developer or construction employer in order to safeguard the rights of the employees.

c. At the conclusion of an investigation commenced pursuant to this chapter, the comptroller shall offer the employer or employers that are subject of the investigation, with notice to the developer or recipient of city financial assistance on a housing development project on which the employer or employers performed work, no less than 30 days to cure the investigation via a stipulation of settlement. The comptroller may negotiate an agreed-upon stipulation of settlement or conduct a hearing concerning the alleged violation of this section. At least 10 days before the hearing, the comptroller shall give notice thereof together with a copy of the complaint, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person, developer, or construction employer affected thereby, or electronically, where such person, developer, or construction employer has consented. Such person, developer, or construction employer shall have the opportunity to be heard at the hearing regarding such matters.

d. Based upon the hearing record, the comptroller shall provide a report and recommendation concerning the alleged violation of this section to the mayor or mayor's designee, who shall issue an order with a final determination. Such order may:

1. Direct payment of one- and one-half times the wages and/or the monetary equivalent of benefits

wrongly denied;

2. Direct the filing or disclosure of any records that were not filed or made available to the public as required by this chapter;

3. Direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this chapter;

4. Direct payment of a further sum as a civil penalty in an amount not exceeding 25 percent of the total amount found to be due in violation of this chapter; and

5. Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the employer.

e. In assessing an appropriate remedy, due consideration shall be given to the size of the employer's business, the employer's good faith, the gravity of the violation, the history of previous violations, and the failure to comply with record-keeping, reporting, anti-retaliation, or other non-wage requirements.

f. When a final order has been entered against a developer or construction employer in 2 instances, within any consecutive 6 year period, determining that such employer has failed to comply with the wage, benefits, anti-retaliation, record-keeping or reporting requirements of this chapter, such employer, and any principal or officer of such employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any city contract or financial assistance for a period of 5 years from the date of the second disposition provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the employer or any officer of the employer who knowingly participated in the violation of this chapter shall be ineligible to submit a bid on or be awarded any city contract or financial assistance for a period of 5 years from the date of the final order.

g. When a final disposition has been made finding a violation of this chapter and the person found violating this chapter has failed to comply with the payment or other terms of the remedial order, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall

have expired, the mayor, or his or her designee, as applicable shall file a copy of such order containing the amount found to be due with the clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the mayor in the same manner and with like effect as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

h. Before any further payment is made, or claim is permitted, of any sums or benefits due under any agreement covered by this chapter, it shall be the duty of the city or city economic development entity to require the construction employer to file a written statement certifying to the amounts then due and owing from each such employer to or on behalf of all employees, or the city for wages or benefits wrongly denied them, or for civil penalties assessed, and setting forth the names of the persons owed and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the employer under penalty of perjury. If any interested person shall have previously filed a protest in writing objecting to the payment to any employer on the ground that payment is owing to 1 or more employees of the employer for violations of this section, or if for any other reason it may be deemed advisable, the city shall deduct from the whole amount of any payment to the employer sums admitted by the employer in the verified statement or statements to be due and owing to any employee before making payment of the amount certified for payment, and may withhold the amount so deducted for the benefit of the employees or persons that are owed payment as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due them.

i. The comptroller may contract with non-governmental agencies to investigate possible violations of this chapter. Where a developer or construction employer is found to have violated the requirements of this chapter, the developer or construction employer shall be liable to the city for costs incurred in investigating and prosecuting the violation.

j. The comptroller shall maintain and publish on the comptroller's website, on a monthly basis, a list of

each employer or any officer of the employer found to be in violation of this chapter pursuant to the terms of a final order and include a copy of the final order with such list.

§ 26-3607 Private right of action. a. Any individual who is aggrieved by a violation of this chapter shall have the right to commence an action in a court of competent jurisdiction on their own behalf against the developer or construction employer.

b. For each violation of section 26-3602, the construction worker may recover compensatory and punitive damages. If such violation was committed with intent or recklessness, the construction worker may recover treble damages.

c. For each violation of section 26-3603, the construction worker may recover double damages in the amount of the difference between actual wages and the combined wage and benefits required by this chapter. If such violation was committed with intent or recklessness, the construction worker may recover treble damages.

d. Any person who is a victim of retaliation shall be entitled to all relief necessary to make such person whole, including, but not limited to:

1. An injunction to restrain any adverse or retaliatory action;

2. Reinstatement to the position such employee would have had but for such action, or to an equivalent position; and

3. Reinstatement of full benefits and seniority rights including payment of any missed back pay, plus interest.

e. Persons aggrieved by a violation of this chapter or by retaliation shall be entitled to compensation for any special damages sustained as a result of an action commenced pursuant to this section, including litigation costs and reasonable attorneys' fees, and to such other relief as the court may deem appropriate.

§ 26-3608 Liability. a. Developers and construction employers shall assume liability for any debt resulting from an action under this chapter, owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the construction employer for its

subcontractors for the wage claimant's performance of labor.

b. No agreement or release by an employee or subcontractor to waive liability assigned to a developer or construction employer under this section shall be valid. The provision of this section shall not be deemed to impair the rights of a developer or construction employer to maintain an action against a subcontractor for amounts for owed wages that are paid by a developer or construction employer pursuant to this section.

§ 2. This local law takes effect 180 days after it becomes law, provided that this local law shall not apply to any written agreement providing for city financial assistance executed prior to such effective date, except that extension, renewal, amendment, or modification of such written agreement, occurring on or after such effective date that results in the grant of any additional city financial assistance shall make such written agreement subject to the requirements of this local law, and provided further that the comptroller and commissioner of housing preservation and development may promulgate any rules necessary for implementation of this local law and take any other measures as are necessary for its implementation, prior to such date.