Legislation Details (With Text)

File #:	Int 1321-2019 **Version:** C	**Name:**	Expanding the prevailing wage law for building service employees at city development projects.
Type:	Introduction	**Status:**	Enacted
		In control:	Committee on Civil Service and Labor
On agenda:	1/9/2019		
Enactment date:	12/4/2019	**Enactment #:**	2019/212

Title: A Local Law to amend the administrative code of the city of New York, in relation to expanding the prevailing wage law for building service employees at city development projects

Sponsors: Rafael L. Espinal, Jr., Laurie A. Cumbo, Rafael Salamanca, Jr., Justin L. Brannan, Adrienne E. Adams, Francisco P. Moya, Rory I. Lancman, Ben Kallos, Mark Treyger, Deborah L. Rose, Carlos Menchaca, Alicka Ampry-Samuel, Mark Levine, Diana I. Ayala, Barry S. Grodenchik, Ydanis A. Rodriguez, Keith Powers, James G. Van Bramer, Brad S. Lander, Stephen T. Levin, Mathieu Eugene, Karen Koslowitz, I. Daneek Miller, Margaret S. Chin, Fernando Cabrera, Andrew Cohen, Helen K. Rosenthal, Antonio Reynoso, Robert F. Holden, Vanessa L. Gibson, Andy L. King, Donovan J. Richards, Carlina Rivera, Paul A. Vallone, Alan N. Maisel, Ritchie J. Torres, Bill Perkins, Mark Gjonaj, Costa G. Constantinides, Chaim M. Deutsch, Farah N. Louis, Daniel Dromm

Indexes: Agency Rule-making Required

Attachments: 1. Summary of Int. No. 1321-C, 2. Summary of Int. No. 1321-B, 3. Summary of Int. No. 1321-A, 4. Summary of Int. No. 1321, 5. Int. No. 1321, 6. January 9, 2019 - Charter Meeting with Links to Files, 7. Hearing Transcript - Charter Meeting 1/9/19, 8. Minutes of the Charter Meeting - January 9, 2019, 9. Proposed Int. No. 1321-A - 6/6/19, 10. Committee Report 6/20/19, 11. Hearing Testimony 6/20/19, 12. Hearing Transcript 6/20/19, 13. Proposed Int. No. 1321-B - 10/24/19, 14. Proposed Int. No. 1321-C - 11/7/19, 15. Committee Report 11/13/19, 16. Hearing Transcript 11/13/19, 17. Committee Report - Stated Meeting, 18. November 14, 2019 - Stated Meeting Agenda with Links to Files, 19. Hearing Transcript - Stated Meeting 11-14-19, 20. Minutes of the Stated Meeting - November 14, 2019, 21. Int. No. 1321-C (FINAL), 22. Fiscal Impact Statement, 23. Mayor's Letter, 24. Local Law 212

Date	Ver.	Action By	Action	Result
1/9/2019	*	City Council	Introduced by Council	
1/9/2019	*	City Council	Referred to Comm by Council	
6/20/2019	*	Committee on Civil Service and Labor	Hearing Held by Committee	
6/20/2019	*	Committee on Civil Service and Labor	Amendment Proposed by Comm	
6/20/2019	*	Committee on Civil Service and Labor	Laid Over by Committee	
11/13/2019	*	Committee on Civil Service and Labor	Hearing Held by Committee	
11/13/2019	*	Committee on Civil Service and Labor	Amendment Proposed by Comm	
11/13/2019	*	Committee on Civil Service and Labor	Amended by Committee	
11/13/2019	C	Committee on Civil Service and Labor	Approved by Committee	Pass
11/14/2019	C	City Council	Approved by Council	Pass
11/14/2019	C	City Council	Sent to Mayor by Council	

12/4/2019	C	Mayor	Hearing Held by Mayor
12/4/2019	C	Mayor	Signed Into Law by Mayor
12/5/2019	C	City Council	Recved from Mayor by Council

Int. No. 1321-C

By Council Members Espinal, Cumbo, Salamanca, Brannan, Adams, Moya, Lancman, Kallos, Treyger, Rose, Menchaca, Ampry-Samuel, Levine, Ayala, Grodenchik, Rodriguez, Powers, Van Bramer, Lander, Levin, Eugene, Koslowitz, Miller, Chin, Cabrera, Cohen, Rosenthal, Reynoso, Holden, Gibson, King, Richards, Rivera, Vallone, Maisel, Torres, Perkins, Gjonaj, Constantinides, Deutsch, Louis and Dromm

A Local Law to amend the administrative code of the city of New York, in relation to expanding the prevailing wage law for building service employees at city development projects

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

a. Definitions. For purposes of this section, the following terms [shall] have the following meanings:

[(1) "Affordable housing project" means a project where not less than fifty percent of the residential units are affordable for households earning up to one hundred thirty percent of the area median income or in which all residential units are affordable to households earning up to one hundred sixty five percent of the area median income provided that at least twenty percent of units are affordable to households earning no more than fifty percent of area median income and at least one-third of residential units are occupied at the time of execution of the financial assistance, and where no more than thirty percent of the total square footage of the project area is used for commercial activities, defined as the buying, selling or otherwise providing of goods or services, or other lawful business or commercial activities otherwise permitted in mixed-use property.

(2)] "Building service work" means work performed in connection with the care or maintenance of a building or property, and includes but is not limited to work performed by a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

[(3)] "Building service employee" means any person, the majority of whose employment consists of

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performing building service work, including but not limited to a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

[(4)] "City development project" means [a] any project [undertaken by a city agency or a city economic development entity for the purpose of improvement or development of real property, economic development, job retention or growth, or other similar purposes where the project] that: (a) is [expected to be larger than 100,000 square feet] a large development project [,] or[,in the case of] a residential project[, larger than 100 units]; and (b) has received [or is expected to receive] financial assistance. [City development project shall not include an affordable housing project, nor shall it include] The term "city development project" shall not include a project of the [Health and Hospitals Corporation] health and hospitals corporation, a supportive housing project, or a preservation project. [A project will be considered a "city development project" for ten years from the date the financially assisted project opens, or for the duration of any written agreement between a city agency or city economic development entity and a covered developer providing for financial assistance, whichever is longer.]

[(5)] "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 pursuant to] city as described by paragraph b of subdivision [one] 1 of section 1301 of the [New York city] charter.

[(6)] "Comptroller" means the comptroller of the city [of New York].

[(7)] "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution, or agency of government, the expenses of which are paid in whole or in part from the city treasury.

"Converted public housing building" means any building converted from section 9 of the United States Housing Act of 1937, as amended, to section 8 of such act by the New York city housing authority.

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"Converted public housing building service worker" means any building service worker employed at a converted public housing building that is a beneficiary of federal assistance under the United States Housing Act of 1937, as amended, at the time such worker performs such building service work.

[(8)] "Covered developer" means any person receiving financial assistance in relation to a city development project, or any assignee or successor in interest of real property that qualifies as a city development project. ["Covered developer" shall] The term "covered developer" shall not include any not-for-profit organization, except where a not-for-profit organization receives financial assistance in relation to a city development project that is a residential project. Further, [a covered developer] such term shall not include a business improvement district[;], a small business[; nor shall it include], or an otherwise covered developer whose industry conducted at the project location is manufacturing, as defined by the North American Industry Classification System.

[(9)] "Covered lessor" means any person entering into a lease with a contracting agency.

[(10)] "Financial assistance" means assistance that is provided to a covered developer or protected developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (a) directly by the city, or (b) indirectly by a city economic development entity and that is paid in whole or in part by the city, and that at the time the covered developer or protected developer enters into a written agreement with the city or city economic development entity is expected to have a total present financial value of [one million dollars] $1,000,000 or more. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements related to real property that,

under ordinary circumstances, the city would not pay for; provided, however, that any tax abatement, credit, reduction or exemption that is given to all persons who meet criteria set forth in the state or local legislation authorizing such tax abatement, credit, reduction or exemption, [shall be] is deemed to be as of right (or non-discretionary); and provided further that the fact that any such tax abatement, credit, reduction or exemption is limited solely by the availability of funds to applicants on a first come, first serve or other non-discretionary basis set forth in such state or local law shall not render such abatement, credit, reduction or exemption discretionary. Financial assistance [shall include] includes only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and shall not include as-of-right assistance, tax abatements or benefits. Where assistance takes the form of leasing city property at below-market lease rates, the value of the assistance shall be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance shall be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance from a city economic development entity.

"Large development project" means a project undertaken by a city agency or a city economic development entity for the purpose of improvement or development of real property, economic development, job retention or growth, or other similar purposes where the project is expected to be larger than 100,000 square feet.

[(11)] "Lease" means any agreement whereby a contracting agency contracts for, or leases or rents, commercial office space or commercial office facilities of 10,000 square feet or more from a non-governmental entity provided the [City] city, whether through a single agreement or multiple agreements, leases or rents no less than [fifty-one] 51 percent of the total square footage of the building to which the lease applies, or if such space or such facility is entirely located within the geographic area in the borough of Staten Island, or in an area not defined as an exclusion area pursuant to section 421-a of the real property tax law on the date of enactment of the local law that added this section, then no less than [eighty] 80 percent of the total square footage of the

building to which the lease applies. Such agreements [shall] do not include agreements between not-for-profit organizations and a contracting agency.

[(12)] "Not-for-profit organization" means an entity that is either incorporated as a not-for-profit corporation under the laws of the state of its incorporation or exempt from federal income tax pursuant to subdivision c of section [five hundred one] 501 of the United States internal revenue code.

"On-site supportive services" means the provision of services to residents that may include, but are not limited to, assistance with the physical health, mental health, and substance abuse needs of such residents.

"Preservation project" means a (i) small residential project; or (ii) residential project that includes an existing building that is subject to a regulatory agreement with a federal, state or local government agency, provided that such agreement requires all of the residential units, other than units for resident employees of such building, to be affordable for households earning on average up to 50 percent of the area median income, adjusted for household size, and provided, further, that such project receives financial assistance: (A) solely in the form of a tax benefit or (B) that averages less than $35,000 per residential unit, except that "preservation project" shall not include a supportive housing project.

[(13)] "Prevailing wage" means the rate of wage and supplemental benefits paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the [New York state] labor law. As provided under section 231 of the [New York state] labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments under rules and regulations established by the comptroller.

"Protected wage" means the rate of wages and cost of benefits paid to a building service employee in a preservation project on the date that the financial assistance for such project is received plus an annual increase to account for any change in the cost of living and in the cost of providing benefits. Such increase shall be determined by a standard determined pursuant to rule, as required by paragraph (9) of subdivision d of this

section.

"Protected developer" means any person receiving financial assistance for a preservation project, except that "protected developer" shall not include a business improvement district.

"Received" means the execution of a written instrument that sets forth the provision of financial assistance to a covered developer or protected developer by the city or a city economic development entity.

"Residential project" means a project undertaken by a city agency or a city economic development entity to develop or improve no less than 120 residential units in one or more buildings.

[(14) Small business] "Small business" means an entity that has annual reported gross revenues of less than [five million dollars] $5,000,000. For purposes of determining whether an employer qualifies as a small business, the revenues of any parent entity, of any subsidiary entities, and of any entities owned or controlled by a common parent entity shall be aggregated.

"Small residential project" means a project: (a) undertaken by a city agency or a city economic development agency to improve no more than 119 residential units in one or more buildings; and (b) that has received financial assistance.

"Supportive housing project" means a project for the provision of housing in which: (i) a developer has entered into a regulatory agreement with a federal, state or local government entity that requires: (A) at least 50 percent of the residential units in such project be reserved for homeless, disabled individuals or homeless families with a disabled head-of-household, and (B) the provision of on-site supportive services to the residents of at least 50 percent of the residential units, and (ii) the remaining 50 percent of the residential units in such project be rented to households earning, on average, up to 80 percent of the area median income, adjusted for household size.

§ 2. Paragraph (2) of subdivision b of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

(2) Prior to entering into a lease, or extension, renewal, amendment or modification thereof, and

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annually thereafter for the term of the lease, the contracting agency shall obtain from the prospective covered lessor, and provide to the comptroller, a certification, executed under penalty of perjury, that all building service employees employed in the building to which the lease pertains or under contract with the covered [developer] lessor to perform building service work in such building will be and/or have been paid the prevailing wage for the term of the lease. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each building service employee employed at such building which shall be available for inspection by the city. Such certification shall be certified by the chief executive or chief financial officer of the covered lessor, or the designee of any such person. The certification shall be annexed to a part of any prospective lease. A violation of any provision of the certification or failure to provide such certification shall constitute a violation of this section by the party committing the violation of such provision.

§ 3. Paragraphs (1), (2), (3), (4), and (6) of subdivision c of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

(1) Except with regard to converted public housing building service workers in connection with a city development project or a preservation project, the following requirements shall apply to covered developers and protected developers:

(A) Covered developers shall ensure that all building service employees performing building service work in connection with a city development project are paid no less than the prevailing wage.

(B) Protected developers shall ensure that all building service employees performing building service work in connection with a preservation project are paid no less than the protected wage.

(2) Prior to commencing work at [the] a city development project, and annually thereafter, every covered developer shall provide to the city or the city economic development entity and the comptroller an annual certification executed under penalty of perjury that all building service employees subject to subparagraph (A) of paragraph 1 of this section, who are employed at a city development project by the covered developer or under contract with the covered developer to perform building service work will be and/or

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have been paid the prevailing wage. Prior to commencing work at a preservation project, and annually thereafter, every protected developer shall provide to the city or the city economic development entity and the comptroller an annual certification executed under penalty of perjury that all building service employees subject to subparagraph (B) of paragraph 1 of this section, who are employed at a preservation project by the protected developer or under contract with the protected developer to perform building service work will be and/or have been paid no less than the protected wage. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each building service employee employed at the city development project or preservation project, or under contract with the covered developer or protected developer. Such certification shall be certified by the chief executive or chief financial officer of the covered developer or protected developer, or the designee of any such person. A violation of any provision of the certification, or failure to provide such certification, shall constitute a violation of this section by the party committing the violation of such provision.

(3) Each covered developer and protected developer shall maintain original payroll records for each building service employee subject to subparagraphs (A) or (B) of paragraph 1 of this section reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked, and shall retain such records for at least six years after the building service work is performed. The covered developer or protected developer may satisfy this requirement by obtaining copies of records from the employer or employers of such employees. Failure to maintain such records as required shall create a rebuttable presumption that the building service employees were not paid the wages and benefits required under this section. Upon the request of the comptroller or the city, the covered developer or protected developer shall provide a certified original payroll record.

(4) No later than the day on which any work begins at any city economic development project or preservation project subject to the requirements of this section, a covered developer or protected developer shall post in a prominent and accessible place at every such city economic development project or preservation

project, as applicable, and provide each building service employee subject to subparagraphs (A) or (B) of paragraph 1 of this section a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which building service employees are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising such building service employees that if they have been paid less that the prevailing wage or protected wage, as applicable, they may notify the comptroller and request an investigation. Such [notices] notice shall be provided in English and Spanish. Such notice shall remain posted for the duration of the [lease] applicable period as set forth in paragraph 6 of this subdivision and shall be adjusted periodically to reflect the current prevailing wage for building service employees. The comptroller shall provide the city with sample written notices explaining the rights of building service employees and covered developers' or protected developers' obligations under this section, and the city shall in turn provide those written notices to covered developers and protected developers.

(6) The requirements of this section shall apply for the term of the financial assistance, for ten years from the date that the financially assisted project opens, or for the duration of any written agreement between a city agency or city economic development entity and a covered developer or protected developer providing for financial assistance, whichever is longer.

§ 4. Paragraphs (1), (2), (3), (4) and (6) of subdivision d of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, are amended to read as follows:

(1) [No later than October 1, 2012, the] The mayor or his or her designee shall promulgate implementing rules and regulations as appropriate and consistent with this section and may delegate such authority to the comptroller. Beginning twelve months after the enactment of the local law that added this section, the comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year.

(2) In addition to failure to comply with subdivisions b and c of this section, it shall be a violation of this section for any covered lessor [or], covered developer or protected developer to discriminate or retaliate

against any building service employee who makes a claim that he or she is owed wages due as provided under this section or otherwise seeks information regarding, or enforcement of, this section.

(3) The comptroller shall monitor covered lessors' [and], covered [employers'] developers' and protected developers' compliance with the requirements of this section. Whenever the comptroller has reason to believe there has been a violation of this section, or upon a verified complaint in writing from a building service employee, a former building service employee, or a building service employee's representative claiming a violation of this section, the comptroller shall conduct an investigation to determine the facts relating thereto. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by subdivision 2 of section 235 of the [state] labor law, request that the relevant contracting agency or entity withhold any payment due to the covered lessor [or], covered developer or protected developer in order to safeguard the rights of the building service employees.

(4) The comptroller shall report the results of such investigation to the mayor or his or her designee, who shall, in accordance with the provisions of paragraph 6 of this subdivision and after providing the covered lessor [or], covered developer or protected developer an opportunity to cure any violations, where appropriate issue an order, determination, or other disposition, including, but not limited to, a stipulation of settlement. Such order, determination, or disposition may at the discretion of the mayor, or his or her designee, impose the following on the covered lessor, covered developer or protected developer committing the applicable violations: (i) direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the building service employee, based on the interest rate then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the [state] banking law, but in any event at a rate no less than six percent per year; (ii) direct payment of a further sum as a civil penalty in an amount not exceeding [twenty-five] 25 percent of the total amount found to be due in violation of this section, except that in cases where a final disposition has been entered against a person in two instances within any consecutive six year period determining that such person has willfully failed to pay or to ensure the payment of

the prevailing wages or protected wages in accordance with the provisions of this section or to comply with the anti-retaliation, recordkeeping, notice, or reporting requirements of this section, the mayor, or his or her designee, may impose a civil penalty in an amount not exceeding [fifty] 50 percent of the total amount found to be due in violation of this section; (iii) direct the maintenance or disclosure of any records that were not maintained or disclosed as required by this section; (iv) direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this section; or (v) direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered lessor [or], covered developer or protected developer. In assessing an appropriate remedy, due consideration shall be given to the gravity of the violation, the history of previous violations, the good faith of the covered lessor [or], covered developer or protected developer, and the failure to comply with record-keeping, notice, reporting, or other non-wage requirements. Any civil penalty shall be deposited in the general fund.

(6) Before issuing an order, determination, or any other disposition, the mayor, or his or her designee, as applicable, shall give notice thereof, together with a copy of the complaint, which notice shall be served personally or by mail on any person affected thereby. The mayor, or his or her designee, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings, or other appropriate agency or tribunal, for a hearing and disposition. Such person or covered [employer] lessor, covered developer or protected developer shall be notified of a hearing date by the office of administrative trials and hearings, or other appropriate agency or tribunal, and shall have the opportunity to be heard in respect to such matters.

§ 5. Subdivision d of section 6-130 of the administrative code of the city of New York is amended by adding a new paragraph (9) to read as follows:

(9) The mayor, or an agency designated by the mayor shall promulgate a rule establishing a standard by which to calculate an increase in the rate of wages to account for any change in the cost of living and a standard

by which to calculate any increase in the cost of benefits to account for changes in the cost of such benefits.

§ 6. This local law does not apply to any written agreement between a city agency or city economic development entity and either a covered developer or a protected developer providing for financial assistance executed prior to the effective date of this local law, except that extension, renewal, amendment or modification of such written agreement, occurring on or after the effective date of this local law, that results in the provision of any financial assistance to either a covered developer or a protected developer in addition to the financial assistance provided to such covered developer or such protected developer pursuant to any written agreement between a city agency or city economic development entity and either such covered developer or such protected developer executed prior to the effective date of this local law shall make either such covered developer or such protected developer subject to the requirements of this local law. The terms "city economic development entity", "covered developer", "protected developer", and "financial assistance" shall be defined in accordance with the definitions in section 6-130 of the administrative code.

§ 7. This local law takes effect 120 days after it becomes law, except that the mayor, or an agency designated by such mayor, 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.

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LS #5520; 5670
11/06/19 8:26 p.m.