



Legislation Text

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Proposed Int. No. 1321-A

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 and Perkins

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, doorman, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator

and starter, or window cleaner.

[(3)] (2) “Building service employee” means any person, the majority of whose employment consists of performing building service work, including but not limited to a watchperson, guard, doorman, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

[(4)] (3) “City 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: (a) is expected to be larger than 100,000 square feet, 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” does not include a project of the [Health and Hospitals Corporation] health and hospitals corporation. Such term also does not include a project that is financed in whole or in part through a loan for supportive housing that requires that (i) 100 percent of units are rented to households earning up to 60 percent of the area median income, (ii) at least 60 percent of units are reserved for homeless, disabled individuals or homeless families with a disabled head-of-household, (iii) the covered developer presents a plan for providing on-site supportive services, and (iv) the covered developer plans to secure or has secured a contract with a city, state or federal agency to provide on-site supportive services. A project will be considered a “city development project” for [ten] 10 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)] (4) “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 paragraph b of subdivision [one] 1 of section 1301 of the [New York city] charter.

[(6)] (5) “Comptroller” means the comptroller of the city [of New York].

[(7)] (6) “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.

[(8)] (7) “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” does not include any not-for-profit organization, except where a not-for-profit organization receives financial assistance in relation to a residential city development project. Further, [a covered developer shall] such term does not include a business improvement district; a small business; nor [shall] does it include an otherwise covered developer whose industry conducted at the project location is manufacturing, as defined by the North American Industry Classification System.

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

[(10)] (9) “Financial assistance” means assistance that is provided to a covered 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 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] does 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] does 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] will 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] will 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.

[(11)] (10) “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)] (11) “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.

(13)] (12) “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.

[(14) Small business] (13) “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.

§ 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 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. Paragraph (2) 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:

(2) Prior to commencing work at the city development project, and annually thereafter, every covered developer shall provide to the city economic development entity and the comptroller an annual certification executed under penalty of perjury that all building service employees 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 have been paid the prevailing 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 under contract with the covered developer. Such certification shall be certified by the chief executive or chief financial officer of the covered 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.

§ 4. Paragraph (4) 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:

(4) No later than the day on which any work begins at any city economic development project subject to the requirements of this section, a covered developer shall post in a prominent and accessible place at every such city economic development project and provide each building service employee 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 building service employees that if they have been paid less than the prevailing wage they may notify the comptroller and request an investigation. Such notice[s] 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' obligations under this section, and the city shall in turn provide those written notices to covered developers.

§ 5. This local law does not apply to any written agreement between a city agency or city economic development entity and a covered 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 grant of any additional financial assistance to a covered developer shall make such covered developer subject to the requirements of this local law.

§ 6. This local law takes effect 120 days after it becomes law.

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