



Legislation Text

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By Council Members De La Rosa, Won, Cabán, Stevens, Menin, Hanif, Brooks-Powers, Ossé, Williams, Marte, Farías, Avilés, Restler, Narcisse, Nurse, Hudson, Salaam, Schulman, Krishnan, Moya, Powers, Ung, Holden, Sanchez, Brewer, Ayala, Abreu, Gutiérrez, Louis, Brannan, Bottcher, Riley, Feliz, Salamanca, Mealy, Lee, Dinowitz, Joseph, Gennaro, Epstein, Zhuang, Banks and Carr

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 38 to read as follows:

CHAPTER 38

COMMUNITY HIRING AND COMPENSATION STANDARDS ON CITY-ASSISTED HOUSING

DEVELOPMENT PROJECTS

§ 26-3801 Definitions. For purposes of this chapter, the following terms have the following meanings:

Area median income. The term “area median income” means the income limits as defined annually by the United States department of housing and urban development for the New York, NY HUD Metro FMR Area (HMFA), as established in section 3 of the housing act of 1937, as amended.

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 five hundred thousand 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 directly, or indirectly, such as through a subcontractor or subcontractors.

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, conversion of any non-residential floor area to residential, and any green building retrofit including energy efficiency improvements and renewable energy systems installations as defined in section 58-02 of title 19 of the rules of the city of New York that (1) creates or preserves at least 150 or more dwelling units with project construction costs of 3 million dollars or more; and (2) is funded in whole or in part by city financial assistance. The term “housing development project” does not include scatter sites, preservation projects, housing development projects on land owned by the New York city housing authority, or housing development projects wholly sited on land where the disposition of such land is solely by the New York city housing authority. The term “housing development project” does not include supportive housing projects.

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.

On-site supportive services. The term “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 use needs of such residents.

Preservation project. The term “preservation project means a renovation project of any existing residential facilities or structures that preserves dwelling units. “Preservation project” does not include a project that involves a conversion of any non-residential floor area to residential or any green building retrofit including energy efficiency improvements and renewable energy systems installations as defined in section 58-02 of title 19 of the rules of the city of New York.

Scatter site. The term “scatter site” means a project consisting of 3 or more buildings where no individual parcel or building is contiguous or located on the same block and no individual parcels or buildings

have more than 20 units.

Supportive housing project. The term “supportive housing project” means a project for the provision of housing in which (1) a developer has entered into a regulatory agreement with a federal, state, or local government entity that requires (a) at least 35 percent of the residential units in such project be reserved for individuals who are homeless or at risk of becoming 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 20 percent of the residential units, and (2) the remaining 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.

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.

§ 26-3802 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 work on such housing development projects are performed by construction workers who reside in the city.

b. The department shall provide a model community hiring plan to developers, including a description of measures that would satisfy the requirements established pursuant to subdivision a of this section.

c. Prior to receiving city financial assistance for a housing development project, the developer shall submit to the comptroller a community hiring plan describing how the developer plans to recruit construction workers to meet the hiring goals established pursuant to subdivision a of this section.

§ 26-3803 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. Such notification shall be provided in writing no later than 10 days from the date of such change.

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 July 1, 2028, 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 62.5 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.

§ 26-3804 Reporting requirements. a. The department shall maintain a publicly searchable open dataset available online of all construction projects subject to this chapter. Projects shall be added to such open dataset as often as needed to keep it current, but no less than quarterly. The open dataset 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 workers employed on the construction project, disaggregated by the percentage of whom are residents of the city.

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.

§ 26-3805 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.

§ 26-3806 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 90 days to cure once a stipulation of settlement has been executed. 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. Any violations settled before the 90-day cure period will not negatively impact a developer's eligibility to be awarded housing development projects receiving city financial assistance in the future.

d. After the 90-day cure period, 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 1.5 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 for 3 instances of

violations not settled during the cure period 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 third 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. 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.

h. The comptroller may contract with non-governmental agencies to make referrals of possible violations of this chapter, provided, however, that the comptroller may not delegate authorities provided under sections 234 and 235 of the labor law to such non-governmental agencies. Where a developer or construction

employer is found to have violated the requirements of this chapter, the comptroller may require the developer or construction employer to be liable to the city for reasonable costs incurred by the non-governmental agency in referring such violations.

i. 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.

§ 26-3807 Private right of action. a. Except as otherwise provided by law, any person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and other such remedies as may be appropriate, unless such person has filed a complaint with the comptroller with respect to such claim. In an action brought by a construction worker, if the court finds in favor of the employee, it shall award the employee, in addition to other relief, reasonable attorney’s fees and costs.

b. Notwithstanding any inconsistent provision of paragraph a of this subdivision where a complaint filed with the comptroller is dismissed, any person claiming to be aggrieved by a violation of this section shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed.

c. A civil action commenced under this section shall be commenced in accordance with subdivision 2 of section 214 of New York civil practice laws and rules.

d. No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee’s right to bring a common law cause of action for wrongful termination.

e. Notwithstanding any inconsistent provision of this section or of any other general, special, or local law, ordinance, city charter or administrative code, a construction worker affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this section because of the prior receipt of the

employee without protest of wages or benefits paid, or on account of the construction worker's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages or benefits received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full wages or benefits due to the employee for the period covered by such payment.

f. 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.

§ 26-3808 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 January 1, 2027, 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.

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