

O-19-024

TOWNSHIP OF MONTCLAIR

AN ORDINANCE AMENDING AND SUPPLEMENTING MONTCLAIR ORDINANCE CREATING A PROJECT LABOR AGREEMENT REQUIREMENT FOR CERTAIN PUBLIC WORKS CONTRACTS AND PUBLICLY FUNDED PROJECTSJune 25, 2019
(date of introduction)

WHEREAS, the Township of Montclair has a compelling interest in ensuring that large construction projects that it directly undertakes or for which it provides financial support are performed promptly, at a responsible costs and with the highest degree of quality;

WHEREAS, the Township of Montclair has a significant number of people who are unemployed and unable to find employment;

WHEREAS, the Township of Montclair seeks to ensure that job opportunities generated by construction projects contemplated by this Ordinance help low-income, minority and women workers gain access to careers in the construction trades;

WHEREAS, the Township of Montclair seeks to promote meaningful job opportunities for its citizens;

WHEREAS, the employment of apprentices in such contracts can maintain reasonable costs while providing valuable and rewarding work opportunities for new workers;

WHEREAS, Project Labor Agreements are a form of pre-hire collective bargaining agreements that cover all of the terms and conditions of a specific project;

WHEREAS, Project Labor Agreements make legally enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lock-outs or slowdowns; and

WHEREAS, Project Labor Agreements also provide for peaceful, orderly and mutually binding procedures for resolving labor disputes;

WHEREAS, Project Labor Agreements provide the Township of Montclair with a guarantee that contracts as described above are completed with a highly skilled diverse workforce;

WHEREAS, a highly skilled workforce ensures the efficient, economical and safe completion of contracts as described above;

WHEREAS, the benefits received by contractors regulated by this ordinance will create opportunities to employ a substantial number of apprentices, thus ensuring that these projects will

expand access to middle-class careers in the construction trades for a new generation of workers, and

WHEREAS, a local Federally registered Apprenticeship program offers access to large numbers of long term middle-class careers in the construction trades; and

WHEREAS, Project Labor Agreements shall be considered on a project by project basis where such agreement benefits the Township of Montclair from a cost, efficiency, quality, safety and/or timeliness standpoint; and

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Montclair, that the code-of the Township of Montclair is hereby amended and supplemented as follows:

SECTION 1. (New Section)

Chapter 8A Project Labor Agreements for Certain Public Works and Publicly Funded Projects

8A-1 Purpose

This chapter shall ensure that large construction projects with total costs that exceed 5 million excluding land acquisition costs and certain public construction contracts with total costs that exceed 5 million that the municipality directly undertakes or for which it provides financial support are performed promptly, at a reasonable cost and with the highest degree of quality. This chapter also creates opportunities to employ a substantial number of apprentices, thus ensuring that these projects will expand access to living wages careers in the construction trades for a new generation of workers. Projects which exceed the 5 million dollar threshold during the pendency of the project shall also be subject to this Ordinance.

8A-2 Definitions

- A. **Public Works Project** shall mean building, altering, repairing, improving or demolishing any public structure or facility constructed, acquired or otherwise owned by the Township of Montclair to house local government functions or provide water, waste, disposal, power, transportation and other public infrastructure.
- B. **Publicly Funded Projects** shall include Public Works Projects that the Township of Montclair directly undertakes with total costs that exceed 5 million and Redevelopment Area Financing Projects with total costs that exceed 5 million.
- C. **Not for Profit** shall mean any entity that is organized as a nonprofit or not for profit entity, corporate or to otherwise as a governmental entity.

- D. **Private Entity** shall mean any organization which conducts a profit-making business and is not otherwise organized as a non-profit organization or governmental entity.
- E. **Project Labor Agreement** shall mean a contract between a Contractor/Labor Organization, and a Developer and/or the Township of Montclair that contains, at a minimum, the requirements set forth in this ordinance.
- F. **Developer** shall mean the recipient of Financial Assistance for a Redevelopment Area Financing Project or the contractor for a Public Works Project.
- G. **Apprentice** shall mean a worker who participates in a Federally-approved Apprenticeship Program or as an Apprentice equivalent participates in a Federally-approved training program, takes a construction apprenticeship test and receives benefits and pay not less than those received by an Apprentice.
- H. **Apprentice Program** shall mean an apprenticeship program operated by an entity registered by the Bureau of Apprenticeship and Training of the US Department of Labor or registered by a Federal apprenticeship agency recognized by the Bureau.
- I. **Labor Organization** shall mean an organization which represents, for purposes of collective bargaining, employees involved in the performance of construction contracts and eligible to be paid prevailing wages under the “New Jersey Prevailing Wage Act,” P.L.1963, c.150(C.34:11-56.25 et seq.) and has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work and which has an apprenticeship program registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor.
- J. **Contractor** shall mean a person or entity awarded a Public Works Project or Contract on a publicly funded project contemplated by this Ordinance.
- K. **Sub-Contractor** shall mean a person or entity that is engaged or performs work or provides materials for a Contractor or Developer as defined herein, which person or entity may or may not be in privity of contract with the Township of Montclair.
- L. **Craft-Request Form** shall mean a form which delineates the job or craft titles and descriptions (for example, but not by way of limitation, plumbers, glazers, carpenters, etc.) which are needed for a particular project; which form may be the one customarily used by the relevant trade or craft unions at that time and place.
- M. **Certain Projects** shall mean that the Township in its sole discretion may exempt projects which otherwise would fall within the purview of this Ordinance from the requirements of same.
- N. **Total Projects Costs** shall be inclusive of Environmental work, demolitions, preconstruction and construction costs.

O. **REDEVELOPMENT AREA FINANCING (“RAF”) PROJECT** means a project that has a Total Construction Cost that is equal to or exceeds five million dollars (\$5,000,000.00), exclusive of any land acquisition costs, which and receives (1) a tax exemption pursuant to N.J.S.A. 40A:20-1 et. seq. or N.J.S.A. 40A:21-1, et seq., and (2) receives some form of Redevelopment Area Financing such as an Affordable Housing Trust Fund Grant, a Community Block Development Grant, or a Redevelopment Area Bond.

8A-3 Coverage

The terms of this Ordinance, set forth in section 8A-4 below are applicable to covered projects. Covered projects include Public Works and Publicly Funded Projects.

8A-4 Conflicts

To the extent of any of the provisions of this ordinance are deemed to conflict with N.J.S.A. 52:38-1 et seq. (P.L. 2202, C 44) or any other applicable NJ statute, the statute shall control. To the extent the provisions of this Ordinance conflict with the Township’s Ordinance implementing an Affirmative Action Program (Ordinance No 7 of 1982) this Ordinance shall prevail. To the extent this ordinance conflicts with any additional local Ordinances, this ordinance shall control.

8A-5 Requirements for Covered Contracts

A. Projects Labor Agreement Required

Public Works Projects and Publicly Funded Projects shall require the execution of a Project Labor Agreement that complies with the requirements of this chapter, unless the Township Manager or his designee determines that it is in the best interests of the Township to waive this requirement. The agreement shall either be directly entered into with a labor organization or the award of the contract shall be made on the conditions that the construction manager for the contract shall negotiate a project labor agreement in good faith with one or more labor organizations.

B. **Project Labor Agreement Requirements.** Each Project Labor Agreement executed pursuant to this ordinance shall be in conformity with N.J.S.A. 52:38-1 et seq. (P.L. 2202, C. 44):

- i. Advance the interests of the Township of Montclair, including the interests in cost, efficiency, quality, timeliness, skilled labor force, and safety;
- ii. Contain guarantees against strikes, lock-outs, or other similar actions;
- iii. Set forth effective, immediate, and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work;

- iv. Be made binding on all contractors and subcontractors on the project in all relevant documents, including bid specifications;
- v. Require that each contractor and subcontractor working on the project utilize have an Apprenticeship Program as defined herein.
- vi. Fully conform to all statutes, regulations and Township of Montclair ordinances regarding the implementation of set-aside goals for women and minority owned businesses, the obligation to comply with which shall be expressly provided for in the Project Labor Agreement;
- vii. Include a publicly available plan which is in full conformance with the requirements of all applicable statutes, regulations, executive orders and Township ordinances and is mutually agreed upon by the participating labor organizations and the public entity or the Developer which will own the facilities which are built, altered or repaired under the project, provided that any shares mutually agreed upon pursuant to this subsection shall equal or exceed the requirements of other statutes, regulations, executive orders or local ordinances;
- viii. State that contractors and subcontractors need not be a party to a collective bargaining agreement with the applicable labor organization other than for the project covered by the Project Labor Agreement.
- ix. Require the Township to monitor, or arrange to have a State agency monitor the amount and share of work done on the project by minority group members and women and the progression of minority group members and women into apprentice and journey worker positions and require the Township to make public, or have the State agency make public, all records of monitoring conducted pursuant to N.J.S.A. 52:38 et seq (P.L. 2002, Chapter 44), this Chapter and the Project Labor Agreement.
- x. State that any and all residents who are already in any signatory union or an apprenticeship program shall be referred to contractors or subcontractors who request them, even if those Montclair residents were not in line for referral under normal hiring hall procedures; and
- xi. Require the contract for the public works project to provide whatever resources may be needed to prepare for apprenticeship a number of women and minority members sufficient to enable compliance with the plan agreed upon pursuant to this Chapter and provide that the use of those resources be administered jointly by the participating labor organization and the public entity; and

- xii. State that the terms of the Project Labor Agreement shall prevail over conflicting terms of any collective bargaining agreements.
- xiii. Require that the labor organization utilize members who are Montclair residents as their first choice for staffing without regard of any other preferential status.
- xiv. Require that 10 percent (10%) of the labor hours required shall be performed by the Montclair residents who are participating in the apprenticeship program and that one hundred (100%) percent of the apprentices shall be Essex County residents.

C. Advertisement

At such time as its sponsored Apprentice Program is seeking applications, the Labor Organization will advertise in two newspapers regularly published and distributed in the Township and outreach via other media, such as cable television, the internet and/or radio. The advertisement shall solicit apprenticeship applications for the Labor Organization's Apprenticeship Program, describe the basic requirements for admission, describe the job training and set forth the range of salaries.

D. Pre-Construction Meeting

Not less than 30 days prior to the commencement of construction, the Developer shall meet with the appropriate Township officials, as the context makes relevant, or his or her designee to present workforce needs, which will include the job description of the positions to be filled and duration of the project. In addition, the Developer will provide the construction schedule to the respective Director or his or her designee. The Labor Organization will present the Developer and the respective Director or his or her designee with the names, addresses and trades of eligible Apprentices who are available to work on the project.

E. Job Fairs

The Developer and the Labor Organization will jointly participate in a job fair to be held in the Township in order to explain the Apprenticeship Program and solicit applications from attendees.

8A-6 Apprenticeship Utilization Goals

On all covered projects, the minority and women employment goals for each contractor and subcontractor for each trade shall be established by the New Jersey Department of Labor in manner that is consistent with N.J.A.C., 17:27-7.2; however a contractor shall not be subject to enforcement actions for violation of this provision if that contractor can demonstrate that it made

good faith efforts to comply with this section. For the purposes of this section, good faith efforts for a Developer shall at a minimum include compliance with the following:

- (i) Entry into a Project Labor Agreement and obtaining Letters of Assent from each contractor/sub-contractor;
- (ii) Convening pre-bid and pre-construction meetings to educate construction manager and subcontractors about the Apprenticeship Utilization Goals;
- (iii) Cooperating with Township Representative. The Contractor shall cooperate with the representative appointed by the Manager to ensure compliance with this Section. Representative shall provide services in support of the Contractor's Apprentice Hiring Goals;
- (iv) Establish a point of contact to provide information about Pre-Apprenticeship or Apprenticeship opportunities;
- (v) Develop and maintain an up-to-date list of persons who have been offered opportunities and those who are working on the Project;
- (vi) Facilitate relationships among approved apprenticeship programs and Contractors to enable prompt referrals;
- (vii) Assist Contractors with reporting by working with Contractors and the Representative where appropriate.
- (viii) Regularly contacting and documenting of contact with the Representative and providing certified payroll and other records on a regular basis to the Representative.
- (ix) Use and documenting use of Township approved Craft Request Forms sent to both unions and Township Representative. Craft Request Form, as defined herein means a document through which Contractors shall request workers from Unions.
- (x) Requesting apprentices that are Township residents from union hiring halls.
- (xi) Documenting reasons for not hiring referred candidates from target populations, if applicable.
- (xii) Allowing Township Representative prompt and willing access to documentation of all of the above activities and to the work site if requested.

8A-7 Local Minority Hiring Goals

For each contractor and subcontractor performing work on a Covered Project, the Project Labor Agreement shall contain female and minority employment goals that are

consistent with the guidelines set forth by the Division of Public Contracts Equal Employment Opportunity pursuant to N.J.A.C. 17:27-7.2.

8A-8 Enforcement

- A. **Monitoring and Enforcement.** Each contractor and subcontractor subject to the provisions of this Ordinance shall submit to the Township a completed certified Declaration of Compliance form prior to commencing work on the Covered Project.
- B. **Contractors and Subcontractors.** All contractors on Covered Projects shall require that their subcontractors comply with the provisions of this Chapter. Language indicating the subcontractor's agreement to comply shall be included in the contract between the contractor and subcontractor, and shall contain a provision making such terms enforceable by the Township. Copies of such agreements shall be submitted to the Township.
- C. **Reports.** All contractors and subcontractors shall report to the respective Director or his or her designee on a quarterly basis according to the following schedule (by March 31, June 30th, September 30th, and December 31st of each year) and shall provide the following information, certified and notarized, for each Covered Contract for which work was performed during the previous quarter:

i. Manning Report

The Developer's/Contractor's report, as the case may be, will accurately reflect the total hours in each construction trade or craft and the number of hours worked by Township residents, including a list of minority resident and women resident workers in each trade or craft, and will list separately the work hours performed by such employees of the Contractor and each of its Subcontractors during the previous quarter;

ii. Certified Payroll Report

The Developer's/Contractor's, as the case may be, that will specify the residence, gender and ethnic/racial origin of each worker, work hours, and the rate of pay and benefits provided.

iii. Equal Employment Opportunity Reports

A copy of the Labor Organization's Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the Equal Employment Opportunity Commission by the Labor Organization.

iv. Apprenticeship Report.

The Report of the Labor Organization that shall list the names, address and contact information of all Montclair residents who were accepted in to the Apprenticeship Program. The report shall also list the names, address and contact information of all Montclair residents who were rejected for admission, with the reasons for rejection and, for those Montclair residents who failed to finish the program, the reasons why they failed to complete the program.

v. Total Cost Report

In the event construction permits have been issued and more than 12 months has expired from the date of the adoption of the Ordinance approving the Tax Abatement, the developer shall be required to re-submit a current estimate of Total Construction Costs to ensure that the Total Construction Costs do not exceed \$5 million or it will be deemed that this Ordinance applies.

vi. Final Cost Report

No later than 90 days following project completion, the developer shall submit a certificate of actual Total Construction Costs. All Total Construction Costs shall be certified to the Township by the project Architect and Engineer and is subject to review by the Township at the time of application for Certificate of Occupancy and audit by the Township.

vii. Other Reports.

The Developer or the Labor Organization shall furnish to the Township of Montclair such further information, documents or reports as shall be requested.

D. Records. Contractors and subcontractors performing work on Covered Contracts shall maintain certified payroll records for all employees and shall preserve them for a period of three years after completion of the Covered Contract, making such records available within three (3) days of a written request by the Township or its designee and upon inspection without notice.

E. Site and Records Access. All Developers, contractors and subcontractors performing work on Covered Contracts shall permit access for representatives of the Township or its designee to all work sites and to all applicable records in order to monitor compliance with the provisions of this ordinance.

In the event the Township has good cause to believe that any contractor or subcontractor has failed to comply with the provisions of this Chapter, the contractor or subcontractor shall be given written notice and afforded an opportunity for a hearing before the

appropriate Township official prior to the imposition of the sanctions set forth in this Section. The decision of the respective Director(s) shall be final.

- F. **Township Remedies.** In the event the Township has good cause to believe that any contractor or subcontractor on either a Publicly Funded Project or a Public Works Project has failed to comply with the provisions of this Chapter, said contractor or subcontractor shall be given written notice of their alleged non-compliance and afforded an opportunity to submit a written response to the Township. In the event the Township determines that any contractor or subcontractor on either a Publicly Funded Project or a Public Works Project has failed to comply with the provisions of this Ordinance, it shall have available all remedies available at law or in equity, which shall include, but not be limited to the following:

Suspending or terminating the contract, grant, subsidy agreement, or tax abatement agreement in question;

Completing the Public Works Project with a different contractor or subcontractor, and require the original contractor or subcontractor to pay all damages and costs in utilizing a substitute contractor or subcontractor and/or make claim on their performance bond;

Debarring the Developer, contractor or subcontractor from eligibility for future Township contracts and for Financial Assistance;

Assessing liquidated damages in the amount of 5% of the value of the contract or subsidy in question.

Late filing of any Report or record or the prohibition of any access required for same under Section C, D or E hereof, a payment of \$1,000.00 per day for each day that the report is late for up to 15 days apply. After 15 days the failure to provide same shall constitute a material breach and the above remedies shall apply.

Such other remedies available at law or in equity.

8A-9 Implementation

- A. The Township shall include language in all grant agreements or other documents approved by the Township Council providing Financial Assistance on Covered Projects, including financial agreements in connection with long term tax abatements, requiring compliance with this Ordinance.

- B. Any advertisement for a Public Works Project published sixty (60) days or more following the effective date of this Ordinance shall contain provisions conditioning the award of any contract on compliance with this Chapter.

- C. The Manager or his designees may promulgate regulations or policies implanting this Ordinance.

Section 2. All Township Ordinances or portions of Ordinances inconsistent herewith are hereby repealed to the extent of their inconsistency only.

Section 3. Severability. If any part of this Ordinance shall be declared to be invalid or inoperative, such part shall be deemed severable and the invalidity thereof shall not affect remaining parts of this Ordinance.

Section 4. Effectiveness. This Ordinance shall take effect upon passage, approval and publication as required by law.