

City Clerk File No. Ord. 14.052

Agenda No. 3.B 1st Reading

Agenda No. 4.B 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.052

TITLE: ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 304 (TAXATION) ARTICLE VII
(CONSTRUCTION PROJECT LABOR AGREEMENTS) OF THE JERSEY CITY MUNICIPAL CODE

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY DOES ORDAIN:

A. The following amendment to Chapter 304 (Taxation) Article VII (Construction Project Labor Agreements) of the Jersey City Code are hereby adopted:

ARTICLE VII Construction Project Labor Agreements

§304-33. Definitions.

1. APPRENTICE means a worker who participates in a federal or state apprenticeship program or, as an apprentice equivalent, participates in a DOL approved training program, takes a construction apprenticeship test, and receives benefits and pay not less than those received by an apprentice.
2. APPRENTICESHIP PROGRAM means an apprenticeship program operated by a labor organization and registered by the Bureau of Apprenticeship and Training of the US Department of Labor or an apprenticeship equivalent program as that term is used by the State of New Jersey in the Abbot Project Labor Agreement either approved and funded by the New Jersey Department of Labor as of January 1, 2003.
3. CITY OF JERSEY CITY means the City or the Business Administrator or his designee.
4. DEVELOPER means the recipient of a tax exemption for a tax abated project or the awardee of a public construction contract for a public construction project.
5. LABOR ORGANIZATION means an organization which represents, for purposes of collective bargaining, employees involved in the performance of public construction project or tax abated project that has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work and has an apprenticeship program.
6. PROJECT COMPLETION means the determination by the City that the project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the project receives its final certificate of occupancy.
7. PROJECT LABOR AGREEMENT means a contract between a labor organization and a developer that contains at a minimum the requirements set forth in this Chapter.
8. PUBLIC CONSTRUCTION PROJECT means any construction contract entered into by the City using public funds, the total cost of which is equal to or exceeds five million dollars (\$5,000,000.00), exclusive of any land acquisition costs.
9. TAX ABATED PROJECT means a project that has a ~~total~~ Total ~~cost~~ Construction ~~cost~~ Cost that is equal to or exceeds twenty-five million dollars (\$25,000,000.00), exclusive of any land acquisition costs, ~~for which the City has granted~~ which receives either 1) a long term tax ~~abatement~~ exemption pursuant to the Long Term Tax Exemption Law N.J.S.A. 40A:20-1 et seq., or 2) a five (5) year tax exemption that requires Municipal Council approval, pursuant to

the Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., and Section 301-6 et seq. of the Municipal Code. [However, any project that is being undertaken by a not for profit organization or which shall contain more than fifty percent (50%) affordable housing shall be excluded.]

10. TOTAL CONSTRUCTION COST means all costs, excluding only land acquisition costs, incurred to construct a project through the date of completion, that is, the date the first Certificate of Occupancy is issued. Total Construction Cost shall generally be determined in accordance with the industry standard of Marshall and Swift Valuation, but including the cost of piling and soil compaction. Total Construction Cost must include any Construction Cost constituting as an element of Total Project Cost under N.J.S.A. 40A:20-3(h)(4), whether the project is approved under the Long Term Tax Exemption or the Five Year Tax Exemption Law.

§304-34. Project labor agreements required [for certain projects]; Reports; Exemption.

1. Project Labor Agreement required: All [t] Tax [a] Abated [p] Projects and all requests for proposals, specifications and final contracts for [p] Public [c] Construction [p] Projects shall require the execution of a project labor agreement that complies with the requirements of this chapter, unless the Business Administrator determines, taking into consideration the nature, size and complexity of the project, such as the height of the buildings, the presence of elevators and the utilization of steel, that a project labor agreement is not appropriate. In all cases, the project labor agreement must advance the interests of the City of Jersey City, including cost, efficiency, quality, time lines, and need for a skilled labor force and safety.
2. Reports:
 - A. All developers or Tax Abated Projects, whether subject to Project Labor Agreement or not, shall submit a detailed certification of the estimated Total Construction Cost with its application for any tax abatement, which shall be made available to the public.
 - B. In the event construction permits are issued more than 12 months have 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 insure that the Total Construction Costs do not exceed \$25,000,000 or it will be deemed a Project Labor Agreement applies.
 - C. No later than 90 days following project completion, the developer shall submit a certification of actual Total Construction Cost. Whether estimated or actual, all Total Construction Cost shall be certified to the City by the project Architect and Engineer. Total Construction Cost is subject to review by the City at the time of application and audit by the City, upon project completion.
3. Exemption: Any project that is being undertaken by a not for profit organization or which shall contain more than fifty percent (50%) affordable housing shall be exempt from the requirement of a Project Labor Agreement (PLA).

§304-35. General requirements.

The project labor agreement ~~[one form of which is on file in the office of the City Clerk,]~~ shall contain the following terms:

1. A guarantee that there will be no strikes, lock-outs, or other similar actions.
2. Procedures to insure the effective, immediate, and mutually binding resolutions of jurisdictional and labor disputes arising before the completion of the work.
3. A provision to bind all contractors and subcontractors on the project in all relevant documents.
4. Evidence that each contractor and subcontractor working on the project has a local federally registered apprenticeship program.
5. A requirement that twenty percent (20%) of the labor hours required shall be performed by apprentices and that all apprentices shall be Jersey City residents. However, if it can be demonstrated that fulfilling this requirement is not possible because there are not enough apprentices available, the required percentage of apprentices will be decreased accordingly.
6. Conformity with all statutes, regulations and City ordinances regarding the implementation of our goals for women and minority owned businesses.

7. A requirement that Developers and Labor Organizations complete the following "Pre-Construction Actions":
- A. Pre-Construction Meeting: Not less than 90 days prior to the commencement of construction, the developer will meet with the Business Administrator and the labor organization to present workforce needs, which will include the job description of the positions to be filled and the duration of the project. In addition, the developer will provide the construction schedule. The labor organization will present the developer and the City with the names, addresses and trades of eligible apprentices who are available to work on the project.
 - B. Advertisement: Not less than sixty (60) days prior to the commencement of construction, the Labor Organization will advertise in two newspapers regularly published and distributed in Jersey City and outreach via other media, such as cable television, the web, and/or radio. The advertisement will 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.
 - C. Job Fairs: Developer and the labor organization will jointly participate in at least two (2) job fairs to be held at a location to be provided by the City in order to explain the apprenticeship programs and solicit applications from attendees. Each participating developer shall pay a pro rata share of the costs of each job fair. The first job fair shall be held at least 50 days prior to commencement of construction.

§304-36. Reports and records.

The project labor agreement shall require the submission of the following reports to the business administrator on the fifteenth day of each month for the previous month, for each year of construction until project completion:

- 1. Manning Report. The developer's report will accurately reflect the total hours in each construction trade or craft and the number of hours worked by City 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.
- 2. Certified Payroll Report. The developer's report that will specify the residence, gender and ethnic/racial origin of each worker, work hours, and the rate of pay and benefits provided.
- 3. Equal Employment Opportunity Reports. The labor organization's local union report (EEO-3) and apprenticeship information report (EEO-2) which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the labor organization.
- 4. Apprenticeship Report. The report of the labor organization that shall list of the names, address and contact information of all persons who were accepted to the apprenticeship program. The report shall also list the names, address and contact information of all persons who were rejected for admission to the apprenticeship program with the reasons for their rejection and, for those who failed to finish the program, the reasons why they failed to complete the program.
- 5. Other Reports. The developer or labor organization shall furnish such reports or other documents to the City as the City may reasonably request from time to time in order to carry out purposes of the ordinance.
- 6. Records. Records to support the work hours stated in the above reports must be maintained for a period of three (3) years after project completion. All records shall be made available to the City upon ten (10) days prior written notice.
- 7. Site access. Representatives of the City shall be permitted to have appropriate access to all work sites in order to monitor compliance.

§304-37. Remedies.

In the event of default the developer shall be provided with a written notice of default allowing the developer ten (10) days to cure the default. Should the developer fail to cure, then, in addition to any other remedies available at law or in equity including termination, the City shall be permitted to seek the following remedies for the failure to comply with this ordinance, ~~which remedies shall also be included in the project labor agreement~~

A reference to the within ordinance, including the within remedies, shall be included in the financial agreement for any Tax Abated Project, irrespective of estimated Total Construction Costs:

1. For Public Construction Projects:

- A. Suspend the public construction contract for failure to complete any of the preconstruction actions described in Subsection 304-35.8.A, B and C;
- B. Complete the contract with a substitute contractor or subcontractor and require the contractor or subcontractor to pay all damages and costs incurred;
- C. Require the refunding of payments made by the City to the developer prior to the suspension or termination; and/or
- D. Liquidated damages in the following amounts: three percent (3%) of the total price of the construction contract for each breach and up to ten percent (10%) of the total price of the construction contract for multiple breaches or for a single breach that is unabated for a period of six (6) months.

2. For Tax Abated Projects:

- A. Suspension: Suspend the tax abatement financial agreement until the date of cure (during which period three hundred percent (300%) of conventional real estate taxes shall be assessed and collected) for during any period that the developer fails to complete any of the preconstruction actions described in Subsections 304-35.8.A and C hereof.
- B. Liquidated Damages:
 - (1) Late filing of any report required under Section 304-36 hereof: a payment of one thousand dollars (\$1,000.00) per day for each day that the report is late for up to fourteen (14) days. After fourteen (14) days, the remedy in section (2) hereof, shall apply.
 - (2) Failure to provide a required report or record or to allow work place access: an amount equal to two percent (2%) of the estimated annual payment in lieu of taxes for each month or part thereof the records or work place access is not provided.
 - (3) A material breach of any other term of this Chapter, an amount equal to two percent (2%) of the estimated annual payment in lieu of taxes for each month or part thereof the breach continues.
 - (4) A material breach of this Chapter that continues for a period of six (6) months or more, shall allow the City to terminate the tax abatement.

3. For Tax Abated Projects if a Project Labor Agreement was initially determined not to be required:

- A. In the event an application for a Tax Abated Project contains an estimate of Total Project Cost that is less than \$25 million dollars, but upon project completion is determined to have a Total Construction Cost equal to or exceeding \$25 million, then the project Service Charge shall be increased as follows:
 - (1) Long Term Tax Exemption: 2% of Total Project Cost, or 5% of Annual Gross Revenue, as applicable; or
 - (2) Five Year Tax Exemptions: the phase-in for each year shall be increased 10%.
 - (3) The above increases shall be retroactive to the date of Substantial Completion and shall apply for each and every year of the entire term of the tax abatement.
- B. In addition, the project shall also be immediately subject to the City's Living Wage, Section 3-76 of the Jersey City Municipal Code.

§304-38. Pre-apprenticeship training program.

1. **Inter Agency Cooperation.** The City will solicit the support of the Jersey City Board of Education, the Hudson County Community College, the Hudson County Vo-Tech School, the Jersey City Employment and Training Program, Inc, the Jersey City Housing Authority, and other community based organizations to maximize participation in the apprenticeship program among eligible City residents.
 2. **Preparatory Services.** The City shall be responsible for the development of a program to provide all necessary preparatory services for enrolled pre-apprentices, including assistance with GED preparation, obtaining drivers license, mentoring and other supportive services for pre-apprentices. The pre-apprenticeship program shall be operated in such a manner that its successful graduates will be equipped and eligible for entry into the apprenticeship programs of a labor organization.
 3. **Monitoring.** The City shall be responsible for the selection, operation and supervision of pre-apprenticeship programs that may be operated by private entities, such as the Jersey City Employment and Training Program, Inc., and shall retain authority to review and approve the curriculum and procedures used to recruit and select participants.
- B. All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.
- C. This Ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. the City Clerk shall have this Ordinance codified and incorporated in the official copies of the Jersey City Code.
- D. This ordinance shall take effect at the time and in the manner as provided by law.
- E. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All new material is underlined; words in {brackets} are omitted.
 For purposes of advertising only, new matter is indicated by **boldface**
 and repealed matter by *italic*.

JM/he
 5/13/14

APPROVED AS TO LEGAL FORM

APPROVED: _____

 Corporation Counsel

APPROVED: _____
 Business Administrator

Certification Required ☐
 Not Required ☐

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 304 (TAXATION) ARTICLE VII
(CONSTRUCTION PROJECT LABOR AGREEMENTS) OF THE JERSEY CITY MUNICIPAL CODE

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547 - 4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

Ordinance makes revisions to the definitions, requirements and remedies imposed by it.

I certify that all the facts presented herein are accurate.

Signature of Department Director

Date

Ordinance of the City of Jersey City, N.J.



ORDINANCE NO. Ord. 14,052

TITLE: 3.B MAY 14 2014 4.B MAY 28 2014

Ordinance amending and supplementing Chapter 304 (Taxation) Article VII (Construction Project Labor Agreements) of the Jersey City Municipal Code.

RECORD OF COUNCIL VOTE ON INTRODUCTION MAY 14 2014 9-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMANN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES.	✓		

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING MAY 28 2014											
Councilperson <u>BOGGIANO</u> moved, seconded by Councilperson <u>RIVERA</u> to close P.H. 8-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	ABSENT			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMANN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.--Not Voting (Abstain)

SPEAKERS:

YVONNE BALGER
LAVERN WASHINGTON
GUEN TIGER
MORRIS GADSDEN
CYNITA DAVIS
PAT KELLEHER

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____ moved to amend* Ordinance, seconded by Councilperson _____ & adopted											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMANN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

RECORD OF FINAL COUNCIL VOTE MAY 28 2014 8-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	ABSENT			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMANN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.--Not Voting (Abstain)

MAY 14 2014

Adopted on first reading of the Council of Jersey City, N.J. on _____

MAY 28 2014

Adopted on second and final reading after hearing on _____

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on **MAY 28 2014**

Robert Byrne, City Clerk

APPROVED: _____

Rolando R. Lavarro, Jr., Council President

Date **MAY 28 2014**

*Amendment(s):

APPROVED: _____

Steven M. Fulop, Mayor

Date **MAY 29 2014**

Date to Mayor **MAY 29 2014**