Proposed Int. No. 1321-B

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 and Louis

..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

..Body

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 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.

[(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 employer 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 employer 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 physical health, mental health, and substance abuse needs of such residents.

“Preservation project” means a project receiving financial assistance to rehabilitate a building or group of buildings with less than 120 residential units, or a residential project involving an existing building that is subject to a regulatory agreement with a federal, state or local government agency, provided that such agreement requires that none of the residential units may be sold or rented at market rate and the average unit is affordable for households earning up to 50 percent of the area median income, and provided, further, that such project receives financial assistance: (i) solely in the form of a tax benefit or (ii) that averages less than $35,000 per residential unit.

[(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 no less than the wages and benefits paid to building service employees in a preservation project on the date that the financial assistance for such project is received, plus the difference between the applicable prevailing wage on such date and the applicable prevailing wage in effect at the time of the annual certification required pursuant to paragraph (2) of subdivision c of this section.

“Protected employer” means any employer receiving financial assistance for a preservation project.

“Received” means the execution of a written instrument that sets forth the provision of financial assistance to a covered developer or protected employer 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 a building or a group of buildings with no less than 120 residential units in total.

[(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.

“Supportive housing project” means 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 or protected employer presents a plan for providing on-site supportive services, and (iv) on-site supportive services are provided pursuant to a contract with a city, state or federal agency.

§ 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 (1) 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) 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. Protected employers 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.

§ 4. 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] a 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. Prior to commencing work at a preservation project, and annually thereafter, every protected employer 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 preservation project by the protected employer or under contract with the protected employer to perform building service work will be and/or have been paid 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 employer. Such certification shall be certified by the chief executive or chief financial officer of the covered developer or protected employer, 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.

§ 5. Paragraph (3) 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:

(3) Each covered developer and protected employer shall maintain original payroll records for each building service employee working at a city development project or preservation project, as applicable, 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 employer 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 employer shall provide a certified original payroll record.

§ 6. 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 or preservation project subject to the requirements of this section, a covered developer or protected employer 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 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 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 or protected wage, as applicable, 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 employers’ obligations under this section, and the city shall in turn provide those written notices to covered developers and protected employers.

§ 7. Paragraph (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:

(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 employer providing for financial assistance, whichever is longer.

§ 8. Paragraphs (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, is amended to read as follows:

   (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 employer 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 employers’ 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 employer 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 employer 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 employer 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 employer. 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 employer, 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 employer 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.

§ 9. 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 provision of any financial assistance to a covered developer in addition to the financial assistance provided to such developer pursuant to any written agreement between a city agency or city economic development entity and such covered developer executed prior to the effective date of this local law shall make such covered developer subject to the requirements of this local law. The terms “city economic development entity”, “covered developer”, and “financial assistance” shall be defined in accordance with the definitions in section 6-130 of the administrative code.

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

MHL

LS #5520; 5670

10/22/19 9:06 p.m.