

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 173

Introduced by The Speaker (Council Member Johnson) and Council Members Kallos, Ayala and Brannan.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring labor peace agreement for certain city economic development projects

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-146 to read as follows:

§ 6-146 Labor peace agreements for certain city economic development projects. a.

Definitions. For the purposes of this section, the following terms have the following meanings:

As-of-right assistance. The term “as-of-right assistance” means any financial assistance that is available to all persons who meet the criteria used to determine the allocation of such financial assistance, and any financial assistance provided to a person the amount of which is calculated based on an evaluation of the financial assistance that a person would have been eligible for under such a program. The term “as-of-right assistance” includes, but is not limited to, financial assistance that is limited by the availability of funds and is distributed on a first come, first serve basis or on any other non-discretionary basis.

Brooklyn navy yard entity. The term “Brooklyn navy yard entity” means any not-for-profit organization that contracts with the city to lease or operate the area encompassing block 2023, lots 1, 50 and 150 in Kings county, commonly known as the Brooklyn navy yard.

Building service employee. The term “building service employee” means any person, the majority of whose employment consists of performing work in connection with the care or maintenance of a building or other property, including but not limited to a watchperson, guard, doorman, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

City economic development entity. The term “city economic development entity” means a not-for-profit organization 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, except that the term “city economic development entity” shall not include any Brooklyn navy yard entity.

City financial assistance. The term “city financial assistance” means financial assistance, other than as-of-right assistance, that is provided directly by the city or by a city economic development entity using funds provided in whole or in part by the city to a person for the improvement or development of property and that, at the time the city financial assistance recipient enters into a project agreement with the city or city economic development entity, is expected to have a total present financial value of at least \$ 500,000, which amount shall be adjusted on July 1 of each year commencing on July 1, 2022, based upon the 12-month percentage increases, if any, in the price index for the most recent 12-month period for which data is available. Where financial assistance takes the form of leasing property at below-market lease rates, for the purpose of determining whether such financial assistance constitutes city financial

assistance, the value of the financial assistance shall be determined based on the difference in cost between the lease for the property and a market lease for a similar property. Where financial assistance takes the form of loans, bond financing or tax increment financing, for the purpose of determining whether such financial assistance constitutes city financial assistance, the value of the financial assistance shall be determined based on the difference between the financing costs to a borrower and the costs to a similar borrower who does not receive financial assistance from the city or a city economic development entity.

City financial assistance recipient. The term “financial assistance recipient” means any person that receives city financial assistance, except that the term “financial assistance recipient” shall include neither a city economic development entity nor a Brooklyn navy yard entity.

Comptroller. The term “comptroller” means the comptroller of the city.

Construction employee. The term “construction employee” means a person employed to perform labor of a type that the comptroller has identified in a published schedule as a classification of work performed by laborers, workmen or mechanics pursuant to section 220 of the labor law, regardless of whether such labor constitutes public work pursuant to such section.

Covered employee. The term “covered employee” means an employee, other than a building service employee or construction employee, working at a retail or food service establishment or a distribution center, provided that:

- 1. Such work involves the retail or food service establishment or distribution center’s regular business operations; and*
- 2. Such retail or food establishment or distribution center is located on property within the city that has been improved or developed using city financial assistance.*

Covered employer. The term “covered employer” means a person that employs covered employees and that is any of the following:

1. A city financial assistance recipient;

2. A tenant, subtenant, leaseholder or subleaseholder of a city financial assistance recipient who occupies property improved or developed with city financial assistance; or

3. A person performing services pursuant to a contract or subcontract:

(a) For a city financial assistance recipient or a tenant, subtenant, leaseholder or subleaseholder of a city financial assistance recipient;

(b) At a property that has been improved or developed with city financial assistance;

(c) For an amount in excess of \$500,000, which amount shall be adjusted on July 1 of each year commencing on July 1, 2022, based upon the twelve-month percentage increases, if any, in the price index, for the most recent twelve-month period for which data is available; and

(d) For a period of more than 90 days.

Distribution center. The term “distribution center” means a warehouse, distribution center, sortation facility, fulfillment center or any other building stocked with products or goods to be redistributed to retailers, to wholesalers, or directly to consumers and at which 20 or more employees are employed on the premises, except that the term “distribution center” shall not include any such facility used primarily for the storage or distribution of goods owned or manufactured by the person operating such facility or any affiliate of such person, provided that the business operations of such person and any affiliates within the city primarily involve the sale of goods owned or manufactured by such person or any affiliate.

Financial assistance. The term “financial assistance” means assistance provided to a person through an agreement with the city or a city economic development entity that consists of:

1. A cash payment or grant, including but not limited to a payment for costs associated with environmental remediation of or capital improvements to a property;

2. A loan, bond financing, or tax increment financing;

3. A tax abatement, credit, or exemption, including, but not limited to, an abatement or exemption from real property, mortgage recording, sales and use taxes, or the difference between a payment in lieu of taxes and the amount of real property or other taxes that would have been due if the property or taxpayer were not exempted from the payment of such taxes, provided that such tax abatement, credit, or exemption is provided in conjunction with a lease, grant, cash payment, loan, bond financing, or tax increment financing; or

4. A write-down in the market value of a building, land, or lease.

Hunts Point city property. The term “Hunts Point city property” means any city-owned property located in the blocks 2770, 2775, 2778, 2780, or 2781 in Bronx county.

Labor organization. The term “labor organization” has the same meaning as set forth in subdivision (5) of section 152 of title 29 of the United States code.

Labor peace agreement. The term “labor peace agreement” means an agreement between a covered employer and a labor organization that seeks to represent individuals who perform one or more classes of work at a distribution center or retail or food service establishment located on a property improved or developed with city financial assistance, where such agreement:

1. Requires that the covered employer and the labor organization and its members agree to the uninterrupted performance of work on the property improved or developed with city financial

*assistance and to refrain from actions intended to or having the effect of interrupting such work;
and*

2. Includes any other terms required by rules promulgated pursuant to subdivision g of this section.

Not-for-profit organization. The term “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 501 of the United States internal revenue code.

Operational commencement date. The term “operational commencement date” means:

- 1. With respect to a city financial assistance recipient, the project commencement date; and*
- 2. With respect to a covered employer that is not a city financial assistance recipient, the date upon which such covered employer commences business operations at a project, as further defined by a rule promulgated pursuant to subdivision g of this section.*

Price index. The term “price index” means a price index published by the bureau of labor statistics of the United States department of labor and selected pursuant to a rule promulgated pursuant to subdivision g of this section.

Project. The term project means a development or improvement for which city financial assistance is provided.

Project agreement. The term “project agreement” means a written agreement between the city or a city economic development entity and a city financial assistance recipient through which city financial assistance is provided.

Project commencement date. The term “project commencement date” means the date on which a city financial assistance recipient commences operations at a project, as further defined by a rule promulgated pursuant to subdivision g of this section.

Property. The term “property” means real property and does not include personal property or any other intangible form of property.

Retail or food service establishment. The term “retail or food service establishment” means any retail store selling goods, any food services establishment, and any establishment that is required to have a license to sell liquor pursuant to the alcohol beverage control law, provided that:

1. Such store or establishment offers goods or services primarily to members of the general public; and

2. 10 or more employees are employed on the premises of such store or establishment.

Small business. The term “small business” means a firm that does not exceed the small business size standards established for its industry by the United States small business administration.

b. 1. No later than 90 days after the operational commencement date, a covered employer shall either:

(a) submit an attestation to the city or city economic development entity that provided the applicable city financial assistance, signed by one or more labor organizations, as applicable, stating that the covered employer has entered into or is negotiating one or more labor peace agreements, as applicable, with such labor organizations, and identify: (i) the classes of covered employees to whom the labor peace agreements apply, (ii) the classes of covered employees not

currently represented by a labor organization and that no labor organization has sought to represent, and (iii) the classes of covered employees for which labor peace agreement negotiations have not yet concluded; or

(b) submit an attestation to the city or city economic development entity stating that the covered employer's covered employees are not currently represented by a labor organization and that no labor organization has sought to represent such covered employees.

2. Where a labor organization seeks to represent the covered employees of a covered employer after the expiration of the 90-day period following the operational commencement date, or after the covered employer has submitted an attestation pursuant to paragraph 1 of this subdivision, whichever occurs first, and the labor organization has provided notice to the city or city economic development entity that provided the city financial assistance, as applicable, and the covered employer regarding such interest, the covered employer shall no later than 90 days after the date of notice submit an attestation signed by the labor organization to the city or city economic development entity, as applicable, stating that it has entered into a labor peace agreement with such labor organization or that labor peace agreement negotiations have not yet concluded.

3. The city or a city economic development entity, as applicable, may, pursuant to the terms of a project agreement, require a city financial assistance recipient to receive and transmit to the city or a city economic development entity any such attestations required to be made pursuant to this subdivision by covered employers operating on the project.

c. The requirements of subdivision b and paragraphs 1 through 3 of subdivision e of this section shall apply for the term of the project agreement or for 10 years, whichever is longer. Such 10 year period shall be calculated as starting at the project commencement date.

d. 1. The requirements established under paragraphs 1 and 2 of subdivision b and paragraph 2 of subdivision e of this section shall not apply to the following persons:

(a) Any firm that constituted a small business during the prior calendar year; or

(b) Any not-for-profit organization.

2. The requirements established under paragraphs 1 and 2 of subdivision b and paragraph 2 of subdivision e of this section shall not apply to:

(a) Any retail or food service establishment or distribution center operating at a project:

(1) in which residential units subject to a regulatory agreement with one or more federal, state, or local government agencies comprise more than 75% of the project area, and such regulatory agreement requires that no less than 75% of the residential units located at the project are affordable for households earning on average less than 125% of the area median income; or

(2) in which residential units comprise more than 75% of the project area, and all such residential units are subject to a regulatory agreement with one or more federal, state, or local government agencies the term of which govern the affordability of such residential units;

(b) Any retail or food service establishment or distribution center operating at the hunts point city property; or

(c) Any retail or food service establishment or distribution center operating at a project for which the principal industry conducted on the property is or will be manufacturing, as defined by the North American industry classification system.

e. 1. Each city financial assistance recipient shall provide to the comptroller and the city or city economic development entity that executed the project agreement an annual certification:

(a) confirming notification to all employers operating on the property improved or developed with city financial assistance that employers must comply with all requirements of this section, as applicable;

(b) providing the names, addresses and telephone numbers of such employers; and

(c) affirming the city financial assistance recipient's obligation to assist the city to investigate and to remedy non-compliance by any employers.

2. Prior to commencing work at a property improved or developed with city financial assistance, each covered employer not subject to an exemption pursuant to subdivision d of this section shall provide to the comptroller and the city or city economic development entity that executed the project agreement a statement agreeing to comply with the requirements of this section, provided that the city or city economic development may instead, pursuant to the terms of a project agreement, require a city financial assistance recipient to collect and transmit such statements for all covered employers operating on such project. All such statements shall be certified by the chief executive or chief financial officer of the covered employer, or the designee of any such person. A violation of any provision of such certified statements shall constitute a violation of this section.

3. A person who qualifies for an exemption pursuant to subdivision d of this section shall provide to the comptroller and the city or city economic development entity that executed the project agreement a certification indicating the exception that such person qualifies for and specifying the basis for that exemption. Such person shall update or withdraw such certification on a timely basis if such person's eligibility for the claimed exemption changes.

4. *The comptroller and city or city economic development entity that executed the project agreement shall maintain each certification submitted pursuant to this subdivision and make such certifications available for public inspection until the sixth anniversary of the conclusion of the term of the project agreement.*

f. 1. The comptroller shall monitor the city financial assistance recipients' and covered 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 an interested party, the comptroller shall conduct an investigation to determine the facts relating thereto. Based upon such investigation, hearing and findings, the comptroller shall report the results of such investigation and hearing to the mayor. Based on the comptroller's report or any other information available to the mayor, the mayor may, after providing the city financial assistance recipient or covered employer an opportunity to cure any violations, where appropriate, issue an order, determination or other disposition. Such disposition may:

(a) Direct the filing of any records as required by this section;

(b) Direct the imposition of sanctions against the city financial assistance recipient or covered employer in accordance with rules promulgated pursuant to subdivision g;

(c) Direct the imposition of any contractual remedies available to the city or the city economic development entity under the applicable project agreement; or

(d) Declare the applicable city financial assistance recipient in default of the project agreement.

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 city financial assistance recipient

or covered employer and the failure to comply with recordkeeping, reporting, or other requirements.

2. Before issuing an order, determination or any other disposition, the mayor 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 may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and recommended disposition. Such city financial assistance recipient's or covered employer shall be notified of a hearing date by the office of administrative trials and hearings, and shall have the opportunity to be heard in respect to such matters.

g. The mayor shall promulgate implementing rules and regulations, as appropriate and consistent with this section, and may delegate such authority to the comptroller.

§ 2. (a) This local law takes effect 120 days after it becomes law, provided that this local law shall not apply to any project for which the project agreement was entered into prior to the effective date of this local law or any tenancy, subtenancy, lease, sublease, contract or subcontract entered into prior to the effective date of this local law, and provided further that the mayor, or the mayor's delegee, 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.

(b) For the purpose of this section, the terms "project" and "project agreement" shall be defined in accordance with the definitions in section 6-146 of the administrative code of the city of New York.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on November 23, 2021 and returned unsigned by the Mayor on December 23, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 173 of 2021, Council Preconsidered Int. No. 2456 of 2021) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.