

# ORDINANCE

No. 23-047  
Date to Mayor SEP 12 2023  
Date Returned SEP 14 2023  
Date Resubmitted to Council \_\_\_\_\_

1<sup>st</sup> Reading AUG 03 2023  
Public Hearing SEP 07 2023  
2<sup>nd</sup> Reading & Passage SEP 07 2023  
Withdrawn \_\_\_\_\_ Lost \_\_\_\_\_

Approved as to Form and Legality

Factual content certified by

WESLEY BRIDGES, ESQ., CITY ATTORNEY

BRANDON L. GARCIA, CITY CLERK

Councilman /woman

presents the following Ordinance:

**AN ORDINANCE OF THE CITY OF TRENTON, COUNTY OF MERCER, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE CITY CODE TO CREATE A NEW CHAPTER 214, ENTITLED PROJECT LABOR AGREEMENT**

**WHEREAS**, the New Jersey State Legislature has determined, among other things, that New Jersey has a compelling interest in carrying out public works projects at the lowest reasonable cost and the highest degree of quality; that New Jersey has a compelling interest in having labor disputes in connection with public works projects resolved without the disruptions of strikes, lock-outs, or slowdowns; that project labor agreements make possible legally-enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lock-outs, or slowdowns; and that project labor agreements make it possible to provide the State with a guarantee that public works projects are completed with highly skilled workers; and

**WHEREAS**, the City of Trenton desires to provide for the efficient, safe, quality and timely completion of large construction projects undertaken by the City which total costs exceed five million dollars (\$5,000,000.00); and

**WHEREAS**, the City Council declares it to be in the best interest of the City to provide for a project labor agreement for construction projects undertaken by the City which total costs exceed five million dollars (\$5,000,000.00).

**NOW, THEREFORE, BE IT ORDAINED** that the City Code of the City of Trenton is hereby amended by creating a new Chapter 214, entitled Project Labor Agreement as follows:

**SECTION 1.** Chapter 214, "Project Labor Agreement," shall be added to the Code of the City of Trenton as follows:

**§ 214-1. Purpose.**

This Chapter shall ensure that certain public construction contracts with total project costs that exceed five million dollars (\$5,000,000) which the City directly undertakes 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-wage careers in the construction trades for a new generation of workers. Projects which exceed the five-million-dollar threshold during the pendency of the project shall also be subject to this Chapter.

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## **§ 214-2. Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated:

### **APPRENTICE**

A worker who participates in a federal 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.

### **APPRENTICE PROGRAM**

An apprenticeship program operated by an entity registered by the Bureau of Apprenticeship and Training of the United States Department of Labor or registered by a federal apprenticeship agency recognized by the Bureau.

### **CONTRACTOR**

A person or entity awarded a public works contract contemplated by this Chapter.

### **CRAFT REQUEST FORM**

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.

### **LABOR ORGANIZATION**

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 (N.J.S.A. 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 United States Department of Labor.

### **PROJECT LABOR AGREEMENT**

A contract between a contractor/labor organization and the City of Trenton that contains, at a minimum, the requirements set forth in this Chapter.

### **PUBLIC WORKS PROJECTS**

Building, altering, repairing, improving or demolishing any public structure or facility constructed, acquired or otherwise owned by the City of Trenton to house local government functions or provide water, waste disposal, power, transportation, and other public infrastructure.

### **SUBCONTRACTOR**

A person or entity that is engaged or performs work or provides materials for a contractor, as defined herein, which person or entity may not be in privity of contract with the City of Trenton.

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## TOTAL PROJECT COSTS

Shall be inclusive of environmental work, demolition, preconstruction, and construction costs.

### § 214-3. Coverage.

The terms of this Chapter, set forth in § 214-5 below, are applicable to covered projects. Covered projects include public works projects.

### § 214-4. Conflicts.

To the extent any of the provisions of this Chapter are deemed to conflict with N.J.S.A. 52:38-1 et seq. (P.L. 2202, c. 44), the statute shall control. To the extent this Chapter conflicts with any additional local ordinances, this Chapter shall control.

### § 214-5. Requirements for covered contracts.

A. Project labor agreement required. Certain public works projects shall require the execution of a project labor agreement that complies with the requirements of this Chapter. The agreement shall either be directly entered into with a labor organization or the award of the contract shall be made on the condition 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 Chapter shall be in conformity with N.J.S.A. 52:38-1 et seq. (P.L. 2022, c. 44), and:

- (1) Advance the interests of the City of Trenton, including the interests in the City of Trenton in cost, efficiency, quality, timeliness, skilled labor force, and safety;
- (2) Contain guarantees against strikes, lockouts, or other similar actions;
- (3) Set forth effective, immediate and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work;
- (4) Be made binding on all contractors and subcontractors on the project in all relevant documents, including bid specifications;
- (5) Require that each contractor and subcontractor working on the project have an apprenticeship program as defined herein;
- (6) Fully conform to all statutes, regulations, and City of Trenton ordinances regarding the implementation of goals for women- and minority- owned businesses, the obligation to comply with which shall be expressly provided for in the project labor agreement;
- (7) Include a publicly available plan which is in full conformance with the requirements of all applicable statutes, regulations and executive orders regarding the share of employment and apprenticeship positions in the project for minority group members and women, and is mutually agreed upon by the participating labor organizations

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and the public entity 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;

(8) State that contractors and subcontractors need not be a party to a City of Trenton labor agreement with the applicable labor organization other than for the project covered by the project labor agreement;

(9) Require the City 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 City to make public, or have the state agency make public, all records of monitoring conducted pursuant to N.J.S.A. 52:38-1 et seq. (P.L. 2002, c. 44), this Chapter and the project labor agreement;

(10) 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 residents were not in line for referral under normal hiring hall procedures;

(11) 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 group 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 organizations and the public entity;

(12) State that the terms of the project labor agreement shall prevail over conflicting terms of any collective bargaining agreements;

(13) Require that the labor organization utilize members who are City of Trenton residents as its first choice for staffing without regard to any other preferential status; and

(14) Require that twenty percent (20%) of the labor hours required shall be performed by City of Trenton residents who are participating in the apprenticeship program and that one-hundred percent (100%) of the apprentices shall be City of Trenton residents.

C. 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 the City and outreach via other media, such as cable television, the Internet 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. Preconstruction meeting. Not less than thirty (30) days prior to the commencement of construction, the contractor shall meet with the appropriate City official, 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 contractor will provide the construction schedule to the respective Director or his or her designee and to the City Engineer. The labor organization will present the contractor 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.

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E. Job fairs. The contractor and the labor organization will jointly participate in a job fair to be held in the City in order to explain the apprenticeship program and solicit applications from attendees.

## **§ 214-6. 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 a manner that is consistent with N.J.A.C. 17:27-7.2; however, a contractor shall not be subject to enforcement actions for violations 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:

A. Entry into a project labor agreement and obtaining letters of assent from each contractor/subcontractor.

B. Convening prebid and preconstruction meetings to educate construction manager and subcontractors about the apprenticeship utilization goals.

C. Cooperating with representative. The contractor shall cooperate with the representative appointed by the Mayor to ensure compliance with this section. The representative shall provide services in support of the contractor's apprentice hiring goals.

D. Establish a point of contact to provide information about pre-apprenticeship or apprenticeship opportunities.

E. Develop and maintain an up-to-date list of persons who have been offered opportunities and those who are working on the project.

F. Facilitate relationships among approved apprenticeship programs and contractors to enable prompt referrals.

G. Assist contractors with reporting by working with contractors and their subcontractors where appropriate.

H. Regularly contacting and documenting of contact with the representative and providing certified payroll and other records on a regular basis to the representative.

I. Use and documenting use of City-approved craft request forms sent to both unions and City representatives. Craft request form, as defined herein, means a document through which contractors shall request workers from unions.

J. Requesting apprentices that are City residents from union hiring halls.

K. Documenting reasons for not hiring referred candidates from target populations, if applicable.

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L. Allowing the City representative prompt and willing access to documentation of all of the above activities and to the work site if requested.

## **§ 214-7. 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 Compliance established in the State Department of the Treasury, pursuant to N.J.A.C. 17:27-7.2.

## **§ 214-8. Enforcement.**

A. Monitoring and enforcement. Each contractor and subcontractor subject to the provisions of this Chapter shall submit the 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 City. Copies of such agreements shall be submitted to the City.

C. Reports. All contractors and subcontractors shall report to the City Business Administrator or his or her designee on a quarterly basis according to the following schedule (by March 31, June 30, September 30 and December 31 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:

(1) Manning report. The contractor'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 contractor's report 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. 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 United States Equal Employment Opportunity Commission by the labor organization.

(4) Apprenticeship report. The report of the labor organization which shall list the names, addresses, and contact information of all persons who were accepted into the apprenticeship program from the target population. The report shall also list the names, addresses and contact information of all persons from the target population who were rejected for admission, with the reasons for rejection, and for those from the target population who failed to finish the program, and the reasons why they failed to complete

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the program.

(5) Other reports. The developer or the labor organization shall furnish to the City 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 (3) years after completion of the covered contract, making such records available within three (3) days of a written request by the City or its designee and upon inspection without notice.

E. Site and records access. All contractors and subcontractors performing work on covered contracts shall permit access for representatives of the City or its designees to all work sites and to all applicable records in order to monitor compliance with the provisions of this Chapter.

F. City remedies. In the event the City has good cause to believe that any contractor or subcontractor on a public works project has failed to comply with the provisions of this Chapter, a contractor or subcontractor shall be given written notice of the alleged noncompliance and afforded an opportunity to submit a written response to the City. In the event the City determines any contractor or subcontractor on a public works project has failed to comply with the provisions of this Chapter, it shall have available all remedies available at law or equity, which shall include but not be limited to the following:

(1) Suspending or terminating the contract in question.

(2) 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 its performance bond.

(3) Debarring the developer, contractor or subcontractor from eligibility for future City contracts.

(4) Assessing liquidated damages in the amount of five percent (5%) of the value of the contract in question.

(5) For late filing of any report or record or the prohibition of any access required for same under Subsection C, D or E hereof, a payment of one thousand dollars (\$1,000) per day for each day that the report is late for up to fifteen (15) days shall apply. After fifteen (15) days, the failure to provide same shall constitute a material breach and the above remedies shall apply.

(6) Such other remedies available at law or in equity.



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**§ 214-9. Implementation.**

A. Any advertisement for a public works project published sixty (60) days or more following the effective date of the Chapter shall contain provisions conditioning the award of any contract to be in compliance with this Chapter.

B. The Mayor or their designees may promulgate regulations or policies implementing this Chapter.

**SECTION 2**

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgement shall be limited in its effect only to the portion of the ordinance actually adjudged to be invalid, and the remaining portions of this ordinance shall be deemed severable therefrom and shall not be affected. All ordinances, rules and regulations inconsistent with herewith are hereby repealed.

**SECTION 3**

This ordinance shall take effect upon final adoption and publication in accordance with N.J.S.A. 40:69A-18.

Ordinance authored by Councilwoman Figueroa Kettenburg

INTRODUCTION:	MOTION: <i>Feliciano</i> SECOND: <i>Figueroa Kettenburg</i>								ORD. AUTHORED BY: COUNCILWOMAN FIGUEROA KETTENBURG	ADOPTION	MOTION: <i>Feliciano</i> SECOND: <i>Figueroa Kettenburg</i>															
	INTRODUCTION				ADOPTION						INTRODUCTION				ADOPTION											
	AYE	NAY	NV	AB	AYE	NAY	NV	AB			AYE	NAY	NV	AB	AYE	NAY	NV	AB								
EDWARDS	✓				✓				GONZALEZ	✓				✓				FRISBY	✓				✓			
ELICIANO	✓				✓				HARRISON	✓				✓												
FIGUEROA KETTENBURG	✓				✓				WILLIAMS	✓				✓												

IV - NO VOTE AB - ABSENT

Adopted on first reading at a meeting of the City Council of the City of Trenton, NJ on AUG 03 2023

Adopted on second reading after the public hearing on SEP 07 2023

Mayor *[Signature]*  
 President of Council *[Signature]*



Reconsidered by Council - Override Vote *[Signature]*  
 City Clerk