

**BOROUGH OF WOODLAND PARK
ORDINANCE NO. 23-20**

**AN ORDINANCE TO AMEND CHAPTER 37 ENTITLED
“PROJECT LABOR AGREEMENTS”**

WHEREAS, the Borough of Woodland Park has a compelling interest to ensure that development projects with a total estimated cost equal to or exceeding \$5 million, excluding land acquisitions costs, are completed at responsible cost with the highest degree of quality; and

WHEREAS, the Borough of Woodland Park has a compelling interest in ensuring that workers on such development projects are paid appropriate wages and that their families receive appropriate benefits; and

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

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

WHEREAS, the Borough of Woodland Park also seeks to ensure that job opportunities generated by contracts as described above are also utilized to help low-income, minority and women workers gain access to careers in the construction trades; and

WHEREAS, the Borough seeks to promote meaningful job opportunities for all of its citizens; and

WHEREAS, the benefits received by contractors impacted by this ordinance will create opportunities to employ a substantial number of apprentices from Woodland Park, thus ensuring that those projects will expand access to living wage careers in the construction trades for a new generation of Woodland Park workers. However, if a construction project is put out to bid pursuant to this Ordinance and which contains a “Project Labor Agreement” and none of the bids received are within the budget for that project, the Borough shall rebid the project without mandating the use of a “Project Labor Agreement”; and

WHEREAS, to facilitate the above, the Mayor and Borough Council have determined that the annexed amended Chapter entitled “Project Labor Agreements” shall be added to the General Code of Woodland Park;

NOW THEREFORE BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Woodland Park, in the County of Passaic and the State of New Jersey, that:

1. The annexed amended Chapter 37 “Project Labor Agreements” shall be added to the General Code of Woodland Park.
2. If any section, subsection, paragraph, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.
3. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.
4. This Ordinance shall take effect upon passage and publication as required by law.

Attest:

Approved:

Sandra Olivola, Municipal Clerk

Tracy Kallert, Acting Mayor

Introduction: September 6, 2023

Adoption: September 20, 2023

Chapter 37. Project Labor Agreements

§37-1. Purpose.

This chapter shall ensure that large construction projects with total costs that exceed \$5,000,000, excluding land acquisition costs and certain public construction contracts with total costs that exceed \$5,000,000 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. However, if a construction project is put out to bid pursuant to this ordinance and which contains a Project Labor Agreement requirement and none of the bids received are within the budget for that project, , the Borough shall rebid the proposed contract without mandating the use of a "Project Labor Agreement".

§37-2. Definitions.

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

APPRENTICE

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.

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.

CERTAIN PROJECTS

The Borough in its sole discretion may exempt projects which otherwise would fall within the purview of this chapter from the requirements of same.

CONTRACTOR

A person or entity awarded a public works project or contract on a publicly funded project 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.

DEVELOPER

The recipient of financial assistance for a redevelopment area financing project or the contractor for a public works project.

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.C. 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.

NOT-FOR-PROFIT

Any entity that is organized as a nonprofit or not-for-profit entity, corporate or otherwise as a governmental entity.

PROJECT LABOR AGREEMENT

A contract between a contractor/labor organization, and a developer and/or the Borough of Woodland Park that contains, at a minimum, the requirements set forth in this chapter.

PRIVATE ENTITY

Any organization which conducts a profit-making business and is not otherwise organized as a nonprofit organization or governmental entity.

PUBLIC WORKS PROJECT

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

PUBLICLY FUNDED PROJECTS

Includes public works projects that the Borough of Woodland Park directly undertakes with total costs that exceed \$5,000,000 and redevelopment area financing projects with total costs that exceed \$5,000,000.

REDEVELOPMENT AREA FINANCING ("RAF") PROJECT

A project that has a total construction cost that is equal to or exceeds \$5,000,000, 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.

SUBCONTRACTOR

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 Borough of Woodland Park.

TOTAL PROJECTS COSTS

Shall be inclusive of environmental work, demolitions, pre-construction and construction costs.

§37-3. Coverage.

The terms of this chapter, set forth in Sec. 37-4 below are applicable to covered projects. "Covered projects" includes public works and publicly funded projects.

§37-4. Conflicts.

To the extent of any of the provisions of this chapter are deemed to conflict with N.J.S.A. 52:38-1 et seq. (P.L. 2002, c. 44) or any other applicable New Jersey statute, the statute shall control. To the extent the provisions of this chapter conflict with the Borough's ordinance implementing an Affirmative Action Program (Ordinance No. 7 of 1982), this chapter shall prevail. To the extent this chapter conflicts with any additional local ordinances, this chapter shall control.

§37-5. 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 Borough determines that it is in the best interests of the Borough 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 chapter shall be in conformity with N.J.S.A. 52:38-1 *et seq.* (P.L. 2002, c. 44).
 - (1) Advance the interests of the Borough of Woodland Park, including the interests in cost, efficiency, quality, timeliness, skilled labor force, and safety;
 - (2) Contain guarantees against strikes, lock-outs, 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 utilize have an apprenticeship program as defined herein;
 - (6) Fully conform to all statutes, regulations and Borough of Woodland Park 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;
 - (7) Include a publicly available plan which is in full conformance with the requirements of all applicable statutes, regulations, executive orders and Borough 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;

- (8) 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;
 - (9) Require the Borough 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 Borough 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 Woodland Park 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 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;
 - (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 Woodland Park residents as their first choice for staffing without regard of any other preferential status; and
 - (14) Require that 10% of the labor hours required shall be performed by the Woodland Park residents who are participating in the apprenticeship program and that 100% of the apprentices shall be Passaic 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 Borough 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 Borough 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 Borough in order to explain the apprenticeship program and solicit applications from attendees.

However, if a construction project is put out to bid pursuant to this Ordinance and which contains a Project Labor Agreement requirement and none of the bids received are within the budget for that project the foregoing shall not apply.

§37-6. 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:

- A. Entry into a project labor agreement and obtaining letters of assent from each contractor/subcontractor;
- B. Convening pre-bid and pre-construction meetings to educate construction manager and subcontractors about the apprenticeship utilization goals;
- C. Cooperating with Borough representative. The contractor shall cooperate with the representative appointed by the Borough 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 the representative 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 Borough-approved craft request forms sent to both unions and Borough representative craft request form, as defined herein means a document through which contractors shall request workers from unions;
- J. Requesting apprentices that are Borough residents from union hiring halls;
- K. Documenting reasons for not hiring referred candidates from target populations, if applicable;

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

§37-7. 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.

§37-8. Enforcement.

- A. Monitoring and enforcement. Each contractor and subcontractor subject to the provisions of this chapter shall submit to the Borough 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 Borough. Copies of such agreements shall be submitted to the Borough.
- 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 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 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 Borough 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 developers/contractors, 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.
 - 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 Equal Employment Opportunity Commission by the labor organization.
 - 4. Apprenticeship report. The report of the labor organization that shall list the names, address and contact information of all Woodland Park residents who were accepted in to the apprenticeship program. The report shall also list the names, address and contact information of all Woodland Park residents who were rejected for admission,

with the reasons for rejection and, for those Woodland Park residents who failed to finish the program, the reasons why they failed to complete the program.

5. 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 resubmit a current estimate of total construction costs to ensure that the total construction costs do not exceed \$5,000,000 or it will be deemed that this chapter applies.
 6. 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 Borough by the project architect and engineer and is subject to review by the Borough at the time of application for certificate of occupancy and audit by the Borough.
 7. Other reports. The developer or the labor organization shall furnish to the Borough of Woodland Park 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 days of a written request by the Borough 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 Borough or its designee to all work sites and to all applicable records in order to monitor compliance with the provisions of this chapter. In the event the Borough 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 Borough official prior to the imposition of the sanctions set forth in this section. The decision of the respective director(s) shall be final.
- F. Borough remedies. In the event the Borough 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 noncompliance and afforded an opportunity to submit a written response to the Borough. In the event the Borough 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 chapter, it shall have available all remedies available at law or in equity, which shall include, but not be limited to the following:
- (1) Suspending or terminating the contract, grant, subsidy agreement, or tax abatement agreement 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 their performance bond;

- (3) Debarring the developer, contractor or subcontractor from eligibility for future Borough contracts and for financial assistance;
- (4) Assessing liquidated damages in the amount of 5% of the value of the contract or subsidy in question;
- (5) Late filing of any report or record or the prohibition of any access required for same under Subsections C, D or E hereof, may result in a fine of \$1,000 per day for each day that the report is late for up to 15 days applies. After 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.

§37-9. Implementation.

- A. The Borough shall include language in all grant agreements or other documents approved by the Borough Council providing financial assistance on covered projects, including financial agreements in connection with long term tax abatements, requiring compliance with this chapter.
- B. Any advertisement for a public works project published 60 days or more following the effective date of this chapter shall contain provisions conditioning the award of any contract on compliance with this chapter.

§37-10. Right to Rebid.

- A. In the event that a construction project is put out to bid pursuant to this Ordinance which contains a Project Labor Agreement requirement and none of the bids received are within the budget for that project, the Borough shall have the opportunity to rebid the proposed project without being subjected to any "Project Labor Agreements" which exist, in order for the Borough to act in an appropriate and proper fiscal manner.