

Introduced by: Mr. Street
Date of introduction: September 12, 2016

ORDINANCE NO. 16-091

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 2
("ADMINISTRATION"), ARTICLE 5 ("DEPARTMENTS AND OFFICES"),
SECTION 2.05.303 ("PURCHASING OF CONTRACT CONSTRUCTION"),
RELATING TO PROJECT LABOR AGREEMENTS**

WHEREAS, the United States Supreme Court held in *Building & Const. Trades Council of the Metropolitan Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993) that state and local governments, when acting as market participants, are permitted under the National Labor Relations Act (29 U.S.C. Section 151 et seq.) to enforce bid specifications requiring contractors to abide by project labor agreements with labor organizations, for construction projects owned by those state and local governments; and

WHEREAS, New Castle County has a compelling interest in guaranteeing that public works projects meet the highest standards of safety and quality; and

WHEREAS, a highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of the completed project; and

WHEREAS, New Castle County has a compelling interest in carrying out public works projects at the lowest reasonable cost and the highest degree of quality; and

WHEREAS, New Castle County has a compelling interest in having labor disputes in connection with public works projects resolved without the disruptions of strikes, lock-outs, or slowdowns; and

WHEREAS, 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

WHEREAS, project labor agreements also make it possible to provide for peaceful, orderly, and mutually binding procedures for resolving labor issues; and

WHEREAS, project labor agreements and apprenticeship programs make it possible to provide the State with a guarantee that public works projects are completed with highly skilled workers; and

WHEREAS, project labor agreements allow public agencies to more accurately predict the actual cost of projects; and

WHEREAS, project labor agreements make it possible to provide the County with assurances that public works projects are completed with a diverse workforce; and

WHEREAS, project labor agreements facilitate the efficient integration of work schedules among different trades on project sites; and

WHEREAS, project labor agreements also promote harmonious and productive work environments in public works projects; and

WHEREAS, New Castle County can best accomplish these goals by providing, on County public works projects, project labor agreements between public works contractors and subcontractors and labor organizations concerning important issues of employment, including work hours, starting times, overtime rates, and procedures for resolving disputes; and

WHEREAS, project labor agreements, therefore, give New Castle County an effective means to advance the interests of efficiency, quality, and timeliness of public works projects; and

WHEREAS, County Council has determined that the provisions of this ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and /or welfare of the present and future inhabitants of this County).

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. Code Chapter 2 (Administration), Article 5 (“Departments and Offices”), Section 2.05.303 (“Purchasing of contract construction”), is hereby amended by deleting the language that is stricken and by adding the language that is underscored, as set forth below.

Sec. 2.05.303. Purchasing of contract construction.

A. Definitions.

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Labor organization engaged in the construction industry means an organization which represents, for purposes of collective bargaining, employees involved in the performance of public works contracts and eligible to be paid prevailing wages under § 6960 of Title 29 of the Delaware Code and has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work, in a manner consistent with the provisions of this act.

...

Project labor agreement means a form of pre-hire collective bargaining agreement with one or

more labor organizations covering the terms and conditions of a specific construction project.

Project workers for purposes of computing percentages under a local hiring plan means residents of the State of Delaware and excludes non-Delaware residents.

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D. *Procedures*

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18. Local hiring plan.

- a. The County will require contractors and their subcontractors on contract construction projects to draw a minimum of 30% of their project workers from persons residing within New Castle County.
- b. The County will require contractors and their subcontractors on contract construction projects to employ no less than 5% of workers on each project who shall be classified as individuals who have served in the Armed Forces of the United States, being discharged under honorable conditions and currently reside in New Castle County. The same worker may be counted in fulfilling the requirements of this subsection a and subsection (a) of this section.
- c. The County shall adopt policies in support of the local hiring plan, authorize incentives for contractors and subcontractors who exceed local hiring requirements, mandate assessment of penalties against contractors and subcontractors who fail to meet minimum local hiring requirements, and establish monitoring, enforcement and administrative procedures in support of the law.
- d. The County shall establish reporting procedures for contractors and subcontractors to submit to the contracting agency the certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers on the covered projects.

19. Project Labor Agreements

- a. For all contract construction projects, where the County estimates that the total cost of the project, exclusive of any land acquisition costs, will equal or exceed in aggregate \$5 million, a County agency shall include a project labor agreement in the contract construction project. Taking into consideration the size, complexity and cost of the contract construction project, and the need for promoting labor stability and advancing the interests of the County in cost, efficiency, skilled labor

force, quality, safety and timeliness, the County shall either: directly negotiate in good faith a project labor agreement with one or more labor organizations engaged in the construction industry or condition the award of a contract to a contractor upon a requirement that the contractor negotiate in good faith a project labor agreement with one or more labor organizations engaged in the construction industry. If the contractor and the labor organizations engaged in the construction industry cannot agree to the terms of the project labor agreement, the County Executive shall appoint a designee to assist the parties in reaching a project labor agreement.

b. The contents of the project labor agreement, pursuant to this section, shall:

- i. Advance the interests of the County, including the interests in cost, efficiency, quality, timeliness, skilled labor force, and safety.
 - ii. Set forth effective, immediate, and mutually binding procedures for resolving jurisdictional labor disputes and grievances arising before the completion of work.
 - iii. Contain guarantees against strikes, lockouts, or similar actions.
 - iv. Ensure a reliable source of skilled and experienced labor.
 - vi. Bind all contractors and subcontractors on all contract construction projects utilizing any County funds through the inclusion of appropriate bid specifications in all relevant bid documents.
 - vii. Provide that the successful bidder and any subcontractor of the bidder need not be a party to a labor agreement with the labor organizations other than for the contract construction project covered by the project labor agreement.
 - viii. Provide that the successful bidder and any subcontractor of the bidder working on the contract construction project will be permitted to retain a percentage of up to twenty-five percent of their current workforce.
 - ix. Include such other terms as the parties deem appropriate.
- (c) Covered projects funded in part by federal funds shall include a project labor agreement compliant with Executive Order 13502.

Section 2. This ordinance shall become effective upon adoption by Council and approval of the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council
of New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This ordinance revises Chapter 2, Article 5, Section 2.05.303 of the *New Castle County Code*, in order to require project labor agreements for County construction projects projected to cost in the aggregate \$5 million or more. It requires that on all New Castle County-funded contract construction projects that contractors and subcontractors must draw 30% of their workforce from New Castle County, and 5% of their workforce from eligible New Castle County veterans. Such projects shall be governed by a Project Labor Agreement to provide structure and stability and promote efficient completion.

FISCAL NOTE: At this time there is no discernible fiscal impact from this legislation.