

City Clerk File No. Ord. 10-106

Agenda No. 3.D 1st Reading

Agenda No. 4.A. 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-106

TITLE:

**ORDINANCE OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE
LAND DEVELOPMENT ORDINANCE DEALING WITH HISTORIC PRESERVATION
PROCEDURES AND APPLICATIONS**

WHEREAS, the Land Development Ordinance contains provisions to preserve and protect the Historic Districts and Designated Landmarks of Jersey City; and

WHEREAS, certain procedures and requirements of the Land Development Ordinance with regard to historic preservation warrant revision to make them consistent internally and to improve our ability to preserve the historic resources of the City of Jersey City, our state and our nation;

WHEREAS, the proposed amendments to the Land Development Ordinance have been reviewed and recommended for Municipal Council adoption by both the Historic Preservation Commission and the Planning Board;

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City as follows:

The Land Development Ordinance shall be amended as follows.

New material intended to be enacted is indicated by bold italics *thusly*.
Material intended to be deleted is indicated by strikethrough ~~thusly~~.

Article I, Section 345-6 Definitions

CAPABLE OF EARNING A REASONABLE RETURN – Having the capacity, under reasonable, efficient and prudent management, of earning a reasonable return. ~~The net annual return yielded by an improvement parcel during the test year shall be presumed to be the earning capacity of such improvement parcel, in the absence of substantial ground for a contrary determination by the Historic Preservation Commission.~~

REASONABLE RETURN - ~~A net annual return of 12% of the current valuation of an improvement parcels~~ *Such return on investment as required by the New Jersey and United States Constitutions.*

Article III. Sections 345-30. Historic Preservation Review Procedures

345-30.D. Certificate of Economic Hardship

2. Criteria

- a. ~~Commercial property. In order for the Commission to issue a Certificate of Economic Hardship, the applicant must establish to the satisfaction of the~~

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~~Commission that the improvement parcel with such improvements as exist at the time of the request is not capable of earning a reasonable return as herein defined. If such a finding is made by the Commission, it shall approve the application for a Certificate of Economic Hardship and any pending application for a Certificate of Appropriateness for that improvement parcel. The Preservation Commission shall review all the evidence and information submitted by the applicant for a Certificate of Economic Hardship and shall make determination within forty-five (45) days of receipt of the application.~~

- b. ~~Non-commercial property.~~ The Preservation Commission may solicit expert testimony or require that the applicant for a Certificate of Economic Hardship make submissions concerning any or all of the following information before it makes a determination on the application.
- (1) Estimate of the cost of the proposed construction, alteration demolition or removal or an estimate of any additional cost that would be incurred to comply with the recommendations of the Preservation Commission for changes necessary for the issuance of a Certificate of Appropriateness.
 - (2) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the rehabilitation.
 - (3) Estimated market value of the property in its current condition; after completion of the proposed construction, alternation, demolition or removal; after any changes recommended by the Preservation Commission; and in the case of a proposed demolition, after renovation of the existing property for continued use.
 - (4) In the case of proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
 - (5) Amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased any terms of financing between the seller and buyer. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any for the previous two (2) years.
 - (6) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property. Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two (2) years.
 - (7) Assessed value of the property according to the two (2) most recent assessments and real estate taxes for the previous two (2) years.
 - (8) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other.
 - (9) Any other information, including the income tax bracket of the owner, applicant or principal investors in the property considered necessary by the Commission for a determination as to whether a commercial property does yield or may yield a reasonable return to the owners or whether, in the case of new commercial property, an economic hardship exists.
- e. The Preservation Commission shall review all of the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination within forty-five (45) days of receipt of a completed application whether the denial of a Certificate of Appropriateness has deprived or, or will deprive, the owner of the property of reasonable use *and enjoyment* of the property.

Article III. Application Requirements, Development Procedures and Checklists

Section 345-30. Historic Preservation Review Procedures

E Application for Demolition Permit

ORDINANCE OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE DEALING WITH HISTORIC PRESERVATION PROCEDURES AND APPLICATIONS

- 1. The following shall be considered in regard to an application to demolish an individual landmark building, structure, site or object or any **building, structure, site or object** contained within a historic district:

Article V. Zoning and Design Standards

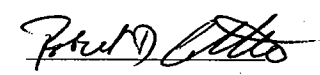
Section 345-71. Historic Design Standards

J. Demolition

- 1. The following shall be considered in regard to an application to demolish an individual landmark building, structure, site, or object or **one any building, structure, site or object** contained within a historic district:

BE IT FURTHER ORDAINED THAT:

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- E. The City Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.1.



Robert D. Cotter, P, AICP
Planning Director

APPROVED AS TO LEGAL FORM


Corporation Counsel

APPROVED: 

APPROVED: 
Business Administrator

- Certification Required
- Not Required

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September 14, 2010

BY FEDERAL EXPRESS

Mayor Jeremiah Healy
City Council of the City of Jersey City
Department of Law, City Hall
280 Grove Street
Jersey City, NJ 07302

Re: Ordinance No. 106

Dear Mayor Healy and Members of City Council:

I represent the owners of the Sixth Street Embankment, who are 247 Manila Avenue, LLC, owner of property designated as Block 247, Lot 50A; 212 Marin Boulevard, LLC, owner of property designated as Block 212, Lot M; 354 Cole Street, LLC, the owner of property known as Block 354.1, Lot 50 A; 280 Erie Street, LLC, the owner of property known as Block 280, Lots B.1 and 50 A; 317 Jersey Avenue, LLC, the owner of property known as Block 317.5, Lot 50 A; and 389 Monmouth Street, LLC, the owner of property known as Block 389.1, Lot 50. ("the Owners of the Sixth Street Embankment Properties"). In this letter, we will refer to these separate properties collectively as "the Embankment."

The purpose of this letter is to present opposition to Ordinance No. 106, which is scheduled for second reading on September 15, 2010. We believe that Ordinance No. 106 is not valid and that it is targeted at my clients in order to undermine pending applications for certificates of economic hardship. We are requesting that Ordinance No. 106 not be adopted or at the least, not be adopted until after my clients' applications are completed. If Ordinance No. 106 is not aimed at the Owners of the Sixth Street Embankment Properties, a delay in enactment will have no consequences but will instead avoid unnecessary and costly litigation.

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BACKGROUND

Since my clients purchased the Embankment properties, there have been numerous disputes and much litigation, all at great expense to taxpayers and my clients. With the civil rights litigation, the taxpayers will be faced with reimbursing the Owners of the Sixth Street Embankment Properties for the costs incurred in obtaining as-of-right approvals and other expenses resulting from a series of frivolous lawsuits that the City has pursued.

It would be a tremendous undertaking to summarize the series of efforts on the part of the City, and its officers and agencies to prevent development of the Embankment. Suffice it to say that to date, the City prevailed in only one lawsuit that challenged the first ordinance designating the Embankment as a historic landmark, and the only reason was that the time to challenge the ordinance had passed. This letter will focus on the efforts to obtain approvals to remove the Embankment blocks and the fill or alternatively to obtain certificates of economic hardship.

On May 31, 2007, the Owners of the Sixth Street Embankment filed applications with the Historic Preservation Commission ("Commission") for certificates of appropriateness to demolish the Embankment. Alternatively, the Owners of the Sixth Street Embankment applied for certificates of economic hardship pursuant to the commercial provisions of the ordinance because, without demolition, there is no economic return.

In December 2007, the Commission simply refused to hear the applications. Plaintiffs filed another action in lieu of prerogative writs challenging the refusal. The City filed a Notice of Removal to the federal court, which remanded to the state court. The United States District Court Judge Stanley R. Chesler found a significant lack of merit in the City's removal of the case to federal court.

After the remand and after almost two years of litigation, the Commission entered into a consent order agreeing to hear and decide the applications within certain time frames. On April 1, 2009, the Commission then denied the applications for certificates of appropriateness. After denial of the certificates of appropriateness, the

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Owners of the Sixth Street Embankment pursued the applications for hardship relief on both the commercial and non-commercial bases.

Before the Owners of the Sixth Street Embankment could even finish the applications on the certificates of appropriateness, one Commissioner announced that the commercial provisions for certificates of economic hardship were not applicable. The Commission had already retained a witness at City expense to take that position, thus demonstrating that the Commission had no intention of granting hardship relief under this provision of the Jersey City Land Development Ordinance ("LDO"). The Commission also denied the certificates of economic hardship.

These actions were consistent with the statements of Commissioner Stephen Gucciardo, an active member of the Embankment Coalition and an original advocate for the designation of the Embankment as a historic site, who announced in the newspaper in the spring of 2009 that the classification in the LDO for commercial hardship was outdated and should be amended.

Plaintiffs appealed the decisions of the Commission to the Zoning Board of Adjustment. Contrary to established law, the Zoning Board refused to allow a *de novo* plenary hearing on the appeal.

On appeal to the Superior Court, in June 2010, the Honorable Maurice J. Gallipoli reversed the action of the Zoning Board of Adjustment in refusing to grant a *de novo* hearing on the appeals. In his decision, Judge Gallipoli harshly commented about the conduct of attorneys specially employed by the City in opposing my clients' applications and appeals. In his written opinion, Judge Gallipoli noted that the Commission's basis for denying hardship certificates on the commercial basis because of the residential zoning of the Embankment blocks was incorrect.

The Owners of the Sixth Street Embankment have procured hearings before the Zoning Board on the certificates of appropriateness and certificates of economic hardship. The scheduling of hearings is complicated by the untimely introduction and consideration of Ordinance No. 106, an ordinance that is specifically intended to undermine Judge

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Gallipoli's decision and to eliminate a longstanding basis for hardship relief contained in the LDO. This is exactly what Mr. Gucciardo declared should be done, acting as a tenth member of the City Council. Ordinance No. 106 is targeted specifically at my clients in another effort to prevent them from getting a fair hearing or having any use of their properties.

As you should be fully aware, there is pending civil rights litigation against the City and certain individuals, including members of the Corporation Counsel's office, because of the long and checkered history of unlawful and shocking actions by the City and its officials working in conjunction with special-interest groups. The City has joined with and supported these groups and paid years of legal bills but has not prevailed due to poor, self-interested advice and the unreasonable, bad faith conduct that has been repeatedly exhibited. The recommendation of Ordinance No. 106 is but the latest misstep in years of litigation.

Claiming that it wants to preserve relics of the past, the City administration nonetheless ignored a signed offer from my clients and Consolidated Rail Corporation that would have preserved most of the Embankment at no out of pocket cost to the City. The inescapable conclusion from this is that Ordinance No. 106 and City Council's continued funding of special interests with taxpayer dollars has no legitimate public purpose. We hope that the fact that the civil rights litigation is stayed while the City funds litigation in Washington, D.C. and elsewhere is not erroneously interpreted as an indication that repeating past mistakes will produce worthwhile results for the City or its taxpayers. To the contrary, there is a certainty of more legal fees and expenses, and a real risk of substantial monetary damages, particularly if the past efforts to deny my clients their property rights are endorsed and continued.

ORDINANCE NO. 106

The current provisions of the LDO allow property owners to apply for certificates of economic hardship on commercial or noncommercial bases. Ordinance No. 106 completely eliminates the commercial basis and its guaranteed 12% return and substitutes a vague and meaningless standard that purports to be a constitutional standard. One need only review the decisions of the United States Supreme Court to recognize that the standard is uniquely suited for judicial determination. It is

