



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 09-072

**TITLE: AN ORDINANCE GRANTING PERMISSION TO 134 BAY STREET, LLC AND 126-142 MORGAN STREET URBAN RENEWAL, LLC, THEIR SUCCESSORS AND ASSIGNS, TO MAKE PRIVATE IMPROVEMENTS IN THE PROVOST STREET RIGHT OF WAY BETWEEN MORGAN STREET AND BAY STREET ADJACENT TO THE PROPERTY LOCATED AT 10 PROVOST STREET, 143 BAY STREET, AND 332-350 MARIN BOULEVARD, JERSEY CITY, NEW JERSEY, ALSO KNOWN ON THE TAX MAPS OF THE CITY OF JERSEY CITY AS BLOCK 140, LOT 1 AND BLOCK 171 IN ITS ENTIRETY.**

WHEREAS, 134 Bay Street, LLC and 126-142 Morgan Street Urban Renewal, LLC ("Petitioners"), having offices located at 33-41 Newark Street, Hoboken, NJ 07030, are the owners of the property located at 10 Provost Street, 143 Bay Street, and 332-350 Marin Boulevard, Jersey City, and known as Block 140, Lot 1 and Block 171 in its entirety on the current tax maps of the City of Jersey City; and

*B.R.  
5-27-09*

WHEREAS, pursuant to a Jersey City Planning Board Resolution for Preliminary Major Site Plan Approval with deviations, Case #P08-114, Petitioners were granted approval to develop a mixed-use project containing 925 residential units, consisting of 881 traditional residential units, 12 work/live units (including 1 artist-in-residence unit), and 32 workforce housing units, approximately 44,939 square feet of retail space, an approximately 23,663 square foot performing arts theater (inclusive of art exhibition space), approximately 16,824 square feet of arts-related space, an approximately 26,000 square foot public plaza, and 917 parking spaces, which includes 30 tandem parking spaces ("Project") at 10 Provost Street, 332-350 Marin Boulevard, 143 Bay Street, and 352-358 Marin Boulevard, Jersey City, New Jersey, also known on the Jersey City Tax Maps as Blocks 140 and 171 in their entirety, and Block 172, Lots A, B, C, and D (collectively the "Property"), which is located within the Arts Theater Residence Overlay Zone of the Powerhouse Arts District Redevelopment Plan; and

WHEREAS, as part of the Preliminary Site Plan Approval, the Petitioners must construct a public plaza, totaling approximately 26,184 square feet, which shall consist of approximately 14,117 square feet of Block 140, Lot 1 and approximately 12,067 square feet of the Provost

Street right of way, between Morgan Street and Bay Street; and

**WHEREAS**, the 12,067 square foot area of the Provost Street right of way shall be improved insofar as the existing cobblestone within the right of way shall be removed, repaired or resurfaced, and replaced, as needed, to promote safety for the typical pedestrian, and the existing rails located within the same area of the Provost Street right of way shall remain, all of which is more particularly depicted and described in the Franchise Plan, Exhibit A, Site Plan, Exhibit B and Metes and Bounds Descriptions, Exhibit C, attached hereto; and.

**WHEREAS**, as part of the Preliminary Site Plan Approval, upon completion of the construction of the Project by the Petitioners, the entire 26,184 square foot plaza shall be dedicated to the City, with a maintenance easement reserved for the Petitioners for the stormwater detention system located beneath the property located at Block 140, Lot 1; and

**WHEREAS**, as part of the Preliminary Site Plan Approval, the Petitioners must construct a stormwater detention system approximately two (2) feet below the surface of the land located on Block 140, Lot 1; and

**WHEREAS**, the stormwater detention system will require a 16- inch pipe to be located approximately two (2.0) feet below the surface of the Provost Street right of way to connect the system with the rest of the development located on Block 171, all of which is more particularly depicted and described in the Franchise Plan, Exhibit A, Site Plan, Exhibit B and Metes and Bounds Descriptions, Exhibit C, attached hereto; and

**WHEREAS**, as part of the Preliminary Site Plan Approval, the Petitioners must construct a stairway entrance to the required performing arts theater to be located on Block 171 that minimally extends onto the surface of the Provost Street right of way, as more particularly depicted and described in the Franchise Plan, Exhibit A, Site Plan, Exhibit B and Metes and Bounds Descriptions, Exhibit C, attached hereto; and

**WHEREAS**, the Petitioner was required to file this Petition for a Franchise Ordinance pursuant to the requirements of the Arts Theater Residence Overlay Zone of the Powerhouse Arts District Redevelopment Plan, and in accordance with the comments of the Jersey City Division of Engineering, the resolution of which comments are a condition of the Preliminary Site Plan Approval; and

**WHEREAS**, the franchise for the stairway entrance and underground stormwater piping within the Provost Street right of way shall be in effect for ninety-nine (99) years from the date upon which Final Site Plan Approval for the Project is granted by the Jersey City Planning Board, and the franchise to use Provost Street to construct the public plaza, restore the façade of

the A & P Annex building, protect the existing cobblestone, and to make improvements to the existing cobblestone within the Provost Street right of way shall be in effect only so long as required until construction of the Project is complete, but no longer than fifteen (15) years from the date upon which Final Site Plan Approval for the Project is granted by the Jersey City Planning Board; and

**WHEREAS**, although the Provost Street right of way between Morgan Street and Bay Street will be closed to vehicular traffic to enable the creation of the public plaza, there will be no negative impact or diminishment to the right-of-way for pedestrian use as the contemplated improvements are minimally invasive to the right of way area or are located beneath the surface of the right of way; and

**WHEREAS**, the Petitioners have filed a petition for relief and represented to the Municipal Council of the City of Jersey City that the passage of this Ordinance is in the best interests of the City of Jersey City and essential for the construction of the development; and

**WHEREAS**, after due notice was given in accordance with law, a public hearing was held on the Petition filed by Petitioners to grant permission to use Provost Street between Bay Street and Morgan Street for the following purposes:

1. The construction of the public plaza, restoration of the façade of the A & P Annex building, the protection of the existing cobblestone, and the removal, repair and/or resurfacing, and replacement of the cobblestones located within the Provost Street right of way between Morgan Street and Bay Street.
2. The construction and maintenance of a stairway that is necessary to transition the public plaza to the entryway to the performing arts theater.
3. The installation and maintenance of a 16-inch storm water pipe to be located approximately two (2.0) feet below the surface, extending from the stormwater detention system below the land on Block 140, Lot 1 into the subsurface of the Provost Street right of way and connecting to the required development on Block 171.
4. All costs associated with these improvements will be incurred by the Petitioner, and there being no objections thereto.

**WHEREAS**, the Jersey City Engineering Department has required that the Petitioner obtain a franchise ordinance from the City Council of the City of Jersey City in order to construct the private improvements within the right of way, as contained within the Preliminary Site Plan Approval for the Project; and

**WHEREAS**, a franchise ordinance is required to permit the construction of the private improvements within the public right-of-way; and

**WHEREAS**, by reason of the character of the development of the area within which this property is situated, the said improvements will enhance the property's ability to function as an cultural and arts entertainment center and public plaza, to manage storm water, and to greatly benefit Jersey City and the surrounding neighborhood; and

**WHEREAS**, the public interest will be served by said improvements, which will be of great benefit to the citizens of Jersey City and Hudson County and the rights of the public will not be injuriously or adversely affected by the requested relief;

**NOW, THEREFORE, BE IT ORDAINED**, by the Municipal Council of the City of Jersey City, that:

**SECTION I.** Permission be, and is hereby granted to 134 Bay Street, LLC and 126-142 Morgan Street Urban Renewal, LLC, their successors and assigns, for a portion of lands located within the public right of way adjacent to 10 Provost Street, 143 Bay Street, and 332-350 Marin Boulevard, Jersey City, and known as Block 140, Lot 1, and Block 171 in its entirety on the current tax maps of the City of Jersey City, said areas being more particularly described as follows and on the Franchise Plan, Site Plan and Metes and Bounds descriptions attached hereto as Exhibit A, Exhibit B and Exhibit C respectively to be used for the following purposes.

1. The construction of the public plaza, restoration of the façade of the A & P Annex building, the protection of the existing cobblestone, and the removal, repair and/or resurfacing, and replacement of the cobblestones located within the Provost Street right of way between Morgan Street and Bay Street.
2. The construction and maintenance of a stairway that is necessary to transition the public plaza to the entryway to the performing arts theater.
3. The installation and maintenance of a 16-inch storm water detention pipe to be located approximately two (2.0) feet below the surface, extending from the stormwater detention system below the land on Block 140, Lot 1 into the subsurface of the Provost Street right of way and connecting to the required development on Block 171.
4. There will remain sufficient area in the right-of-way for typical pedestrian use.
5. The required improvements will be constructed consistent with the plans approved by the Jersey City Planning Board, the Jersey City Department of Engineering, and the Jersey City Municipal Utilities Authority.

6. All costs associated with these improvements will be incurred by the Petitioners.
7. The required improvements are necessary to construct the proposed development consistent with the development approvals and will benefit the Petitioners' property, the surrounding neighborhood, and greater Jersey City.

**SECTION II.** All the work herein authorized shall be done under the supervision of the proper department or departments of the City of Jersey City. Further, all the work herein authorized shall comply with any applicable State of New Jersey Uniform Construction Code requirements. The construction plans shall be submitted to the City Engineer for his review and comments prior to the start of construction. After construction there shall remain no damage to the sidewalk or roadway or interference with the free and safe flow of pedestrian traffic. 134 Bay Street, LLC and 126-142 Morgan Street Urban Renewal, LLC, and their successors and assigns, shall construct, operate and maintain all improvements installed by them for the entire term of this Franchise at no cost or inconvenience to the City.

**SECTION III.** The franchise granted in this Ordinance for the stairway entrance and underground stormwater piping within the Provost Street right of way shall remain in full force and effect for a period of ninety-nine (99) years from the date that Final Site Plan Approval is granted by the Jersey City Planning Board for the Project, and the franchise granted in this Ordinance for the construction of the public plaza, restoration of the façade of the A & P Annex building, protection of the existing cobblestone, and the removal, repair, and/or resurfacing and replacement of the improvements to the existing cobblestone within the Provost Street right of way shall be in effect only so long as required until construction of the Project is complete, but no longer than fifteen (15) years from the date upon which Final Site Plan Approval for the Project is granted by the Jersey City Planning Board. This Ordinance shall take effect upon final passage and publication according to law. In the event that the Municipal Council determines that this Ordinance must be canceled in whole or in part because of a public purpose, the City reserves the right to cancel this Ordinance or any part thereof by giving written notice to the Petitioners one year prior to the date of cancellation.

**SECTION IV.** All costs and expenses incident to the introduction, passage and publication of this Ordinance shall be borne and paid by said 134 Bay Street, LLC and 126-142 Morgan Street Urban Renewal, LLC.

**SECTION V.** In accepting the privileges of this Ordinance and the installation, maintenance, and use hereby authorized, upon the grant of Final Site Plan Approval for the Project by the Jersey City Planning Board, 134 Bay Street, LLC and 126-142 Morgan Street

Urban Renewal, LLC, their successors and assigns hereby agree to assume full, complete and undivided responsibility for any and all injury or damage to persons or property by reason of said installation, maintenance and use, and to indemnify and hold the City of Jersey City harmless from all injury or damage to persons or property by reason of such installation, maintenance and use (except such injury or damage which is caused by the negligence or misconduct of the City or its officers, employees or agents) for the term of this Ordinance. Upon the grant of Final Site Plan Approval for the Project by the Jersey City Planning Board, 134 Bay Street, LLC and 126-142 Morgan Street Urban Renewal, LLC, their successors and assigns, shall maintain in effect, during the term of this franchise, liability insurance naming the City of Jersey City, its officers and employees as additional insured, covering the use and occupancy of the public property subject to this franchise. A certificate of insurance, in the amount of \$1,000,000.00 in a form deemed acceptable by the City's Risk Manager, shall be delivered to the Risk Manager before use or occupancy of the premises subject to this Franchise Ordinance.

**SECTION VI.** This Ordinance shall not become effective unless an acceptance hereof in writing is filed by the Petitioners with the City Clerk. In the event, that the Petitioners shall not file with the City Clerk their acceptance in writing of the provisions of this Ordinance within 30 days after receiving notice of its passage, this Ordinance shall become void and be of no effect.

**SECTION VII.** Only with prior written consent and approval by the City Council of the City of Jersey City, which consent and approval shall not be unreasonably withheld, shall Petitioners have the right to assign or otherwise transfer their rights under this Franchise Ordinance.

**SECTION VIII.** An easement for the duration of this Ordinance is reserved for the benefit of the City of Jersey City and all public utility companies including any cable television company as defined in the "Cable Television Act", P.L. 1972, c. 186 (c. 48:5A-1 et seq.) for the purpose of ingress and egress over and upon the area subject to this Franchise Ordinance in order to maintain, repair or replace existing utility facilities including water lines, sewer lines, gas lines and telephone, electrical and cable television wires and poles which may be located either beneath or above the surface of the area subject to this Franchise Ordinance.

**SECTION IX.** For the rights and privileges herein granted, said beneficiaries hereunder, their successors and assigns, shall pay annually to the City of Jersey City the sum of One Dollar (\$1.00), which payment shall be made annually on the 1st day of July next succeeding the time when this Ordinance shall become effective and on each first day of

July thereafter until the termination of this Ordinance.

**SECTION X.**

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 fully set forth therein. The City Clerk shall have this Ordinance certified 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 Counsel 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 accidental repeals of existing provisions.

5/27/09

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

\_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

# Ordinance of the City of Jersey City, N.J.

Ord. 09-072

ORDINANCE NO.

3.D. JUN 03 2009

4.E. JUN 17 2009

TITLE:

An ordinance granting permission to #34 Bay Street, LLC and 126-142 Morgan Street Urban Renewal, LLC, their successors and assigns, to make private improvements in the Provost Street right of way between Morgan Street and Bay Street adjacent to the property located at 10 Provost Street, 143 Bay Street and 332-350 Marin Boulevard, Jersey City, New Jersey, also known on the tax map of the City of Jersey City as Block 140, Lot 1 and Block 171, in its entirety.



RECORD OF COUNCIL VOTE ON INTRODUCTION JUN 03 2009 9-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Councilperson BRENNAN moved, seconded by Councilperson LIPSKI to close P.H.

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING JUN 17 2009											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

STACEY NOSBAUM  
JILL EDELMAN  
CATHERINE GRIMM

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY JUN 17 2009 9-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE JUN 17 2009 8-1											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓	✓		FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on

JUN 03 2009

Adopted on second and final reading after hearing on

JUN 17 2009

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on

JUN 17 2009

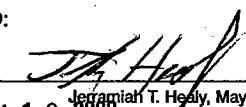
  
Robert Byrne, City Clerk

APPROVED:

  
Mariano Vega, Jr., Council President

Date: JUN 17 2009

APPROVED:

  
Jeremiah T. Healy, Mayor

Date JUN 19 2009

Date to Mayor JUN 18 2009

\*Amendment(s):

REMOVE "OR RESURFACING"