



## Legislation Text

File #: 19-1279, Version: 1

**ORDINANCE AUTHORIZING THE ACTING DEPUTY MAYOR / DIRECTOR OF THE DEPARTMENT OF ECONOMIC AND HOUSING DEVELOPMENT TO CONVEY A TEMPORARY WORK AREA EASEMENT ON THE CITY-OWNED PROPERTY DESCRIBED AS BLOCK 1, LOT 60, BLOCK 2, LOT 15, BLOCK 2, LOT 27 AND BLOCK 2, LOT 29, AND AN EASEMENT IN PERPETUITY ON THE CITY-OWNED PROPERTY DESCRIBED AS BLOCK 1, LOT 30.01, BLOCK 1, LOT 60, BLOCK 2, LOT 15, BLOCK 2, LOT 27, BLOCK 2, LOT 29, BLOCK 3, LOT 1, BLOCK 3, LOT 13 AND TO ASSIGN OR EXECUTE BOTH EASEMENTS IN PERPETUITY AND TEMPORARY EASEMENTS ON BLOCK 1, LOTS 30 AND 46, WHICH ARE CURRENTLY OWNED BY THE NEWARK HOUSING AUTHORITY, TO THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE UNITED STATES DEPARTMENT OF THE ARMY AND THE CITY OF NEWARK FOR USE BY THE STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE CITY OF NEWARK AND THEIR REPRESENTATIVES, AGENTS AND CONTRACTORS TO CONTINUE THE CONSTRUCTION OF THE JOSEPH G. MINISH PASSAIC RIVER WATERFRONT PARK AND HISTORIC AREA.**

**WHEREAS**, the Municipal Council (“Municipal Council”) of the City of Newark (the “City”) acknowledges that the Passaic River shoreline at the City of Newark, New Jersey is subject to constant erosion and degradation, thereby destroying a valuable natural resource, and threatening the safety and property of the City and of all of the citizens of the State; and

**WHEREAS**, the United States Congress, through Section 101(a)(18) of the Water Resources Development Act of 1990 authorized the construction of the Joseph G. Minish Passaic River Waterfront Park Flood Control Project (the “Project”) along the Passaic River in the City of Newark; and

**WHEREAS**, the Municipal Council, through Resolution 7RBI, adopted on August 4, 1999, authorized the Mayor and his designee to enter into and execute a State Aid Agreement with the New Jersey Department of Environmental Protection (the “1999 State Aid Agreement”); and

**WHEREAS**, through the 1999 State Aid Agreement, the City of Newark agreed to collaborate with the United States Army Corps of Engineers (the “USACE”) and the State of New Jersey, Department of Environmental Protection, Division of Engineering and Construction of the State of New Jersey (the “NJDEP”), as “Non-Federal Sponsor”, to construct the Joseph G. Minish Passaic River Waterfront Park and Historic Area (the “Project”) as defined in the Project Cooperation Agreement between USACE and NJDEP dated May 25, 1999 (the “1999 PCA”); and

**WHEREAS**, the Project includes bulkhead construction; streambank stabilization; and periodic maintenance work, all of which may be performed solely by the Department of Environmental Protection and/or in conjunction to the Army Corps of Engineers; and

**WHEREAS**, the USACE constructed portions of the Project intermittently between 1999-2010; and

**WHEREAS**, during Superstorm Sandy in October 2012, the Passaic River breached its banks and Newark's residents endured flooding, exposure to pollutants, loss of power, loss of transportation, and loss of work and school days; and

**WHEREAS**, the United States Congress then passed the Disaster Relief Appropriations Act of 2013, Public Law (P.L.) 113-2, identifying the Project as an authorized but partially constructed project in the US Army Corps of Engineers' Second Interim report to Congress, Disaster Relief Appropriations Act of 2013, and earmarking additional funding for the completion of the Project; and

**WHEREAS**, the USACE then, as part of its planning and implementation process, prepared the "Joseph G. Minish Passaic River Waterfront Park and Historic Area, Phase I- Final Hurricane Sandy Limited Reevaluation Report" ("HSLRR"), which updated the prior engineering and design efforts, physical surveys, and environmental compliance for the Project. The HSLRR calls for 6,000 feet of new bulkhead to be installed as Phase I, in order to reduce erosion and provide environmental restoration, recreation, and economic development benefits; and

**WHEREAS**, on December 15, 2015, the City provided a letter of support to the Department of Environmental Protection for the remaining portions of the Project to be 100% funded by Chapter 4, Title X, Division A of the Disaster Relief Appropriations Act of 2013, Public Law 113-2 (127 Stat. 24-25) enacted January 29, 2013; and

**WHEREAS**, to effectuate the continuation of the above-referenced Project, the Municipal Council adopted a resolution on August 20, 2019, authorizing the Mayor and/or his designee to enter into a State Aid Agreement with the Department of Environmental Protection (the "State Aid Agreement"); and

**WHEREAS**, the State Aid Agreement requires the City to acquire all real estate, perpetual and temporary easements and rights-of-ways on all properties affected by the Project for the purpose of completing the Project and for the periodic future maintenance, which may be performed solely by the Department of Environmental Protection or in conjunction with the Army Corps of Engineers; and

**WHEREAS**, the USACE, through NJDEP, has requested that the City acquire and provide easements on all lots abutting the Passaic River between Center Street and Lombardy Street in the Central Ward (the "Project Area"); and

**WHEREAS**, the City is the owner of certain tracts of land within the Project Area, located in the City of Newark, County of Essex, State of New Jersey, and identified as Block 1, Lots 30.01 and 60; Block 2, Lots 15, 27 and 29; and Block 3, Lots 1 and 13 (the "City Property") on the Official Tax Maps of the City of Newark, New Jersey; and

**WHEREAS**, the City, pursuant to N.J.S.A. 40A:12-13(b)(1), N.J.S.A. 40A:12-20 and the State Aid Agreement, desires to convey the "Deed of Dedication and Perpetual Bank Protection Easement" in the form attached herein as Exhibit A, (the "Permanent Easement") to the Department of Environment Protection on the City-owned properties described as Block 1, Lots 30.01 and 60; Block

2, Lots 15, 27 and 29; and Block 3, Lots 1 and 13, the boundaries of which are depicted on the surveys and drawings attached as hereto (“Permanent Easement Area”); and

**WHEREAS**, the City further desires to convey, pursuant to N.J.S.A. 40A:12-13(b)(1), N.J.S.A. 40A:12-20 and the State Aid Agreement, the “Temporary Work Area Easement” in the form attached herein as Exhibit B (the “Temporary Easement”) to the Department of Environmental Protection on the City-owned properties described as Block 1, Lot 60; Block 2, Lots 15, 27 and 29, the boundaries of which are depicted on the surveys and drawings attached hereto (“Temporary Easement Area”); and

**WHEREAS**, the Newark Housing Authority (“NHA”) is the owner of certain properties within the Project Area, located in the City of Newark, County of Essex, State of New Jersey, and identified as Block 1, Lots 30 and 46 (the “NHA Properties”); and

**WHEREAS**, pursuant to an Agreement for the Sale and Redevelopment of the NHA Properties between NHA, the City, and Boraie Development, LLC (the “Boraie Agreement”), portions of the NHA Properties comprising the Permanent Easement Areas are to be subdivided and conveyed to the City upon Closing of the sale of Block 1, Lots 30 and 46 (the “Closing”) for the purposes of construction and maintenance of the bulkhead; and

**WHEREAS**, pursuant to the Boraie Agreement, those portions of the NHA parcels comprising the Temporary Easement Areas are to be conveyed to Boraie Development at Closing; and

**WHEREAS**, a date for Closing has not yet been ascertained, but may occur prior to the effective date of this Ordinance; and

**WHEREAS**, the USACE has indicated that the Project is time-sensitive and cannot be commenced without the acquisition of all real estate necessary; and

**WHEREAS**, in contemplation of the commencement of the Project, and pursuant to a resolution adopted by its Board on March 22, 2018, NHA has authorized the execution of Permanent and Temporary Easements on Block 1, Lots 30 and 46 in order to accommodate the Project; and

**WHEREAS**, the City is obligated under the State Aid Agreement to obtain the Permanent Easements and Temporary Easements on all parcels, regardless of the record owner; and

**WHEREAS**, the City wishes to provide for the acquisition of the Permanent Easements and Temporary Easements from the record owner as of the effective date of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

**Section 1.** The Acting Deputy Mayor/Director of the Department of Economic and Housing Development on behalf of the City of Newark be and hereby authorized, pursuant to N.J.S.A. 40A:12-13(b), to execute in the form attached hereto as Exhibit A, the “Deed of Dedication and Perpetual Bank Protection Easement” to the New Jersey Department of Environmental Protection on the City owned property described as Block 1, Lots 30.01 and 60; Block 2, Lots 15, 27 and 29; and Block 3, Lots 1 and 13, for use by the State of New Jersey, the United States Army Corps of Engineers and

the City of Newark and their representatives, agents, and contractors to continue the construction of the Joseph G. Minish Passaic River Waterfront Park and Historic Area.

**Section 2.** The Acting Deputy Mayor/Director of the Department of Economic and Housing Development on behalf of the City of Newark be and hereby authorized, pursuant to the State Aid Agreement adopted by resolution on August 20, 2019, to enter into the “Temporary Work Area Easement” agreement, substantially in the form attached hereto as Exhibit B, with respect to City owned property described as Block 1, Lot 60; Block 2, Lots 15, 27 and 29, for temporary use by the State of New Jersey, the United States Army Corps of Engineers and the City of Newark and their representatives, agents, and contractors to continue the construction of the Joseph G. Minish Passaic River Waterfront Park and Historic Area. The temporary easement rights conveyed by the Temporary Work Area Easement agreement shall extinguish after the time period specified therein.

**Section 3.** The Acting Deputy Mayor/Director of the Department of Economic and Housing Development on behalf of the City of Newark be and hereby authorized, pursuant to N.J.S.A. 40A:12-13(b), to acquire from the record owner and to execute in the form attached hereto as Exhibit C, the “Deed of Dedication and Perpetual Bank Protection Easement”, to the New Jersey Department of Environmental Protection on the City owned property described as Block 1, Lots 30 and 46 for use by the State of New Jersey, the United States Army Corps of Engineers and the City of Newark and their representatives, agents, and contractors to continue the construction of the Joseph G. Minish Passaic River Waterfront Park and Historic Area.

**Section 4.** The Acting Deputy Mayor/Director of the Department of Economic and Housing Development on behalf of the City of Newark be and hereby authorized, pursuant to the State Aid Agreement adopted by Resolution \_\_\_\_\_ on August 20, 2019, to acquire and assign from the record owner a Temporary Work Area Easement, substantially in the form attached hereto as Exhibit D, with respect to the property described as Block 1, Lots 30 and 46; for temporary use by the State of New Jersey, the United States Army Corps of Engineers and the City of Newark and their representatives, agents, and contractors to continue the construction of the Joseph G. Minish Passaic River Waterfront Park and Historic Area. The temporary easement rights conveyed by the Temporary Work Area Easement agreement shall extinguish after the time period specified therein.

**Section 5.** The Acting Deputy Mayor/Director of the Department of Economic and Housing Development shall place a copy of this Ordinance and one copy of each of the fully executed easement agreements authorized herein on file in the Office of the City Clerk.

**Section 6.** This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

## **STATEMENT**

Ordinance authorizing the Acting Deputy Mayor/Director of the Department of Economic and Housing Development to enter into an agreement, pursuant to N.J.S.A. 40A:12-13(b) and the State Aid Agreement adopted by the Municipal Council on August 20, 2019, to convey an easement in perpetuity to the New Jersey Department of Environmental Protection and the City of Newark on the City Property described as Block 1, Lots 30.01 and 60; Block 2, Lots 15, 27 and 29; and Block 3, Lots 1 and 13, to acquire from the record owner and convey an easement in perpetuity on Block 1, Lots

30 and 46, and further to convey a temporary work area easement to the New Jersey Department of Environmental Protection on City-owned property described as Block 1, Lot 60; Block 2, Lots 15, 27 and 29, and acquire from the record owner and convey a temporary work area easement on Block 1, Lots 30 and 46 for use by the State of New Jersey, the United States Department of the Army and the City of Newark and their representatives, agents and contractors to continue the construction of the Joseph G. Minish Passaic River Waterfront Park and Historic Area.