



# City of Newark

City Hall  
920 Broad Street  
Newark, New Jersey 07102

## Legislation Text

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File #: 22-1739, Version: 1

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**Dept/ Agency:** Law

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Purpose:** Settlement of Civil Litigation

**Docket No.:** ESX-L-4632-20

**Claimant:** Genesis Companies, LLC

**Claimant's Attorney:** Eric Kanefsky, Esq., Calcagni Kanefsky, LLP, One Newark Center, 1085 Raymond Boulevard, 14<sup>th</sup> Floor, Newark, New Jersey 07102

**Settlement Amount:** \$450,000.00

**Funding Source:** Community and Economic Development Trust Fund, Fund 26, Account 32100, Budget Year B2022

**WHEREAS**, by Resolution 7RM , adopted May 4, 2005, the Municipal Council of the City of Newark (the "Municipal Council") directed the Central Planning Board of the City of Newark (the "Central Planning Board") to undertake an investigation to determine if the City satisfied the statutory criteria of an "area in need of rehabilitation" in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"); and

**WHEREAS**, the Central Planning Board conducted the requested investigation in accordance with the LRHL, including a public hearing on June 6, 2005, after which hearing the Central Planning Board recommended the designation of the entire City as an area in need of rehabilitation; and

**WHEREAS**, based upon the recommendation of the Central Planning Board, on June 15, 2005 the Municipal Council adopted Resolution 7RDO (A.S.) June 15, 2005, designating the entire City as an area in need of rehabilitation (as defined by the LRHL), and such designation became effective on June 17, 2005 upon the transmission of the resolution to the New Jersey Department of Community Affairs by the City Clerk; and

**WHEREAS**, subsequent to the designation of the City as an area in need of rehabilitation, the Municipal Council adopted redevelopment plans for each of the City wards governing the sale and rehabilitation of City-owned properties within those wards; and

**WHEREAS**, on October 15, 2008, the Municipal Council adopted a resolution authorizing the Mayor and the Deputy Mayor/Director of the Department of Economic and Housing Development to enter into a contract with Genesis Fairmount Partners, LLC and Genesis Central Ave Partners, LLC for the sale of City-owned property located within the West Ward identified on the City's Official Tax Map as Block 259, Lots 21 and 22 and more commonly known as 130 Fairmount Avenue and 124-128 Fairmount Avenue (the "Fairmount Avenue Property") to Genesis Fairmount Partners, LLC for redevelopment purposes in accordance with the West Ward Redevelopment Plan and for the sale of City-owned property located in the Central Ward identified on the City's Official Tax Map as Block 20, Lot 1 and more commonly known as 32 Central Avenue (a/k/a 17-21 Halsey Street)(the "Central Avenue Property") to Genesis Central Ave Partners, LLC for redevelopment purposes in accordance

with the Central Ward Redevelopment Plan; and

**WHEREAS**, pursuant to this authorization, the City subsequently entered into an agreement on July 21, 2009 with Genesis Fairmount Partners, LLC and Genesis Central Ave Partners, LLC for the sale and redevelopment of the Fairmount Avenue Property and the Central Avenue Property (the "Initial Redevelopment Agreement"); and

**WHEREAS**, the City never conveyed the Fairmount Avenue Property and the Central Avenue Property to Genesis Fairmount Partners, LLC and Genesis Central Ave Partners, LLC under the Initial Agreement; and

**WHEREAS**, the City subsequently entered into negotiations with Genesis Fairmount Partners, LLC and Genesis Central Ave Partners, LLC to amend the terms and conditions of the Initial Agreement and to arrange for the sale and redevelopment of certain additional parcels of real property owned by the City located within the West Ward identified on the City's Official Tax Map as Block 1826, Lots 35, 36, 38, 39, 40, 41 and 62 and more commonly known as 111 11<sup>th</sup> Avenue, 113-115 11<sup>th</sup> Avenue, 117 11<sup>th</sup> Avenue, 200 South 11<sup>th</sup> Street, 198 South 11<sup>th</sup> Street, 196 South 11<sup>th</sup> Street, and 107-109 11<sup>th</sup> Avenue (the "Eleventh Street Property") (henceforth any reference to the Fairmount Avenue Property shall include the Eleventh Street Property); and

**WHEREAS**, as a result of these negotiations, and with the Deputy Mayor/Director's of the Department of Economic and Housing Development consent, Genesis Fairmount Partners, LLC assigned its rights under the Initial Redevelopment Agreement (including but not limited to all rights that it had to acquire and redevelop the Fairmount Avenue Property) to Fairmount Senior Genesis Housing Urban Renewal Partnership, LLC ("Fairmount Partners"), a limited liability corporation owned by Karim Hutson (the owner of Genesis Fairmount Partners, LLC) and by the Greater Newark Housing Partnership and Tate George (the owners of Fairmount Heights Development Company, LLC); and

**WHEREAS**, on or about September 7, 2011, the Parties entered into a First Amended Redevelopment Agreement (the "Amended Redevelopment Agreement") in order to memorialize the terms and conditions of their revised agreement with regard to the sale and redevelopment of the Fairmount Avenue Property, the Central Avenue Property, and the Eleventh Street Property; and

**WHEREAS** on or about June 1, 2013 the City and Plaintiff Fairmount entered into a Deed Restrictive Department of Economic and Housing Development Affordable Housing Agreement ("Home Agreement") which was to provide a subsidy to the affordable housing development at the Fairmount Avenue Property as provided in the Amended Redevelopment Agreement. Under the HOME Agreement, the parties agreed that \$1,875,000.00 would be made available through the City's share of the federal Home Fund Program that was funded by the federal Department of Housing and Urban Development; and

**WHEREAS** on or about September 17, 2013, Plaintiffs and the City entered into a Grant Agreement which was intended to subsidize the redevelopment and environmental remediation costs associated with the Fairmount Avenue Property. Under the terms of the Grant Agreement, approximately \$300,000.00 to \$400,000.00 was to be applied to the costs associated with redevelopment of the Fairmount Avenue Property; and

**WHEREAS** on or about June 23, 2014, Fairmount Senior Genesis Housing Urban Renewal Partnership, LLC took title to the Fairmount Avenue Property by Deed from the City in exchange for payment of \$114,100.00. That deed contained a limited right of reverter providing that title to the property shall automatically revert to the City should Plaintiffs default under their obligations under the Amended Redevelopment Agreement, which is consistent with Section 8.8 of the Amended Redevelopment Agreement providing for the right of reverter; and

**WHEREAS** on or about May 2015, the City advised plaintiffs that the federal HOME funds that were to come from HUD were de-committed by HUD and thus unavailable for the Fairmount Avenue Property project; and

**WHEREAS** Plaintiffs advised that the loss of HOME funding for the Fairmount Avenue Property project made redevelopment of that site economically infeasible; and

**WHEREAS** in February 2016, the City advised Plaintiffs that it was terminating the Amended Redevelopment Agreement with respect to the Central Avenue Property; and

**WHEREAS** in February 2016 the City and CFNJ entered into an Assignment of Grant Agreement by which CFNJ assigned its interest in the Grant Agreement to the City; and

**WHEREAS** in March, 2016, Plaintiffs filed a Verified Complaint against the City, CFNJ and others arising out of the Amended Redevelopment Agreement, the Grant Agreement and the HOME Agreement;

**WHEREAS** that Complaint was dismissed upon the City's withdrawal of the prior termination of the Amended Redevelopment Agreement as to the Central Avenue Property;

**WHEREAS** the parties thereafter negotiated the potential transfer of Plaintiffs' development rights in the Central Avenue Property and Fairmount Avenue Property to another developer, but those negotiations were not successful; and

**WHEREAS** Plaintiffs did not commence construction activities at either the Central Avenue Property or the Fairmount Avenue Property; and

**WHEREAS** on or about November 2019 the City issued another default notice to Plaintiffs concerning the Central Avenue Property, to which Plaintiffs responded on January 16, 2020; and

**WHEREAS** the City issued a termination notice to Plaintiffs on January 29, 2020 concerning the Central Avenue Property; and

**WHEREAS** the City issued a default notice as to the Fairmount Avenue Property on January 29, 2020; and

**WHEREAS** Plaintiffs filed this lawsuit on July 14, 2020 and filed a Notice of Lis Pendens for both the Central and Fairmount Avenue Properties on or about August 11, 2020 ("the Lawsuit"); and

**WHEREAS** the City decided to move forward with another redeveloper on the Central Avenue

Property and, to that end, Municipal Council passed a resolution on February 18, 2021 authorizing the Mayor to enter into an agreement for the sale and redevelopment of the Central Avenue Property to Kawaida Towers LP; and

**WHEREAS** Plaintiffs filed an Amended Complaint on or about June 25, 2021 which added claims of tortious interference against several redevelopment entities associated with the Kawiada Towers LP project, namely Kawaida Towers LP, Omni America, LLC, Mid-Atlantic Investment Alliance, LLC and NAN Newark Tech World (the “Omni Defendants”); and

**WHEREAS** the Omni Defendants filed a motion to dismiss and were dismissed from the case with prejudice on or about February 4, 2022; and

**WHEREAS** on October 4, 2022, Plaintiffs filed an Order to Show Cause seeking to enjoin the City Defendants from moving forward with the Kawaida Towers LP redevelopment project; and

**WHEREAS** the return date for that Order to Show Cause was adjourned for several months to permit the parties to engage in settlement discussions and mediation; and

**WHEREAS** on February 18, 2022, that Order to Shaw Cause was denied; and

**WHEREAS** settlement discussions between the parties continued and ultimately resulted in a successful resolution of the matter; and

**WHEREAS** the City’s interests in the Lawsuit are represented by Schenck, Price, Smith & King, LLP (“Outside Counsel”) which, after discussion with Corporation Counsel, the Deputy Mayor/Director of the Department of Economic Housing and Development, and the Business Administrator, advises that the proposed settlement is in the best interest of the City because it resolves legal issues which are of uncertain outcome if adjudicated and advances the City’s interest in the redevelopment of the Central Avenue Properties because the Omni Defendants will be able to proceed with the Kawaida Towers LP project uninhibited by Plaintiffs’ Lawsuit and legal challenges; and

**WHEREAS**, the City believes this settlement to be in the vital and best interest of the City and of the Central Ward and West Ward, and that it promotes the health, safety, morals and welfare of the City's residents, as well as advances the City’s interest in the redevelopment of the Central Avenue Properties.

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

1. The Mayor and/or his designee, the Corporation Counsel, are authorized to enter into and execute the Settlement Agreement and Release attached hereto as Attachment A.
2. The Mayor, and/or his designee, the Corporation Counsel, are hereby authorized to take all actions necessary and appropriate to implement this Resolution and to effectuate the terms of the Settlement Agreement and Release, thereby fully releasing all of the City’s claims against Fairmount Senior Genesis Housing Urban Renewal Partnership, LLC, Genesis Fairmount Partners, LLC and Genesis Central Ave Partners, LLC.

1. Upon receipt by the Corporation Counsel of all documents deemed necessary, the Director of the Department of Finance is hereby authorized and directed to issue payment in the amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00), which payment will be made payable to Genesis Companies, LLC., and mailed to Eric Kanefsky, Esq., Calcagni Kanefsky, LLP., One Newark Center, 1085 Raymond Boulevard, 14<sup>th</sup> Floor, Newark, New Jersey 07102.
2. Annexed hereto is the Certification of Funds issued by the City's Director of the Department of Finance, which states that there are available sufficient legally-appropriate funds from the Community and Economic Development Trust Fund, Fund 26, Account 32100, Budget Year B2022 in the amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00)
3. A copy of the Comptroller's Certification shall be filed in the Office of the City Clerk along with this Resolution by the Corporation Counsel.
4. The Corporation Counsel shall file a fully executed copy of the Settlement Agreement and Release in the Office of the City Clerk.
5. This Resolution shall be effective upon adoption in accordance with applicable State Law.
6. The Settlement Agreement and Release and Resolution does not admit, nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of the Corporation Counsel and to eliminate all risks and future litigation costs.
7. Once the Settlement Agreement is fully executed, Outside Counsel is hereby authorized to execute the Stipulation of Dismissal With Prejudice in substantially the same form as Attachment A to the Settlement Agreement.

### **STATEMENT**

This resolution authorizes the Corporation Counsel to: (1) resolve pending litigation entitled Fairmount Senior Genesis Housing Urban Renewal Partnership, LLC et al. v. the City of Newark et al., Docket No. ESX-L-4632-20; and (2) terminate the First Amended Redevelopment Agreement between the City of Newark and Fairmount Senior Genesis Housing Urban Renewal Partnership, LLC and Genesis Central Ave Partners, LLC executed on or about September 7, 2011. Under the terms of the Settlement Agreement, the City defendants and the Redevelopers agree to release all claims against each other relating to the Redevelopment Agreement and related financing documents and the Redevelopers agree to dismiss the Lis Pendens currently placed on the Fairmount Avenue Property and the Central Avenue Property in exchange for payment of \$450,000.