City of Philadelphia

(Bill No. 110083)

AN ORDINANCE

Amending Section 14-1607 of The Philadelphia Code, entitled "Special District Controls for the Center City Commercial Area," and Section 14-1605 of The Philadelphia Code, entitled "Regulated Uses," and Section 14-305 of The Philadelphia Code, entitled "'C-4' Commercial and 'C-5' Commercial Districts," by adding to all Sections special provisions relating to the area bounded by Chestnut Street, 12th Street, 13th Street, and Sansom Street, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 14-1605 of The Philadelphia Code is hereby amended to read as follows:

§14-1605. Regulated Uses.

* * *

(2) Definitions.

* * *

(i) Pool Room. An establishment which provides two or more tables for the playing of pool and billiards, *except that in the area bounded by Chestnut Street, 12th Street, 13th Street and Sansom Street, an establishment regulated by the Pennsylvania Liquor Control Board shall not be considered a Pool Room if the pool tables and billiard tables are not coin operated.*

* * *

SECTION 2. Section 14-1607 of The Philadelphia Code is hereby amended to read as follows:

§14-1607. Special District Controls for the Center City Commercial Area.

* * *

(7) Conditional Uses. In any building or upon any land abutting Chestnut street and Walnut street between Seventh street and the Schuylkill River and Broad street between

South Penn Square and Washington avenue (except as noted in §14-1607(6) above), the following uses shall require a Zoning Board of Adjustment certificate:

* * *

(b) Restaurants, cafes, coffee shops and other similar establishments for the sale and consumption of food and/or beverages, without drive-in or take-out service (service at tables or sit down counter facilities only); *except for restaurants along the south side of Chestnut Street between 12th Street and 13th Street that are accessory to the principal use of a pool or billards hall;* except for restaurants on Broad street between South Penn Square and Washington avenue and, except for restaurants located within hotels and, except for restaurants accessory to an office building (intended principally to serve the occupants of the building) provided that there shall be no ingress or egress directly from any street (accessible solely from the interior of the building) and there shall be no signage visible from the street;

* * *

(10) Bulk and Height Controls.

* * *

(b) No building shall be erected which is located at a point two hundred fifty feet south of the south side of Chestnut street between Front street and a point one hundred thirty feet east of Broad street or two hundred fifty feet south of the south side of Chestnut street between a point one hundred thirty feet west of Broad street and the Schuylkill River, or within two hundred fifty feet south of the south side of Walnut street between Front street and Eighth street and between Ninth street and a point one hundred feet east of Broad street, or within two hundred fifty feet south of the south side of Walnut street between a point two hundred twenty feet west of Broad street and the Schuylkill River, unless there is compliance with the following height and bulk controls:

(.1) The main cornice line abutting the south side of Chestnut street or Walnut street shall not exceed fifty feet in height above the average sidewalk level; provided, that no portion of any building within two hundred fifty feet south of the southerly property line of Chestnut street or two hundred fifty feet south of the southerly property line of Walnut street shall exceed this fifty feet height limitation unless the portion or portions above this fifty feet height limitation recede from the plane of the cornice line a distance equal to or greater than the distance it extends above the fifty feet height limit; provided, further, that in no case shall any portion or portions of a building exceed three hundred feet in height. *This subsection (10)(b)(.1) shall not apply to buildings along the south side of Chestnut Street between 12th Street and 13th Street.*

SECTION 3. Section 14-305 of The Philadelphia Code is hereby amended to read as follows:

§14-305. "C-4" Commercial and "C-5" Commercial Districts.

* * *

(7) Height Regulations. The height regulations in these districts shall be as set forth herein, provided, that when other sections of this Title require more restrictive height regulations, the more restrictive regulations shall take precedent.

* * *

(c) Chestnut Street. For lots fronting on and south of Chestnut street between Front street and the Schuylkill River, except within one hundred thirty feet of the east side of Broad street or within one hundred thirty feet of the west side of Broad street, the following regulations shall apply:

* * *

(.2) Maximum Height. The maximum height of any building or structure shall be as follows:

* * *

(.b) South Side. Along the south side of Chestnut street the maximum height of any building, building appurtenance (as permitted in Section 14-312 except flagpoles), or structure shall be fifty feet above the average sidewalk level. This height limit may be increased to a maximum height of three hundred twenty feet above the average sidewalk level by increasing the height one foot for each foot the building sets back (i.e., along a forty-five degree recession plane) from the street line. *This subsection (7)(c)(.1)(.b) shall not apply to buildings along the south side of Chestnut Street between 12th Street and 13th Street.*

SECTION 3. This Ordinance shall be effective immediately.

Explanation:

Italics indicate new matter added.

City of Philadelphia

BILL NO. 110083 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on April 14, 2011. The Bill was Signed by the Mayor on April 27, 2011.

Michael A. Decker

Michael A. Decker
Chief Clerk of the City Council

City of Philadelphia
Economic Opportunity Plan

RENOVATION OF 1200 CHESTNUT STREET

Philadelphia, PA

I. Introduction, Definitions and Goals

The City of Philadelphia strongly encourage the use of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") and Disadvantaged[1] ("DBEs") Business Enterprises (collectively, "M/W/DSBEs") and minority and female workers in all aspects (including financial investment, design and construction) in the renovation and expansion of 1200 Chestnut Street Philadelphia, PA which will include an upscale billiard club with ancillary bar, restaurant, banquet space, and a lounge occupying the roof top. In support of this objective, City of Philadelphia will require that the developer, 1200 Bank, LLC ("1200 Bank"), commit to this Economic Opportunity Plan ("EOP" or "Plan"). This Plan shall apply to contracts awarded and procurements by 1200 Bank and all Participants of this Project.

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project. This Plan shall be a part of and incorporated into the resulting agreement(s) with 1200 Bank.

1200 Bank hereby verifies that all information submitted to the Office of Economic Opportunity ("OEO") in response to this Plan, is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities and 18 Pa.C.S. Section 4107.2 (a)(4) relating to fraud in connection with minority business enterprises or women's business enterprises.

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency[2] will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oeo/directory.

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[1]Disadvantaged Business Enterprises ("DBEs") are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26.

[2]A list of "OEO approved certifying agencies" can be found at www.phila.gov/oeo

For this Plan, the term "Best and Good Faith Efforts" means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the M/W/DSBE Participation Ranges established for this development and a commitment is made to employ a diverse workforce as enumerated herein.

II. Project Scope

1200 Bank will renovate 1200 Chestnut Street, a long-vacant landmark building, to its former grandeur to house an upscale billiard club in the lobby, banquet space in the former boardroom, and an enclosed bar/restaurant of approximately 5,000 square feet on the rooftop. There will also be a mezzanine-level bar and restaurant designed for both socializing and spectating. 1200 Bank's intention is to have 1200 Chestnut Street become a beacon for locals, tourists and conventioneers looking for a unique high-end experience. Actual renovations will include upgrading basic systems, adding an elevator for roof access and encasing the roof with a glass envelope creating a unique entertainment experience. The construction for the renovation and expansion will begin in Fall 2011. The total construction costs will be approximately $3 million.

III. Goals

1. M/W/DSBE Participation Ranges

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the Project the following participation ranges have been established. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts. These percentages relate to the good faith estimated cost of the entire Project. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the development and the availability of MBEs, WBEs, DSBEs and DBEs to participate in this development:

The following *Professional Services* contract goals have been set for the Project:

Contracts	Minority Owned	Female Owned	Disabled Owned
Professional Services	5%	5%	*Best efforts*

The following *Construction* contract goals have been set for the Project:

Contracts	Minority Owned	Female Owned	Disabled Owned
Construction Sub-Contractors	25%	7%	*Best efforts*

The objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Projects and communicated to all Participant levels.

2. Employment Goals

1200 Bank agrees to exhaust Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen at the following levels[3]:

Minority Apprentices – 50% of all hours worked by all apprentices
Minority Journeymen – 32% of all journey hours worked across all trades
Female Apprentices – 7% of all hours worked by all apprentices
Female Journeypersons - 7% of all hours worked across all trades

3. Workforce during Operations.

During operation, approximately 40-50 full/part- time jobs will be created. The workforce will comprised of local residents with minority and female representation.

IV. Responsiveness

A. 1200 Bank shall identify all M/W/DSBE commitments and other agreements evidencing its intent to use Best and Good Faith efforts to employ minority persons and females at the levels stated herein on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The identified commitments on this form constitutes a representation that the M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that 1200 Bank have entered into a legally binding commitments or other legally binding agreements with the listed M/W/DSBEs

[3] These goals, which have been adopted by the Economic Opportunity Cabinet, are the recommendations of the Mayor's Commission on Construction Industry Diversity.

for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. Commercially Acceptable Function

A Contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with Bid specifications), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the Bid specifications and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

C. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form.

D. OEO will review 1200 Bank's commitments for the purpose of determining whether Best and Good Faith Efforts have been made. OEO reserves the right to request further documentation and/or clarifying information at any time during the construction and development of the Project.

E. Participants shall be required to submit a Subcontracting/Vendor Plan outlining how it intends to seek out vendors to satisfy the goals established in herein.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. 1200 Bank agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, upon the request of OEO, documentation relative to its implementation of the Plan, including the items described below:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;

- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation; and

- Telephone logs and correspondence relating to M/W/DSBE commitments.

- To the extent required by law, 1200 Bank shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to inspection by OEO.

B. Prompt Payment of M/W/DSBEs

1200 Bank agrees and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Project receive payment for their work or supply effort within thirty (30) business days after receipt of a proper invoice following satisfactory performance.

C. Oversight Committee

1200 Bank, in consultation with the OEO, will establish and identify the members of a Project Oversight Committee, including representatives from the Project and/or the General Contractor and Construction Manager, Office of Economic Opportunity and the First District Councilperson, or his designee.

The first meeting of the Project Oversight Committee shall be called by 1200 Bank within one (1) month of the initiation of this Project (as determined by 1200 Bank) and shall meet on a regular basis during all phases of the Project. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out its implementation and the successful completion of the Project.

C. Reporting

The Owner, will provide higher-level "snapshot" reports containing updates for certain categories of information. Snapshot reporting will include: (i) utilization of M/W/DSBEs and/or DBEs; (ii) the hiring and employment of minorities and females, (iii) the hiring and employment of Philadelphia residents.

VI. Remedies and Penalties for Non-Compliance

A. 1200 Bank agrees that its compliance with the requirements of this Plan is material inducing City Council to approve Ordinance No.: 100753. Failure to comply with the Plan may subject 1200 Bank to the remedies and penalties contained in Section 17-1100 of the Philadelphia Code therein or otherwise available at law or in equity. Notwithstanding the foregoing, no privity of contract exists between the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither 1200 Bank nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from implementation of the Plan except such rights or remedies that the M/W/DSBE may seek as a private cause of action under any legally binding contract to which it may be a party.

_____ _____

Owner Representative Date

[*See Best and Good Faith Efforts Forms Attached*]