City of Philadelphia

(Bill No. 100552-AA)

AN ORDINANCE

Amending the Philadelphia Zoning Maps by changing the zoning designations of certain areas of land located within an area bounded by Race Street, 4th Street, 5th Street and Florist Street; and by amending Section 14-303 of The Philadelphia Code, entitled "'C-3' Commercial District," all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 14-304 of The Philadelphia Code is hereby amended to read as follows:

§14-304. "C-3" Commercial District.

* * *

(9) Notwithstanding anything to the contrary in this Title, for any building containing a hotel use in the area bounded by Race Street, 4th Street, 5th Street and Florist Street (as extended westward), the following shall apply:

(a) Use Regulations.

(1) The use restrictions of Section 14-1610(3), relating to prohibited uses under the Old City Residential Area Special District Controls, shall not apply.

(2) Restaurant, entertainment, and public assembly uses not accessory to a hotel, shall collectively occupy no more than 35,000 square feet.

(b) Height Regulations.

(1) A maximum height of 145 feet, including all rooftop mechanicals, penthouses, staircases, and appurtenances, is permitted in the area between the eastern edge of Fifth Street and a line 200 feet east of, and parallel to, the eastern edge of Fifth Street.

(2) A maximum height of 80 feet, including all rooftop mechanicals, penthouses, staircases, and appurtenances, is permitted in the area between a line 200 feet east of, and parallel to, the eastern edge of Fifth Street, and the western edge of Fourth Street. All rooftop

mechanicals, penthouses, staircases, and appurtenances in such area shall be set back at least ten (10) feet from the cornice line of the main building along the western edge of Fourth Street and ten (10) feet from the cornice line of the main building along the northern edge of Race Street.

(c) Off-Street Parking.

(1) For hotel use, at least one (1) space for every three (3) hotel units shall be required.

(2) For restaurant, entertainment, and public assembly uses, at least one (1) space for every 450 square feet of gross floor area shall be required.

(3) For residential uses, other than hotel uses, one (1) space for each single-family dwelling unit shall be required.

(4) No fewer than 220 parking spaces shall be provided at all times.

(5) Interior valet parking areas may be tandem, stacked, or mechanical parking, and shall comply with applicable parking requirements.

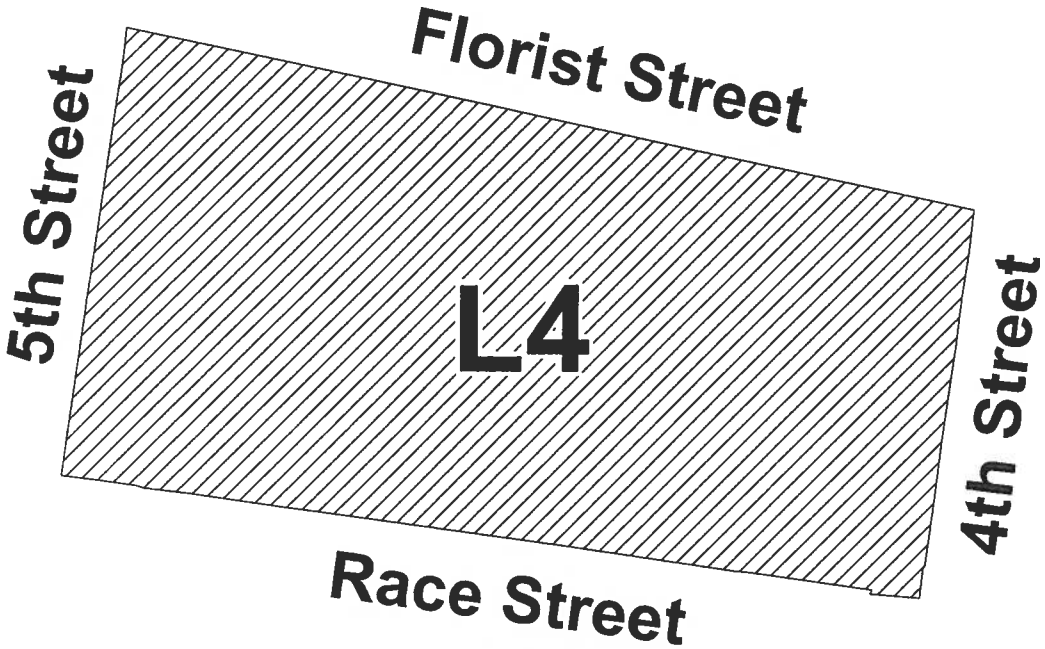
(6) Exterior valet parking areas may be tandem or stacked parking, and shall comply with all applicable surface parking lot requirements, including screening, landscaping, lighting and striping.

SECTION 2. Pursuant to Section 14-103 of The Philadelphia Code, The Philadelphia Zoning Maps are hereby amended by changing the zoning designations of certain areas of land within an area bounded by Race Street, 4th Street, 5th Street and Florist Street (as extended westward) from the existing zoning designations indicated on Map "A" set forth below to the zoning designations indicated on Map "B" set forth below.

SECTION 3. Sunset. Section 1 of this Ordinance shall expire two (2) years from the date it is enacted.

SECTION 4. This Ordinance shall take effect immediately.

Existing Zoning - Map A

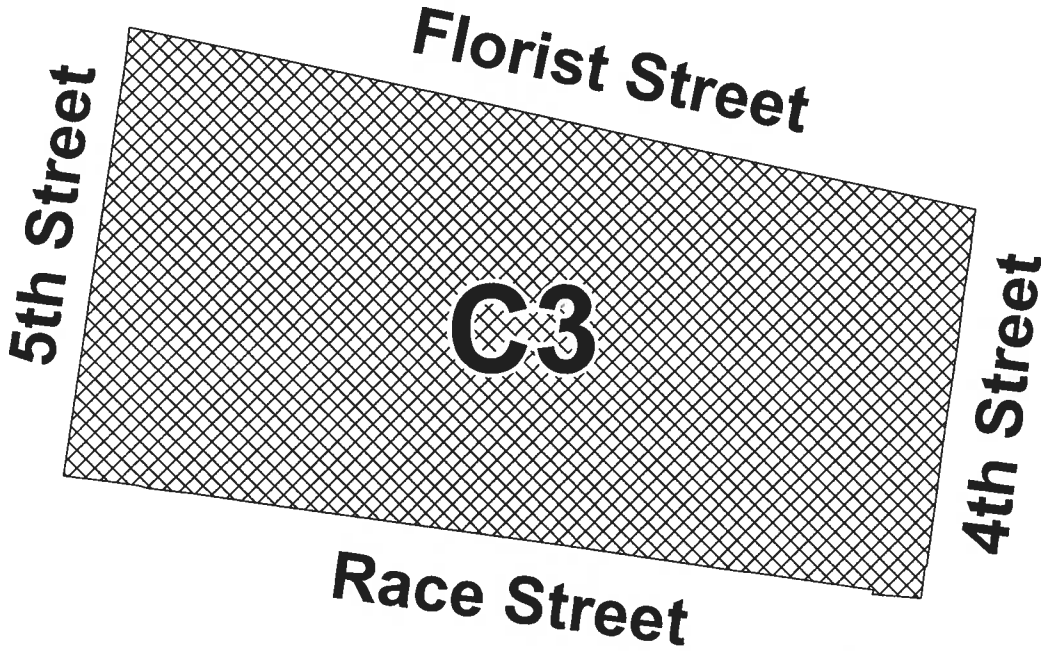


Legend

L4 Limited Industrial

N

Proposed Zoning - Map B



Legend

C3 Commercial

N

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

City of Philadelphia

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
Chief Clerk of the City Council

City of Philadelphia
Economic Opportunity Plan

One Franklin Square
401 Race Street
Philadelphia, PA 19107

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 of the One Franklin Square located at the 401 Race Street Project which may include financial investment, design, construction and operations. In support of this objective, City of Philadelphia will require that 401 Race St Partners L.P. d/b/a One Franklin Square ("Franklin") commit to this Economic Opportunity Plan ("EOP" or "Plan"). This Plan shall apply to contracts awarded and procurements by Franklin and all Participants during both Phases 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 development of the One Franklin Square. This Plan shall be a part of and incorporated into the resulting agreement(s) with the Franklin.

Franklin 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

401 Race St Partners L.P. d/b/a One Franklin Square ("Franklin") intends to develop a mixed-use project including a Hotel, Restaurant and Entertainment Venue, Parking and Residential component. Developed on the site of the former Pincus Brothers building, the existing building will be converted into retail and parking, and the hotel will be newly-constructed on top of the existing structure (the "Project"). The residential component will be constructed on the current parking lot on the 4th street side of the site. The hotel will rise 6 stories above the existing building and be comprised of an 150 +/- room suites hotel with limited food and beverage facilities. The hotel will service business and government business travelers as well as tourist business emulating from the Independence Mall area including the Liberty Bell, Independence Hall and the Constitution Center. The retail portion will be occupied by a family oriented restaurant entertainment venue and will comprise approximately 32,000 square feet. Parking will be on the second and third floors with approximately 220 parking spaces in either a self-park, valet, stacked or tandem configuration. There will be a phase II of the project which would comprise of first floor retail and residential above. The Residential building would comprise 5 stories plus a penthouse and contain approximately 45 units. Development costs total approximately $80 million dollars.

This project will be done in phases. Phase I will include the hotel, retail and parking, as previously described above, and will commence in the First Quarter of 2011 with the anticipated completion scheduled for the Third Quarter of 2013. Phase II will commence afterwards but will be dependent upon market conditions. This Plan shall apply to contracts awarded by Franklin and sub-contracts awarded by its Participants for the entire Project.

II. 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 One Franklin Square

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 One Franklin Square 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	10%	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%	10%	*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

Franklin 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

IV. Responsiveness

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

A. Franklin 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 the Franklin has entered into a legally binding commitments or other legally binding agreements with the listed M/W/DSBEs 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. 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.

C. OEO will review Franklin'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.

D. 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. Franklin 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, Franklin 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

1. Franklin 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 five (5) business days after receipt of a proper invoice following satisfactory performance.

C. Oversight Committee

Franklin, in consultation with the OEO, will establish and identify the members of a Project Oversight Committee, including representatives from Franklin 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 Franklin within one (1) month of the initiation of this Project (as determined by Franklin) 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.

VI. Remedies and Penalties for Non-Compliance

A. The Franklin agrees that its compliance with the requirements of this Plan is material to the Agreement. Failure to comply with the Plan may constitute a substantial breach of the Agreement and is subject to the remedies and penalties contained 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 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*]