S T A T E O F N E W Y O R K

10705

I N A S S E M B L Y

June 15, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gottfried) -- read once and referred to the Committee on Cities

AN ACT to amend the Hudson river park act and the New York city charter, in relation to the boundaries and uses of the Hudson river park

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 3 of chapter 592 of the laws of 1998, constituting the Hudson river park act, is amended to read as follows:

S 3. Definitions. As used in this act, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(a) "Board" means the board of directors of the Hudson river park trust.

(b) "Compatible governmental use" means a use within the park that is compatible with park use in accordance with the purposes of this act, such as necessary and appropriate sewage, utility, and ventilation connections, and private utilities, including the repair, maintenance, operation, and replacement thereof; public safety facilities necessary for the maintenance and operation of the park; the marine company one fire boat station on pier 53; and the city of New York department of sanitation water-dependent marine transfer station on pier 99.

(c) "Floating structure" means any vessel or other water-supported structure, including a floating dock, which is bordered by either open water or a dock and which is or is intended to be moored or attached to a pier, wharf, dock, platform, bulkhead or floatation system for a period of more than six months; provided however, that such definition shall not include historic ships or vessels, as determined by the trust through rules and regulations. Support by means of a cradle or as a result of natural siltation shall not exclude from this definition a structure normally supported by water.

(d) "General project plan" means the Hudson river park concept & financial plan, dated May, 1995, as modified in the May 20, 1998 final environmental impact statement, and any successor plan or statement of findings created thereafter consistent with the state environmental

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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quality review act; provided that the general project plan shall be consistent with this act.

(e) "Hudson river park" or "park" means the area in the city and county of New York within the following boundaries, but excluding pier 76 except as otherwise provided in paragraph (c) of subdivision nine of section seven of this act and piers 78, 88, 90, 92 and 94 and their associated upland areas:

(i) the southern boundary shall be the northern [boundary of Battery Place and Battery Place extended, provided that the Battery Park city project area as defined in section 1972 of the public authorities law shall not be included within the boundaries of the park] SEAWALL OF BATTERY PARK CITY AS EXTENDED EASTERLY TO THE WESTERN BOUNDARY OF THE ROUTE 9A BIKEWAY;

(ii) the northern boundary shall be the northern boundary of 59th street and 59th street extended;

(iii) the western boundary shall be the United States pierhead line; and

(iv) the eastern boundary shall be the western boundary of West street, eleventh avenue or twelfth avenue (whichever boundary is more westerly at any point); provided that as any portion of the state highway route 9-A is completed, as certified by the commissioner of transportation of the state, the eastern boundary of the park adjacent to that portion shall be the western boundary of state highway route 9-A; provided that the department of transportation shall retain a temporary easement over all lands east of the bulkhead during the period of construction of route 9-A for the sole purpose of completing construction; and provided further that (A) Thomas F. Smith Park as will be rebuilt as part of the route 9-A project, (B) the area bounded by 14th street, 15th street, tenth avenue and route 9-A, and (C) any additional land adjacent to the park or adjacent to route 9-A acquired in accordance with the provisions of this act to expand the park shall be part of the park; and provided further that any pier or upland area which is privately owned shall not be deemed part of the park for purposes of this act unless transferred to or acquired by the city or state and made part of the park.

(f) "Incompatible governmental use" means a governmental use within the park that is not a compatible governmental use or is otherwise incompatible with park use in accordance with the purposes of this act, such as sanitation-truck parking, bus parking, and police impound lots and storage facilities.

(g) "Park/commercial use" means a use that is not a prohibited use and is compatible with park use, and that is:

(i) a transportation water dependent use, including commercial maritime and marine ferry terminals;

(ii) an entertainment, retail, TELEVISION OR FILM STUDIO, COMMUNITY NON-COMMERCIAL RECREATIONAL SPORTS FACILITIES, or commercial recreational use;

(iii) limited parking spaces incidental to permitted uses;

(iv) solely at piers 59, 60, and 61 and the headhouse (commonly known as "Chelsea Piers") the uses authorized at such piers and headhouse as of the effective date of this act, including, but not limited to, sports and studio facilities; [or]

(v) a non-tourism/non-recreation heliport for commercial and emergency transportation use[.];

(VI) SOLELY ON THAT PORTION OF PIER 76 THAT IS NOT USED AS PARK USE, PARKING, BUSINESS, PROFESSIONAL OR GOVERNMENTAL OFFICES, RESIDENTIAL,

HOTEL, SPA AND RELATED ANCILLARY OPERATIONS AND FACILITIES ONLY UPON THE CONDITION THAT SUCH USES ARE IDENTIFIED AND AUTHORIZED IN A MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNOR, THE MAYOR OF THE CITY OF NEW YORK, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY AFTER CONSULTATION WITH THE MEMBERS OF THE ASSEMBLY AND SENATE REPRESENTING THE AREA WHERE PIER 76 IS LOCATED; SUCH MEMORANDUM OF UNDERSTANDING MAY IDENTIFY, DESCRIBE AND LIMIT SPECIFIC USES AND PROJECTS THAT MAY BE CONSIDERED "PARK/COMMERCIAL USE" PURSUANT TO THIS PARAGRAPH AND MAY AUTHORIZE THE TRUST TO ENTER INTO A LEASE, CONCESSION AGREEMENT, LICENSE OR OTHER AGREEMENT RELATED TO USES ON SUCH PIER FOR A TERM OR TERMS THAT ARE COTERMINOUS WITH THE DURATION OF THE TRUST'S MASTER LEASE WITH THE CITY OR STATE; OR

(VII) SOLELY AT PIER 40, PARKING, BUSINESS, PROFESSIONAL OR GOVERNMENTAL OFFICES, A FINE ARTS GALLERY OR STUDIO OWNED OR OPERATED BY THE CITY UNIVERSITY OF NEW YORK AND RELATED ANCILLARY OPERATIONS AND FACILITIES ONLY UPON THE CONDITION THAT SUCH USES ARE IDENTIFIED AND AUTHORIZED IN A MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNOR, THE MAYOR OF THE CITY OF NEW YORK, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY AFTER CONSULTATION WITH THE MEMBERS OF THE ASSEMBLY AND SENATE REPRESENTING THE AREA WHERE PIER 40 IS LOCATED; SUCH MEMORANDUM OF UNDERSTANDING MAY IDENTIFY, DESCRIBE AND LIMIT SPECIFIC USES AND PROJECTS THAT MAY BE CONSIDERED "PARK/COMMERCIAL USE" PURSUANT TO THIS PARAGRAPH AND MAY AUTHORIZE THE TRUST TO ENTER INTO A LEASE, CONCESSION AGREEMENT, LICENSE OR OTHER AGREEMENT RELATED TO USES ON SUCH PIER FOR A TERM OR TERMS UP TO 49 YEARS IN LENGTH.

(h) "Park use" means:

(i) public park uses, including passive and active public open space uses;

(ii) public recreation, AMUSEMENT RIDES and entertainment, including the arts and performing arts, on open spaces;

(iii) public recreation, AMUSEMENT RIDES and entertainment, including the arts and performing arts within enclosed structures subject to the limitations on such structures specified in subdivision nine of section seven of this act;

(iv) small-scale boating for recreational and educational purposes that enhance park users' access to, and enjoyment of, the water;

(v) environmental education and research, including museums subject to the limitations specified in subdivision nine of section seven of this act;

(vi) historic or cultural preservation including historic ships and vessels;

(vii) wildlife and habitat protection; and

(viii) facilities incidental to public access to, and use and enjoyment of park uses, such as concession stands, information stands, comfort stations, boathouses, marinas, water taxis, and stands at which bicycles, skates, deck chairs, beach umbrellas, fishing tackle, other sports equipment or other similar products are rented or at which water-taxi tickets or other tourist attraction passes or meals are sold, subject to the limitations on such structures specified in subdivision nine of section seven of this act.

Provided that the following shall apply: (A) enclosed structures on piers and other areas designated for park use shall be subject to the limitations on such structures specified in subdivision nine of section seven of this act, (B) in no event shall the following be deemed to constitute a "park use": any amusement park, television or film studio, commercial cinema or other for-profit entertainment facility, or any

parking facilities (except for temporary spaces for deliveries or as necessary to meet local, state or federal requirements regarding access for disabled persons); [and] (C) AS USED IN THIS SUBDIVISION, "AMUSEMENT RIDES" SHALL MEAN CAROUSELS AND OTHER SMALL SCALE RIDES OWNED BY THE TRUST THAT ARE INTENDED FOR CHILDREN PROVIDED THAT, ANY SUCH "AMUSEMENT RIDES" MUST BE LOCATED WEST OF THE BULKHEAD AND, PROVIDED FURTHER THAT, EXCEPT AT PIER 76, A FERRIS WHEEL OR OTHER OBSERVATION RIDE OR TOURIST ATTRACTION SHALL NOT BE CONSIDERED A "PARK USE"; AND (D) the overall policy within the park shall be to provide free or nominal-cost recreational opportunities to the public on a broad basis.

(i) "Permitted use" means:

(i) park use;

(ii) park/commercial use;

(iii) compatible governmental use;

(iv) uses permitted under any lease, permit, license, or other instrument in effect upon the effective date of this act, whether or not a prohibited use under this act, but only pursuant to the terms of the instrument and only for the term thereof or pursuant to any extension according to the terms thereof if, but only if, the option to extend is exercised solely by and is a contractual right of the lessee, permittee, licensee or other contractual user, and subject to the deadlines for the removal or relocation of incompatible governmental uses under subdivision nine of section seven of this act.

(j) "Prohibited use" means any of the following uses:

(i) residential EXCEPT AT PIER 76 IF RESIDENTIAL USE IS AUTHORIZED AT SUCH PIER BY MEMORANDUM OF UNDERSTANDING PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (G) OF THIS SECTION;

(ii) manufacturing, except in furtherance of and incidental to park uses, PROVIDED THAT AT PIER 57 SMALL SCALE CREATION OF ARTISAN FOODS OR OTHER CRAFT PRODUCTS SHALL NOT BE CONSIDERED MANUFACTURING AND, AT PIERS 40 AND 76, SUCH SMALL SCALE CREATION SHALL NOT BE CONSIDERED MANUFACTURING IF SUCH SMALL SCALE CREATION IS AUTHORIZED AT SUCH PIERS BY MEMORANDUM OF UNDERSTANDING PURSUANT TO PARAGRAPH (G) OF THIS SECTION;

(iii) commercial office and warehousing, except office space incidental to a permitted use; PROVIDED THAT COMMERCIAL OFFICE USE SHALL NOT BE CONSIDERED A PROHIBITED USE AT PIERS 40 AND 76 IF COMMERCIAL OFFICE USE IS AUTHORIZED AT SUCH PIERS BY MEMORANDUM OF UNDERSTANDING PURSUANT TO PARAGRAPH (G) OF THIS SECTION;

(iv) hotel EXCEPT AT PIER 76 IF HOTEL USE IS AUTHORIZED AT SUCH PIER BY MEMORANDUM OF UNDERSTANDING PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (G) OF THIS SECTION;

(v) incompatible governmental uses;

(vi) casino and riverboat gambling, and the docking of vessels to be used substantially for gambling or for transportation to such a vessel;

(vii) any facility for motorized aircraft, including a heliport except a heliport which is defined as a park/commercial use; and

(viii) other uses determined by the trust to be incompatible with the purposes of this act.

(k) "Hudson river park trust" or "trust" means the public benefit corporation established pursuant to section five of this act.

(l) "Water section" means all the area of the park west of the bulkhead line, including the water, lands under water and space above the water, but not including the piers and float bridge as they exist on the effective date of this act.

(m) "Water dependent use" excludes any prohibited use and means:

(i) any use that depends on utilization of resources found in the water section;

(ii) recreational activities that depend on access to the water section, such as fishing, boating, swimming in such waters, passive enjoyment of the Hudson river and wildlife protection and viewing;

(iii) facilities and incidental structures needed to dock and service boats; and

(iv) scientific and educational activities that by their nature require access to marine reserve waters.

(n) "Passive and active public open space uses" mean lawns, esplanades, open pier surfaces, areas for strolling and sitting, picnicking areas and open space areas for sports, exercise and active play including, playgrounds, ball fields, playing courts, and areas for running, biking and rollerblading and similar recreational activities.

S 2. Paragraphs (b), (c), (h) and (i) of subdivision 9 and subdivision 11 of section 7 of chapter 592 of the laws of 1998, constituting the Hudson river park act, are amended to read as follows:

(b) No less than the equivalent of fifty percent of the footprint of Pier 40 shall be passive and active public open space; provided that up to one hundred percent of this pier may be limited to park use by the general project plan; PROVIDED FURTHER THAT IF A MEMORANDUM OF UNDERSTANDING IS ENTERED INTO PURSUANT TO SUBPARAGRAPH (VII) OF PARAGRAPH (G) OF SECTION THREE OF THIS ACT, THEN NO LESS THAN SIXTY-FIVE PERCENT OF THE PIER FOOTPRINT SHALL BE USED FOR SPORTS EXERCISE AND ACTIVE PLAY, INCLUDING BALL FIELDS, PLAYING COURTS, AND AREAS FOR RUNNING, BIKING, ROLLERBLADING AND SIMILAR RECREATION ACTIVITIES. Notwithstanding any other provision of this act to the contrary, Pier 40 may be used for parking for passenger vehicles with a seating capacity of 10 passengers or less, provided however such use shall be predominantly for long-term parking.

(c) [The city of New York shall use best efforts to relocate the tow pound on Pier 76. Subsequent to relocation of the tow pound] ALL INCOMPATIBLE GOVERNMENTAL USES AT PIER 76, INCLUDING THE TOW POUND AND MOUNTED POLICE FACILITY, SHALL BE RELOCATED BY DECEMBER 31, 2015 AFTER WHICH, the city of New York shall convey to the trust a possessory interest in [fifty percent of] Pier 76 for [passive and active public open space use for] a period not to exceed 99 years, provided that [such open space portion of Pier 76] AT LEAST FIFTY PERCENT OF THE PIER FOOTPRINT SHALL BE USED FOR PARK USES THAT ARE LIMITED TO PASSIVE AND ACTIVE OPEN SPACE AND WHICH shall be contiguous to water AND PROVIDED FURTHER THAT THE REMAINING PORTION SHALL BE FOR PARK/COMMERCIAL USE. Upon such conveyance, [the portion so conveyed will] PIER 76 shall become part of the park [and will be used solely for passive and active public open space uses].

(h) On each of the piers identified in paragraph (a) of this subdivision (i) not less than eighty percent of the surface area of each such pier shall be used solely for passive and active public open space uses, or for habitat and wildlife protection in the case of any pier for that purpose, and (ii) not more than ten percent of the surface area of each such pier shall be covered by enclosed structures; [provided that] EXCEPT THAT AN ENCLOSED, ONE-STORY STRUCTURE WITH A COVERAGE LIMITATION OF 12,000 SQUARE FEET THAT IS BUILT FOR USE AS AN ESTUARIUM FACILITY IS PERMITTED at Pier 26, [the coverage limitation shall be fifteen percent and at Pier 64, the existing structures at that pier (or any portions thereof) may be retained for permitted park uses without regard to the requirements of subparagraphs (i) and (ii) of this paragraph] AND THE

COVERAGE LIMITATION AT PIER 97 SHALL BE NO MORE THAN A TOTAL OF 12,000 SQUARE FEET.

(i) Consistent with the general project plan, the area of the park east of the bulkhead line shall be used (I) solely for park use and to permit access to permitted uses; provided that this limitation shall not apply to those areas east of the bulkhead line that are occupied by pier headhouses or other pier-related structures at the base of piers 57, 59, 60, and 61; OR (II) A COMMERCIAL RECREATIONAL USE ALONG THE UPLAND PARK AREA BETWEEN 29TH AND 34TH STREETS, PROVIDED THAT: (A) ANY SUCH RELATED ENCLOSED STRUCTURE SHALL NOT EXCEED TWO STORIES; (B) ANY SUCH USE AND ANY RELATED ENCLOSED STRUCTURE SHALL NOT EXCEED A MAXIMUM OF TWO HUNDRED FEET IN LENGTH AND SHALL MAINTAIN OPEN VIEW CORRIDORS TO THE HUDSON RIVER FROM STREETS RUNNING TOWARDS AND AWAY FROM THE PARK AND SHALL NOT BE LOCATED WITHIN ANY DESIGNATED VIEW CORRIDORS AS SUCH CORRIDORS ARE DEFINED UNDER THE CITY OF NEW YORK ZONING REQUIREMENTS; AND (C) THIS SUBPARAGRAPH SHALL NOT APPLY AFTER JULY 1, 2024.

11. Except as otherwise provided in paragraph (b) of subdivision 3 of this section AND EXCEPT AS OTHERWISE PROVIDED AT PIERS 40 AND 76 BY MEMORANDUM OF UNDERSTANDING PURSUANT TO SUBPARAGRAPHS (VI) AND (VII) OF PARAGRAPH (G) OF SECTION 3 OF THIS ACT, the trust may not enter into a lease, concession agreement, license or other agreement relating to any part of the park for periods in excess of thirty years in total; provided FURTHER that any such agreement for a period in excess of ten years shall be for the purpose of assuring a lessee, licensee, concessionaire or other party to an agreement with adequate protection against loss of investments in developing, renovating, improving, furnishing, and equipping properties within the park. Any proposed lease, concession agreement, license or other agreement by the trust for a period in excess of ten years shall constitute a proposed significant action subject to the requirements of subdivision six of this section. The trust shall promulgate rules and regulations governing leases, concession agreements, licenses or other agreements. Such rules and regulations shall require the trust to issue a bid prospectus for any leases, concession agreements, licenses and other agreements which would provide for a total capital investment in the park of no less than one million dollars over the proposed term of the agreement. The bid prospectus submitted to prospective bidders shall contain specific information concerning the nature of the capital improvements or equipment to be provided by the successful bidder and shall be provided to community boards one, two and four within the borough of Manhattan.

S 3. Subdivision 10 of section 7 of chapter 592 of the laws of 1998, constituting the Hudson river park act, is amended by adding a new paragraph (d) to read as follows:

(D) THE TRUST MAY FIX, ESTABLISH AND COLLECT FEES UPON OPERATORS OF COMMERCIAL VESSELS, SHIPS, BOATS, FERRIES AND OTHER DEVICES THAT ARE USED FOR TRANSPORTATION WATER DEPENDENT USES FOR EACH PASSENGER THAT EMBARKS OR DISEMBARKS WITHIN THE PARK PROVIDED THAT SUCH FEE SHALL EQUAL ONE DOLLAR PER PASSENGER AND PROVIDED FURTHER THAT SUCH FEE SHALL EQUAL TEN DOLLARS PER PASSENGER OF A CRUISE SHIP AT PIERS 88, 90 AND 92.

S 4. Subdivision 3 of section 8 of chapter 592 of the laws of 1998, constituting the Hudson river park act, is amended by adding a new paragraph (e) to read as follows:

(E) NOTWITHSTANDING PARAGRAPH (B) OF THIS SUBDIVISION OR ANY PROVISION OF SECTION 382-A OF CHAPTER 190 OF THE LAWS OF 1990 TO THE CONTRARY, PIER 54 MAY BE RECONSTRUCTED OUTSIDE OF ITS HISTORIC FOOTPRINT PROVIDED THAT THE LENGTH OF SUCH PIER DOES NOT EXCEED 700 FEET AND THE TOTAL

SQUARE FOOTAGE OF SUCH RECONSTRUCTED PIER, EXCLUDING ADJACENT PLATFORM AREAS, DOES NOT EXCEED THE TOTAL SQUARE FOOTAGE OF ITS HISTORIC FOOTPRINT AND PROVIDED FURTHER THAT SUCH RECONSTRUCTION COMPLIES WITH ALL APPLICABLE FEDERAL, STATE AND CITY LAWS.

S 5. Subdivision 1 of section 13 of chapter 592 of the laws of 1998, constituting the Hudson river park act, is amended to read as follows:

1. Unless otherwise provided, any person who violates any rule or regulation adopted pursuant to this act, shall be guilty of a violation punishable solely by a fine not to exceed five [hundred] THOUSAND dollars.

S 6. Section 14 of chapter 592 of the laws of 1998, constituting the Hudson River park act, is amended by adding a new subdivision 4 to read as follows:

4. SHOULD THIS ACT PERMIT THE CONSTRUCTION, OPERATION AND USE OF A HOTEL OR MEETING SPACE WITHIN ANY PORTION OF THE PARK, THE TRUST OR THE CONTRACTOR OR SUB-CONTRACTOR OF SUCH PROJECT SHALL ENTER INTO A VALID AGREEMENT ENFORCEABLE UNDER 29 U.S.C.S 185 WITH EACH LABOR ORGANIZATION THAT IS ACTIVELY ENGAGED IN REPRESENTING OR ATTEMPTING TO REPRESENT HOSPITALITY INDUSTRY WORKERS IN THE STATE. SUCH AGREEMENT SHALL, AT A MINIMUM, PROTECT THE TRUST'S PROPRIETARY INTERESTS BY PROHIBITING THE LABOR ORGANIZATION AND ITS MEMBERS FROM ENGAGING IN PICKETING, WORK STOPPAGES, BOYCOTTS, AND ANY OTHER ECONOMIC INTERFERENCE WITH THE OPERATION OF THE FACILITY OR ASSOCIATED HOSPITALITY OPERATIONS FOR THE DURATION OF THE TRUST'S PROPRIETARY INTEREST.

S 7. Paragraph 9-b of subdivision a of section 533 of the New York city charter, as amended by local law number 35 of the city of New York for the year 2008, is amended to read as follows:

9-b. by agreement with the Hudson river park trust (a public benefit corporation established pursuant to section five of the Hudson river park act, chapter five hundred ninety-two of the laws of nineteen hundred ninety-eight), to enforce the rules and regulations of such trust relating to the use, government and protection of the Hudson river park, created pursuant to section four of such act. In addition to or as an alternative to any of the remedies or penalties provided under any other provision of law, violation of such rules and regulations shall be punishable by a civil penalty of not more than five [hundred] THOUSAND dollars for each violation, which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by a notice of violation returnable before such board. The procedures set forth in section one thousand forty-nine-a of this charter applicable to the adjudication by the environmental control board of violations within the jurisdiction of the commissioner shall apply to the adjudication of violations of such rules and regulations by such board and final orders of such board imposing civil penalties for such violations shall constitute judgments that may be entered and enforced as set forth in such section.

S 8. Fifteen million dollars of funding for New York Works Infrastructure projects shall be made available to the Hudson River park trust, created pursuant to chapter 592 of the laws of 1998, in state fiscal year 2012-2013 for capital maintenance including bulkhead or pier repair and reconstruction within the Hudson River park that requires immediate maintenance, repair and reconstruction so as to maintain structural soundness, safety and continued use of park infrastructure.

S 9. This act shall take effect immediately.