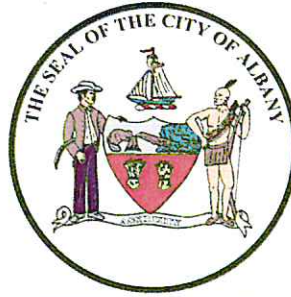


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KATHY SHEEHAN
MAYOR

March 3, 2020

City of Albany Common Council
City Hall
24 Eagle Street
Albany, NY 12207

Re: Veto of Ordinance 44.112.19 *as amended*

Dear City of Albany Common Council Members,

I am returning to the Common Council, without my approval, Ordinance Number 44.112.19 *as amended*, as per Section 302 of the City of Albany Charter.

While I understand the approval of this ordinance by the Common Council was driven by the best of intentions, I have been advised by Corporation Counsel it is an unconstitutional zoning action with no rational basis in law.

In addition, this ordinance was passed by the Common Council even though several procedural defects exist making the ordinance invalid on its face as per the City of Albany Uniform Sustainable Development Ordinance ("USDO") and state law, including:

- Lack of a referral to the Albany County Planning Board prior to approval by the Common Council – a violation of New York State General Municipal Law §239-m;
- Lack of a public hearing held by the Common Council, and failure to adhere to public notice requirements prior to adoption of the ordinance at both the Common Council Planning & Economic Development Committee meeting held on February 12, 2020, and the Common Council meeting held on February 20, 2020 – violations of both New York State General City Law §83 and USDO §375-5(E)(24)(b)(iii)(A); and
- Lack of State Environmental Quality Review Act (SEQRA) review prior to adoption – a violation of New York State Environmental Conservation Law § 8-0101 - 8-0117.

Moreover, there are several other concerning, and possibly fatal, procedural defects present, including:

- The lack of a review of the proposed amendments, the lack of a public hearing held by the City of Albany Planning Board on the proposed amendments, and the lack of a recommendation regarding the ordinance or the proposed amendments by the Planning Board – steps required as per USDO §375-5(E)(24)(b)(ii);

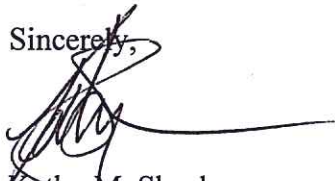
- Potential Open Meetings Law violation regarding the refusal to allow the representative of Nigro Companies to make public comments at the Common Council meeting held on February 20, 2020, purportedly because he arrived several minutes late – an action that is not in accord with the intent of New York State’s Open Meetings Law:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

- Potential Open Meetings Law violation by entering executive session during the Common Council Planning & Economic Development Committee Meeting on February 12, 2020, for the stated basis of “proposed, pending or current litigation.”
- Potential Open Meetings Law violation regarding the failure to provide notice to the public regarding the proposed amendments to the ordinance after the Common Council Planning & Economic Development Committee meeting held on February 12, 2020 (the same Common Council Planning & Economic Development Committee meeting where the aforementioned executive session was held). The changes to the ordinance were not disclosed to the public until the revised ordinance was voted on at the full Common Council meeting held on February 20, 2020; and
- Possible USDO violation by initiating the amendment via a Common Council member instead of by “the Chief Planning Official upon referral from City staff, the Planning Board, the BZA, or the Common Council” – required as per USDO §375-5(E)(24)(b)(i).

Should a veto override be brought to a vote by the Common Council, I strongly urge each member to bear in mind the cost of an inevitable legal action brought against the City. I urge you to seek guidance from your attorney regarding enforceable actions the Common Council could adopt to address the social justice issues raised during your debate of this ordinance.

Sincerely,



Kathy M. Sheehan
Mayor, City of Albany

Cc. Danielle Gillespie, City of Albany City Clerk