

carried  
to  
gz 11/7/12  
Z-210

1st reading 4-5-12 (2)

Sponsored by \_\_\_\_\_

Seconded by \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF HOBOKEN, IN THE  
COUNTY OF HUDSON, STATE OF NEW JERSEY,  
DISSOLVING THE HOBOKEN MUNICIPAL HOSPITAL  
AUTHORITY PURSUANT TO N.J.S.A. 40A:5A-20**

WHEREAS, the governing body of the City of Hoboken, in the County of Hudson, New Jersey (the "City"), created, by ordinance adopted on August 9, 2006, the Hoboken Municipal Hospital Authority (the "Authority") in accordance with the Municipal Hospital Authority Law, constituting Chapter 46 of the Pamphlet Laws of 2006 of the State, as amended and supplemented (the "Act"); and

WHEREAS, the Authority was formed for the purpose of acquiring, improving and managing Hoboken University Medical Center (formerly St. Mary Hospital) (the "Hospital") and did so for the period from acquisition of the Hospital through November 4, 2011, the date upon which the Authority sold the Hospital and all of its related assets (the "Sale Transaction") to HUMC Holdco, LLC (the "Purchaser"); and

WHEREAS, the proceeds of the Sale Transaction provided for (i) the defeasance of all of the Authority's outstanding indebtedness, which indebtedness was secured by, among other things, a guaranty of the City, and (ii) the maintenance of insurance policies that cover certain future claims associated with the governance of a general acute care hospital; and

WHEREAS, as part of the Sale Transaction and pursuant to bankruptcy proceedings related to the Hudson Healthcare Inc. (the "Hospital Manager"), the Authority has satisfied its obligations to the Hospital Manager and has received a general release from potential claims of creditors of the Hospital Manager; and

WHEREAS, the City has determined that as a result of the Sale Transaction, the Authority has made provision for the payment of all creditors and obligees of the Authority, and therefore it is in the best interests of the residents of the City to dissolve the Authority; and

WHEREAS, the City desires to dissolve the Authority in accordance with, and in fulfillment of, the provisions of N.J.S.A. 40A:5A-20,

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Hoboken, in the County of Hudson, State of New Jersey, as follows:

**Section 1. Dissolution.** In light of the Sale Transaction and the provision for the payment of all creditors and obligees of the Authority, the Authority is hereby dissolved, subject to the terms and conditions hereof.

**Section 2. Transfer of Title to All Facilities.** Upon the effective date of the dissolution as set forth in Section 3 of this ordinance, all real and personal property, facilities and contracts of the Authority and all monies and funds held by or for the Authority, if any, shall be deemed transferred to and become the property of the City. The existing officers of the Authority are hereby authorized and directed to execute any documents or instruments necessary to transfer legal title to all real property, personal property, facilities, contracts and monies and funds to the City upon the effective date of the dissolution herein, notwithstanding the dissolution of the Authority. All documents and records of the Authority shall be delivered to the City Clerk prior to the effective date of the dissolution.

**Section 3. Effective Date of Dissolution.** The dissolution of the Authority shall take effect simultaneously with the transfer of the Authority property to the City and the transfer of all funds from the Authority to the City.

**Section 4. Limitation on Actions by Authority.** Prior to the effective date of the dissolution, the Authority shall not be authorized to issue or authorize any obligations or to approve or enter into agreements without the prior consent of the City as evidenced by a resolution of the City Council; provided, however, that the Authority conduct all other business and may pay its legally due debt and bills incurred in the ordinary course without the prior consent of the City.

**Section 5. Authorization of City and Authority to Take all Necessary Action.** The Mayor, Business Administrator, Chief Financial Officer, City Clerk and other employees, as directed by the Business Administrator, are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this ordinance. The members of the Authority, its officers, employees, engineer and counsel are hereby authorized and directed to take all steps necessary to effectuate the purposes of this ordinance.

**Section 6. Approval of Local Finance Board; Filing.** This ordinance shall be submitted to, and approved by, the Local Finance Board of the State of New Jersey prior to final adoption in accordance with the requirements of N.J.S.A. 40A:5A-20 and the final adoption of this ordinance by the City shall represent conclusive proof of the fact that this ordinance has received the approval of the Local Finance Board. Immediately upon adoption of this ordinance, this ordinance shall be filed with the Local Finance Board and with the Secretary of State of New Jersey, in accordance with N.J.S.A. 40A:5A-20.

**Section 7. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

**Section 8. Repeal of All Inconsistent Ordinances.** All ordinances of the City which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

**Section 9. Effective Date.** This ordinance shall take effect immediately upon the adoption hereof and shall not be subject to referendum.

Date of Introduction: September 5, 2012

Introduction:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	/			
Theresa Castellano	/			
Jen Giattino	/			
Carol Marsh	/			
Elizabeth Mason				/
David Mello	/			
Tim Occhipinti	/			
Michael Russo	/			
President Peter Cunningham	/			

Final Reading:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla				
Theresa Castellano				
Jen Giattino				
Carol Marsh				
Elizabeth Mason				
David Mello				
Tim Occhipinti				
Michael Russo				
President Peter Cunningham				

Approved as to Legal Form:

\_\_\_\_\_  
 Mellissa Longo, Interim Corporation Counsel

Adopted by the Hoboken City Council  
 By a Vote of \_\_\_ Yeas to \_\_\_ Nays  
 On the \_\_\_ day of \_\_\_\_, 2012

\_\_\_\_\_  
 James Farina, City Clerk

Vetoed by the Mayor for the following reasons: \_\_\_\_\_

-or-

Approved by the Mayor  
 On the \_\_\_ day of \_\_\_\_, 2012

\_\_\_\_\_  
 Dawn Zimmer, Mayor

carried  
to  
11/7/12  
meeting  
je

1st meeting 7-5-12

91

Sponsor: \_\_\_\_\_

Second: \_\_\_\_\_

CITY OF HOBOKEN  
ORDINANCE No. 2-213

AN ORDINANCE ESTABLISHING A NEW CHAPTER 169 "TREES & TREE MAINTENANCE" AND AMENDING RELATED SECTION OF THE MUNICIPAL CODE

WHEREAS, trees are an integral part of the urban landscape that provide shade and comfort to pedestrians and residents, reduce air temperatures, reduce air pollutants improving overall air quality, and reduce the amount of stormwater runoff; and

WHEREAS, studies by the U.S. Forest Service found that tree-lined streets contribute to reduce the speeds at which automobiles travel along city streets, create safer walking environments, and contribute to a 20% higher income stream for local businesses; and

WHEREAS, the Mayor and City Council find that it is in the public interest that an ordinance establishing conditions, standards and procedures for the removal and replacement of trees.

NOW, THEREFORE, be it ordained by the City Council of the City of Hoboken, County of Hudson, State of New Jersey, as follows:

SECTION ONE: ADDITION

The following Chapter is hereby added to the Municipal Code of the City of Hoboken, NJ:

CHAPTER 169  
TREES & TREE MAINTENANCE

§ 169-1 PURPOSE.

- A. It is the intent of this chapter, pursuant to N.J.S.A. 40:48-2, to promote the health, safety and general welfare of the people of the City of Hoboken by providing for the protection, regulation, planting and cutting of trees in such a way as to protect and preserve the City's environment biomass and the tree canopy which produces oxygen, provides habitat, and removes air pollutants by conserving to the maximum extent possible the tree life in the City.
- B. The Mayor and the City Council find that the indiscriminate, uncontrolled destruction, removal, and cutting of trees upon City streets and public rights-of-way has caused an increase in stormwater runoff from private property onto City streets contributing to street flooding, affecting the general health, safety, welfare, and well being of the residents of the City as well as the integrity of the natural environment and processes upon which the residents of the City depend.
- C. The Mayor and the City Council also find that the indiscriminate, uncontrolled destruction, removal, and cutting of trees upon lots and tracts of land within the City has caused increased

drainage control costs, increased soil erosion, increased buildup of atmospheric carbon and increased dust, tending to decrease the quality of life and to diminish property values in the City.

- D. Trees provide shade and comfort to pedestrians and residents, reduce air temperatures and the urban "heat island" effect, reduce air pollutants and improve overall air quality, and reduce the amount of stormwater runoff. Tree-lined streets are proven to reduce the speeds at which automobiles travel on City streets, improving pedestrian safety. Trees also contribute to the fabric of a neighborhood; create a sense of place, increase economic activity; and connect human beings and nature. Therefore, the Mayor and the City Council find that it is in the public interest that an ordinance establishing conditions, standards and procedures for the removal and replacement of trees, and for the preservation of mature vegetation be enacted by the City.

#### § 169-2 FINDINGS.

- A. With an ever growing population in the City, it is absolutely essential to our citizens to remove pollution from our air. It takes approximately twenty (20) mature trees to clean the air of gases produced from vehicular traffic consuming five (5) gallons of gasoline. Healthy trees greatly assist in the battle against air pollution since moist tree foliage traps dust and soot particles until the rain washes them away. Trees also capture carbon dioxide, a by-product of the combustion of organic fuel materials.
- B. Properly planted and nurtured trees are also needed to create sound barriers to help in the reduction of the noise level created by vehicular traffic, train traffic and ultimately the noise which is created by the general density of human beings within the City.

#### § 169-3 DEFINITIONS.

As used in this chapter:

*ADMINISTRATIVE OFFICER* means the Director or ~~other Administrative Officer~~ having charge of the Department of Environmental Services or his/her designee.

*DIAMETER AT BREAST HEIGHT (D.B.H.)* means diameter of tree measured at breast height, approximately four and one-half (4.5) feet from the ground.

*DRIP LINE* means a limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree but not less than eight (8) feet from the trunk, whichever is greater.

*PERSON* means any individual, firm, co-partnership, association, corporation, limited liability company, limited liability partnership or developer, other than the City.

*PROFESSIONAL FORESTER* means one who has a minimum of a Bachelor's of Science degree in forestry from a four-year college accredited by the Society of American Foresters or who is accepted by and listed with the NJDEP as a professional forester pursuant to N.J.A.C. 7:3-2.

*RECOMMENDED TREE SPECIES* means the species of trees acceptable for use in planting in the City. A list of recommended trees species shall be maintained by the Shade Tree Commission and shall be reviewed and approved periodically by the Commission. Species not shown on the list of comparable attributes may be approved for use as equivalent substitutes. Native and urban tolerant tree species are preferred over other tree species for equivalent substitutes.

*RECOMMENDED TREE SPECIES LIST* means a list of recommended trees species maintained by the Shade Tree Commission, and reviewed and approved annually by the Commission, and made available on the City's web site.

*REPLACEMENT TREE* means a nursery grown certified tree, properly balled and burlapped and marked with a durable label indicating genus, species and variety, having a minimum caliper of two and one-half (2 1/2) inches measured at D.B.H. A replacement tree shall be selected from the recommended tree species list.

*SPECIMEN TREE* means any tree with a D.B.H. of sixteen (16) inches or greater.

*SHADE TREE COMMISSION* means the Hoboken Shade Tree Commission (HSTC) as established by the governing body in accordance with N.J.S.A. 40:64-1.

*TREE* means any deciduous or coniferous species which reaches a typical mature height of ten (10) feet or more. An individual tree for the purpose of this chapter has a D.B.H. of four (4) inches or greater. A specimen with multiple trunks will be considered an individual tree with a D.B.H. of one-half (1/2) of the sum of the diameters of the trunks.

*TREE REMOVAL PERMIT* means a permit to remove trees issued by the administrative officer after review and approval of application for removal and replacement of trees by those parties with jurisdiction.

*TREE REPLACEMENT PLAN* means a plan for replacement of removed trees in accordance with the provisions of this chapter.

*WOODED AREA* means any natural cluster or clusters of trees and vegetative undergrowth. Street trees, parking lot landscaping trees, and landscaping surrounding a building or structure that were planted in connection with prior development shall not constitute a wooded area.

## **§ 169-4 PROTECTION OF TREES.**

### **§ 169-4.1 Damage from Electrical Wires.**

Any person, firm or corporation having control over any wire for transmission of electrical current or other essential utility along a public street or right-of-way, or upon any City or private property shall at all times guard all trees through which or near which such wires pass against any injury from wires or from electrical current carried by them. The device or means used shall in every case be subject to the approval of the Shade Tree Commission.

### **§ 169-4.2 Contact of Trees with Injurious Substances**

No person, firm or corporation shall permit any brine, gas or injurious substance to come into contact with the stem or roots of any tree or shrub upon a public street or right-of-way, or upon any City property.

### **§ 169-4.3 Interference with Lawful Work Prohibited.**

No person, firm or corporation shall prevent, delay or interfere with any lawful work undertaken hereunder by the Hoboken Department of Environmental Services or other employees of the City.

**§ 169-4.4 Hitching of Animals; Injury by Animals.**

No person, firm or corporation shall hitch or fasten an animal to any tree or shrubs on a public right-of-way or to any guard or support provided for same, nor permit an animal to bite or to otherwise injure any such tree or shrub.

**§ 169-4.5 Locks.**

No person, firm or corporation shall attach a lock, including bicycle locks to any tree or shrub on a public right of way.

**§ 169-4.6 Garbage.**

No person, firm or corporation shall place garbage or trash within one foot of a tree pit .

**§ 169-4.7 Tree Preservation During Construction.**

- A. No soil shall be deposited or removed within the drip line or within eight (8) feet, whichever is greater, of any existing tree trunk. No machinery or materials shall be sorted, deposited, cleaned or operated within the drip line or within eight (8) feet, whichever is greater of any existing trunk.
- B. Drip lines of specimen trees and isolated groupings of trees which are to remain on site shall be clearly protected by snow fencing.
- C. The grade of the land located along the drip line shall not be raised or lowered more than six (6) inches unless compensated for by welling or retaining methods and in no event shall the welling or retaining wall methods be less than eight (8) feet from the trunk of the tree.
- D. All debris created during tree removal and replacement shall be removed from the site for disposal before any certificate of occupancy shall be issued.
- E. Where clearing and construction on the site results in accidental removal or severe damage of any tree delineated in the replacement plan as remaining on the site, each removed or damaged tree shall be replaced on a one for one basis by a tree of the same caliper as the one damaged or of as large a caliper as can be accommodated by the planting site and approved by the Shade Tree Commission.

**§ 169-5 MAINTENANCE AND REMOVAL OF TREES.**

**§ 169-5.1 Administrative Officer and Shade Tree Commission Authorized to Maintain or Remove Certain Trees.**

The Administrative Officer and the Shade Tree Commission shall have the power to:

- A. Require the removal of any tree or part thereof dangerous to public safety at the expense of the owner of such tree;
- B. Remove any tree or part thereof dangerous to public safety at the request and expense of the owner of such tree;
- C. The Administrative Officer shall have the power to contract with the owner of any real estate in the municipality to supply him or her with material and labor for the purpose of removing trees in accordance with this section, and to charge the actual cost thereof to such owner. If after such

material or labor is supplied, and payment is not made on demand, the Officer may certify the actual cost thereof to the Collector of Taxes, whereupon the sum so certified shall be collected by the Collector as other taxes on real property are collected in the City.

#### § 169-5.2 Permission Required for Certain Acts.

- A. No person shall do or cause to be done upon trees, in any right-of-way, public street, road or highway within the City without first obtaining written permission from the Administrative Officer any of the following acts:
- 1) Cut, trim, break, climb with spikes, disturb the roots or otherwise intentionally injure, misuse or spray with harmful chemicals or remove any living tree or remove any device installed to support or protect such trees;
  - 2) Plant any tree;
  - 3) Fasten any rope, wire, electrical equipment, sign or other device to a tree or any guard about such a tree or shrub;
  - 4) Close or obstruct any open space provided at the base of a tree which open space is necessary to permit the access of air, water or fertilizer to the roots of such tree;
  - 5) Pile, heap or store any building material, soil, debris or any other matter or make any mortar or cement within a distance of six (6) feet of a tree.
- B. No person shall cut, trim or remove portions of a tree originating on the property of another person, firm or corporation without that person, firm or corporation's express approval, or without approval from the Shade Tree Commission.
- C. During the period of construction or repair of any building or structure or in the construction or repair of a street, road, and highway not yet dedicated to the City, the owner thereof or the contractor shall take every precaution to place guards around all nearby trees on City land or within public rights-of-way so as to effectively prevent injury to such trees. The owner and/or contractor shall each be responsible for the placement of such guards or guardrails and failure to make adequate provision for the protection of the trees shall subject the owner and builder to a penalty as hereinafter provided.

#### § 169-5.3 Trees on Public Roadways.

Where any person, business entity, association, trust, organization, or utility desires to control the growth of trees on a public street or right-of-way by removing them or pruning the trees, then the person, business entity, association, trust, organization or utility, or agent thereof, shall apply for approval to the Administrative Officer and shall outline the work to be performed. If the applicant fails to comply with the order of the Administrative Officer, the applicant shall be subject to the penalties as hereinafter provided.

#### § 169-5.4 Destruction of Trees.

No person shall cut, remove or destroy, or cause to destroy, any tree growing on streets, in public places, parks and parkways within the City of Hoboken without having first obtained a permit as provided in this chapter.

## § 169-6 EXEMPTIONS FROM TREE REPLACEMENT.

The following activities are exempt from the tree replacement element of this chapter:

- A. Cutting, pruning and removal of trees in utility rights-of-way and easements by utility companies and agencies having jurisdictions over the respective utility;
- B. Removal of trees which are diseased or trees which have suffered severe damage. Any tree whose angle of growth makes it a hazard to structure or human life;
- C. Any trees removed pursuant to either a New Jersey Department of Environmental Protection ("NJDEP") or Environmental Protection Agency ("EPA") approved environmental clean-up or an NJDEP approved woodlands management plan.
- D. Where no trees are being removed, no application need be submitted. A signed and sealed letter from applicant's engineer certifying that no trees are being removed shall suffice.

## § 169-7 TREE REMOVAL PERMIT.

### § 169-7.1 Procedure for Obtaining a Tree Removal Permit When Approval from Zoning or Planning Board Is Not Required.

- A. For the removal of trees (i) not in conjunction with an application for development of property involving minor or major subdivision or site plan, or (ii) where the approval of the Planning Board or Zoning Board of Adjustment is not required, application shall be made to the Administrative Officer, on a form approved by the Shade Tree Commission, and available in the office of the Administrative Officer, the office of the City Clerk, and on the City web site.
- B. The Administrative Officer shall review the submitted information and determine what effect the proposed tree removal will have on the subject property. The Administrative Officer shall certify that the information contained in the application is accurate. If the proposed removal does not violate the below listed criteria, a tree removal permit, in a form to be established, shall be issued by the Administrative Officer. If the proposed tree removal does violate one of the below listed criteria, the matter shall be referred to the Shade Tree Commission which had or would have jurisdiction in accordance with subsection § 169-7.2
- C. A tree removal permit issued by the Administrative Officer under this subsection shall be valid for one (1) year from the date of issuance. It shall be displayed or available for inspection at the site where tree removal and replacements are to take place. Any person may examine an application for tree removal permit on file with the Administrative Officer upon request made in writing or in person to that officer.
- D. Tree Removal Criteria.
  - 1) The tree removed is not located within a buffer area as required by the zoning ordinance for the zoning district in which the property in question is located;
  - 2) The tree to be removed is not located within a tree save area or buffer area as delineated and/or specified on a previously approved site plan or subdivision plan for the property in question;

- 3) The tree to be removed was not required to be planted by a previously approved application and/or landscape plan to provide screening or buffering for a building or structure located on the property in question or on an adjacent parcel of land.

**§ 169-7.2 Procedure for Obtaining Tree Removal Permit When Approval from Zoning or Planning Board Is Required.**

- A. For the removal of trees in conjunction with an application for development of property as either a minor or major subdivision or site plan, or in any other form of development where the approval of the Planning Board or Zoning Board of Adjustment will be required, the applicant shall submit to the Board simultaneously with the application for approval of such development in a form and manner which complies with the City's Land Use Regulations;
  - 1) A plot plan consisting of a map having a scale not greater than one (1) inch equals fifty (50) feet showing clearly marked boundaries of the site, the location of all trees within the boundaries of the site and any trees outside of the site but within twenty feet (20') of the boundaries of the site, and all trees to be removed. The map shall be prepared by a professional architect, landscape architect, planner, engineer or surveyor licensed in the State of New Jersey and authorized pursuant to law to submit such plans. The map or site plan shall also show:
    - a) Locations of slopes greater than ten (10%) percent where any tree removal is proposed;
    - b) Total area of the tract in square feet;
    - c) Locations on the tract where tree removal is to take place;
    - d) A list identifying the species and common name of each tree, the number of trees of each species and the size in D.B.H. of trees in the plot;
    - e) A list identifying the species and common name of each tree, the number of trees of each species and the D.B.H. of each tree which is to be removed;
    - f) A specific replacement plan for the replanting of removed trees in accordance with Section § 169-8;
    - g) When a subdivision is to be created by the application, individual plot plans shall be prepared showing the location of trees to be removed and replaced.
- B. The Planning Board or the Zoning Board of Adjustment shall forward the proposed tree removal and replacement plans to the Shade Tree Commission. The Commission shall certify that the plan is accurate and so advise the Planning Board or Zoning Board of Adjustment. The Shade Tree Commission shall further provide detailed comments and recommendations to the Planning or Zoning Board for incorporation into conditions of approval.
- C. A copy of the ~~signed~~ Resolution of Approval and a copy of the ~~fully executed site plan~~ approved Tree Plan incorporating all conditions, and signed by the approving Board chair of approval shall be submitted to the Administrative Officer before a tree removal and/or planting permit shall be issued.

- D. The tree removal and/or planting permit issued by the Administrative Officer shall be valid so long as the approved application is valid. The removal or damage to trees not approved for removal shall be considered a violation of this chapter.
- E. Any substantial change in a tree removal and replacement plan shall necessitate the submission of a revised plan to the Shade Tree Commission for review.
- F. The tree removal permit issued by the Administrative Officer shall be displayed or be available for inspection at the site where tree removal and replacement is to take place. Failure to display or make available the tree removal permit at the site of removal shall be a violation of this chapter. Any person may examine the application for tree removal permit on file with the Administrative Officer upon request made in writing or in person to that office. Copies of the application submission shall be made available at the usual charge.
- G. ~~Prior to the issuance of a building permit by the Construction Official, the developer shall designate on all relevant lots, the trees to be retained which designation shall be based upon the tree removal permit.~~ Prior to obtaining a demolition or building permit, the developer shall clearly mark for identification all trees to be retained, and shall provide protective barriers for those trees, as may be necessary.
- H. ~~Prior to the issuance of the certificate of occupancy, the Construction Official shall receive a release from the Administrative Officer or his or her designee confirming that all trees to be retained and all trees to be planted or replaced on site under the tree removal permit are in fact in existence, or that appropriate funds have been deposited as a bond or in escrow with the Shade Tree Commission to address planting at a later date when weather conditions permit, and that all debris (slash) generated as a result of these activities has been removed.~~

**§ 169-8 REPLACEMENT REQUIREMENTS AND FORMULAS.**

For all replacement requirements, the following formulas shall apply:

- A. For trees with a D.B.H. equal to or greater than four (4) inches and less than twelve (12) inches, replacement shall be one for one.
- B. For trees with a D.B.H. equal to or greater than twelve (12) inches, the removed tree shall be replaced:

Existing Tree to be Removed	Number of Replacement Trees (min. size 2.5" caliper)
Less than 14"	3
More than 14" but less than 17"	4
More than 17" but less than 20"	5
More than 20" but less than 23"	6
More than 23" but less than 26"	7
More than 26" but less than 29"	8
More than 29" but less than 32"	9
More than 32" but less than 35"	10
More than 35" but less than 38"	11
More than 38" but less than 40"	12
40" or greater	13

- C. The species or type of replacement tree(s) and the mix of replacement tree types (deciduous, coniferous) shall be determined by the Shade Tree Commission and selected from the recommended tree species list.
- D. On parcels to be developed where less than ten (10%) percent of the site is permeable, in addition to any trees that must be replaced or provided under this chapter, there shall be required the addition of one (1) tree for every five hundred (500) square feet of new or reconstructed impervious coverage. Vegetation incorporated in a landscaping plan or trees required for rights-of-way may not be credited toward this requirement.
- E. The applicant may provide replacement trees of a caliper size larger than two and a half (2.5) inches and receive tree replacement credit on a tree replacement plan as set forth below:

Size of Tree Value	Replacement Value
Minimum 2.5" caliper	1.00
Minimum 3.0" caliper	1.25
Minimum 3.5" caliper	2.00
Minimum 4.0" caliper	3.00

For example, if twelve (12) 2.5" replacement trees are required, the applicant may provide any one of the following combinations of trees:

Twelve (12) trees of minimum 2.5" caliper:	[12 trees x 1.00 (replacement value) = 12 trees]
Ten (10) trees of minimum 3.0" caliper:	[10 trees x 1.25 (replacement value) = 12.5 trees]
Six (6) trees of minimum 3.5" caliper:	[6 trees x 2.0 (replacement value) = 12 trees]
Four (4) trees of minimum 4.0" caliper:	[4 trees x 3.00 (replacement value) = 12 trees]

Further, where approved by the Shade Tree Commission, the applicant may provide coniferous evergreen replacement trees of a height between six (6) feet to ten (10) feet and/or dark arborvitae replacement shrubs of a height between eight (8) feet to twelve (12) feet and receive a one (1) for one (1) tree replacement credit on a tree replacement plan.

#### § 169-9 ON-SITE REPLACEMENT WAIVERS.

- A. All required replacement trees shall be planted on the site from which trees were removed. A waiver from any portion or all of the required-on-site replacement shall be granted by the Shade Tree Commission, if the applicant has adequately demonstrated to the Commission that practical physical difficulties associated with the subject property that were not caused by the applicant and/or undue hardship related to the unique conditions of the site from which trees are to be removed preclude strict compliance with this chapter. The comments and recommendations of the Planning Board's professional planner and/or engineer may be solicited in determining whether the requested waiver is appropriate.

- B. In lieu of replanting trees on the removal site, the applicant shall have the option of planting replacement trees of type(s) selected by the Shade Tree Commission from the recommended tree species list at an off-site location chosen by the Commission having jurisdiction in consultation with the Department of Environmental Services. Such off-site locations shall be public property and rights-of-way, including, but not limited to public parks, public schools and public buildings.
- C. For those excess trees that cannot be planted on the site, the applicant may make a contribution to be deposited in the City's tree fund escrow as established by this chapter. The contribution, in lieu of planting of trees, shall be one-thousand, five hundred (\$1,500.00) dollars per tree. Applicants shall demonstrate their ability to plant as many trees on the site as reasonably practicable as determined by the Planning Board's professional planner and/or engineer. After a showing that the applicant can place no additional plantings on the site, the remainder shall be available for contribution in lieu of such plantings, subject to the recommendation of the review board's professional planner and/or engineer.

#### § 169-10 BONDING FOR REPLACEMENT TREES.

The applicant shall post a bond covering fifteen (15%) percent of the cost of the tree replacement plan, including all labor costs, prior to the final engineering approval for the release of the performance guarantees, if any. The bond shall be held for two (2) growing seasons after the cessation of construction or land disturbance on the site. Funds shall be used to replace trees which die or are damaged during this two (2)-year ~~growing season~~ period in the event that the applicant fails in his, her or its duty to replace trees. If the City replaces trees under this provision, all administrative fees to cover the City's costs including the cost of replacement trees, labor, and materials shall be deducted from any amount of funds to be returned to the applicant. Any unused funds shall be returned to the applicant at the end of the two (2) year period.

#### § 169-11 TREE FUND.

- A. There shall be established by this chapter a Municipal Tree Fund for the purposes set forth in this chapter.
- B. All funds collected as contribution in lieu of replanting trees shall be payable to the "Hoboken Tree Fund" and deposited into an escrow account clearly designated as the "Hoboken Tree Fund." Funds so deposited shall be used solely for the following purposes:
- 1) The planting of trees or other landscaping in public parks, property surrounding public buildings and rights-of-way.
  - 2) Park improvements, including landscape improvements, retaining walls, landscape irrigation systems, park benches, bollards, landscape lighting, site lighting (excluding sport event lighting) pathways and playground equipment; provided, however, that at no time shall more than thirty (30%) percent of the outstanding account balance on an annual basis be utilized for such park improvements; and
- C. The Hoboken Tree Fund shall be administered by the Director of Finance. The Director of Finance shall report (listing by date for the report period) to the City Council, the Planning Board, and the Shade Tree Commission, on a quarterly basis, the amount in the Fund as of the end of each quarter, the amount deposited by each development application or other

contribution, and all amounts dedicated from the Fund for use for the purposes described in Section §169-11B for that period. Such reports for any period shall be filed with the City Clerk and made available as a public record to residents who request them in writing pursuant to the Open Public Records Act.

- D. Any and all appropriations from the Hoboken Tree Fund shall be made by the Shade Tree Commission with the advice and consent of the City Council, upon recommendation and report from the Shade Tree Commission as to the inventory of locations needing remediation based upon the removal of trees at those locations nearest the site which had generated the funds.

## § 169-12 TREE PLANTING STANDARDS.

The following standards shall apply to any person, firm or corporation wishing to plant a tree upon any City sidewalk or along any public right-of-way. All planting is subject to approval and permitting by the Administrative Officer.

### § 169-12.1 Street Trees

- A. Only trees which are identified on the Shade Tree Commission's *Recommended Tree Species List* shall be selected.
- B. The minimum caliper of trees shall be 2.5 to 3.5 inches.
- C. Use trees of similar form, height and character along a street to promote uniformity. Trees should be planted in groupings of similar varieties, although monoculture plantings are discouraged.
- D. The mature height and spread shall be considered to ensure that it will not interfere with existing or proposed structures and overhead utilities.
- E. Trees shall not cause interference with streets, sidewalks, driveways, and other paved surfaces, or affect water and sewer lines or underground drainage systems or sight triangles.

### § 169-12.2 Spacing and Location.

- A. Recommended spacing is 25 feet on center. Actual spacing may vary due to local conditions. Consideration will be made for species, utility lines, streetlights, fire hydrants, underground vaults, bus stops, and other existing street furniture.
- B. Spacing of existing trees may determine the spacing standards for new street trees on the same block frontage.
- C. Street trees shall be spaced evenly along the street; however, if a specific effect is desired the trees may be massed at critical points or shall be a combination of both. If columnar trees are to be planted, the spacing may be closer. All tree spacing shall be subject to review and approval by the Shade Tree Commission.
- D. Where on-street parking is provided, trees, and tree accessories should be located as not to conflict with opening car doors or pedestrian access wherever practicable.

### § 169-12.3 Planting.

- A. Trees shall be planted in accordance with the *New Street Tree Installation Specifications* established by the Shade Tree Commission. Those guidelines shall be available from the office of the Administrative Officer and on the City web site.
- B. Tree pits should be as large as possible to allow for ample growing space for tree roots and crown. An ideal tree pit is four (4) feet by four (4) feet or greater, however, the overall width of a sidewalk can limit the size of the tree pit. The minimum width should not be less than two (2) feet and the length not less than four (4) feet.
- C. Planting strips should be considered wherever possible and are subject to approval by the Shade Tree Commission.

### § 169-12.4 Finishing.

- A. Tree pit guards shall be installed wherever possible. Guards shall be selected from the list Shade Tree Commission approved designs, and shall be installed in accordance with established standards.
- B. Tree pit guard shall not restrict the growth of the tree; raise the level of the soil around the tree; or pose a trip hazard to pedestrians.
- C. Tree pit guard shall not impede the flow of rainwater into the tree pit.
- D. Elevated curbing of any type around tree pits is not permitted. Such curbing is a tripping hazard and diverts the flow of stormwater from the pit.
- E. Where a tree pit guard is not installed, an ADA compliant tree grate is recommended in areas with considerable commercial and pedestrian activity such as Washington Street and areas surrounding mass transportation hubs. Acceptable grates shall have a life-span of 5-10 years and shall allow for radial expansion as the tree grows. The style and type of tree grate to be used shall be specified or approved by the Shade Tree Commission.

### § 169-13 FEES.

- A. There shall be an application review and permit fee of twenty-five dollars (\$25) for maintenance of existing tree, or for removal of a tree subject to section § 169-7.1. No application fee shall be collected for a permit for planting of new trees.
- B. Where the applicant is seeking a tree removal permit and replacement plan approval under subsection § 169-7.2, the application fee shall be two-hundred fifty (\$250.00) dollars in addition to all other fees required by the jurisdictional land use board.

### § 169-14 VIOLATIONS; PENALTIES.

- A. Each tree cut, damaged or destroyed in violation of this chapter shall be deemed to be a separate and distinct violation. Any person convicted of violating any of the provisions of this chapter shall be liable to a penalty of not less than two-hundred fifty (\$250.00) nor more than two thousand (\$2,000) per violation.

- B. In addition, the City may institute and maintain a civil suit in chancery for injunctive relief to enforce the provisions of this chapter. The City may also require the replacement of illegally removed trees with trees of similar species or appropriate contribution for same as set forth in other sections of this chapter.
- C. The Administrative Officer or any Code Enforcement Officer of the City, upon the direction of the Shade Tree Commission, may revoke a tree removal permit where there has been a false or misleading application or there is noncompliance with the approved tree removal and replacement plan.

## SECTION TWO: AMENDMENT

The following Section of the Municipal Code of the City of Hoboken, NJ is hereby amended. Additions shall be noted in underline; deletions as strikethrough.

### Chapter 34 (Subdivision of Land), Section §34-12. (Improvements):

- A.
  - (4) Shade trees: to be located on the street line so as not to interfere with utilities or sidewalks pedestrian egress, and shall be of ~~the a type approved by the governing body or by the Planning Board approved by the Hoboken Shade Tree Commission, and planted subject to the Commissions approved~~ New Street Tree Installation Specifications.

### Chapter 168 (Streets and Sidewalks):

#### §168-14. Care of trees on sidewalks.

The care and maintenance of trees now located, or which may hereafter be planted along any street, road, highway, or public right-of-way, is the responsibility of the owner of real property immediately adjacent to said street, road, highway, or public right-of-way, and is subject to the guidelines and regulations established by the Hoboken Shade Tree Commission as set forth in Chapter 169 of this municipal code.

- ~~A. Prohibited acts. No person shall do any of the following acts upon any street within the city without the written permission of the Director of the Department of Environmental Services:~~
  - ~~(1) Cut, trim, break, climb with spikes, disturb the roots of, spray with any chemical, remove or otherwise injure any living tree or shrub or injure, misuse or remove any structure or device placed to support or protect such tree or shrub.~~
  - ~~(2) Plant any tree or shrub.~~
  - ~~(3) Fasten any rope, wire, electric attachment, sign or other device to a tree or shrub or to any guard about such tree or shrub.~~
  - ~~(4) Close or obstruct any open space provided about the base of a tree or shrub to permit the access of air, water or fertilizer to the roots of such tree or shrub.~~
  - ~~(5) Place any building material within six feet of a tree or shrub.~~
- ~~B. Electric wires. Any person having control of any wires for the transmission of an electric current along a street shall, at all times, guard the trees through which or near which such wires pass~~

against any injury from the wires or from the electric current carried by it. The device or means used shall be subject to approval by the Department of Environmental Services.

- C. ~~Interference. No person shall prevent, delay or interfere with any lawful work undertaken by the Department of Environmental Services or its authorized agents.~~

#### §168-15. Planting of trees along streets.

Any person desiring to plant trees or shrubs along any street, road, highway, or public right-of-way in the city shall comply with the following rules, guidelines and regulations: established by the Hoboken Shade Tree Commission as set forth in Chapter 169 of this municipal code.

- A. ~~All trees coming from the nursery shall have straight stems of 2 1/2 to three inches in caliper or more, with single leaders, and shall be *Plantanus Orientalis* or *Acer Plantanoids* (Norway maple) with well furnished heads, branching a minimum of seven feet from ground and shall be subject to approval by the Director of the Environmental Services or his designated agent.~~
- B. ~~Holes for the reception of the tree shall be opened five feet long, three feet wide and three feet deep. All debris coming from the holes shall be discarded and the holes filled with compost consisting of topsoil mixed with cow manure.~~
- C. ~~Each tree shall be supported by two eight foot long cedar poles measuring two to three inches in thickness with the bark left on. The tree shall be fastened to stakes with heavy galvanized wire, and where wire passes around, the stem shall be protected by 1/2 in rubber garden hose.~~
- D. ~~After soil is filled in around the roots, the tree shall be watered thoroughly to wash in soil.~~
- E. ~~When holes are excavated through concrete or flagging in areas used by pedestrians, Belgian blocks shall be laid in sand joints, covering the top of the hole flush with the concrete or other material or sidewalk.~~

#### Chapter 196 (Zoning), Section §196-49. (Standards to be enforced.)

##### D.(Buffers)

##### (2) (Installation and maintenance.)

- (a) To ensure proper protection for adjacent properties, the Planning Board shall approve density and species of proposed trees and shrubs a tree removal and replacement plan on advice and recommendation of the Hoboken Shade Tree Commission and subject to the guidelines and regulations set forth in Chapter 169.

#### SECTION THREE: REPEAL OF INCONSISTENT PROVISIONS

All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such Ordinances or parts of Ordinances now existing or in effect, unless the same are in conflict or inconsistent with any provision of this Ordinance, shall remain in effect.

#### SECTION FOUR: SEVERABILITY

The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION FIVE: EFFECTIVE DATE**

This Ordinance shall take effect upon passage and publication as provided by law.

**SECTION SIX: CODIFICATION**

This Ordinance shall be a part of the Municipal Code of the City of Hoboken, NJ as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Municipal Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

**Date of introduction: July 11, 2012**

Approved:

Approved as to form:

\_\_\_\_\_  
 Quentin Wiest, Business Administrator

\_\_\_\_\_  
 Mellissa Longo, Corporation Counsel

RECORD OF COUNCIL VOTE ON 1 <sup>ST</sup> READING			
Council Person	Aye	Nay	N.V.
Castellano	/		
Cunningham	/		
Giattino	/		
Marsh	/		
Mason			/
Mello			/
Occhipinti	/		
Russo	/		
Pres. Bhalla	/		

RECORD OF COUNCIL VOTE ON 2 <sup>ND</sup> READING			
Council Person	Aye	Nay	N.V.
Castellano			
Cunningham			
Giattino			
Marsh			
Mason			
Mello			
Occhipinti			
Russo			
Pres. Bhalla			

I hereby certify the above vote on this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
 James Farina, City Clerk

Approved by the Mayor on the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Dawn Zimmer, Mayor

-or-

Vetoed by the Mayor for the following reasons:

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10-17-12 let reading 2-219

Sponsored by: David M...  
Seconded by: [Signature]

CITY OF HOBOKEN  
ORDINANCE NO. Z-219

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 190 OF THE  
ADMINISTRATIVE CODE OF THE CITY OF HOBOKEN ENTITLED VEHICLES AND TRAFFIC TO  
AMEND BUS STOPS AND LOADING ZONES, AND TO CLARIFY AUTHORIZED TOW AWAY ZONES**

THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN DOES HEREBY ORDAIN AS FOLLOWS:

**Section One: Amendments to 190-13**

**ARTICLE VII  
BUS STOPS**

190-13 Bus Stops designated

The location described is hereby designated as a bus stop. No vehicle other than an omnibus picking up or discharging passengers shall be permitted to occupy said location between the hours indicated. All others will be towed.

Name of Street	Time	Side	Location
<u>Hudson Place</u>	<u>4:00pm-9:00pm</u> <u>Monday-Friday</u>	<u>north</u>	<u>beginning at a point of 40feet east of the easterly curbline of River Street and extending 160 feet easterly therefrom.</u>
<u>River Street</u>	<u>7:00am-8:00pm</u> <u>Monday – Friday</u>	<u>east</u>	<u>beginning at a point of 115 feet north of the northerly curbline of Hudson place and extending 55 feet northerly therefrom.</u>
<u>Hudson Street</u>	<u>4:00pm-9:00pm</u> <u>Monday – Friday</u>	<u>west</u>	<u>beginning at a point of 35 feet south of the southerly curbline of Hudson Place and extending 110 feet southerly therefrom.</u>

**Section Two: Amendments to 190-11**

**ARTICLE V  
LOADING ZONE**

190-11 Loading Zone designated

The location described is hereby designated as a Loading Zone. No person shall park a vehicle in said location during time indicated other than for loading and unloading of goods and materials for a time limit of twenty (20) minutes.

Name of Street	Times	Side	Location
<u>River Street</u>	<u>9:00am-1:00pm</u> <u>north</u> <u>Monday-Friday</u>	<u>west</u>	<u>beginning at a point of 40 feet of the northerly curbline of Hudson Place and extending 110 feet northerly therefrom.</u>

### Section Three: Amendments to 190-44

#### Section 190-44: Violations and Penalties

A. There is hereby established the following parking violation schedule and payable amounts:

Code Number	Violation Description	Payable Amount
190-29	Overtime meter	\$30.00
190-12	No parking taxi stand	\$38.00
190-05	No parking commercial vehicle overnight	\$75.00
190-31	No parking school zone	\$30.00
190-11	No parking loading zone	\$45.00
190-03	Prohibited parking at all times	\$45.00
190-04	Prohibited parking certain hours	\$45.00
190-06.2	Permit parking only	\$68.00
190-13	No parking bus stop	\$53.00
190-28	Alternate side street parking	\$45.00
190-06	No stopping or standing	\$45.00
190-19	No parking private property	\$30.00
190-26	Emergency/temporary parking	\$38.00
190-36	No parking snow emergency street	\$60.00

B. Tow Away Zones. The City shall have the authority to enforce any section of Chapter 190 by towing vehicles in violation of the section if said section expressly allows for towing, even if the location of violation does not have a "Tow Away Zone" sign. The City shall have the authority to enforce any section within Chapter 190 by towing vehicles in violation of the section if the location of the violation has a "Tow Away Zone" sign, even if the particular code section does not expressly call for towing of vehicles in violation.

#### SECTION FOUR: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

#### SECTION FIVE: SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses

and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION SIX: EFFECTIVE DATE**

This Ordinance shall take effect immediately upon passage and publication as provided by law.

**SECTION SEVEN: CODIFICATION**

This ordinance shall be a part of the Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code. The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

**Date of Introduction: October 17, 2012**

Introduction:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	/			
Theresa Castellano		/		
James Doyle	/			
Jen Giattino	/			
Elizabeth Mason				/
David Mello	/			
Tim Occhipinti	/			
Michael Russo				/
President Peter Cunningham	/			

Final Reading:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla				
Theresa Castellano				
James Doyle				
Jen Giattino				
Elizabeth Mason				
David Mello				
Tim Occhipinti				
Michael Russo				
President Peter Cunningham				

Approved as to Legal Form:

\_\_\_\_\_  
Mellissa Longo, Corporation Counsel

Adopted by the Hoboken City Council  
By a Vote of \_\_\_\_ Yeas to \_\_\_\_ Nays  
On the \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
James Farina, City Clerk

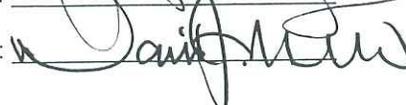
Vetoed by the Mayor for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**-or-**

Approved by the Mayor  
On the \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Dawn Zimmer, Mayor

12-12-12 for reading (2) 2-220  
Sponsored by:   
Seconded by: 

City of Hoboken  
Ordinance No.: Z-220

**AN ORDINANCE AMENDING ARTICLE V "SIDEWALK CAFES" OF  
CHAPTER 168 "STREETS AND SIDEWALKS" OF THE CODE OF THE CITY OF HOBOKEN**

**WHEREAS**, the language, rules and regulations of Articles II and V of Chapter 168 of the current Municipal Code of the City of Hoboken lack sufficient detail and have become outdated for the licensing and governance of operations of the city's sidewalk cafes; and

**WHEREAS**, it is in the best interest of the City to update the Municipal Code to reflect modern issues and conditions; and

**WHEREAS**, the City wishes to ensure the quality of life of its residents, and promote a positive environment for economic development that services both residents and businesses alike.

Now **THEREFORE**, be it ordained by the City Council of the City of Hoboken, County of Hudson, State of New Jersey, as follows:

**SECTION ONE: DELETION**

The current ARTICLE II entitled "Sidewalk Cafes" and ARTICLE V entitled "Limited Sidewalk Cafes" of Chapter 168 of the Municipal Code of the City of Hoboken are hereby deleted in their entirety.

**SECTION TWO: ADDITION**

The following Section is hereby added to the Municipal Code of the City of Hoboken:

**ARTICLE V  
Sidewalk Cafes**

**§168-501. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**RESTAURANT** -- A physical establishment whose principal use is the preparation, sale and service of food and beverages to the public. An establishment serving alcoholic beverages without a kitchen shall not be considered a restaurant or be permitted a sidewalk café.

**SIDEWALK** -- That portion of the public easement which lies between the building line and the curb.

**SIDEWALK CAFÉ** -- Sidewalk space beyond the building line used to accommodate tables, chairs, and the serving of food and drink to patrons of a restaurant fronting on that space.

**§168-502. Projection Into Streets.**

- A. No person may operate a sidewalk café without obtaining a license from the Zoning Officer of the City of Hoboken pursuant to the procedures set forth in §168-505.

- B. Sidewalk cafes are permitted only in association with an open, operating restaurant, as defined herein.
- C. No sidewalk café shall be permitted to project into a sidewalk more than half the width of said sidewalk or eight (8) feet, whichever is less, but in no case shall it extend so far as to leave less than six (6) feet for pedestrian traffic; except in areas where the sidewalk is twenty (20) feet or more wide from the building line to the curb, then a sidewalk café may be permitted to project into a sidewalk a maximum of ten (10) feet.
- D. Where an operating restaurant is located on a corner, both the front and side sidewalk areas fronting the restaurant may be used for the sidewalk café.

**§168-503. General Requirements.**

- A. All establishments licensed to operate a sidewalk café shall display the license in an unobstructed location.
- B. No permanent form of space delineation or construction for the sidewalk café will be permitted within the public right-of-way unless expressly approved by the governing body.
- C. The sidewalk café area shall be partitioned on three sides, by a movable structure separating the sidewalk café from the public portion of the sidewalk, and which is no less than thirty (30) inches in height and no more than thirty-six (36) inches in height, providing one opening for entrance and exit which is no less than forty-two (42) inches in width and no more than sixty (60) inches in width, and whose boundaries allow patrons and pedestrians to clearly ascertain the entrance and exit to the sidewalk café area.
- D. Sidewalk cafes with four (4) seats or less shall be exempt from the partition requirements provided the projection into the sidewalk is less than three (3) feet.
- E. At no time shall the sidewalk café partition, tables, chairs, and other café furniture block any residential entrance.
- F. The sidewalk café shall have an overhead covering, consisting of either individual umbrellas or a retractable awning covering all tables and chairs. Covering must have a minimum clearance of seven (7) feet from the sidewalk to the bottom of the awning/umbrella.
- G. The sidewalk café partition and overhead covering shall be appropriate in style to the façade of the building and shall not contain advertising.
- H. The sidewalk café shall be at the same elevation as the sidewalk. Paint, carpet, platforms, or any other surface cover or treatment of any kind shall not be permitted in the area of the sidewalk café, unless expressly permitted by the governing body.
- I. Outside speakers or other sound reproduction devices shall not be operated or used within a sidewalk café for any reason.
- J. Smoking shall not be permitted within a sidewalk café.
- K. The sidewalk café partition, overhead covering, and all tables, chairs, and other café furniture shall be removed from the sidewalk at the close of business each day. Where planters have been approved as a part of the movable structure, those planters shall be placed against the storefront façade over night.
- L. The entire sidewalk area in front of the premises, including eighteen (18) inches into the street, must be maintained by sweeping or washing daily or more frequently, as needed, by the licensee.

- M. No preparation of food or beverages shall take place outdoors but shall be restricted to the inside of the licensed establishment.
  - N. Food service shall be available during all times in which the sidewalk café is open for business.
  - O. Restaurants which hold a liquor license, and who wish to extend service to the sidewalk café shall have completed a "Place to Place / Expansion of Premises" application with the Alcoholic Beverage Control Board. Licensees not covered for the sidewalk area shall not be permitted to serve alcoholic beverages in the sidewalk café.
  - P. Sidewalk cafés that permit patrons to bring their own beer or wine shall adhere to all laws governing B.Y.O.B. as set forth in N.J.S.A. Title 33, N.J.A.C. 13:2 and City of Hoboken Municipal Code, Chapter 68.
  - Q. Alcoholic beverages, when permitted under this article, shall not be served or consumed on any sidewalk or any other public area which is outside the partitioned area of the sidewalk café.
  - R. No persons other than those being served and restaurant personnel shall be within the sidewalk café area except for those persons passing through the sidewalk café to enter or exit the restaurant proper. ~~No restaurant personnel shall serve café patrons from outside the partition.~~
- 
- S. Holes drilled into the sidewalk for the support of movable partitions shall be capped when not in use.
  - T. Restaurants that do not have table service, shall provide waste receptacle(s) for all used containers, wrappers, bottles, cans and other waste materials. The waste receptacles shall be located within the sidewalk café partitioned area, and shall be removed from the sidewalk along with other café equipment each day.

**§168-504. Terms of License; Dates and Hours of Operation.**

- A. The sidewalk café license shall be personal to the applicant; person or business entity, and may not be sold, leased or transferred and shall be deemed revoked by the sale or transfer of lease or title to the building or the business to which the sidewalk café is related.
- B. The term of each license shall commence on January 1<sup>st</sup> and expire on December 31<sup>st</sup> of each year. There shall be no proration of license fees, regardless of when the license is obtained.
- C. All licenses issued pursuant to this article shall permit sidewalk café operations year round, any day of the year, except that no cafés shall be operated on the first Saturday in March, or when there is snow obstructing any part of the public right-of-way.
- D. Hours of operation shall be between 8:00 a.m. and 11:00 p.m. seven (7) days a week; except that no alcoholic beverages, when permitted under this article, shall be served in a sidewalk café before 11:00 a.m. or when restricted by State of Local Alcoholic Beverage Control (ABC) laws.

**§168-505. Application and Fees.**

- A. Applicants for a sidewalk café shall submit the following documents;
  - 1. A completed application form to be issued by the Zoning Officer and available through the Zoning Office and on the City's web site.
  - 2. A copy of the restaurant's certificate of liability insurance.
  - 3. A letter of consent from the property owner stating that the restaurant and its operator, by name, are permitted to operate a sidewalk café in front of the property.

4. A letter from the City of Hoboken Health Department confirming that the applicant restaurant is in good standing.
5. A letter from the City of Hoboken ABC Board confirming that the applicant restaurant, where applicable, is licensed to sell alcoholic beverages and permitted to extend the service area of their license to the sidewalk café.
6. First time applicants shall submit scale drawings of the proposed sidewalk café by a licensed architect or engineer and photos of the property.
  - a. All buildings, trees and street furniture within ten (10) feet of the proposed café must be included in the plans.
  - b. All tables, chairs and accessory equipment must also be shown.
7. Applicants for renewal of a previously licensed café shall submit a photo and sketch of the location and dimensions of the sidewalk café, the number and placement of tables and chairs, and all other accessory equipment and information deemed necessary by the Zoning Officer. Scaled architectural plans shall not be required for renewal, unless the sidewalk café is located on a street that has had obstructions added, removed or altered since its last licensing, or in front of a building that has been significantly altered since the last licensing.

- B. Upon approval, a successful applicant for a sidewalk café shall pay an annual license fee of two (2) dollars per square foot of café area, with no proration for a partial year.

**§168-506. Insurance Required.**

- A. The applicant shall file with the Zoning Officer, a certificate of liability insurance in the minimum amount of one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in aggregate, naming the City of Hoboken and its agents, servants, and employees as additional insured, which policy shall be kept in full force during the operation of the sidewalk café. The policy of insurance must be occurrence based coverage.
- B. Each Certificate of Insurance required hereunder shall include a thirty (30) day cancellation clause which shall provide notice to the Zoning Office of the City of Hoboken. Any laps in insurance coverage, for any reason, will result in the immediate suspension of the café license.
- C. In addition to obtaining the insurance coverage, the applicant/owner of the sidewalk café shall execute a hold harmless agreement in which the applicant/owner of the sidewalk café agrees to save, defend, keep harmless and indemnify the City and all of its officials and employees from and against any and all claims, loss, damages, injury cost, liability or exposure arising out of the granting of this license or the operation of the sidewalk café.

**§168-507. Enforcement.**

- A. The Zoning Officer and the Police Department of the City of Hoboken shall have the authority to enforce this article.
- B. Any person who violates any provision of this ordinance shall be subject to a civil penalty of not less than \$150 nor more than \$500 per occurrence. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.
- C. The City of Hoboken, through its duly authorized agent, may revoke the license, after notice and a hearing, of any sidewalk café licensee who, upon receipt of citation for violation of city or state law or any of the requirements set fourth herein, fails to cure the violation within ten (10) days of said violation.

- D. The City of Hoboken may require the immediate closure and removal of all sidewalk cafes or other projections or encumbrances upon any street, sidewalk or public easement which are improperly constructed or maintained, or which otherwise create a hazard to the public.
- E. A licensee aggrieved by any decision to revoke a license, or to close or remove a sidewalk café, shall be afforded a hearing before the governing body. Such request for hearing shall be in writing and delivered to the City Clerk, 94 Washington Street, Hoboken, New Jersey, 07030.
- F. The rules and regulations set forth herein shall be applied to all sidewalk café licensees, effective upon adoption of this amended section. Prior conditions that are noncompliant must be abated or approved by the governing body before a license shall be issued for the next following calendar year.

### SECTION THREE: EXEMPTION

Restaurants located in any Residential Zone, who are licensed to operate a sidewalk café at the adoption of this Ordinance, and who have a fence that is non-conforming to this Ordinance, but is in conformance with Chapter 168 (Streets and Sidewalks), Article III (Fences, Gateways and Stairways) of the Municipal Code of the City of Hoboken, shall be permitted to retain said fence until such time as the fence is replaced or substantially altered.

### SECTION FOUR: AMENDMENTS

The following section of Chapter 196, entitled "Zoning" of the Municipal Code of the City of Hoboken, is hereby amended to conform to the new language in Chapter 168; ~~deletions shall be noted by strikethrough~~ and additions shall be noted by underline:

#### Chapter 196: Article II. Definitions

##### § 196-6. B

##### SIDEWALK CAFE

~~Use of the sidewalk beyond the building line for chairs, tables and other space dividers to permit the serving of food and drink for consumption by the patrons of the restaurant fronting on the expanse of sidewalk to be used for this purpose. Facilities shall be fully enclosed by a transparent or translucent temporary structure and shall, in all respects, conform to all applicable city and state regulations, as well as standards set forth elsewhere in this chapter.~~

See Chapter 168 Streets and Sidewalks, Article V Sidewalk Cafes.

For the purposes of this Chapter, a Sidewalk Café shall be considered an accessory use; customarily incidental to an approved restaurant use.

##### SIDEWALK CAFE, ENCLOSED

~~An enclosed eating and drinking facility in conformity with conditions set forth in Article VII of this chapter.~~

##### SIDEWALK CAFE, LIMITED

~~The utilization of sidewalk space beyond the building line to accommodate the serving of food and drink to patrons of a restaurant fronting on that space, which space is unenclosed and does not have walls, and subject to the conditions set forth in Article V of Chapter 168.~~

##### SIDEWALK CAFE, OPEN

~~An unenclosed eating and drinking facility in conformity with conditions set forth in Article VII of this chapter.~~

#### Chapter 196: Article V. Schedule I: Residential Districts

§196-14. D

~~(e) Sidewalk cafes.~~

§ 196-15. D

~~(12) Sidewalk cafes.~~

§ 196-16. D

~~(9) Sidewalk cafes.~~

**Article VII. Schedule III: Review Districts**

§ 196-19. D (1)

~~(d) Sidewalk cafes.~~

**§196-38. Standards for particular use.**

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~~Q. Sidewalk café. The utilization of sidewalk space beyond the building line to accommodate the serving of food and drink to patrons of a restaurant fronting on that space shall be subject to the following conditions:~~

- ~~(1) Conformity with the Building Code and all applicable state and local Health Department standards.~~
- ~~(2) A renewable annual contract between the restaurant management and the Mayor and Council of the City of Hoboken setting forth the annual fee to the city, the hours and conditions of operation and such circumstances as will void renewal of the annual contract.~~
- ~~(3) No more than half the sidewalk or six (6) feet, whichever is less, shall be utilized for sidewalk cafes. In no case shall less than four (4) feet of sidewalk be available for pedestrian traffic.~~
- ~~(4) Site plan review and approval by the Planning Board.~~

**SECTION FIVE: REPEAL OF INCONSISTENT PROVISIONS**

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

**SECTION SIX: SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION SEVEN: EFFECTIVE DATE**

This Ordinance shall take effect January 1, 2013. The 2012 season shall terminate as scheduled on November 30<sup>th</sup>.

**SECTION EIGHT: CODIFICATION**

This ordinance shall be a part of the Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

**Date of Introduction: October 17, 2012.**

Approved:  
Form:

Approved as to Legal

Quentin Wiest, Business Administrator

Mellissa Longo, Corporation Counsel

RECORD OF COUNCIL VOTE ON 1 <sup>ST</sup> READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla	/	/		
Councilwoman Castellano		/		
Councilman Doyle	/			
Councilwoman Giattino	/			
Councilwoman Mason				/
Councilman Mello	/			
Councilman Occhipinti	/			
Councilman Russo				/
President Cunningham	/			

RECORD OF COUNCIL VOTE ON 2 <sup>ND</sup> READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla				
Councilwoman Castellano				
Councilman Doyle				
Councilwoman Giattino				
Councilwoman Mason				
Councilman Mello				
Councilman Occhipinti				
Councilman Russo				
President Cunningham				

**CERTIFICATION:**

I do hereby certify that the foregoing is a true and correct copy of an ordinance duly adopted by the City Council of the City of Hoboken, in the County of Hudson on this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
James J. Farina  
City Clerk

Approved by the Mayor on the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Dawn Zimmer, Mayor

**-or-**

Vetoed by the Mayor for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_