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10/11/12
C. S. [Signature]

CITY OF HOBOKEN, NEW JERSEY

ORDINANCE NO. Z-194

BOND ORDINANCE AUTHORIZING THE REHABILITATION AND RECONSTRUCTION OF PIER "A" AND THE CONSTRUCTION OF THE 9/11 MEMORIAL THEREON, IN AND FOR THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY; APPROPRIATING THE SUM OF \$2,554,000 THEREFOR; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OR BOND ANTICIPATION NOTES OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$2,426,300; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING

BE IT ORDAINED by the City Council of the City of Hoboken, County of Hudson, New Jersey (not less than two-thirds of all the members thereof affirmatively concurring), pursuant to the provisions of the Local Bond Law, Chapter 169 of the Laws of 1960 of the State of New Jersey, as amended and supplemented ("Local Bond Law"), as follows:

Section 1. The purposes described in Section 7 hereof are hereby authorized as general improvements to be made or acquired by the City of Hoboken, County of Hudson, New Jersey ("City").

Section 2. It is hereby found, determined and declared as follows:

- (a) the estimated amount to be raised by the City from all sources for the purposes stated in Section 7 hereof is \$2,554,000;
- (b) the estimated amount of bonds or bond anticipation notes to be issued for the purposes stated in Section 7 hereof is \$2,426,300; and
- (c) a down payment in the amount of \$127,700 for the purposes stated in Section 7 hereof is currently available in accordance with the requirements of Section 11 of the Local Bond Law, *N.J.S.A. 40A:2-11*.

Section 3. The sum of \$2,426,300, to be raised by the issuance of bonds or bond anticipation notes, together with the sum of \$127,700, which amount represents the required down payment, is hereby appropriated for the purposes stated in this bond ordinance ("Bond Ordinance").

Section 4. The issuance of negotiable bonds of the City in an amount not to exceed \$2,426,300 to finance the costs of the purposes described in Section 7 hereof is hereby authorized. Said bonds shall be sold in accordance with the requirements of the Local Bond Law.

COMPUTATION AS TO INDEBTEDNESS FOR IMPROVEMENT OR EXTENSION OF AN EXISTING MUNICIPAL PUBLIC UTILITY, N.J.S. 40A:2-7(h); N.J.S. 40A:2-47(a)

Municipal Public Utility

1	Annual Debt Statement excess in revenues of utility as of:	31-Dec-11	_____
2	Less: Interest and debt redemption charges computed as provided in N.J.S. 40A:2-47(a) for all obligations heretofore authorized but not issued to the extent not already charged to income in annual debt statement.		_____
3	Excess in revenues remaining prior to authorization of proposed obligations (line 1 minus line 2)		\$ _____
4	Interest and debt redemption charges calculated for the obligations about to be authorized (N.J.S. 40A:2-47(a))		_____
(a)	Interest for one year at 4.5%		_____
(b)	First installment of serial bonds legally issuable		_____
(c)	Total Charges (Items (a) and (b))		\$ _____

Note: If line 3 equals or exceeds line 4, obligations may be authorized under the provisions of N.J.S. 40A:2-7(h) as limited by N.J.A. 40A:2-47(a).

I, _____ Director of the Division of Local Government

Services in the Department of Community Affairs of the State of New Jersey DO HEREBY CERTIFY that I have compared this copy of a Supplemental Debt Statement of the above local unit with the original Supplemental Debt Statement filed in the Office of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey on _____ and that this a true copy of said Statement and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand as Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey, this

_____ day of _____ 20_____

Director _____

1 The net debt of the local unit, as stated in the Annual Debt Statement made as of 11-Jul-12
 or the revision thereof last filed, with respect to the following classes of bonds and notes, the \$
 amount by which each class has been increased by the authorization of additional debt, and
 the amount by which each class has been decreased by payment of outstanding debt or reduction
 of the authorization to incur debt, is as follows:

	<i>Net Debt as per Annual Debt Statement</i>	<i>Decrease (Since December 31, Last Past)</i>	<i>Increase</i>	<i>Net Debt</i>
Bonds and notes for school purposes	\$ -	\$ -	\$ -	\$ -
Bonds and notes for self-liquidating purposes	\$ -	\$ -	\$ -	\$ -
Other Bonds and notes	\$ 111,293,153.89	\$ 189,288.00		\$ 111,103,865.89
2 Net debt at the time of this statement:				\$ 111,103,865.89

3 The amounts and purpose separately itemized of the obligations about to be authorized, and any deductions which may be made on account of each such item are:
see note "C" below

<i>Purpose</i>	<i>Amount</i>	<i>Deduction</i>	<i>Net</i>
Redesign and reconstruction of Washington Street	\$ 805,600.00		\$ 805,600.00
Phase I of redesign of Observer Highway	\$ 133,000.00		\$ 133,000.00
Redesign and reconstruction of Sinatra Drive	\$ 102,600.00		\$ 102,600.00
Rehabilitation and Reconstruction of Pier "A"	\$ 2,426,300.00	\$ 2,426,300.00	\$ 3,467,500.00

4 The net debt of the local unit determined by the addition of the net amounts stated in items 2 and 3 above is: \$ 114,571,365.89

NOTES

- A. If authorization of bonds or notes is permitted by an exception to the debt limitation, specify the particular paragraph of N.J.S. 40A:2-7 or other section or law providing such exception.
- B. This form is also to be used in the bonding of separate (not Type I) school districts as required by N.J.S. 18A:24-16, and filed before the school district election. In such case pages 4,5, and 6 should be completed to set forth computation supporting any deduction in line 3 above.
- C. Only the account of bonds or notes about to be authorized should be entered. The amount of the "down payment" provided in the bond ordinance should not be included nor shown as a deduction.

SUPPLEMENTAL DEBT STATEMENT

OF

City of Hoboken, County of Hudson

As of 11-Jul-12

The net debt of the local unit after giving effect to obligations about to be authorized, is (page 2, line 4) \$ 114,571,365.89

1	Equalized valuation basis (the average of the equalized valuation of real estate, including improvements, and the assessed valuation of class II railroad property of the local unit for the last 3 preceding years) as stated in the Annual Debt Statement or the revision thereof last filed	
2	2009 Equalized Valuation Real Property with Improvements plus assessed valuation of Class II R.R. property	\$ 11,034,292.710
	2010 Equalized Valuation Real Property with Improvements plus assessed valuation of Class II R.R. property	\$ 10,243,080,661
	2011 Equalized Valuation Real Property with Improvements plus assessed valuation of Class II R.R. property	\$ 9,703,632,086
3	Equalized Valuation Basis --- Average of (1), (2) and (3)	\$ 10,327,001,819.00

4 Net debt (Line 1 above) expressed as a percentage of such equalized valuation basis (Line 3 above) is:

One and Eleven One Hundredths per cent 1.11%

STATE OF NEW JERSEY }
COUNTY OF HUDSON }

George DeStefano, being duly sworn, deposes and says:

Deponent is the chief financial officer of the
City of Hoboken, County of Hudson

here and in the statement hereinafter mentioned called "the local unit." The Supplemental Debt Statement annexed hereto and hereby made a part hereof is a true statement of the debt condition of the local unit as of the date therein stated and is computed by the Local Bond Law of New Jersey.

Subscribed and sworn to before me this
11-Jul-12



Andrea Papa
Notary Public
New Jersey
My Commission Expires 3-5-15



Title: Chief Financial Officer
Address: 94 Washington St
Hoboken, NJ 07030

(NOTE -- In all cases two copies of Supplemental Debt Statement must be filed with:)

DIVISION OF LOCAL GOVERNMENT SERVICES
P.O.Box 258
TRENTON, NEW JERSEY 08625-0258



JAMES J. FARINA
CITY CLERK

CITY CLERK'S OFFICE
CITY HALL
HOBOKEN, NEW JERSEY 07030

(201) 420-2074

July 12, 2012

Thomas Neff, Director
Dept. of Community Affairs
Division of Local Government Services
101 S. Broad Street
Trenton, NJ 08625

Dear Director Neff:

Enclosed please find the originals of the Supplemental Debt Statement along with the Ordinance, entitled,

"BOND ORDINANCE AUTHORIZING THE REDESIGN AND RECONSTRUCTION OF VARIOUS STREETS IN THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY; APPROPRIATING THE SUM OF \$1,096,000 THEREFOR; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATIONS BONDS OR BOND ANTICIPATION NOTES OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$1,041,200; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING"

Thank you for your attention in this matter.

Sincerely,

James J. Farina
City Clerk

Bond Ordinance Statements and Summary

The bond ordinance, the summary terms of which are included herein, has been finally adopted by the City Council of the City of Hoboken, in the County of Hudson, State of New Jersey on _____, 2012 and the twenty (20) day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this statement. Copies of the full ordinance are available at no cost and during regular business hours, at the City Clerk's office in the Municipal Building, 94 Washington Street, Hoboken, New Jersey, for members of the general public who request the same. The summary of the terms of such bond ordinance follows:

Title: **BOND ORDINANCE AUTHORIZING THE REHABILITATION AND RECONSTRUCTION OF PIER "A" AND THE CONSTRUCTION OF THE 9/11 MEMORIAL THEREON, IN AND FOR THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY; APPROPRIATING THE SUM OF \$2,554,000 THEREFOR; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OR BOND ANTICIPATION NOTES OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$2,426,300; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING**

	<u>Purpose/Improvement</u>	<u>Estimated Total Cost</u>	<u>Down Payment</u>	<u>Amount of Obligations</u>	<u>Period of Usefulness</u>
A.	Rehabilitation and Reconstruction of Pier "A", as more particularly described in the documentation on file in the Office of the City Business Administrator and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	\$2,304,000	\$115,200	\$2,188,800	15 years
B.	Construction of a 9/11 Memorial, as more particularly described in the documentation on file in the Office of the City Business Administrator and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	250,000	12,500	237,500	15 years

Appropriation: \$2,554,000
 Bonds/Notes Authorized: \$2,426,300
 Grants (if any) Appropriated: N/A
 Section 20 Costs: \$760,000
 Useful Life: 15.00 years

JAMES J. FARINA, RMC, City Clerk

This Notice is published pursuant to N.J.S.A. 40A:2-17.

Notice of Pending Bond Ordinance and Summary

The bond ordinance, the summary terms of which are included herein, was introduced and passed upon first reading at a meeting of the City Council of the City of Hoboken, in the County of Hudson, State of New Jersey, on July 11, 2012. It will be further considered for final passage, after public hearing thereon, at a meeting of the City Council to be held at City Hall, 94 Washington Street, Hoboken, New Jersey on _____, 2012 at _____ o'clock __M. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the City Clerk's office for the members of the general public who shall request the same. The summary of the terms of such bond ordinance follows:

Title: **BOND ORDINANCE AUTHORIZING THE REHABILITATION AND RECONSTRUCTION OF PIER "A" AND THE CONSTRUCTION OF THE 9/11 MEMORIAL THEREON, IN AND FOR THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY; APPROPRIATING THE SUM OF \$2,554,000 THEREFOR; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OR BOND ANTICIPATION NOTES OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$2,426,300; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING**

<u>Purpose/Improvement</u>	<u>Estimated Total Cost</u>	<u>Down Payment</u>	<u>Amount of Obligations</u>	<u>Period of Usefulness</u>
A. Rehabilitation and Reconstruction of Pier "A", as more particularly described in the documentation on file in the Office of the City Business Administrator and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	\$2,304,000	\$115,200	\$2,188,800	15 years
B. Construction of a 9/11 Memorial, as more particularly described in the documentation on file in the Office of the City Business Administrator and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	250,000	12,500	237,500	15 years

Appropriation: \$2,554,000
 Bonds/Notes Authorized: \$2,426,300
 Grants (if any) Appropriated: N/A
 Section 20 Costs: \$760,000
 Useful Life: 15.00 years

JAMES J. FARINA, RMC, City Clerk

This Notice is published pursuant to N.J.S.A. 40A:2-17.

authorized hereby has been or shall be specially assessed on any property specially benefited thereby.

Section 16. All ordinances, or parts of ordinances, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 17. In accordance with the Local Bond Law, this Bond Ordinance shall take effect twenty (20) days after the first publication thereof after final passage.

Community Affairs of the State of New Jersey. The supplemental debt statement shows that the gross debt of the City, as defined in Section 43 of the Local Bond Law, *N.J.S.A. 40A:2-43*, is increased by this Bond Ordinance by \$2,426,300 and that the obligations authorized by this Bond Ordinance will be within all debt limitations prescribed by said Local Bond Law.

Section 11. The full faith and credit of the City are irrevocably pledged to the punctual payment of the principal of and interest on the bonds or bond anticipation notes authorized by this Bond Ordinance, and to the extent payment is not otherwise provided, the City shall levy *ad valorem* taxes on all taxable real property without limitation as to rate or amount for the payment thereof.

Section 12. The applicable Capital Budget of the City is hereby amended to conform with the provisions of this Bond Ordinance to the extent of any inconsistency therewith, and the resolution promulgated by the Local Finance Board showing full detail of the amended applicable Capital Budget and Capital Program as approved by the Director of the Division of Local Government Services, is on file with the Clerk and available for inspection.

Section 13. The City hereby declares its intent to reimburse itself from the proceeds of the bonds or bond anticipation notes authorized by this Bond Ordinance pursuant to Income Tax Regulation Section 1.150-2(e), promulgated under the Internal Revenue Code of 1986, as amended ("Code"), for "original expenditures", as defined in Income Tax Regulation Section 1.150-2(c)(2), made by the City prior to the issuance of such bonds or bond anticipation notes.

Section 14. The City hereby covenants as follows:

(a) it shall take all actions necessary to ensure that the interest paid on the bonds or bond anticipation notes authorized by the Bond Ordinance is exempt from the gross income of the owners thereof for federal income taxation purposes, and will not become a specific item of tax preference pursuant to Section 57(a)(5) of the Code;

(b) it will not make any use of the proceeds of the bonds or bond anticipation notes or do or suffer any other action that would cause the bonds or bond anticipation notes to be "arbitrage bonds" as such term is defined in Section 148(a) of the Code and the Regulations promulgated thereunder;

(c) it shall calculate or cause to be calculated and pay, when due, the rebatable arbitrage with respect to the "gross proceeds" (as such term is used in Section 148(f) of the Code) of the bonds or bond anticipation notes;

(d) it shall timely file with the Ogden, Utah Service Center of the Internal Revenue Service, such information report or reports as may be required by Sections 148(f) and 149(e) of the Code; and

(e) it shall take no action that would cause the bonds or bond anticipation notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 15. The improvements authorized hereby are not current expenses and are improvements that the City may lawfully make. No part of the cost of the improvements

Section 5. In order to temporarily finance the purposes described in Section 7 hereof, the issuance of bond anticipation notes of the City in an amount not to exceed \$2,426,300 is hereby authorized. Pursuant to the Local Bond Law, the Chief Financial Officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver the same to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their date to delivery thereof. The Chief Financial Officer is hereby directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this Bond Ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 6. The amount of the proceeds of the obligations authorized by this Bond Ordinance which may be used for the payment of interest on such obligations, accounting, engineering, legal fees and other items as provided in Section 20 of the Local Bond Law, *N.J.S.A. 40A:2-20*, shall not exceed the sum of \$760,000.

Section 7. The improvements hereby authorized and the purposes for which said obligations are to be issued; the estimated costs of each said purpose; the amount of down payment for each said purpose; the maximum amount obligations to be issued for each said purpose and the period of usefulness of each said purpose within the limitations of the Local Bond Law are as follows:

	<u>Purpose/Improvement</u>	<u>Estimated Total Cost</u>	<u>Down Payment</u>	<u>Amount of Obligations</u>	<u>Period of Usefulness</u>
A.	Rehabilitation and Reconstruction of Pier "A", as more particularly described in the documentation on file in the Office of the City Business Administrator and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	\$2,304,000	\$115,200	\$2,188,800	15 years
B.	Construction of a 9/11 Memorial, as more particularly described in the documentation on file in the Office of the City Business Administrator and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	250,000	12,500	237,500	15 years

Section 8. The average period of useful life of the several purposes for the financing of which this Bond Ordinance authorizes the issuance of bonds or bond anticipation notes, taking into consideration respective amounts of bonds or bond anticipation notes authorized for said several purposes, is not less than 15.00 years.

Section 9. Grants or other monies received from any governmental entity, if any, will be applied to the payment of, or repayment of obligations issued to finance, the costs of the purposes described in Section 7 above.

Section 10. The supplemental debt statement provided for in Section 10 of the Local Bond Law, *N.J.S.A. 40A:2-10*, was duly filed in the office of the Clerk prior to the passage of this Bond Ordinance on first reading and a complete executed duplicate original thereof has been filed in the Office of the Director of the Division of Local Government Services in the Department of

James J. Farina
James J. Farina

Statement to be Published After Introduction

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-53(b) TO FUND THE COSTS ASSOCIATED WITH EXECUTION OF A COMPLETE PROGRAM OF REVALUATION OF REAL PROPERTY IN AND FOR THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY

Public notice is hereby given that the foregoing ordinance was introduced and passed on first reading at the City Council meeting of the City of Hoboken, County of Hudson, New Jersey, held on August 15, 2012. Further notice is given that said Ordinance will be considered for final passage and adoption, after a public hearing thereon at a meeting of the City Council of the City Council to be held at 94 Washington Street, Hoboken, New Jersey 07030 on Sept. 15, 2012 at 7:00 p.m. The foregoing ordinance authorizes certain special emergency appropriations in and for the City of Hoboken pursuant to N.J.S.A. 40A:4-53(b). Prior to and up to and including the date of said meeting, copies of said ordinance will be made available at the City Clerk's Office for members of the general public to request the same.

James J. Farina, RMC,
City Clerk

Statement to be Published After Final Adoption

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-53(b) TO FUND THE COSTS ASSOCIATED WITH EXECUTION OF A COMPLETE PROGRAM OF REVALUATION OF REAL PROPERTY IN AND FOR THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY

The ordinance published herewith has been finally adopted by the City Council of the City of Hoboken, County of Hudson, New Jersey, on _____, 2012.

James J. Farina, RMC,
City Clerk

Section 5. All ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. This ordinance shall take effect immediately upon final adoption in accordance with applicable law.

Date of Introduction: August 15, 2012

Date of Final Adoption: September 5, 2012

15- meeting
8-15-12 6

CITY OF HOBOKEN, NEW JERSEY

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-53(b) TO FUND THE COSTS ASSOCIATED WITH EXECUTION OF A COMPLETE PROGRAM OF REVALUATION OF REAL PROPERTY IN AND FOR THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY

BACKGROUND

WHEREAS, the City of Hoboken, County of Hudson, New Jersey ("City"), has determined that it is necessary to prepare and execute a complete program of revaluation of real property for use by the City Tax Assessor and the Hudson County Board of Taxation ("Revaluation Project"); and

WHEREAS, the amount to be appropriated by the City for the purposes described above is \$1,300,000.00, which amount shall be deemed a special emergency appropriation as defined and provided for in the Local Budget Law, N.J.S.A. 40A:4-1 et seq.; and

WHEREAS, it is the desire of the City Council to adopt an ordinance to create said special emergency appropriation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, PURSUANT TO LOCAL BUDGET LAW, AS FOLLOWS:

Section 1. There is hereby appropriated pursuant to N.J.S.A. 40A:4-53(b), the sum of \$1,300,000.00 for the Revaluation Project, as further described in the preambles of this ordinance.

Section 2. The appropriation of said \$1,300,00.00 for the Revaluation Project as further described in the preambles of this ordinance shall be deemed a special emergency appropriation as defined, and provided for, in N.J.S.A. 40A:4-53(b).

Section 3. Said emergency appropriation shall be financed from surplus funds currently available or from borrowed funds, pursuant to N.J.S.A. 40A:4-55; provided, however at least one-fifth (1/5th) of said amount shall be included in each succeeding annual budget until the appropriation has been fully provided for.

Section 4. A certified copy of this ordinance as finally adopted shall be filed by the City Clerk with the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs.

1

Sponsored by: [Signature]
Seconded by: [Signature]

City of Hoboken
Ordinance No.: 2-199

**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:

ESTABLISHMENT – Any business which has as its primary purpose the service of food and beverages

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

SIDEWALK CAFÉ – Partitioned sidewalk space beyond the building line used to accommodate tables, chairs, and the serving of food and drink to patrons of an establishment 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. 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.
- C. Where an operating establishment is located on a corner, both the front and side sidewalk areas fronting the establishment may be used for the sidewalk café.
- D. Sidewalk cafes shall only be permitted in front of an operating establishment that is a permitted conforming use under the city's zoning ordinances. Locations seeking to expand a prior nonconforming or conditional use shall be required to obtain the appropriate variance from the City of Hoboken Planning Board or Zoning Board of Adjustment.

§168-503. General Requirements.

- A. All establishments licensed to operate a sidewalk café shall display the license in an unobstructed location on the door or a window of the primary business which faces onto the sidewalk.
- 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) 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 an individual umbrella over each table or a retractable awning covering all tables and chairs. Covering must have a minimum clearance of eight (8) 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. 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.
- K. 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.
- L. After a snow event all snow must be cleared from the sidewalk from the width of the entire establishment in order to operate the sidewalk cafe. No tables, chairs, or boundaries may be placed on the sidewalk until all snow is removed. The snow shall be placed on the sidewalk within the first 18 inches from the street.
- M. Once snow has accumulated greater than an inch while a cafe is already open than all tables, chairs, boundaries must be removed from the sidewalk.
- N. No preparation of food or beverages shall take place outdoors but shall be restricted to the inside of the licensed establishment.
- O. Food service shall be available during all times in which the sidewalk café is open for business.
- P. Establishments which hold a liquor license, and who wish to extend service area to the sidewalk café shall have completed a "Place to Place Transfer" 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.
- Q. 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.
- R. 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.
- S. The number of patrons served in the sidewalk café shall be limited to the maximum number indicated on the sidewalk café license. No persons other than those being served and establishment personnel shall be within the sidewalk café area except for those persons passing through the sidewalk café to enter or exit the establishment proper.
- T. Holes drilled into the sidewalk for the support of movable partitions shall be capped when not in use.

- U. Establishments 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. All licenses issued pursuant to this article shall permit sidewalk café operations for a twelve (12) month period beginning January 1 and ending on December 31 of the following year.
- a. Any establishment holding a valid current side café license as of November 30, 2012, shall automatically have that sidewalk café license extended, without any additional fees, until December 31, 2012.
- C. 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 establishment's certificate of liability insurance.
 3. A valid current lease or letter of consent, which may include any express conditions relating to time and manner of use, from the property owner stating that the establishment 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 establishment is in good standing.
 5. A letter from the City of Hoboken ABC Board confirming that the applicant establishment, 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, with no proration for a partial year, at two dollars (\$2.00) per square foot.

§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. Laps in insurance coverage 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 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 twenty (20) days of said citation.
- 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 Planning Board or Zoning Board of Adjustment. Such request for hearing shall be in writing and delivered to the Planning Board, attn. Board Secretary, 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 variance issued by the Planning Board before a license shall be issued for the next following calendar year.

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 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 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 remaining 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 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: _____

Approved as to Legal Form:

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

RECORD OF COUNCIL VOTE ON FINAL READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla				
Councilwoman Castellano				
Councilwoman Giattino				
Councilwoman Marsh				
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 _____, 2012.

James J. Farina
City Clerk

Approved by the Mayor on the _____ day of _____, 2012.

Dawn Zimmer, Mayor

-or-

Vetoed by the Mayor for the following reasons:

Sponsored by: Cristina
Seconded by: Mello

City of Hoboken
Ordinance No.: 8-200

**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:

BAR – A place of business duly licensed by the Alcoholic Beverage Control Board for the sale and on-premises consumption of alcoholic beverages by the drink as the principal or primary use. Food may be prepared and consumed on site but is incidental to the purpose of the establishment.

RESTAURANT – An establishment principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of meals to its customers.

RESTAURANT, CLASS I – A restaurant whose primary function and operation is the preparation and service, by employees, of food and drink to customers seated at a counter, bar, or table at which the meal is consumed. A Class I restaurant operates without substantial carry-out service and/or delivery service. A Class I restaurant may, on occasion, feature live music entertainment provided there is no interruption of food service to patrons.

RESTAURANT, CLASS II -- A restaurant whose primary function is the preparation and service, by employees, of food and drink to customers as part of an operation designed to include substantial carry-out service; delivery service; self-service, and which may also include on-premises consumption.

RETAIL FOOD ESTABLISHMENT -- A grocery store, convenience store, or market in which food or drink is sold for off-premises preparation and/or consumption.

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. 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.
- C. 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.
- D. Sidewalk cafes shall only be permitted in front of an operating restaurant that is a permitted conforming use under the city's zoning ordinances. Locations seeking to expand a prior nonconforming or conditional use shall be required to obtain the appropriate variance from the City of Hoboken Planning Board or Zoning Board of Adjustment.
- E. Sidewalk cafes shall only be permitted in front of restaurants; Class I or II, as defined herein.

§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 area to the sidewalk café shall have completed a "Place to Place Transfer" 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. Class II 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 1st and expire on December 31st 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 Office of the City Clerk 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 citation.
- 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 variance issued by the Planning Board 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

BAR

A place of business duly licensed by the Alcoholic Beverages Control Board for the sale and on-premises consumption of alcoholic beverages by the drink as the principal or primary use; ~~whether or not food service is also provided.~~ Food may be prepared and consumed on site but is incidental to the purpose of the establishment.

RESTAURANT

~~A building or portion thereof where food and beverages are sold for consumption on the premises as the principal or primary use. An establishment principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, and serving of food for its customers.~~

RESTAURANT, CLASS I

A restaurant whose primary function and operation is the preparation and service, by employees, of food and drink to customers seated at a counter, bar or table at which the meal is consumed. A Class I restaurant operates without substantial carry-out service and/or delivery service. A Class I restaurant may, on occasion, feature live music entertainment provided there is no interruption of food service to patrons.

RESTAURANT, CLASS II

A restaurant whose primary function is the preparation and service, by employees, of food and drink to customers as part of an operation designed to include substantial carry-out service; delivery service; self-service, and which may also include on-premises consumption.

RETAIL FOOD ESTABLISHMENT

A grocery store, convenience store, or market in which food or drink is sold for off-premises preparation and/or consumption.

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

~~(c) 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.

~~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 not withstanding 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 30th.

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: August 15, 2012.

Approved:

Approved as to Legal Form:

Quentin Wiest, Business Administrator

Melissa Longo, Interim Corporation Counsel

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

RECORD OF COUNCIL VOTE ON 2 ND READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla				
Councilwoman Castellano				
Councilwoman Giattino				

Councilwoman Marsh				
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:

1st reading 9-5-12 ①

CITY OF HOBOKEN
AFFORDABLE HOUSING SET-ASIDE ORDINANCE

Theresa Casella

Sponsored by *[Signature]*

Seconded by *[Signature]*

AN ORDINANCE REQUIRING THE SET ASIDE OF LOW AND MODERATE INCOME AFFORDABLE HOUSING UNITS IN RESIDENTIAL AND MIXED USE DEVELOPMENTS, INCLUDING REDEVELOPMENT PROJECTS, THAT SEEK OR RECEIVE AN INCREASE IN DENSITY, A DENSITY BONUS OR OTHER COMPENSATORY BENEFIT AND ESTABLISHING REQUIREMENTS FOR AFFIRMATIVE MARKETING, SALE, RENTAL, AND AFFORDABILTY CONTROLS FOR AFFORDABLE HOUSING.

WHEREAS, the City of Hoboken is a municipal corporation of the State of New Jersey; and

WHEREAS, municipalities are empowered to make, amend, repeal and enforce Ordinances pursuant to N.J.S.A. 40:48-1 et. seq.; and

WHEREAS, the City of Hoboken recognizes the Constitutional requirement of every New Jersey municipality to provide an opportunity for the construction and rehabilitation of low and moderate income housing; and

WHEREAS, the City is committed to remaining affordable by maintaining a diversity and choice in the mix of housing types available within the municipality; and

WHEREAS, the New Jersey Supreme Court, the New Jersey Legislature as well as the Council on Affordable Housing (“COAH”) have all recognized that inclusionary ordinances requiring a mandatory set-aside of affordable housing, either on or off-site, along with appropriate incentives represents an effective and fair means of encouraging and ensuring the production of affordable housing by the private sector. See So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (“Mt. Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

WHEREAS, increases in permitted residential density or floor area ratio (“FAR”), accompanied by a mandatory set-aside of affordable housing, constitute incentives to private developers and compensatory benefits as required by the Fair Housing Act, N.J.S.A. 52:27D-311.h.; and

WHEREAS, use variances granted by the Zoning Board of Adjustment permitting residential uses in zoning districts and redevelopment areas restricted against such uses constitute

a compensatory benefit when a mandatory set-aside of affordable housing is required as a condition of such residential use variance approvals; and

WHEREAS, new and amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Law, N.J.S.A. 40A.12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses and require a mandatory set-aside of affordable housing also constitute a compensatory benefit for inclusionary development; and

WHEREAS, the City also recognizes that the inclusion of a mandatory set-aside of low and moderate income units does not absolve a developer of responsibility to make required proofs in conjunction with applications before the Zoning Board of Adjustment or Planning Board.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Hoboken, New Jersey, as follows:

Section 1. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

“Act” means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, as defined and with the responsibilities specified at N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing” means housing restricted to income-eligible low and moderate income households.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share housing obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Board of jurisdiction” means the Planning Board of the City of Hoboken, the Board of Adjustment of the City of Hoboken, or the City Council of the City of Hoboken, as applicable.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), or successor agency.

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Housing region” means a geographic area, determined by COAH, of no less than two and no more than four contiguous, whole counties, which exhibits significant social, economic, and income similarities and which constitutes, to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Infill” means development on vacant or underutilized property between existing buildings.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income for the housing region.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income for the housing region.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Redevelopment plan” means a plan adopted by the City Council of the City of Hoboken for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH’s adopted Regional Income Limits published annually by COAH.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under the UHORP or MONI programs of the Agency.

“Substantial rehabilitation” means any rehabilitation of a vacant structure or any rehabilitation that involves the replacement of two or more major systems.

“Total development cost” mean the expenses that a developer can reasonably expect to incur in order to develop an affordable housing development, include “hard costs” such as land acquisition, site improvements, and new construction or rehabilitation, and “soft costs” consisting of all other costs and fees, such as professional services and financing fees.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

“Waterfront District” means any district or sub district so designated by the Zoning Ordinance of the City of Hoboken.

Section 2- General standards.

- A. Applicability – Types of Development: All development of property in the City of Hoboken subject to approval by either the Planning Board or Zoning Board of Adjustment for site plan, subdivision or conditional use approval; for variance relief pursuant to any section of N.J.S.A. 40:55D-70d involving an increase in residential density; or for an approval in conjunction with a redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law that includes residential uses. All such development shall include housing affordable to low and moderate income individuals and families in accordance with the standards of this Article with the exception of the exemptions enumerated in sub-section (B).
- B. The following shall be exempt from the provisions of this Article:
- (1) The first 10 units of substantial rehabilitation projects.
 - (2) Any project which is to be undertaken by a nonprofit corporation for the purpose of developing, through new construction or substantial rehabilitation, residential property in which all of the units in the project are for low and/or moderate-income families, but only upon application to and a written finding by the Board that the project is providing an affordable housing benefit in the spirit of and comparable to the benefit provided through this Article.
 - (3) Development under an adopted redevelopment plan in effect as of the effective date of this ordinance, unless amended subsequently to increase the density or floor area ratio.
 - (4) Any application before the Planning Board for a permitted use. Applications submitted pursuant to a redevelopment plan which include a residential component and are not subject to the exemption listed in sub-section B(3) above shall not qualify for an exemption.
- C. Each development subject to this Article shall contain the following percentage of units to be provided for affordable housing:
- (1) 10% where all affordable units provided pursuant to this Article are located on site, whether rental, “for sale”, fee simple, condominium or cooperative.
 - (2) One (1) off-site unit must be provided in lieu of each on-site unit required by sub-section C(1) hereof where some or all affordable units provided pursuant to this Article are located off site as permitted by this Act with the exception of development located in the Waterfront District. 1.5 off-site units must be

provided in lieu of each on-site unit required by Subsection C(1) hereof for development in the Waterfront District.

- (3) In all calculations of a developer's affordable housing set-aside responsibility under this Article, any unit reserved for the superintendent of the residential development shall not be credited towards satisfaction of the affordable housing obligation.
- (4) Rounding: When any calculation of the percentage of affordable units required to be provided results in a fractional unit of one-half or more, the fraction shall be rounded up to the next whole unit. When a calculation results in a fraction of less than one-half, the fraction shall be rounded down to the previous whole unit.
- (5) Any residential or mixed use development receiving Urban Transit Hub Tax Credit financing pursuant to N.J.S.A. 34:1B-207 et seq. shall set-aside 20% percent of the total units in the development as affordable units.

D. Plan of compliance.

- (1) Each development subject to this Article shall prepare and submit to the Board of jurisdiction a plan of compliance with the terms and conditions hereof, which plan shall include:
 - (a) A description of the development, which may be given by reference to other documents submitted to the Board
 - (b) A statement of the number of proposed residential units in the development.
 - (c) A statement setting forth the number of affordable units required to be provided, specifying the number of low-income and moderate-income units, and the number of efficiency, one-bedroom, two-bedroom, and three-bedroom (or larger) units to be provided in each category.
 - (d) A statement setting forth the anticipated purchase or rental prices of the affordable housing units to be provided.
 - (e) A sworn affidavit by the developer that the project is not part of any larger development and has not been artificially subdivided, separated or developed apart from that larger development through the manipulation of the design or implementation schedule in order to evade the provisions of this article.
 - (f) A fiscal statement demonstrating the number of proposed market rate residential units are necessary to subsidize the proposed number of low

and moderate income units. The statement shall demonstrate a rational nexus between any proposed density bonus or compensatory benefit and the number of affordable housing units provided on or off site.

- (2) No preliminary or minor site plan, subdivision or bifurcated use variance approval shall be granted until and unless the plan of compliance has been approved by the Board of jurisdiction.
- (3) It is the intent of this article to prevent evasion of its requirements by the artificial subdivision, separation, construction or rehabilitation of a project into smaller developments through the manipulation of the design or implementation schedule. The Board, therefore, shall review each project to determine whether the project has been artificially subdivided, separated, constructed or rehabilitated through the manipulation of the design or implementation schedule in order to evade the provisions of this article. If the Board so finds, it shall disapprove the plan.
- (4) The Board of jurisdiction shall withhold approval of any plan of compliance for any unit building, project or development which is developed contiguous to any other unit, building, project or development which received site plan approval at any time 18 months prior to the submission of the plan of compliance, unless the Board finds that the developer has not sought to evade the terms of this ordinance and that the project has not artificially subdivided, separated, constructed or rehabilitated through the manipulation of the design or implementation schedule.

Section 3- Provision of Units Off Site.

- A. Any developer engaged in a project subject to the provisions of this article may apply to the Board of jurisdiction to provide the affordable housing required by the application of this article in a structure or structures located apart from the development triggering the provisions of this article, but within the City of Hoboken. Such approval is within the sole discretion of the Board of jurisdiction and may be granted where:
 - (1) The affordable housing units to be provided off site are of comparable or superior size and quality to those that would have otherwise been provided.
 - (2) The environmental conditions of the neighborhood in which the affordable units are to be located are suitable for residential development.
 - (3) Approval would not tend to increase the concentration of low- or moderate-income households within any part of the City of Hoboken.

- B. The Board of jurisdiction should give substantial weight to the policy of favoring integrated development over separate developments for low and moderate-income households and higher-income households.

Section 4- Phasing.

Provision of on-site or off-site affordable housing units shall take place simultaneously, with the balance of the development triggering the affordable housing requirement, and shall be governed by the following phasing schedule:

Maximum Percentage of Market Units Issued Certificates of Occupancy	Minimum Percentage of Low and Moderate Income Units Issued Certificates of Occupancy
25% + 1 unit	10%
50%	50%
75%	75%
90%	100%

Certificates of occupancy for the last 10% of the market units shall not be issued until certificates of occupancy have been issued for all of the required affordable units.

- A. In inclusionary developments, low- and moderate-income units shall be integrated with and interspersed among the market-rate units, but may be concentrated for financing or property management reasons at the discretion of the Board of jurisdiction, e.g., for rental affordable units satisfying the set-aside required for a development of market-rate condominium units.
- B. A schedule setting forth the phasing of the actual number of total units and affordable units, by income category and unit size, for each development shall be incorporated into the resolution of approval for any development-subject to the provisions of this Article.
- C. Low and moderate income units shall utilize the same type of heating source as market rate units within the affordable development.

Section 5- Specific Standards.

Affordable housing units provided under this article shall comply with the standards of this section.

- A. Occupancy Standards.

1. Occupancy standards for determining rents and sales prices: In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. A four-bedroom unit shall be affordable to a six-person household.
 2. Occupancy standards for determining rents in assisted living facilities: In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- B. Bedroom Distribution of Affordable Housing Units:
1. The bedroom distributions of affordable units in non age-restricted developments shall be structured, in conjunction with realistic market demands, such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
 2. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

C. Marketing of Affordable Housing Units. Marketing of affordable housing units provided under this article shall be undertaken subject to the following provisions:

(1) Marketing shall take place in accordance with the provisions of a marketing plan, as provided herein.

(a) The City of Hoboken shall adopt by resolution an Affirmative Marketing Plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented. Such Affirmative Marketing Plan shall be included as part of an eventual petition to COAH for substantive certification.

(b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 (Northeast: Bergen, Passaic, Hudson, and Sussex Counties, as may be amended) and covers the period of deed restriction.

(c) The Administrative Agent designated by the City of Hoboken shall assure the affirmative marketing of all affordable units developed pursuant to this Article, consistent with the Affirmative Marketing Plan for the municipality.

(d) In implementing the affirmative Marketing Plan, the Administrative Agent shall provide a list of housing counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

(e) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy of the units.

(f) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the City of Hoboken.

Section 6. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

(a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Article until the City of Hoboken elects to release the unit from such requirements. Prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq. and this Article, as may be amended and supplemented, for a minimum of 40 years.

- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Article, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) All conveyances of restricted ownership units pursuant to this Article shall be made by deeds and restrictive covenants substantially in the form prescribed in N.J.A.C. 5:80-26 Appendices. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of the County of Hudson. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (g) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 7. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements.

Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section 8. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

Section 9. Limitations on indebtedness secured by ownership unit; subordination

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

Section 10. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the City of Hoboken elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq. and this Article, as may be amended and supplemented, for minimum of 40 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language substantially in the form set forth in N.J.A.C. 5:80-26 Appendices. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Hudson. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

Section 11. Price Restrictions for Rental Units; Leases

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section 12. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - 1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 13. Administration: Municipal Housing Liaison and Administrative Agent

- (a) The position of Municipal Housing Liaison (MHL) for the City of Hoboken is established by this Article and shall be appointed through a Resolution adopted by the City Council. In the event of a petition for substantive certification, the City of Hoboken shall confirm the appointment of the MHL to COAH by means of a letter from the Mayor to COAH.
1. The MHL must be either a full-time or part-time employee of the City of Hoboken.
 2. In the event of a petition for substantive certification, the person appointed as the MHL must be reported to COAH for approval.
 3. The MHL must comply with all COAH requirements.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the City of Hoboken, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in the City of Hoboken's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required by COAH;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls and compliance monitoring.

- (b) The City of Hoboken shall designate by resolution of the City Council one or more Administrative Agents to administer newly constructed or substantially rehabilitated affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC (N.J.A.C. 5:80-26). All Administrative agents must be approved by COAH in the event of a petition for substantive certification.
- (c) An Operating Manual shall be prepared and provided by the Administrative Agent(s) to be adopted by resolution of the City Council. The Operating Manual(s) shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s). The Operating Manual shall be subject to review and approval by COAH in the event of a petition for substantive certification.
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing;
 2. Affirmative Marketing;
 2. Household Certification;
 3. Affordability Controls;
 4. Records retention;
 5. Resale and re-rental;
 6. Processing requests from unit owners; and
 7. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 14. Enforcement of Affordable Housing Regulations

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than \$2,500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Hoboken Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
 - (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow

shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 15. Inclusionary Standards and Requirements for Future Redevelopment Plans

All redevelopment plans providing for residential development, prepared and adopted or amended pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. after the effective date of this Article, shall include inclusionary affordable housing development standards and requirements identical to the standards and requirements of this Article.

Section 16. Effective Date

This ordinance shall take effect upon passage and publication as provided by law, but shall not be applicable to applications for residential development pending before the board of jurisdiction on the effective date of this ordinance.

Section 17 Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 18 Grandfather Provision

The Affordable Housing Ordinance added to the City Code 5-18-88 by Ord. No. P-6, §196-68 through -81, is hereby repealed prospectively, It shall remain in full force and effect for all applications for residential development pending before the Board of Jurisdiction on the effective date of this ordinance seeking a use variance to allow residential development in a zoning district or redevelopment plan where such uses are not currently permitted or seeking an increase in residential density or floor area ratio (FAR). This ordinance shall further remain applicable to all applications having received approval under its terms.

Section 19 Repealer

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

Dawn Zimmer, Mayor
City of Hoboken

Attest:

James J. Farina, Clerk
City of Hoboken

NOTICE OF INTRODUCTION

Notice is hereby given that the foregoing Ordinance was submitted in writing at a meeting of the Mayor and Council of the City of Hoboken, in the County of Hudson, New Jersey held on the 5 day of Sept, 2012. Introduced and read by title and passed on the first reading and that the said Mayor and City Council will further consider the same for the second reading and final passage thereof at a meeting to be held on the ___ day of _____, 2012 at ___ p.m. in the evening prevailing time at the City of Hoboken Municipal Building, Hoboken, New Jersey, at which time and place a public hearing will be held thereon by the Mayor and City Council and all persons and citizens in interest shall have an opportunity to be heard concerning same.

A copy of the Ordinance is available to any member of the general public at no cost, at the Municipal Building of the City of Hoboken, Office of the Clerk between the hours of 8:30 a.m. and 4:30 p.m.

James J. Farina, Clerk
City of Hoboken



**JAMES J. FARINA
HOBOKEN CITY CLERK**

Date: September 7, 2012

To: Chairman Furman
City of Hoboken Planning Board Chair

From: James J. Farina
Hoboken City Clerk

Re: An Ordinance that was introduced on September 5, 2012 City Council Meeting -
**AN ORDINANCE AMENDING AND SUPPLEMENTING THE CITY OF HOBOKEN DEVELOPMENT
APPLICATION CHECKLIST REGULATIONS IN ORDER TO REQUIRE THE SUBMISSION OF A
FISCAL STATEMENT TO BE SUBMITTED AS PART OF THE CHECKLIST IN REGARD TO ANY
APPLICATION FOR DEVELOPMENT WHEREIN AFFORDABLE HOUSING IS REQUIRED**

Chairman Furman et al,

As you are aware, there was an ordinance introduced at the last City Council meeting September 5, 2012 in regards to **AN ORDINANCE AMENDING AND SUPPLEMENTING THE CITY OF HOBOKEN DEVELOPMENT APPLICATION CHECKLIST REGULATIONS IN ORDER TO REQUIRE THE SUBMISSION OF A FISCAL STATEMENT TO BE SUBMITTED AS PART OF THE CHECKLIST IN REGARD TO ANY APPLICATION FOR DEVELOPMENT WHEREIN AFFORDABLE HOUSING IS REQUIRED**

Pursuant to the Local Land Use Law, **N.J.S.A. 40:55D-26**, on behalf of the Office of the City Clerk, this Ordinance is hereby being referred to you and the Planning Board for its review as required by statute. As per your report, the amendments were made and put on as an ordinance for first reading at the last City council meeting on Wed., September 5, 2012 & will be for second reading/public hearing and final vote for the next city council meeting which will be Wed., September 19, 2012.

Please do not hesitate to contact me if you have any questions with the foregoing.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Farina".

James J. Farina
Hoboken Municipal Clerk

Cc: Mayor Dawn Zimmer
Eileen Banyra, Planning Board Planner
Ronald Morgan, Esq.
Mellissa Longo, Corporation Counsel

Patricia Carcone, secretary Hoboken Planning Board
Brandy Forbes, Director of Community Development

1st reading 9-5-12

ORDINANCE NO. -DEVELOPMENT APPLICATION CHECKLISTS

Sponsored by David M. Mero

Seconded by David [Signature]

AN ORDINANCE AMENDING AND SUPPLEMENTING THE CITY OF HOBOKEN DEVELOPMENT APPLICATION CHECKLIST REGULATIONS IN ORDER TO REQUIRE THE SUBMISSION OF A FISCAL STATEMENT TO BE SUBMITTED AS PART OF THE CHECKLIST IN REGARD TO ANY APPLICATION FOR DEVELOPMENT WHEREIN AFFORDABLE HOUSING IS REQUIRED

WHEREAS, the City of Hoboken is a municipal corporation of the State of New Jersey; and

WHEREAS, municipalities are empowered to make, amend, repeal and enforce Ordinances pursuant to N.J.S.A. 40:48-1 et. seq.; and

WHEREAS, the New Jersey Legislature pursuant to N.J.S.A. 40:55D-1 et. seq., has expressed its legislative intent that a municipality examine its land use ordinance and regulations from time to time to insure the most appropriate use and development of its land in a manner which will promote the public health, safety, morals and general welfare; and

WHEREAS, the City of Hoboken seeks to amend its Development Application Checklists in order to require the submission of Fiscal Statements as part of the Checklist requirements when applications for development require an affordable housing component; and

WHEREAS, Chapter 34A entitled Development Application Checklists pertains to the submission requirements associated with Land Use Development Applications; and

WHEREAS, Section 34A-2 sets forth the Checklist for items which must be submitted before a development application can be deemed complete under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-1 et. seq.; and

WHEREAS, the City of Hoboken seeks to establish an effective and fair means of encouraging and insuring the production of affordable housing by private sector developers as recognized by the New Jersey Supreme Court under the Mount Laurel Doctrine and Fair Housing Act pursuant to N.J.S.A. 52:27B-301 et. seq.; and

WHEREAS, the City Council of the City of Hoboken is of the opinion that such an amendment to the Ordinance will advance the interests of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Hoboken, New Jersey, as follows:

Section 1.

The Preliminary Site Plan/Conditional Use Application Checklist shall be amended to add Item 27 which will require the submission of a Fiscal Statement in regard to all applications for development which require an affordable housing set-aside (including variances pursuant to N.J.S.A. 40:55D-70d). The Fiscal Statement shall demonstrate that the number of proposed market rate residential units are necessary in order to subsidize the proposed number of low and moderate income units. The statement shall demonstrate a rational nexus between any proposed density bonus or compensatory benefit and the number of affordable housing units provided on or off site.

Section 2. Severability

If any section, paragraph, subdivision, clause, or provision of this ordinance shall be judged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause, or provision and the remainder of this Ordinance shall be deemed valid and effective.

Section 3. Repealer

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

Section 4. Effective Date

This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

Dawn Zimmer, Mayor
City of Hoboken

Attest:

James J. Farina, Clerk
City of Hoboken

NOTICE OF INTRODUCTION

Notice is hereby given that the foregoing Ordinance was submitted in writing at a meeting of the Mayor and Council of the City of Hoboken, in the County of Hudson, New Jersey held on the 5 day of Sept., 2012. Introduced and read by title and passed on the first reading and that the said Mayor and City Council will further consider the same for the second reading and final passage thereof at a meeting to be held on the ___ day of _____, 2012 at ___ p.m. in the evening prevailing time at the City of Hoboken Municipal Building, Hoboken, New Jersey, at which time and place a public hearing will be held thereon by the Mayor and City Council and all persons and citizens in interest shall have an opportunity to be heard concerning same.

A copy of the Ordinance is available to any member of the general public at no cost, at the Municipal Building of the City of Hoboken, Office of the Clerk between the hours of 8:30 a.m. and 4:30 p.m.

James J. Farina, Clerk
City of Hoboken

1st reading 9-5-12 (3)

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 it 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

1st reading 9-5-12

7

Sponsored by: [Signature]
Seconded by: [Signature]

CITY OF HOBOKEN
ORDINANCE NO. _____

**AN ORDINANCE TO AMEND CHAPTER 56 ENTITLED "PARKING UTILITY" AND
CHAPTER 64A ENTITLED "TRANSPORTATION AND PARKING, DEPARTMENT" TO
UPDATE THE TITLE OF THE PARKING UTILITY**

WHEREAS, Chapter 56 is the enabling chapter for the Hoboken Parking Utility, and the Utility has the ability to act as both a parking and transportation utility, which the City intends to proceed towards on a going forward basis which requires the City Code to redefine and retitl the name of the Utility; and,

WHEREAS, Chapter 64A is the enabling chapter for the Department of Parking and Transportation needs to be amended, also, to ensure coordination with the new definition of tasks and titles.

NOW, THEREFORE, the City Council of the City of Hoboken does hereby Ordain as follows (additions noted in underline, ~~deletions noted in strikethrough~~):

SECTION ONE: AMENDMENTS TO HOBOKEN CODE CHAPTER 56

Chapter 56 TRANSPORTATION AND PARKING UTILITY

- § 56-1. Utility created.
- § 56-2. Rules of operation.
- § 56-3. Assumption of obligations and revenues of former Parking Authority.
- § 56-4. Function.
- § 56-5. Acquisition of property.
- § 56-6. Costs and expenses.
- § 56-7. Authorization to charge and collect monies.
- § 56-8. Employees.
- § 56-9. Operation of Transportation and a Parking Utility.

§ 56-1. Utility created.

From and after the effective date of the dissolution of the Authority,¹ the parking system and properties comprising said parking system obtained by the city through the dissolution of the Authority, and the services rendered through the employment of said properties to certain residents, commercial enterprises and visitors to the city, shall be known and designated as the City of Hoboken Transportation and Parking Utility.

§ 56-2. Rules of operation.

The City of Hoboken Transportation and Parking Utility shall be operated in accordance with statutes applicable thereto under the Local Budget Law, N.J.S.A. 40A:4-1 et seq. (40A:4-33 to 35 and 62) and the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (40A:2-45 to 48) and the regulations promulgated by the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey

§ 56-3. Assumption of obligations and revenues of the former Parking Authority.

The City of Hoboken Transportation and Parking Utility shall assume all the obligations and receive all of the revenues arising from all contracts and service charges to provide parking services heretofore entered into or imposed by the Authority.

§ 56-4. Function.

It shall be the function of the City of Hoboken ~~Department of Transportation and Parking Utility~~ to construct, maintain, improve and operate the parking system in the city, which parking system shall include, but shall not be limited to, existing or to-be constructed or acquired parking lots, parking structures, parking meters, parking signage, parking signals, traffic signals, striping and signage, including street and curb markings and street signs related to parking and transportation or other functionally related real or personal property; to construct, reconstruct, alter, provide, renew and maintain buildings or other structures and equipment and provide for the care, custody and control thereof in the operation of the City of Hoboken Department of Transportation and Parking Utility; to construct, reconstruct, alter, provide, renew and maintain streets, roadways, sidewalks, and points of ingress and egress to and from City streets, roadways and sidewalks; to acquire, install, maintain and operate traffic signals, striping and signage, including street and curb markings and street signs related to transportation on City streets and roadways; to acquire equipment for the operation and maintenance of the parking system and for the construction, reconstruction, maintenance, care, custody and control of City streets, roadways, sidewalks, and points of ingress and egress to and from City streets, roadways and sidewalks; to construct, reconstruct, alter, provide, renew and maintain buildings or other structures and equipment and provide for the care, custody and control thereof in the operation of the City of Hoboken Transportation and Parking Utility; to raise money necessary to pay for the lands, rights or interest therein acquired for the parking system and those streets, roadways, sidewalks and points of ingress and egress within the boundaries of the City or, as necessary, beyond such boundaries as provided by applicable law;

to raise money necessary to pay for the costs and expenses necessary for the construction, reconstruction, alteration, renewal and maintenance of streets, roadways, sidewalks, and points of ingress and egress to and from City, including the costs of the installation, maintenance and operation of traffic signals, striping and signage related to transportation on City streets and roadways; to acquire equipment for the operation and maintenance of the parking system and for the construction, reconstruction, maintenance, care, custody and control of City streets, roadways, sidewalks, and points of ingress and egress to and from City streets and for improving and equipping the same; to pay or make provision for the payment of the reasonable expenses in each fiscal year of the City of Hoboken Department of Transportation and Parking Utility; to pay to those persons entitled thereto the interest and principal on notes and bonds of the City of Hoboken Department of Transportation and Parking Utility, and to deposit and accumulate reserve funds or reserves.

§ 56-5. Acquisition of property.

The City of Hoboken Transportation and Parking Utility may, from time to time, acquire such real property as may be authorized by the City Council by duly adopted ordinances according to the laws of the State of New Jersey.

§ 56-6. Costs and expenses.

All costs and expenses, direct or indirect, attributable or allocable to the operation of the City of Hoboken Transportation and Parking Utility, shall be charged to it, including debt service on obligations issued or to be issued on account of capital improvements heretofore or hereafter made to the parking system or streets, roads, sidewalks and points of ingress and egress within the City as part of the City's pedestrian and vehicular transportation network.

§ 56-7. Authority to charge and collect monies.

The City of Hoboken Transportation and Parking Utility shall have authority to charge and collect monies for the use of the City of Hoboken Transportation and Parking Utility's facilities whether they be user charges, rental fees, or lease payments, for the operation of the City of Hoboken Transportation and Parking Utility as a Self-liquidating Enterprise as provided in N.J.S.A. 40A:2-45.

§ 56-8. Employees.

The city shall appoint and employ all necessary employees for the City of Hoboken Department of Transportation and Parking Utility. Salaries of the employees will be in accordance with classification and salary ordinances duly adopted by the City Council.

§ 56-9. Operation of Transportation and Parking utility.

The City of Hoboken Transportation and Parking Utility shall be under the administration, operation and control of the Director of the Department of Transportation and Parking as set forth in Chapter 64A of the Code of the City of Hoboken.

SECTION TWO: AMENDMENTS TO HOBOKEN CODE CHAPTER 64A

Chapter 64A TRANSPORTATION AND PARKING, DEPARTMENT OF

§ 64A-1. Establishment.

§ 64A-2. Director.

§ 64A-3. Director's duties and authority.

§ 64A-4. Employees.

§ 64A-5. Division of Safe Streets.

§ 64A-6. Division of Mobility and Planning.

§ 64A-7. Division of Transportation and-Parking Utility.

§ 64A-1. Establishment.

There is hereby established in the government of the City of Hoboken a department that shall be known as the Department of Transportation and Parking.

§ 64A-2. Director.

There is hereby created the office of Director of the Department of Transportation and Parking. The Director shall be appointed by the Mayor with the advice and consent of the Council and shall serve during the term of the Mayor appointing him and until the appointment and qualification of his/her successor and shall be subject to removal as provided by law. Vacancies in the office of Director shall be filled in the same manner as the original appointment but for the unexpired term only. The compensation of the Director shall be established by the Council of the City of Hoboken pursuant to N.J.S.A. 40:69A-43a and N.J.S.A. 40:69-180.

§ 64A-3. Director's duties and authority.

- A. The Director shall be head of the City of Hoboken Department of Transportation and Parking and, in addition to the functions, powers and duties that are hereby or may hereafter be conferred and imposed upon him/her by law and the ordinances of the City, shall:

- (1) Exercise supervision and have general responsibility for all the operations of said Department and of the personnel employed herein.
 - (2) Supervise the organization of the Department and changes in the organization thereof, and, to the extent to which the organization of the Department is not prescribed by law, may organize the Department into such divisions and bureaus and make such assignment of powers and duties among them and, from time to time, change such organization or assignments as he/she may deem advisable, except that the boards, offices and other governmental agencies and positions hereby allocated and assigned to said Department shall be maintained.
 - (3) Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the Department and the officers and employees thereof.
 - (4) Make periodic reports with such recommendations as he/she deems appropriate to the Mayor concerning the affairs of the Department.
- B. In addition and without limitation to the general duties set forth herein, the Director of the Department of Transportation and Parking shall have the following responsibilities:
- (1) To direct and administer the operation and maintenance of the City of Hoboken Transportation and existing Parking Utility created under Chapter 56 of the Code of the City of Hoboken, the and existing parking facilities, and the streets, roads, sidewalks and points of ingress and egress within the City as part of the City's pedestrian and vehicular transportation network, all as more particularly described in Chapter 56-4 of the Code of the City of Hoboken, by directing and supervising administrative, operational and maintenance staff, ensuring all aspects of the City of Hoboken Transportation and Parking Utility are operating effectively and efficiently to the benefit of the city.
 - (2) To make recommendations to the Mayor and the City Council with respect to increasing the availability of parking, ameliorating traffic, and in general making transportation safer and more efficient.
 - (3) To make recommendations to the Mayor and the City Council with respect to efficiency, operation, maintenance, construction, reconstruction and safety of City streets, roadways, sidewalks, points of ingress and egress, as well as signage and signalization related to the foregoing.
 - (43) To create an overall transportation strategy with an integrated approach to parking, pedestrian and vehicular traffic issues.
 - (54) To coordinate with the Director of Community Development to create a strategy for ensuring that parking, pedestrian and vehicular traffic issues, including street, sidewalk and roadway improvements, ~~issues~~ are fully addressed in an integrated and comprehensive manner in all development and redevelopment plans reviewed by the City.
 - (65) To coordinate with the Director of Revenue and Finance in assisting organizing, developing, directing and performing the work involved in the management of the financial affairs of the Department and the Transportation and Parking Utility.
 - (76) To coordinate with the Director of Revenue and Finance in supervising and performing professional functions involved in the analysis and audits of the

accounts, vouchers and other records and prepare statements concerning the financial condition of the Department and the Transportation and Parking Utility.

- (87) To coordinate with the Director of Revenue and Finance to develop, coordinate and execute financial policies, procedures and plans involving the Department and the Transportation and Parking Utility.

§ 64A-4. Employees.

The City shall appoint and employ all necessary employees for the Department of Transportation and Parking in accordance with applicable law. Salaries of the employees will be in accordance with classification and salary ordinances duly adopted by the City Council.

§ 64A-5. Division of Safe Streets.

There is hereby established the Division of Safe Streets within the Department of Transportation and Parking, which shall be responsible for maintenance, improvement, reconstruction and safety of the public rights-of-way including traffic and parking control, streets, sidewalks and concomitant transportation and parking facilities maintenance, and other operations associated with the management of streets, transportation and parking systems. This Division shall be supervised by one (1) Division Head. This Division shall include the following Offices which shall be considered Subdivisions of Safe Streets and which shall be overseen by the Division's Division Head:

A. Office of Street Maintenance

There is hereby established the Office of Street Maintenance within the Division of Safe Streets, which shall be responsible for traffic and parking control and maintenance, improvement, reconstruction and safety ~~maintenance of streets, roads, sidewalks and rights-of-way in the City.~~ This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council. The Division of Signs and Signals, as previously established, shall hereinafter be incorporated into the Office of Street Maintenance. This Office shall undertake all obligations and responsibilities previously held under the Division of Signs and Signals, and any reference to the Division of Signs and Signals within the Hoboken City Code shall hereinafter be amended to the Office of Street Maintenance.

B. Office of Facilities Maintenance

There is hereby established the Office of Facilities Maintenance within the Division of ~~Safe~~ Sustainable Streets, which shall be responsible for concomitant transportation and parking facilities maintenance, and other operations associated with the management of transportation and parking systems. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

§ 64A-6. Division of Mobility and Planning.

There is hereby established the Division of Mobility and Planning within the Department of Transportation and Parking, which shall be responsible for management of various streets, roads, transportation systems and programs, as well as the exploration, development and implementation of programs and initiatives that lead to improved street, sidewalk and road conditions, mobility and reduced congestion and parking demand. This Division shall be supervised by one (1) Division Head. This Division shall include the following Offices which shall be considered Subdivisions of Mobility and Planning and which shall be overseen by the Division's Division Head:

A. Office of Transport Planning

There is hereby established the Office of Transport Planning within the Division of Mobility and Planning, which shall be responsible for the exploration, development and implementation of programs and initiatives that lead to improved street, sidewalk and road conditions, mobility and reduced congestion and parking demand. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

B. Office of the Hop

There is hereby established the Office of the Hop within the Division of Mobility and Planning, which shall be responsible for management of the community shuttle bus program known as "The Hop". This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

C. Office of Taxi/Limousine/Shuttle Licensing

The Division of Taxi and Limousine, as previously established, shall hereinafter be referred to as the Office of Taxi/Limousine/Shuttle Licensing. This Office shall undertake all obligations and responsibilities previously held under the Division of Taxi and Limousine, and shall be additionally responsible for licensing and management of these systems including private shuttle buses operating on Hoboken streets. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

§ 64A-7. Division of ~~the Hoboken~~ Transportation and Parking Utility.

There is hereby established the Division of ~~the Hoboken~~ Transportation and Parking Utility within the Department of Transportation and Parking, which shall be subject to the restrictions found in Chapter 56 of the City Code of the City of Hoboken, and which shall be responsible for the management of the supply and demand of the City's parking resources, equipment, services and facilities. This Division shall be supervised by one (1) Division Head. This Division shall include the following Offices which shall be considered Subdivisions of the Division of ~~Hoboken~~ Transportation and Parking Utility, and which shall be overseen by the Division's Division Head:

A. Office of Enforcement

There is hereby established the Office of Enforcement within the Division of ~~the Hoboken~~ Transportation and Parking Utility, which shall be responsible for enforcement of parking policies and procedures, as well as ancillary operations that have an impact on the safe and equitable use of limited parking resource. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

B. Office of Customer Service

There is hereby established the Office of Customer Service within the Division of ~~the Hoboken~~ Transportation and Parking Utility, which shall be responsible for serving as the conduit for provision of services associated with parking and other requisite city services and products, including facilitation of the approvals process for various permit applications established by the City Code as a support mechanism for other municipal departments, divisions and offices. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

C. Office of Garage Maintenance

There is hereby established the Office of Garage Maintenance within the Division of ~~the Hoboken~~ Transportation and Parking Utility, which shall be responsible for oversight and management of the operations associated with municipal parking facilities. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

D. Office of Accounting

There is hereby established the Office of Accounting within the Division of ~~the Hoboken~~ Transportation and Parking Utility, which shall be responsible for conducting accounting operations and services needed to manage the revenues, expenditures, procurement, and personnel activities of the Department of Transportation and Parking. This Office may include clerical, operational, supervisory and managerial positions as deemed necessary and appropriate within the budgetary limits established by Council.

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 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 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 remaining 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 immediately upon passage and publication as provided by law.

SECTION SIX: 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: 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



**JAMES J. FARINA
HOBOKEN CITY CLERK**

Date: September 7, 2012

To: Chairman Furman
City of Hoboken Planning Board Chair

From: James J. Farina
Hoboken City Clerk

Re: An Ordinance that was introduced on September 5, 2012 City Council Meeting -
**AN ORDINANCE ADOPTING A NEW HISTORIC PRESERVATION FEE SCHEDULE AND A NEW
HISTORIC PRESERVATION APPLICATION AND CHECKLIST AS REFERENCED IN CHAPTER 42
AS APPENDIXES "A" AND "B" RESPECTIVELY**

Chairman Furman et al,

As you are aware, there was an ordinance introduced at the last City Council meeting
September 5, 2012 in regards to **AN ORDINANCE ADOPTING A NEW HISTORIC PRESERVATION
FEE SCHEDULE AND A NEW HISTORIC PRESERVATION APPLICATION AND CHECKLIST AS
REFERENCED IN CHAPTER 42 AS APPENDIXES "A" AND "B" RESPECTIVELY**

Pursuant to the Local Land Use Law, **N.J.S.A. 40:55D-26**, on behalf of the Office of the City Clerk,
this Ordinance is hereby being referred to you and the Planning Board for its review as required by
statute. As per your report, the amendments were made and put on as an ordinance for first reading at
the last City council meeting on Wed., September 5, 2012 & will be for second reading/public hearing
and final vote for the next city council meeting which will be Wed., September 19, 2012.

Please do not hesitate to contact me if you have any questions with the foregoing.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Farina", is written over the typed name.

James J. Farina
Hoboken Municipal Clerk

Cc: Mayor Dawn Zimmer
Eileen Banyra, Planning Board Planner
Ronald Morgan, Esq.
Mellissa Longo, Corporation Counsel
Patricia Carcone, secretary Hoboken Planning Board
Brandy Forbes, Director of Community Development

1st reading 9-5-12

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Sponsored by: David James

Seconded by: David S. Brown

City of Hoboken
Ordinance No.: _____

AN ORDINANCE ADOPTING A NEW HISTORIC PRESERVATION FEE SCHEDULE AND A NEW HISTORIC PRESERVATION APPLICATION AND CHECKLIST AS REFERENCED IN CHAPTER 42 AS APPENDIXES "A" AND "B" RESPECTIVELY

WHEREAS, the new Historic Preservation Ordinance, Chapter 42 of the Code of the City of Hoboken was duly adopted by the City Council on August 15, 2012; and

WHEREAS, Chapter 42 references the Fee Schedule as Appendix "A" attached thereto; and

WHEREAS, Chapter 42 references the Application and Checklist as Appendix "B" attached thereto; and

WHEREAS, the Historic Preservation Commission wishes to submit for adoption by the City Council a new Fee Schedule and a new Application and Checklist which reflects the provisions of the new Historic Preservation Chapter.

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

SECTION ONE: ADOPTION

Chapter 42, entitled "Historic Preservation" is hereby amended to include the following two (2) appendixes (documents attached hereto):

**Appendix A
Fee Schedule**

**Appendix B
Application & Checklist of Attachments**

SECTION TWO: 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 THREE: 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 not withstanding the invalidity of any part.

SECTION EIGHT: EFFECTIVE DATE

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

SECTION NINE: 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 cause this Ordinance to be 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: September 5, 2012

Approved:

Approved as to Form:

Quentin Wiest, Business Administrator

Mellissa Longo, Interim Corporation Counsel

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

RECORD OF COUNCIL VOTE ON 2 ND READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla				
Councilwoman Castellano				
Councilwoman Giattino				
Councilwoman Marsh				
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 _____, 2012.

James J. Farina, City Clerk

Approved by the Mayor of the City of Hoboken on the _____ day of _____, 2012.

Dawn Zimmer, Mayor

APPENDIX

A

Historic Preservation Commission City of Hoboken



Fee Schedule

Certificate of No Effect (CNE):	\$25
Sign / Awning Application: (when not filed concurrently with other work)	\$100
Façade and/or Store-front Application: (Any façade or store-front alteration; including but not limited to painting or resurfacing, lighting, windows, doors, trim, et cetera. A sign application may be made concurrently with an application for façade alterations at no additional fee.)	\$150
Sidewalk repair or replacement: (when not filed concurrently with other work)	\$50 for first 25 linear feet, + \$25 for each additional 25 linear feet or part thereof.
Construction Applications	
New construction on vacant land:	\$500
Residential renovation or alteration with 1-4 dwelling units:	\$100
Residential renovation or alteration with 5 or more dwelling units:	\$25 per dwelling, to a maximum of \$1,000
Non-Residential renovation or alterations with Principal Building	\$100 per 1,000 GSF or part thereof
Non-Residential renovation or alteration without Principal Building	\$100 per 1,000 SF of lot area
Note: Mixed-use projects will be priced based on number of dwelling units + square footage of non-residential area.	
Demolition Application: (when not filed concurrently with other work)	\$500
Special meeting when requested by applicant:	\$250
Extension of a Certificate of Appropriateness (COA):	\$25

APPENDIX

B



CITY OF HOBOKEN HISTORIC PRESERVATION COMMISSION

94 Washington Street, Hoboken, New Jersey 07030

APPLICATION for CERTIFICATE OF APPROPRIATENESS

For office use only:

Date/Time Received:

Application No.:

Property Data (required):

Property Address:

Block:

Lot(s):

Zone District:

Description:

Applicant Information (required):

Name:

Address:

Phone:

E-mail:

I am the applicant proposing the work referenced herein. I do hereby certify that the information herein is correct and complete to the best of my knowledge.

Applicant Signature:

Date:

Property Owner Information (required):

Name:

Address:

Phone:

E-mail:

I am the owner of the property for which this application is being made. I do hereby certify that the information herein is correct and complete to the best of my knowledge.

Owner Signature:

Date:

Relationship of applicant to property:

Owner

Tenant

Contractor/Builder

Architect

Other: _____

As the Applicant, I understand that the Historic Preservation Commission or the Administrative Officer for the Commission may require additional information for my application to be considered "complete" AND that an applicant, owner or a representative must appear before the Commission at a public hearing, or my application will not be heard.

Work Proposed (check all that apply):

- Exterior: Cleaning Repointing Facade Repair Repair / Replace Architectural Elements
 Painting Window Repair / Replacement Door Repair / Replacement Signage
 Repair / Replace Sidewalk Repair / Replace Fence or Railings Repair / Replace Lighting
 Rooftop Appurtenance Fire Escape / Deck Alter Front or Side Yard / Areaway / Stoop
- Construction: New Construction or Addition Repair / Restoration Demolition

PROJECT SCOPE AND DESCRIPTION (required):

Write a detailed description of all proposed work (attach additional sheets if needed).

CHECKLIST OF ATTACHMENTS

The Historic Preservation Commission office has examples of all types of applications available for review by prospective applicants. Before submission of an application, the applicant is encouraged review these examples and discuss any questions regarding submission requirements with the Commission Secretary

REQUIRED FOR ALL APPLICATIONS:

- 3 COPIES OF APPLICATION (pages 1 and 2; all required sections completed);
- 1 ORIGINAL + 2 COPIES of a current survey (not required for sign, awning or lighting applications);
- 13 COPY SETS of all attachments; architectural drawings, schematics, samples, color swatches, et cetera;
- PHOTOGRAPHS showing existing condition of the entire building facade and close-up photos of area of work;
- 1 ELECTRONIC COPY of all attachments, either by E-mail or on CD; and
- APPLICATION FEE; check payable to the City of Hoboken (fee schedule available in the HPC office and on the city web site)

The following checklists represent typical attachments required for each application type IN ADDITION TO those noted above. If a waiver is requested for any required attachment, please supply detailed reasons for the request. Attach additional sheets if necessary.

SIGNAGE & AWNING APPLICATIONS (in addition to items required for all applications as noted above):

- Photo montage with sign and/or awning drawn or photo-manipulated in the exact location proposed;
- Proposed sign materials noted (i.e. wood, acrylic, PVC) or awning fabric sample;
- Measured drawings showing *height and width* dimensions of the storefront or first floor facade;
- Measured drawings showing *height and width* dimensions of proposed sign or awning;
- Section drawing showing *side view and projection* of proposed sign or awning from the building facade;
- Measured drawings showing the *height and width* dimensions of all copy and/or printed area (required for awnings); and
- Method of installation of sign or awning onto the facade. Note facade material.

LIGHTING APPLICATIONS (in addition to items required for all applications as noted above):

- Detail photographs of area of attachment;
- Manufacturer's information / cut sheets of fixture to be used and maximum luminous area in footcandles;
- Photo montage of proposed lighting noting where it will attach to the building; and
- Drawing indicating power supply, routing and installation.

FACADE OR STOREFRONT ALTERATIONS / RESTORATION APPLICATIONS (in addition to above items):

- Architectural drawings of a scale not less than 1/4 inch showing existing condition and proposed alterations;
- Elevation drawings of the full building facade and detail drawings of the proposed area of work;
- Detailed materials list noted on the drawings with call-outs marking location of use for each;
- Color and/or finish specification for all materials exposed to public view;
- Photo montage of the existing building facade with proposed alterations superimposed;
- Photograph of the street scape showing adjacent buildings along the same block frontage; and
- Historic photographs of the building, when available

1st reading 9-5-12

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Sponsor: _____

Second: _____

**CITY OF HOBOKEN
ORDINANCE No. _____**

**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 ½ 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 ST READING			
Council Person	Aye	Nay	N.V.
Castellano	/		
Cunningham	/		
Giattino	/		
Marsh	/		
Mason			/
Mello			/
Occhipinti	/		
Russo	/		
Pres. Bhalla	/		

RECORD OF COUNCIL VOTE ON 2 ND 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:

1st reading
9-5-12

10

Sponsored by: [Signature]
Seconded by: [Signature]

CITY OF HOBOKEN
ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 95 ENTITLED "DWELLINGS, MINIMUM STANDARDS" TO ADD ADDITIONAL AUTHORIZED ENFORCEMENT AGENTS

WHEREAS, Chapter 95 is the regulatory chapter for the public health and safety standards for residential dwellings; and,

WHEREAS, the City seeks to add addition enforcement agents for enforcement of the regulations within Chapter 95.

NOW, THEREFORE, the City Council of the City of Hoboken does hereby Ordain as follows (additions noted in underline, deletions noted in strikethrough):

SECTION ONE: AMENDMENTS TO HOBOKEN CODE CHAPTER 95

§ 95-1. Definitions; word usage.

A. Terms defined. As used in this chapter, the following terms shall have the meanings indicated:

AUTHORIZED AGENT

A Shall include any Sanitary Inspector First Grade or any Public Health Nuisance Investigator of the Hoboken Board of Health or any Chief Housing Inspector or Housing Inspector of the City of Hoboken.

BASEMENT

A portion of the building located partly underground but having less than 3/4 of its clear floor to ceiling height below the average grade of the adjoining ground.

CELLAR

A portion of a building located partly or wholly underground and having 3/4 or more of its clear floor to ceiling height below the average grade of the adjoining ground.

DWELLING

Any building which is wholly or partly used or intended to be used for living or sleeping by human occupants, provided that temporary housing as hereinafter defined shall not be regarded as a "dwelling." The term shall include one-family, two-family, three-family, and multi-family dwellings.

DWELLING UNIT

Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

EXTERMINATION

The control and elimination of insects or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating or trapping; or by any other recognized and legal pest elimination methods approved by the Health Officer.

GARBAGE

The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

HABITABLE ROOM

A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, recreation rooms in cellar or basement space, foyers or communicating corridors, closets and storage spaces.

HEALTH OFFICER

The legally designated Health Officer of the City of Hoboken or his Authorized representative Agent, as the term is defined herein.

INFESTATION

The presence within or around a dwelling of any insects, rodents or other vermin.

MULTIPLE DWELLING

Any dwelling containing more than two dwelling units.

OCCUPANT

Any person over one year of age living, sleeping, cooking or eating in or having actual possession of a dwelling unit or rooming unit.

OPERATOR

Any person who has charge, care or control of a building or part thereof in which dwelling units or rooming units are let.

ORDER OR RULE

A directive of the Health Officer.

ORDINARY MINIMUM WINTER CONDITIONS

The temperature, 15° F. above the lowest recorded temperature for the previous ten-year period.

OWNER

Any person who, alone or jointly or severally with others:

(1) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or

(2) Shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto to the same extent as if he were the owner.

PERSON

Includes any individual, firm, corporation, association, partnership or management agency and their agents and employees.

PLUMBING

Includes all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

ROOMING HOUSE

Any dwelling or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband or wife, son or daughter, mother or father, sister or brother of the owner or operator.

ROOMING UNIT

Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

RUBBISH

Combustible and noncombustible waste materials, except garbage, and the term shall include the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

SUPPLIED

Paid for, furnished or provided by or under the control of the owner or operator.

TEMPORARY HOUSING

Any tent, trailer or other structure used for human shelter, which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system on the same premises for more than 30 consecutive days.

- B.** Use of terms. Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," or "premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

§ 95-2. Inspections.

The Health Officer, or his Authorized Agent, is hereby authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming units and premises located within the City of Hoboken, in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections, the Health Officer, or his Authorized Agent, is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit and rooming unit or the person in charge thereof shall give the Health Officer free access to such dwelling, dwelling unit or rooming unit and its premises at all reasonable times for the purpose of such inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof or his agent or employee access to any part of such dwelling or dwelling unit or its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this chapter.

§ 95-3. Enforcement; service of notices; hearings.

- A.** Whenever the Health Officer, or his Authorized Agent determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, he shall give notice of such alleged violation to the person or persons responsible therefor, as hereinafter provided. Such notice shall:

(1) Be put in writing.

(2) Include a statement of the reasons why it is being issued.

(3) Allow a reasonable time for the performance of any act it requires.

(4) Be served upon the owner or his agent or the occupant, as the case may require, provided that such notice shall be deemed to be properly served upon such owner or agent or upon such occupant if a copy thereof is served upon him personally or if a copy thereof is sent by regular mail to his last known address or if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice or if he is served with such notice by any other method authorized or required under the laws of this state.

B. Any person effected by any notice which has been issued in connection with the enforcement of any provision of this chapter or of any rule or regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the Health Officer, provided that such person shall file in the office of the Health Officer a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within 10 days after the day that notice was served. Upon receipt of such petition, the Health Officer shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than 10 days after the day on which the petition was filed, provided that, upon application of the petitioner, the Health Officer may postpone the date of hearing for a reasonable time beyond such ten-day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement.

C. After such hearing, the Health Officer shall sustain, modify or withdraw the notice, order or rule depending upon his findings as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with.

D. The proceedings at such hearing, including the findings and decision of the Health Officer, shall be summarized, reduced to writing and entered as a matter of public record in the office of the Health Officer. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decision of the Health Officer may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this state.

E. Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but, upon petition to the Health Officer, shall be afforded a hearing as soon as possible. After such hearing, depending upon his findings as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with, the Health Officer shall continue such order in effect, or modify it, or revoke it.

§ 95-4. Basic equipment and facilities.

No person shall occupy as owner-occupant or let to another for occupation any dwelling or dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

- A. Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to a water and sewer system approved by the Health Officer.
- B. All dwelling units are required to have a private bathroom, with a separate room contiguous to and capable of being closed off from the rest of the dwelling unit, supplied with adequate heat, light, hot and cold running water and properly connected to a water and sewer system equipped with flush toilet, lavatory basin and bathtub or shower, all in good working condition.
- C. Every kitchen sink, lavatory basin and bathtub or shower required under the provisions of this chapter and this subsection shall be properly connected with both hot and cold waterlines.
- D. Every dwelling unit shall be supplied with adequate rubbish storage facilities, type and location of which are approved by the Health Officer or as per law.
- E. Every dwelling unit shall have adequate garbage disposal facilities or garbage containers, type and location of which are approved by the Health Officer or as per law.
- F. Every dwelling unit shall have supplied water-heating facilities which are properly installed, are maintained in safe and good working condition, are properly connected with the hot waterlines required under the provisions of this chapter and are capable of heating water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120° F.
- G. Every dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of this state and this City.

§ 95-5. Light, ventilation and heating.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- A. Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be 10% of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least 15% of the total floor area of such room.
- B. Where an interior room without its own source of natural light and ventilation is adjacent to an outside room having both, such room will be considered acceptable as a habitable room on the basis of the calculate combined floor area of the two rooms and provided that the separating wall between them

has an opening either six feet wide or is 70% as wide as the inside room or that said separating wall be four feet above the floor for the entire width of the room, except space required for a doorway.

- C. Every habitable room shall have at least one window or skylight which can easily be opened or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to at least 45% of the minimum window area size or minimum skylight-type window size, as required by this chapter, except where there is supplied some other device affording adequate ventilation and approved by the Health Officer.
 - D. Every bathroom and water closet compartment shall have a window comprising 5% of the total floor space of the bathroom and water closet compartment, except that no window shall be required in adequately ventilated bathrooms and water closet compartments equipped with a ventilation system which is kept in continuous operation.
 - E. Where there is electric service available from power lines which are not more than 300 feet away from a dwelling, every habitable room of such dwelling shall contain at least two separate floor- or wall-type electric convenience outlets or one such convenience outlet and one supplied ceiling-type electric light fixture; and every water closet compartment, bathroom, laundry room, furnace room and public hall shall contain at least one supplied ceiling- or wall-type electric light fixture. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition and shall be connected to the source of electric power in a safe manner.
 - F. Every dwelling unit shall have heating facilities which are properly installed, maintained in good and safe working condition and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments to a temperature of at least 70° F., at a distance of three feet above floor level, under ordinary minimum winter conditions. Nonvented portable oil-heating stoves are banned herewith.
 - G. Every public hall and stairway in every multiple dwelling containing three or more dwelling units shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than two dwelling units may be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed instead of full-time lighting.
 - H. Whenever the ambient air temperature of any habitable dwelling unit within the City of Hoboken falls below 70° F., between the dates of October 1 and May 1, for a period of six hours or repairs to a heating unit or heating system is expected to take longer than six hours to repair, the owner, owners, property manager, management agency or person in charge of said dwelling unit shall immediately provide and furnish space heaters, at no expense to the tenants, to all habitable dwelling units, in such number that the ambient air temperature of all habitable rooms in said dwelling units is at least 70° F. The number of space heaters required for any dwelling units or particular dwelling unit may be reduced at the sole discretion of the Health Officer, upon request of the owner or his agent.
- (1) Space heaters shall be used strictly as a temporary means of providing heat until repairs can be made to the heating unit or heating system. Repairs to all heating units and heating systems, between the dates of October 1 and May 1, shall begin immediately upon knowledge or notification of any malfunction or disrepair with said heating unit or heating system.

(2) Each day's failure to provide the requisite number of space heaters to individual dwelling units shall constitute a separate and distinct offense.

(3) Each dwelling unit that does not receive space heaters, as required by this chapter, shall constitute a separate and distinct offense.

I. Every basement or cellar window used or intended to be used for ventilation and every other opening to a basement which might provide an entry for rodents shall be supplied with a screen or such other device as will effectively prevent their entrance.

§ 95-6. Safe and sanitary maintenance.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit for the purpose of living therein which does not comply with the following requirements:

- A. Every foundation, floor, wall, ceiling and roof shall be reasonably weathertight, watertight and rodentproof and shall be kept in good repair.
- B. Every window, exterior floor and basement hatchway shall be reasonably weathertight, watertight and rodentproof and shall be kept in sound working condition and good repair.
- C. Every inside and outside stair, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair.
- D. Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions.
- E. Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
- F. Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.
- G. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this chapter to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process or during temporary emergencies when discontinuance of service is approved by the Health Officer.
- H. Maintenance.
 - (1) Every foundation, floor, wall, ceiling, door, window, roof or other part of a building covered by this chapter shall be kept in good repair and capable of the use intended, and all interior and exterior part or parts subject to corrosion or deterioration shall be kept painted.

(2) Definitions. For the purpose of this section, the following terms shall have the meanings indicated:

IN GOOD REPAIR

Said building is safe for use and proofed against the elements and free from vermin.

KEPT PAINTED

All interior and exterior part or parts subject to corrosion or deterioration, when corroded or deteriorated, shall be painted.

§ 95-7. Responsibilities of owners and occupants.

- A. Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.
- B. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.
- C. Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish in a clean and sanitary manner by placing it in the rubbish containers required by § 95-4D of this chapter.
- D. Every occupant of a dwelling or dwelling unit shall dispose of all his garbage and any other organic waste, which might provide food for rodents, in a clean and sanitary manner, by placing it in the garbage disposal facilities or garbage storing containers required by § 95-4E of this chapter.
- E. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination, whenever his dwelling unit shall be responsible for such extermination or whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insectproof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.
- F. Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof, except repairs.

§ 95-8. Rooming houses.

No person shall operate a rooming house or shall occupy or let to another for occupancy any rooming unit in any rooming house, except in compliance with the provisions of every section of this chapter, except the provisions of §§ 95-4 and 95-7 of this chapter.

- A. No person shall operate a rooming house unless he holds a valid rooming house permit issued by the Health Officer and such other officer or department of the City of Hoboken, under the provisions of any ordinance now in force or hereafter adopted relating to rooming houses, in the name of the operator and for the specific dwelling or dwelling unit. The operator shall apply to the Health Officer

for such permit, which shall be issued by the Health Officer upon the compliance by the operator with the applicable provisions of this chapter and of any rules and regulations adopted pursuant thereto. This permit shall be displayed in a conspicuous place within the rooming house at all times. No such permit shall be transferable. Every person holding such a permit shall give notice, in writing, to the Health Officer 24 hours after having sold, transferred, given away or otherwise disposed of ownership of, interest in or control of any rooming house. Such notice shall include the name and address of persons succeeding to the ownership or control of such rooming house. Every rooming house permit shall expire on December 31 of each year, unless sooner suspended or revoked as hereinafter provided.

- B.** Any person whose application for a permit to operate a rooming house has been denied may request and shall be granted a hearing on the matter before the Health Officer under the procedure provided by this chapter.
- C.** Whenever, upon inspection of any rooming house, the Health Officer finds that conditions or practices exist which are in violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, the Health Officer shall give notice, in writing, to the operator of such rooming house that unless such conditions or practices are corrected within a reasonable period, to be determined by the Health Officer, the operator's rooming house permit will be suspended. At the end of such period, the Health Officer shall reinspect such rooming house, and, if he finds that such conditions or practices have not been corrected, he shall give notice, in writing, to the operator that the latter's permit has been suspended. Upon receipt of such notice of suspension, such operator shall immediately cease operation of such rooming house, and no person shall occupy, for sleeping or living purposes, any rooming unit therein.
- D.** Any person whose permit to operate a rooming house has been suspended or who has received notice from the Health Officer that his permit is to be suspended, unless existing conditions or practices at this rooming house are corrected, may request and shall be granted a hearing on the matter before the Health Officer, under the procedure provided by this chapter, provided that no petition for such hearing is filed within 10 days following the date on which such permit shall be deemed to have been automatically revoked.
- E.** At least one flush water closet, lavatory basin and bathtub or shower, properly connected to water and sewer systems and in good working condition, shall be supplied for each eight persons or fraction thereof residing within a rooming house, including members of the operator's family, whenever they share the use of said facilities, provided that, in a rooming house where rooms are let only to males, flush urinals may be substituted for not more than 1/2 of the required number of water closets. All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot water at all times. No such facilities shall be located in a basement, except by written approval of the Health Officer.
- F.** The operator of every rooming house shall change supplied bed linens and towels therein at least once each week and prior to the letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

- G. Every room occupied for sleeping purposes by one person shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of additional floor space for each additional occupant thereof.
- H. Every rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of the state and this City.
- I. The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for maintenance of a sanitary condition in every other part of the rooming house; and he shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building is leased or occupied by the operator.

§ 95-9. Unfit dwellings; condemnation procedures.

The designation of dwellings or dwelling units as unfit for human habitation and the procedure for the condemnation or placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- A. Any dwelling or dwelling unit which shall be found to have any of the following defects shall be condemned as unfit for human habitation and shall be so designated and placarded by the Health Officer.
- B. A dwelling unit which is so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public.
- C. A dwelling unit which lacks illumination, ventilation or sanitary facilities adequate to protect the health and safety of the occupants or of the public.
- D. A dwelling unit which, because of its general condition or location, is unsanitary or otherwise dangerous to the health and safety of the occupants or of the public.
- E. Any dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the Health Officer, shall be vacated within a reasonable time as ordered by the Health Officer.
- F. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard is removed by the Health Officer. The Health Officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.
- G. No person shall deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except as provided in Subsection F.
- H. Any person affected by any notice or order relating to the condemning and placarding of a dwelling or dwelling unit as unfit for human habitation may request and shall be granted a hearing on the matter before the Health Officer, under the procedure set forth in this chapter.

§ 95-10. Hearing.

The Health Officer is hereby empowered to order a hearing for the purpose of ensuring that provisions of this chapter are met. The Health Officer shall notify, in writing, any person to whom such order is issued, stating the time, location and a brief reason for the hearing. Once notified, said person shall comply with all aspects of said order. Any person who neglects or refuses to abide by said order shall face penalties pursuant to § 95-11, Violations and penalties, of this chapter.

§ 95-11. Violations and penalties.

Any person who shall violate any provision of this chapter or any provision of any rule, regulation or order adopted by the Board of Health pursuant to authority granted by this chapter shall, upon conviction in the Municipal Court or other court of competent jurisdiction, be punished by a fine of not more than \$1,000 or community service for not more than 90 days or imprisonment for a term not exceeding 90 days, and each day's failure to comply with any provision shall constitute a separate and distinct violation.

§ 95-11.1. (Reserved)

§ 95-12. Permission of the Board.

Any notice, order or rule issued by the Health Officer or his authorized agent shall be taken to mean as issued by the Hoboken Board of Health.

§ 95-13. Severability.

In the event that any section, subsection or any part of this code shall be declared invalid, such decision shall not be deemed to affect the validity of any other section, subsection or other part of this code.

§ 95-14. Repealer.

All ordinances, codes or parts of the same inconsistent with any provisions of this chapter are hereby repealed to the extent of such inconsistency.

SECTION TWO: 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 THREE: 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 FOUR: EFFECTIVE DATE

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

SECTION FIVE: 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: 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