

**MEETING OF OCTOBER 6, 2010**

**MINUTES OF A MEETING OF THE COUNCIL OF THE CITY OF HOBOKEN, NEW JERSEY, HELD IN THE COUNCIL CHAMBERS, CITY HALL, HOBOKEN, NEW JERSEY, WEDNESDAY, OCTOBER 6, 2010 AT 7:00 PM**

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President Marsh opened the meeting at 7:00 p.m. and stated, "I would like to advise all those present that notice of this meeting has been provided to the public in accordance with the provisions of the Open Public Meeting Act, and that notice was furnished to The Jersey Journal and The Hoboken Reporter, The Record, The Newark Star - Ledger and also placed on the bulletin board in the lobby of City Hall."

The Council President then called for the Salute to the Flag.

The Clerk then called the roll:

PRESENT: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

ABSENT: None.

**HEARING ON THE TY 2010 INTRODUCED BUDGET AND AMENDMENT TO THE TY 2010 BUDGET**

The speakers who spoke: Ken Howitt, Perry Belfiore, Scott Siegel, Lane Bajardi, Richard Tremetedi.

**10-613**

**ADOPTION OF THE TY 2010 FINAL BUDGET.**

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**PUBLIC HEARING and FINAL VOTE ON ORDINANCES**

**Second Reading / Public Hearing and Final Vote**

AN ORDINANCE TO AMEND CHAPTER 180A OF THE ADMINISTRATIVE CODE OF THE CITY OF HOBOKEN, ENTITLED "LIMOUSINES AND LIVERIES" Z-60

President Marsh directed the City Clerk to announce that the Council would consider for final passage the aforesaid ordinance and all persons interested at this time would be given an opportunity to be heard concerning said ordinance of which the heading was read in full.

No other person present desiring to be heard and no written protests or objections received, President Marsh asked for a motion to close the hearing.

President Marsh moved that the hearing be closed.

Motion duly seconded by Councilman

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Cunningham, Giacchi, Lenz, Mason, Mello, and President Marsh.

---Nays: Russo

President Marsh then instructed the City Clerk to call the Final Vote for the above Ordinance.

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**APPLICATIONS FOR MISCELLANEOUS LICENSES**

**10-614**

|                       |   |
|-----------------------|---|
| Taxi Drivers-----     | 3 |
| Limo/Liveries-----    | 2 |
| Limousine Owners----- | 1 |

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---YEAS: Council persons Bhalla, Castellano, Cunningham, Giacchi, Mason, Lenz, Mello, Russo, and Marsh

---NAYS: None

**Reports of the Officers**

**10-615**

A report from the Municipal Tax Collector Sharon Curran for taxes collected for the month of September 2010 - \$860,568.53 (Abatement totals - \$12,155.08)

Received and Filed.

**10-616**

A report of the Municipal Court indicating receipts for the month of September 2010 as \$427,709.94.

Received and Filed.

**10-617**

Claims for this agenda Total - \$2,810,044.81.

---Adopted as by the following vote: YEAS: 9 - NAYS: 0  
---YEAS: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo, and President Marsh.  
---NAYS: None.

**10-618**

**Payroll for the two week period starting September 02 – September 22, 2010**

| <b>Regular Payroll</b> | <b>O/T Pay</b> | <b>Pay</b>     |
|------------------------|----------------|----------------|
| \$1,475,812.66         | \$50,353.81    | \$1,595,633.60 |

---Adopted by the following vote: YEAS: 9 - NAYS: 0  
---YEAS: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo, and President Marsh.  
---NAYS: None.

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**RESOLUTIONS**

**Presented and Read**

**10-619**

---by Councilman Russo

**RESOLUTION APPROVING A SHARED SERVICE AGREEMENT WITH THE HOBOKEN HOUSING AUTHORITY FOR SHARED POLICE SERVICES.**

**WHEREAS**, N.J.S.A 40A:65-1 et. seq. authorizes any local governmental until to enter into a contract with any other local government unit to provide for shared services that any party to such agreement is empowered to render within its own jurisdiction;

**WHEREAS**, the City of Hoboken (“City”) and the Hoboken Housing Authority (“HHA”) have agreed, pursuant to a Shared Service Agreement (annexed hereto as Exhibit A), to share in the use of Hoboken Police Department personnel at the HHA’s housing developments;

**WHEREAS**, such services, and the sharing of such services fall within the definitions enumerated in the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-3, and promote the purposes of the Act, N.J.S.A. 40A:65-2; and

**WHEREAS**, it is the desire of the Council of the City of Hoboken to authorize the terms of the Shared Service Agreement, and to direct the formation of a formal executed contract expressing said terms.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Hoboken, County of Hudson, State of New Jersey, that the Mayor and City Clerk be and are hereby authorized to execute the formal contract, in compliance with N.J.S.A. 40A:65-7, known as the Shared Service Agreement, which is attached hereto;

**BE IT FURTHER RESOLVED** that the Mayor is hereby authorized to take any other actions necessary to complete and realize the intent and purpose of this resolution;

**BE IT FURTHER RESOLVED** that the City Clerk maintain a copy of the executed Shared Service Agreement at the Office of the City Clerk for viewing by the public; and

**BE IT FURTHER RESOLVED** that the City Clerk forward two certified copies of this resolution and the executed Shared Agreement to the Division of Local Government Services in the Department of Community Affairs for informational purposes, pursuant to N.J.S.A. 40A:65-4(b).

**BE IT FURTHER RESOLVED** that this resolution shall take effect immediately.

The speaker who spoke: Scott Siegel, Perry Belfiore.

---duly seconded by Councilwoman Castellano.

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-620**

---By President Marsh

**APPOINTING CATHERINE WILLIAMS AS COMMISSIONER OF THE HOBOKEN MUNICIPAL HOSPITAL AUTHORITY TO FILL A TERM TO EXPIRE ON JUNE 30, 2012**

WHEREAS, the term of one Board Member expires on June 30, 2012, but has vacated the seat; and

WHEREAS, a new Board Member is needed to fill the vacancy; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hoboken hereby appoints Catherine Williams as a Hoboken Municipal Hospital Authority Commissioner,

effective immediately, to fill the term expiring on June 30, 2012; and

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Hoboken Municipal Hospital Authority Secretary expeditiously.

The speaker who spoke: Lane Bajardi.

---Motion duly seconded by Councilman Bhalla.

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo, and President Marsh.

---Nays: Castellano.

---Abstain: Mason.

### **10-621**

---By Councilman Lenz

#### **RESOLUTION ACCEPTING THE SEPTEMBER 10, 2010 CHANGE ORDER FOR THE HOBOKEN CITY HALL ADA COMPLIANT EXTERIOR DOOR ON NEWARK STREET**

WHEREAS, the City of Hoboken has contracted with the contractor, Fine Wall Corporation, and the architects, BCA Architects, for an ADA compliant exterior door replacement at the Newark Street entrance of City Hall; and

WHEREAS, a change order has been provided to the City for approval of an increase in the contract sum by Thirteen Thousand Five Hundred Twenty Four Dollars (\$13,524.00) to provide for a new wood subfloor and tiles, new concrete footing, and a magnetic locking system; and

WHEREAS, funds are available to cover this additional costs.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Hoboken does hereby agree to amend the original agreement to include changes set forth in the Change Work Order dated September 10, 2010, for an increase of Thirteen Thousand Five Hundred Twenty Four Dollars (13,524.00);

BE IT FURTHER RESOLVED that the Council of the City of Hoboken does hereby approve the Change Work Order to install new subfloors, new concrete footing and a magnetic locking system as well as the increase cost contained therein, for which funds are available to cover the additional costs; and

BE IT FURTHER RESOLVED, that this resolution shall be advertised after passage and a copy shall be sent by the City Clerk to the municipal auditor for incorporation into the annual audit.

The speaker who spoke: Helen Hirsch

---Motion duly seconded by Councilman Cunningham.

---Adopted by the following vote: YEAS: 7 - NAYS: 2

---Yeas: Council persons Bhalla, Castellano, Cunningham, Lenz, Mason, Mello, and President Marsh.

---Nays: Giacchi, Russo.

**10-622**

---By Councilwoman Castellano

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT BETWEEN THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY AND THE CITY OF HOBOKEN FOR THE LIVE WHERE YOU WORK PROGRAM**

**WHEREAS**, the New Jersey Housing and Mortgage Finance Agency (HMFA) created the Live Where You Work (LWYW) program in order to increase homeownership and enhance housing affordability opportunities within partner municipalities; and

**WHEREAS**, the LWYW program is a home mortgage incentive program that provides low-interest mortgage loans to eligible homebuyers purchasing homes in towns where they are employed, with the goal being to build stronger communities by promoting homeownership and encouraging people to live closer to their jobs; and

**WHEREAS**, the LWYW program encourages the use of public transit and other forms of non-auto transportation for commuting to work, in furtherance of smart growth planning principles; and

**WHEREAS**, the HMFA through the LWYW program is the responsible party for providing enhanced financing benefits to eligible homebuyers; and

**WHEREAS**, the LWYW program will offer home-buying incentives to persons employed within the City of Hoboken by providing (1) down payment and closing cost assistance under the HMFA's Smart Start Program to eligible borrowers; and (2) expanded housing and debt ratios for homebuyers in underwriting mortgage loans to factor in the reduction in travel expenses realized as a result of the homebuyer living close to their place of employment; and

**WHEREAS**, HMFA and the City will jointly develop a marketing brochure to promote the LWYW program, and said brochures will be distributed to major City employers and all municipal employees; and

**WHEREAS**, in order to become a participating municipality, an Agreement is necessary to create an understanding by and between the HMFA and the City of Hoboken regarding the shared responsibilities in administering the LWYW Program; and

**WHEREAS**, this Agreement will require the City to contribute up to half the cost of printing and reproducing marketing brochures (approximately \$1,250.00).

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Hoboken that the Mayor, Administrator, Chief Financial Officer, and/or City Clerk are authorized to execute an Agreement with the HMFA for the LWYW program, and that up to half the costs for printing and reproducing marketing brochures will be provided by the City (approximately \$1,250.00).

---Motion duly seconded by Councilman Russo.

---Adopted by the following vote: YEAS: 6 - NAYS: 0 – ABSENT - 3

---Yeas: Council persons Bhalla, Castellano, Cunningham, Mello, Russo and President Marsh.

---Nays: None.

---Absent: Giacchi, Lenz, Mason

**10-623**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE REFUND OF TAX APPEALS STATE TAX COURT**

**WHEREAS**, an overpayment of taxes has been made on property listed below: and

**WHEREAS**, Sharon Curran, Collector of Revenue recommends that refunds be made;

**NOW THEREFORE BE IT RESOLVED**, that a warrant be drawn on the City Treasurer made payable to the following totaling **\$ 6,606.59**

| NAME  | BL/LT/UNIT      | PROPERTY          | QTR/YEAR | AMOUNT      |
|---|-----------------|-------------------|----------|-------------|
| SMYTH, WESLEY<br>82 CLINTON ST #5B<br>HOBOKEN, NJ 07030                                 | 20/28/C005B     | 82 CLINTON ST     | 2009     | \$ 1,930.27 |
| ZIPP & TANNENBAUM, LLC<br>NORTH FORK BANK<br>166 GATZMER AVENUE<br>JAMESBURG, NJ 08831  | 214/1.1/ 301-11 | WASHINGTON ST     | 2007     | \$ 1,745.00 |
| DAVENPORT & SPIOTTI<br>ATTORNEYS AT LAW<br>219 CHANGEBRIDGE ROAD<br>MONTVILLE, NJ 07045 | 216/7/          | 511 WASHINGTON ST | 2009     | \$ 2,931.32 |

---Motion duly seconded by Councilman Cunningham.

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo, and President Marsh.

---Nays: None.

**10-624**

---By President Mello

**RESOLUTION AUTHORIZING THE REFUND OF TAX OVERPAYMENTS**

**WHEREAS**, an overpayment of taxes has been made on property listed below: and

**WHEREAS**, Sharon Curran, Collector of Revenue recommends that refunds be made;

**NOW THEREFORE BE IT RESOLVED**, that a warrant be drawn on the City Treasurer made payable to the following totaling **\$ 5,454.83**

| NAME                                      | BL/LT/UNIT  | PROPERTY      | QTR/YEAR | <u>AMOUNT</u> |
|---|-------------|---------------|----------|---------------|
| MET LIFE HOME LOANS<br>C/O TOTAL MORTGAGE | 57/23/C004R | 402 MONROE ST | 1/10     | \$ 1,384.71   |

**SOLUTIONS LP  
1555 W WALNUT HILL LA  
STE #200A  
IRVING, TX 75038**

**CUTLER, DAVID & BRIDGET 96/1/C0047 456 NINTH ST 3/10\$ \$339.57  
456 NINTH ST #47  
HOBOKEN, NJ 07030**

**BARNES, C JEFFREY & 202/11.1/C0002 321 BLOOMFIELD ST 3/09 \$125.31  
JAMIE P  
19 EVERGREEN PLACE  
MAPLEWOOD, NJ 07040**

**GRAYBILL, JASON R & 252/38/ 1116 GARDEN ST 1/09 \$ 3,491.79  
REGAN M  
1116 GARDEN ST  
HOBOKEN, NJ 07030**

**GROHOWSKI, TERI 261.03/1/CP175 1125 MAXWELL LA 1/10 \$ 113.45  
1125 MAXWELL LANE #603  
HOBOKEN, NJ 07030**

---Motion duly seconded by Councilman Cunningham.

---Adopted by the following vote: YEAS: 9- NAYS: 0

---Yeas: Council persons Bhalla, Cunningham, Giacchi, Lenz, Mello, Russo, and President Marsh.

---Nays: None

**10-625**

---By Councilwoman Marsh

**RESOLUTION AUTHORIZING THE CITY OF HOBOKEN TO PARTICIPATE  
IN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BROWNFIELDS CLEANUP GRANT PROGRAM AT THE BOYS & GIRLS  
CLUB PARK AND AUTHORIZING THE MAYOR TO ACT AS THE  
AUTHORIZED AGENT FOR THE DURATION OF THE PROGRAM**

**WHEREAS** the Boys & Girls Club Park is located at 109 Jefferson Street, Hoboken, New Jersey; and

**WHEREAS** the Boys & Girls Club Park was subject to a preliminary assessment conducted by Boswell McClave Engineering, the City Engineer, to identify potential environmental concerns associated with the site; and

**WHEREAS** the resulting report submitted by Boswell McClave cited contamination by hazardous substances found in historic fill at the site (lead and polycyclic aromatic hydrocarbons); and

**WHEREAS** the Council recognizes that the Boys & Girls Club Park is a highly valued community resource and fully utilized park space; and

**WHEREAS** the Director of the City of Hoboken Department of Environmental Services has recommended that the City of Hoboken seek funds to cleanup the contamination found at the Boys & Girls Club Park; and

**WHEREAS** there are grant funds available through the United State Environmental Protection Agency Brownfields Cleanup Grant Program, under the Small Business Liability Relief and Brownfields Revitalization Act; and

**WHEREAS** the Boys & Girls Club Park site qualifies as a brownfield site as per the proposal guidelines made public by the United States Environmental Protection Agency; and

**WHEREAS** the Department of Environmental Services will submit an application to the United States Environmental Protection Agency on or about October 15, 2010, for a funding grant.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Hoboken that the City of Hoboken Department of Environmental Services, with the Mayor as authorized agent, is authorized to submit an application to the United States Environmental Protection Agency Brownfields Cleanup Grant Program for a funding grant to perform cleanup activities at the Boys & Girls Club Park site; and

**BE IT FURTHER RESOLVED** that the Mayor and City Clerk are hereby authorized to execute any and necessary documents for this grant application.

---Motion duly seconded by Councilman Bhalla

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-626**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE CITY OF HOBOKEN TO PARTICIPATE IN THE UNITED STATE ENVIRONMENTAL PROTECTION AGENCY BROWNFIELDS ASSESSMENT GRANT PROGRAM FOR THE CHURCH SQUARE PARK AND AUTHORIZING THE MAYOR TO ACT AS THE AUTHORIZED AGENT FOR THE DURATION OF THE PROGRAM**

**WHEREAS** the Church Square Park is located at 401 Willow Avenue, Hoboken, New Jersey; and

**WHEREAS** the Council recognizes that the Church Square Park is a highly valued community resource fully utilized by residents of the City of Hoboken; and

**WHEREAS** the Director of the City of Hoboken Department of Environmental Services has recommended that the City of Hoboken seek funds to conduct a brownfields assessment at the Church Square Park site; and

**WHEREAS** there are grant funds available through the United State Environmental Protection Agency Brownfields Assessment Grant Program, under the Small Business Liability Relief and Brownfields Revitalization Act; and

**WHEREAS** the Department of Environmental Services will submit an application to the United States Environmental Protection Agency on or about October 15, 2010, for a funding grant.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Hoboken that the City of Hoboken Department of Environmental Services is authorized to submit an application to the United States Environmental Protection Agency Brownfields Assessment Grant Program for a funding grant to perform preliminary assessment activities at the Church Square Park site; and

**BE IT FURTHER RESOLVED** that the Mayor and City Clerk are hereby authorized to execute any necessary documents for this grant application.

The speaker who spoke: Helen Hirsch.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 6- NAYS: 3

---Yeas: Council persons Bhalla, Castellano, Cunningham, Marsh Mello, Russo and President Marsh.

---Nays: Giacchi, Lenz, Mason.

**10-627**

---By Councilman Lenz

**AUTHORIZING THE CITY OF HOBOKEN TO PARTICIPATE IN THE STATE LOCAL COOPERATIVE HOUSING INSPECTION PROGRAM FOR THE JULY 1, 2010 TO JUNE 30, 2011 TERM, ACCEPTING THE \$100,000.00 GRANT FROM THE PROGRAM AND AUTHORIZING THE MAYOR TO ACT AS THE AUTHORIZED AGENT FOR TH DURATION OF THE PROGRAM**

**WHEREAS**, the City of Hoboken has been approved by the State of New Jersey Department of Community Affairs for participation in the program known as “ State Local Cooperative Housing Inspection Program” which would provide the City of Hoboken with \$100,000.00 to effectuate proper housing inspections of multiple family dwellings, hotels and motels within the City limits; and,

**WHEREAS**, the City Council of the City of Hoboken finds it advantageous for the City to accept participation into this program to help effectuate proper inspections of the numerous multiple family dwellings within the City.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Hoboken that the City is authorized to participate in the State of New Jersey State Local

Cooperative Housing Inspection Program for the term commencing July 1, 2010 and terminating June 30, 2011;

**BE IT FURTHER RESOLVED**, the City of Hoboken accepts the \$100,000.00 allocated grant for participation in the program; and,

**FURTHER RESOLVED**, that the Mayor, or her designee, is hereby authorized on behalf of the City of Hoboken to:

1. Execute and furnish any documentation necessary to effectuate the City's participation in this program and funding for participation in this program;
2. Act as authorized agent and correspondent for the City of Hoboken; and,
3. Execute necessary contracts, as needed, to have the funding awarded.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-628**

---By Councilman Lenz

**RESOLUTION GRANTING CONSENT TO BLOCK 103 DEVELOPMENT, LLC'S SUBMISSION OF A WATER QUALITY APPLICATION TO THE STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S DIVISION OF WATER QUALITY**

**WHEREAS**, Block 103 Development, LLC has a construction site at 1100-1110 Jefferson Street in the City of Hoboken;

**WHEREAS**, Block 103 Development, LLC has requested the City of Hoboken provide consent to submission of Water Quality forms to the Department of Environmental Protection; and,

**WHEREAS**, approval is for sewage connection of additional 9500 gallons per day.

**WHEREAS**, the City Council feels it is appropriate to grant the developer's request to submit an application to the DEP regarding water quality at the site.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Hoboken hereby grants its consent to Block 103 Development, LLC's request to submit an application to the Water Quality Division of the New Jersey DEP; and,

**BE IT FURTHER RESOLVED** that the Mayor is the authorized representative to execute any documentation regarding this submission, on behalf of the City.  
The speaker who spoke: Helen Hirsch.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 8 - NAYS: 1

--Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mello, Russo and President Marsh.  
---Nays: Mason.

**10-629**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH THE YMCA**

**Whereas**, the Board of Directors of the YMCA, located at 1301 Washington Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$25,000 out of available Community Development funds (an operating grant) during the period of Single Room Occupancy construction; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Sub-recipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved that**, the Mayor of the City of Hoboken, or her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and the YMCA, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham  
---Adopted by the following vote: YEAS: 9 - NAYS: 0  
---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.  
---Nays: None.

**10-630**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH NUESTROS NINOS DAY CARE**

**Whereas**, the Board of Directors of Nuestros Ninos Day Care, located at 301 Garden Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Child Care Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$25,000 out of available Community Development funds and \$11,143 out of available Miscellaneous

Program Income Funds to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or his/her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and Nuestros Ninos Day Care, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-631**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH MILE SQUARE DAY CARE**

**Whereas**, the Board of Directors of Mile Square Day Care, located at 301 Garden Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Child Care Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$25,000 out of available Community Development funds and \$57,818 out of available Miscellaneous Program Income funds to operate said program within the City of Hoboken; **now therefore, be it -**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or his/her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and Mile Square Day Care, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-632**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH THE JUBILEE CENTER**

**Whereas**, the Board of Directors of The Jubilee Center, located at 601 Jackson Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of After School and Summer Programs within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$25,000 out of available Community Development funds to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and The Jubilee Center, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-633**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH HOPES HEAD START**

**Whereas**, the Board of Directors of HOPES Head Start, located at 301 Garden Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Child Care Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$25,000 out of available Community Development funds and \$25,531 out of available Miscellaneous Program Income to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and HOPES Head Start, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-634**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH HOBOKEN FAMILY PLANNING**

**Whereas**, the Board of Directors of Hoboken Family Planning, located at 124 Grand Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Family Planning Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$20,000 out of available Community Development funds and \$3,000 out of available Miscellaneous Program Income funds to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or his/her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and Hoboken Family Planning, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-635**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH DAY CARE 100**

**Whereas**, the Board of Directors of Day Care 100, located at 124 Grand Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Child Care Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$25,000 out of available Community Development funds and \$5,508 out of available Miscellaneous Program Income to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or his/her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and Day Care 100, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-636**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH BOYS & GIRLS CLUB OF HUDSON COUNTY (HOBOKEN UNIT)**

**Whereas**, the Board of Directors of the Boys & Girls Club of Hudson County (Hoboken Unit), located at 119 Jefferson Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Recreation Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$10,000 out of available Community Development funds and \$2,000 out of available Miscellaneous Program Income to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it --**

**Further Resolved**, that the Mayor of the City of Hoboken, or his/her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and the Boys & Girls Club of Hudson County (Hoboken Unit), and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-637**

---By Councilman Lenz

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH UNITED CEREBRAL PALSY**

**Whereas**, the Board of Directors of United Cerebral Palsy, located at 1005 Washington Street, Hoboken, NJ 07030, has submitted to the City of Hoboken, a request for Hudson County Community Development Block Grant funds for the provision of Services within the City of Hoboken; and

**Whereas**, under the terms of said Agreement, a copy of which is attached hereto and made a part hereof, the City of Hoboken shall provide funds in the amount of \$2,000 out of available Community Development funds to operate said program within the City of Hoboken; **now therefore, be it –**

**Resolved**, that the Council of the Mayor and Council of the City of Hoboken hereby approves the attached Subrecipient Agreement and accepts the obligations under the aforesaid Agreement, **and be it –**

**Further Resolved**, that the Mayor of the City of Hoboken, or his/her designee, is hereby authorized and directed to execute said Agreement between the City of Hoboken and United Cerebral Palsy, and the City Clerk is hereby authorized to attest same and to affix the City Seal.

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-638**

---By Councilman Bhalla

**RESOLUTION APPOINTING MARK A. TABAKIN AS CORPORATION COUNSEL**

**WHEREAS**, the Code for the City of Hoboken establishes the Office of Corporation Counsel, pursuant to the Code of the city of Hoboken, § 54-32 *et seq.*; and

**WHEREAS**, Mayor Dawn Zimmer hereby appoints Mark A. Tabakin, Esq. Corporation Counsel, pursuant to N.J.S.A. 40A:9-139 and Code of the City of Hoboken, § 54-32 *et seq.*, effective October 6, 2010; and

**WHEREAS**, funds are available for this purpose upon adoption and passage of the TY 2010 municipal budget.

**NOW, THEREFORE, BE IT AND HEREBY RESOLVED** that the Council of the City of Hoboken hereby concurs in the appointment of Mark A. Tabakin, Esq. to the Office of Corporation Counsel, pursuant to N.J.S.A. 40A:9-139 and the Code of the City of Hoboken, § 54-32 *et seq*, and

**BE IT FURTHER RESOLVED**, that Mark A. Tabakin, Esq. is to be compensated pursuant to the terms of the “ Agreement to be negotiated for the period October 6, 2010 through October 5, 2011 at a cost not to exceed One Hundred and Three Thousand Five Hundred (\$103,500.00) dollars for services as Corporation Counsel.

---Motion duly seconded by President Marsh

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

#### **10-639**

#### **RESOLUTION AUTHORIZING A CONTRACT WITH MARK TABAKIN AND WEINER LESNIAK, LLP FOR THE LEGAL SERVICES**

**WHEREAS**, the City of Hoboken has the need for legal counsel to represent its interests in several pending litigation matters; and;

**WHEREAS**, the above referenced litigation will require the skilled expertise of experienced attorneys to represent the City of Hoboken’s interests; and ,

**WHEREAS**, the firm of Weiner Lesniak, LLP is widely recognized for its expertise in the area of New Jersey municipal law as well as general contract and labor litigation, and the attorneys at the firm have various backgrounds which will provide specialized knowledge to effectively represent all of the City’s interests relating to the above referenced litigation; and

**WHEREAS**, Mark Tabakin and the firm of Weiner Lesniak have complied with the terms and conditions set forth in Hoboken Ordinance #DR-154 (codified as §20A-1 *et. seq.* of the Code of the City of Hoboken), to represent the City; and,

**WHEREAS**, Weiner Lesniak LLP is hereby required to abide by the “pay to play” requirements of the Hoboken Public Contracting Reform Ordinance, #DR-154 (codified as §20A-11 *et. seq.* of the code of the City of Hoboken); and

**WHEREAS**, said service is a professional service as defined by N.J.S.A. 40A:11-1 *et. seq.* and as such, is exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5; and,

**WHEREAS**, funds will be available for this purpose after adoption of the TY 2010 budget,

**NOW, THEREFORE, BE IT RESOLVED**, the Council of the City of Hoboken hereby authorize Mark Tabakin and the firm of Weiner Lesniak to represent the City in the

following matters (pursuant to an agreement to be negotiated and executed by the parties at a cost not to exceed \$200,000 for the litigations as assigned for contract)

1. *Buonfiglio v. Hoboken*, Docket No. HUD-L-5535-09 and related local disciplinary matters;
2. *Andreula v. Hoboken*, Docket No. HUD-L 2498-10 and *Belfiore v. Hoboken*, which together comprise the group of approximately 11 employees that applied to participate in the severance program offered by the City.
3. *Drexel v. Hoboken*, a newly filed lawsuit involving claimed OPRA violations, retaliatory actions, tortuous interference and privacy violations.
4. *Brigden v. Hoboken*, Docket No. HUD-L 931-08/HUD-L3325-08, a matter involving numerous zoning claims, OPRA violations and 42 U.S.C. Sect. 1983 (conspiracy).
5. *City of Hoboken v. United Textiles Fabricators Corp.*, Docket No. HUD-L-31-4-10.
6. SWAT-related litigation.

**BE IT FURTHER RESOLVED** that this firm shall be paid a maximum hourly rate of \$150.00 hour based on actual time and expenses; and,

**BE IT FURTHER RESOLVED** that this contract shall commence immediately and expire on October 5, 2011, which term shall be renewable upon necessity subject to availability of funds and approval of the term extension by the City Council, pursuant to N.J.S.A. 40A:11-1 et. seq.; and

**BE IT FURTHER RESOLVED** the City Clerk shall publish this resolution as required by law and keep a copy of the resulting contract on file, in accordance with N.J.S.A. 40A;-11-1 et. seq.; and

**BE IT FURTHER RESOLVED** that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer for action in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution; and

**BE IT FURTHER RESOLVED** that this resolution take effect immediately.

---Motion duly seconded by President Marsh

Adopted by the following vote: YEAS: 5 - NAYS: 4

Yeas: Council persons Bhalla, Cunningham, Lenz, Mello and Marsh.

Nays: Castellano, Giacchi, Mason and Russo.

**10-640**

---By Councilman Bhalla

**RESOLUTION AUTHORIZING A CONTRACT WITH WEINER LESNIAK, LLP FOR THE SERVICES OF MARK A. TABAKIN, ESQ. AS SPECIAL COUNSEL FOR LITIGATION OF THE SHG HOBOKEN URBAN RENEWAL ASSOCIATES, LLC V. CITY OF HOBOKEN (DOCKET NO. HUD-L-4492-10)**

**WHEREAS**, the City of Hoboken faces extremely pressing deadlines relating to the above referenced case which creates an urgent need for legal representation of the matter; and,

**WHEREAS**, the above referenced litigation will require the skilled expertise of experienced attorneys to represent the City of Hoboken’ s interests; and,

**WHEREAS**, the firm of Weiner Lesniak, LLP is widely recognized for its expertise in the area of New Jersey municipal law as well as general contract litigation, and the attorneys at the firm have various backgrounds which will provide specialized knowledge to effectively represent all of the City’ s interests relating to the above referenced litigation; and,

**WHEREAS**, Mark A. Tabakin, Esq. offers special expertise in representing New Jersey public agencies with complex legal issues; and

**WHEREAS**, this special expertise and knowledge, as well as the emergent need for expert legal representation, provide a basis for waiving the competitive negotiation provisions of Hoboken Ordinance #DR-154 (codified as §20A-1 et seq. of the Code of the City of Hoboken), as permitted by the Ordinance; and,

**WHEREAS**, Weiner Lesniak, LLP is hereby required to abide by the “pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, #DR-154 (codified as §20A-11 et seq. of the Code of the City of Hoboken); and,

**WHEREAS**, said service is a professional service as defined by N.J.S.A. 40A:11-1 et seq. and as such, is exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5; and,

**WHEREAS**, funds will be available for this purpose after adoption of the TY 2010 budget.

**NOW THEREFORE, BE IT RESOLVED** (*a majority of the whole Council concurring*) that a professional services contract be authorized in an amount not to exceed Ten Thousand (\$10,000.00) Dollars with the firm of Weiner Lesniak, LLP, with Mark A. Tabakin, Esq. as lead attorney, to serve as Special Counsel for litigation of Docket No. HUD-L-4492-10 for the City of Hoboken; and,

**BE IT FURTHER RESOLVED** that this firm shall be paid a maximum hourly rate of \$150.00 per hour based on actual time and expenses; and,

**BE IT FURTHER RESOLVED** that this contract shall commence immediately and expire on December 31, 2010, which term shall be renewable upon necessity subject to availability of funds and approval of the term extension by the City Council, pursuant to N.J.S.A. 40A:11-1 et seq.; and

**BE IT FURTHER RESOLVED** that the City Council specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-4 of the Code of the City of Hoboken), is waived for the following reasons: (1) failure to appoint legal counsel to this litigation immediately will jeopardize the City’ s legal position and result in failure to maintain the litigation schedule set by the New Jersey Rules of Court; and, (2) the firm of Weiner Lesniak, LLP offers the City special expertise and substantive knowledge relating to the legal issues underlying the above referenced litigation; and

**BE IT FURTHER RESOLVED** the City Clerk shall publish this resolution as required by law and keep a copy of the resulting contract on file in accordance with N.J.S.A. 40A:11-1 et seq.; and,

**BE IT FURTHER RESOLVED** that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer for action in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution; and,

**BE IT FURTHER RESOLVED** that this resolution shall take effect immediately.

---Motion duly seconded by President Marsh

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-641**

---By Councilman Lenz

**RESOLUTION AUTHORIZING A CONTRACT WITH MCMANIMON & SCOTLAND, LLC TO SERVE AS SPECIAL COUNSEL FOR LITIGATION OF THE WILLOW VIEW URBAN RENEWAL ASSOCIATES, LLC ET ALS V. CITY OF HOBOKEN (DOCKET NO. HUD-L-5067-10) AND 100 PATERSON REALTY LLC V. CITY OF HOBOKEN (DOCKET NO. HUD-L-2981-10)**

WHEREAS, the City of Hoboken faces extremely pressing deadlines relating to the above referenced cases which creates an urgent need for legal representation of the matter; and,

WHEREAS, the above referenced litigations will require the skilled expertise of experienced attorneys to represent the City of Hoboken' s interests; and,

WHEREAS, the firm of Mcmanimon & Scotland, LLC is widely recognized for its expertise in the area of New Jersey Local Redevelopment and Housing Law and PILOT agreements, as well as general litigation, and the attorneys at the firm have intensive backgrounds in these areas which will provide specialized knowledge to effectively represent all of the City' s interests relating to the above referenced litigation; and,

WHEREAS, this special expertise and knowledge, as well as the emergent need for expert legal representation, provide a basis for waiving the competitive negotiation provisions of Hoboken Ordinance #DR-154 (codified as §20A-1 et seq. of the Code of the City of Hoboken), as permitted by the Ordinance; and,

WHEREAS, Mcmanimon & Scotland, LLC is hereby required to abide by the “ pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, #DR-154 (codified as §20A-11 et seq. of the Code of the City of Hoboken); and,

WHEREAS, said service is a professional service as defined by N.J.S.A. 40A:11-1 et seq. and as such, is exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5; and,

WHEREAS, funds will be available for this purpose after adoption of the TY 2010 budget.

NOW THEREFORE, BE IT RESOLVED (*a majority of the whole Council concurring*) that a professional services contract be authorized in an amount not to exceed Fifty Thousand (\$50,000.00) Dollars with the firm of Mcmanimon & Scotland, LLC, to serve as Special Counsel for litigation of Docket No. HUD-L-5067-10 for the City of Hoboken and Docket No. HUD-L-2981-10; and,

BE IT FURTHER RESOLVED that this firm shall be paid a maximum hourly rate of \$150.00 per hour based on actual time and expenses; and,

BE IT FURTHER RESOLVED that this contract shall commence immediately and expire on December 31, 2010, which term shall be renewable upon necessity subject to availability of funds and approval of the term extension by the City Council, pursuant to N.J.S.A. 40A:11-1 et seq.; and

BE IT FURTHER RESOLVED that the City Council specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-4 of the Code of the City of Hoboken), is waived for the following reasons: (1) failure to appoint legal counsel to this litigation immediately will jeopardize the City's legal position and result in failure to maintain the litigation schedule set by the New Jersey Rules of Court; and, (2) the firm of Mcmanimon & Scotland, LLC offers the City special expertise and substantive knowledge relating to the legal issues underlying the above referenced litigation; and

BE IT FURTHER RESOLVED the City Clerk shall publish this resolution as required by law and keep a copy of the resulting contract on file in accordance with N.J.S.A. 40A:11-1 et seq.; and,

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer for action in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution; and,

BE IT FURTHER RESOLVED that this resolution shall take effect immediately

--Motion duly seconded by President Marsh

--Adopted by the following vote: YEAS: 8 - NAYS: 0 - ABSENT -1

--Yeas: Council persons Bhalla, Castellano, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

--Nays: None.

--Absent: Cunningham.

## **ORDINANCES**

### **Introduction and First Reading**

**10-642**

**Z-61**

#### **AN ORDINANCE AMENDING HOBOKEN GENERAL CODE SECTION 128-5 ENTITLED BUSINESS LICENSES - FEES**

**WHEREAS**, the City of Hoboken is entitled to license and regulate businesses within the municipality pursuant to N.J.S.A. 40:52-1; and

**WHEREAS**, the Council of the City of Hoboken seeks to add a new license category and associated fee for food businesses within the municipality so that temporary food vendors are not required to pay the costs of obtaining a license for an entire year term.

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

**SECTION ONE: AMENDMENTS TO HOBOKEN CODE SECTION 128-5 ENTITLED BUSINESS LICENSES - FEES**

Section 128-5 of the Hoboken City Code is hereby amended to add the following (additions noted with underline, deletions noted with ~~strikethrough~~):

**§ 128-5. Business licenses; fees.**

A. Food Businesses.

| <u>Business</u>   | <u>Fee</u> |
|---|------------|
| Bakery (retail)   | \$150.00   |
| Bakery (wholesale, vehicle)   | 250.00     |
| Butcher (retail)  | 125.00     |
| Butcher (wholesale)   | 200.00     |
| Confectionery, retail   | 100.00     |
| Confectionery, wholesale  | 200.00     |
| Eating and drinking (take-out)  | 150.00     |
| Farmers market participant  | 10.00/day  |
| Fish market   | 125.00     |
| Frozen ices, ice cream, (retail)  | 150.00     |
| Frozen ices, ice cream, (wholesale)   | 200.00     |
| Frozen ices, ice cream, yogurt (mobile truck only, not to exceed 5 feet long) | 175.00     |
| Fruit and vegetable store (retail)  | 150.00     |
| Fruit and vegetable truck<br>(peddler truck not to exceed 15 feet long)       | 150.00     |
| Fruit and vegetable (wholesale)   | 200.00     |
| Grocery (retail)  | \$125.00   |
| Grocery, deli (retail)  | 125.00     |
| Grocery, milk (retail)  | 125.00     |
| Grocery, vehicle (wholesale)  | 250.00     |
| Milk (store)  | 125.00     |
| Milk, vehicle (wholesale)   | 75.00      |
| Restaurants (seating capacity fewer than 25)                                  | 125.00     |
| Restaurants (seating capacity 26-50)  | 250.00     |
| Restaurants (seating capacity 51-100)   | 350.00     |
| Restaurants (seating capacity over 100)                                       | 500.00     |
| Small market (mini-market)  | 250.00     |
| Supermarkets under 20,000 square feet   | 600.00     |
| Supermarkets over 20,000 square feet  | 1,250.00   |

|  |               |
|--|---------------|
| Vending machines (food and drink)  | 35.00/machine |
| Vendor, hot dog (pushcart)   | 175.00        |
| Vendor, mobile vehicle (not to exceed 15 feet) (Mobile vendors and hot dog pushcarts not to exceed a total of 50 feet)               | 500.00        |
| <u>Vendor, Temporary (street fairs, festivals, special events)(one permit for any consecutive period up to and including 7 days)</u> | <u>100.00</u> |
| Wholesale food distribution  | 250.00        |

## **SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS**

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

This Ordinance shall also supersede any inconsistent provisions contained in any resolution previously adopted by the Hoboken City Council.

## **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 affect 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 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.

---President Marsh moved that the ordinance pass its first reading as read and be laid on the table for public inspection to be further considered for final passage at a meeting of the Council to be held on **OCTOBER 20, 2010 at 7:00 PM.**

---Motion duly seconded by Councilman Cunningham

---Adopted by the following vote: YEAS: 9 - NAYS: 0

--Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.  
---Nays: None.

**10-643**  
**Z-62**

**AN ORDINANCE DELETING THE CURRENT CHAPTER 133 IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 133 ENTITLED “ NOISE CONTROL”**

**WHEREAS** excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life;

**WHEREAS** a substantial body of science and technology exists by which excessive sound may be substantially abated;

**WHEREAS** the people have a right to, and should be ensured of, an environment free from excessive sound; and

**WHEREAS**, the current Chapter 133 of the Hoboken City Code has been deemed invalid by the Department of Environmental Protection, thus rendering enforcement of it futile.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hoboken, it is the policy of the City of Hoboken to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life. This ordinance shall apply to the control of sound originating from sources within the City of Hoboken.

**SECTION ONE: DELETION**

The current Chapter 133 entitled “ Noise Control” is hereby deleted in its entirety from the City Code of the City of Hoboken.

**SECTION TWO: ADDITION**

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

**Chapter 133 – Noise Control**

**§ 133-1. Declaration of Findings and Policy**

**WHEREAS** excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life; and,

**WHEREAS** a substantial body of science and technology exists by which excessive sound may be substantially abated; and,

**WHEREAS** the people have a right to, and should be ensured of, an environment free from excessive sound;

Now **THEREFORE**, it is the policy of the **City of Hoboken** to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality

of life. This ordinance shall apply to the control of sound originating from sources within the **City of Hoboken.**

**§ 133-2. Definitions**

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this ordinance have the same meaning as those defined in N.J.A.C. 7:29.

**CONSTRUCTION** - means any site preparation, assembly, erection, repair, alteration or similar action of buildings or structures.

**dBC** - means the sound level as measured using the "C" weighting network with a sound level meter meeting the standards set forth in ANSI S1.4-1983 or its successors. The unit of reporting is dB(C). The "C" weighting network is more sensitive to low frequencies than is the "A" weighting network.

**DEMOLITION** - means any dismantling, destruction or removal of buildings, structures, or roadways.

**DEPARTMENT** - means the New Jersey Department of Environmental Protection.

**EMERGENCY WORK** - means any work or action necessary at the site of an emergency to restore or deliver essential services including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways, or abating life-threatening conditions or a state of emergency declared by a governing agency.

**IMPULSIVE SOUND** - means either a single pressure peak or a single burst (multiple pressure peaks) that has a duration of less than one second.

**MINOR VIOLATION** - means a violation that is not the result of the purposeful, reckless or criminally negligent conduct of the alleged violator; and/or the activity or condition constituting the violation has not been the subject of an enforcement action by any authorized local, county or state enforcement agency against the violator within the immediately preceding 12 months for the same or substantially similar violation.

**MOTOR VEHICLE** - means any vehicle that is propelled other than by human or animal power on land.

**MUFFLER** - means a properly functioning sound dissipative device or system for abating the sound on engines or equipment where such device is part of the normal configuration of the equipment.

**MULTI-DWELLING UNIT BUILDING** - means any building comprising two or more dwelling units, including, but not limited to, apartments, condominiums, co-ops, multiple family houses, townhouses, and attached residences.

**MULTI-USE PROPERTY** - means any distinct parcel of land that is used for more than one category of activity. Examples include, but are not limited to:

- (1) A commercial, residential, industrial or public service property having boilers, incinerators, elevators, automatic garage doors, air conditioners, laundry rooms, utility provisions, or health and recreational facilities, or other similar devices or areas, either in the interior or on the exterior of the building, which may be a source of elevated sound levels at another category on the same distinct parcel of land; or
- (2) A building, which is both commercial (usually on the ground floor) and residential property, located above, below or otherwise adjacent to.

**NOISE CONTROL OFFICER (NCO)** - means an employee of a local, county or regional health agency which is certified pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.) to perform noise enforcement activities or an employee of a municipality with a Department-approved model noise control ordinance. All NCOs must receive noise enforcement training as specified by the Department in N.J.A.C. 7:29 and is currently certified in noise enforcement. The employee must be acting within his or her designated jurisdiction and must be authorized to issue a summons.

**NOISE CONTROL INVESTIGATOR (NCI)** - means an employee of a municipality, county or regional health commission that has a Department-approved model noise control ordinance and the employee has not received noise enforcement training as specified by the Department in N.J.A.C. 7:29. However, they are knowledgeable about their model noise ordinance and enforcement procedures. A Noise Control Investigator may only enforce sections of the ordinance that do not require the use of a sound level meter. The employee must be acting within his or her designated jurisdiction and must be authorized to issue a summons. For purposes of City of Hoboken municipal enforcement, the following officers and agents of the city shall have the power and authority to enforce this chapter; Building Code Official(s), Zoning Officer, Health Officer(s), Environmental Health Specialist(s), Public Health Nuisance Investigator(s), the Hoboken Police Department and the Office of Emergency Management.

**PLAINLY AUDIBLE** - means any sound that can be detected by a NCO or an NCI using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The NCO or NCI need not determine the title, specific words, or the artist performing the song.

**PRIVATE RIGHT-OF-WAY** - means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a non-governmental entity.

**PUBLIC RIGHT-OF-WAY** - means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a governmental entity.

**PUBLIC SPACE** - means any real property or structures thereon that are owned, leased, or controlled by a governmental entity.

**REAL PROPERTY LINE** - means either (a) the vertical boundary that separates one parcel of property (i.e., lot and block) from another residential or commercial property; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property as defined herein, the vertical or horizontal boundaries between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs, then the real property line would be the interface between the residential area and the commercial area, or if there is an outdoor sound source such as an HVAC unit on the same parcel of property, the boundary line is the exterior wall of the receiving unit). Note- this definition shall not apply to a commercial source and a commercial receptor which are both located on the same parcel of property (e.g., a strip mall).

**SOUND PRODUCTION DEVICE** - means any device whose primary function is the production of sound, including, but not limited to any, musical instrument, loudspeaker, radio, television, digital or analog music player, public address system or sound-amplifying equipment.

**SOUND REDUCTION DEVICE** - means any device, such as a muffler, baffle, shroud, jacket, enclosure, isolator, or dampener provided by the manufacturer with the equipment, or that is otherwise required that mitigates the sound emissions of the equipment.

WEEKDAY - means any day that is not a federal holiday, and beginning on Monday at 7:00 a.m. and ending on the following Friday at 6:00 p.m.

WEEKENDS - means beginning on Friday at 6:00 p.m. and ending on the following Monday at 7:00 a.m.

### **§ 133-3. Applicability**

- A. This noise ordinance applies to sound from the following property categories:
  - 1. Industrial facilities;
  - 2. Commercial facilities;
  - 3. Public service facilities;
  - 4. Community service facilities;
  - 5. Residential properties;
  - 6. Multi-use properties;
  - 7. Public and private right-of-ways;
  - 8. Public spaces; and
  - 9. Multi-dwelling unit buildings.
- B. This noise ordinance applies to sound received at the following property categories:
  - 1. Commercial facilities;
  - 2. Public service facilities;
  - 3. Community service facilities (i.e. non-profits and/or religious facilities)
  - 4. Residential properties;
  - 5. Multi-use properties; and
  - 6. Multi-dwelling unit buildings.
- C. Sound from stationary emergency signaling devices shall be regulated in accordance with N.J.A.C. 7:29-1.4, except that the testing of the electromechanical functioning of a stationary emergency signaling device shall not meet or exceed 10 seconds.

### **§ 133-4. Exemptions**

- A. Except as provided in IX. and X. below, the provisions of this ordinance shall not apply to the exceptions listed at N.J.A.C. 7:29-1.5.
- B. Sound production devices required or sanctioned under the Americans with Disabilities Act (ADA), FEMA or other government agencies to the extent that they comply with the noise requirement of the enabling legislation or regulation. Devices which are exempted under N.J.A.C. 7:29-1.5 shall continue to be exempted.
- C. Construction and demolition activities are exempt from the sound level limits set forth in Tables I and II and III except as provided for in IX. below.

### **§133-5. Enforcement Officers**

- A. Noise Control Officers shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance and pursue enforcement activities.
- B. Noise Control Investigators shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance that do not require the use of a sound level meter (i.e., plainly audible, times of day and/or distance determinations) and pursue enforcement activities.

C. Noise Control Officers and Investigators may cooperate with NCOs and NCIs of an adjacent municipality in enforcing one another's municipal noise ordinances.

**§ 133-6. Measurement Protocols**

- A. Sound measurements made by a Noise Control Officer shall conform to the procedures set forth at N.J.A.C. 7:29-2, except that interior sound level measurements shall also conform with the procedures set forth in VIB of this ordinance and with the definition of "real property line" as contained herein.
- B. When conducting indoor sound level measurements across a real property line the measurements shall be taken at least three feet from any wall, floor or ceiling and all exterior doors and windows may, at the discretion of the investigator, be closed. The neighborhood residual sound level shall be measured in accordance with N.J.A.C. 7:29-2.9(b)2. When measuring total sound level, the configuration of the windows and doors shall be the same and all sound sources within the dwelling unit must be shut off (e.g., television, stereo). Measurements shall not be taken in areas which receive only casual use such as hallways, closets and bathrooms.

**§ 133-7 . Maximum Permissible Sound Levels**

A. No person shall cause, suffer, allow, or permit the operation of any source of sound on any source property listed in III.(A) above in such a manner as to create a sound level that equals or exceeds the sound level limits set forth in Tables I, II or III when measured at or within the real property line of any of the receiving properties listed in Tables I, II or III except as specified in VI(B).

**B. Impulsive Sound**

Between 7:00 a.m. and 10:00 p.m., impulsive sound shall not equal or exceed 80 decibels. Between 10:00 p.m. and 7:00 a.m., impulsive sound which occurs less than four times in any hour shall not equal or exceed 80 decibels. Impulsive sound which repeats four or more times in any hour shall be measured as continuous sound and shall meet the requirements as shown in Tables I and II.

**TABLE I  
MAXIMUM PERMISSIBLE A-WEIGHTED SOUND LEVELS  
WHEN MEASURED OUTDOORS**

| RECEIVING PROPERTY CATEGORY                 | Residential property, or residential portion of a multi-use property |                | Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility |
|---|--|----------------|--|
|   | 7 a.m.-10 p.m.   | 10 p.m.-7 a.m. | 24 hours   |
| Maximum A-Weighted sound level standard, dB | 65   | 50             | 65   |

**TABLE II  
MAXIMUM PERMISSIBLE A-WEIGHTED SOUND LEVELS  
WHEN MEASURED INDOORS**

|   |  |                |  |
|---|--|----------------|--|
| RECEIVING PROPERTY CATEGORY                 | Residential property, or residential portion of a multi-use property |                | Commercial facility, or non-residential portion of a multi-use property. |
| TIME  | 7 a.m.-10 p.m.   | 10 p.m.-7 a.m. | 24 hours   |
| Maximum A-Weighted sound level standard, dB | 55   | 40             | 55   |

Note: Table II shall only apply when the source and the receptor are separated by a real property line and they also share a common or abutting wall, floor or ceiling, or are on the same parcel of property.

**TABLE III  
MAXIMUM PERMISSIBLE OCTAVE BAND  
SOUND PRESSURE LEVELS IN DECIBELS**

| Receiving Property Category       | Residential property, or residential portion of a multi-use property |                | Residential property, or residential portion of a multi-use property |                | Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility | Commercial facility of non-residential portion of a multi-use property |
|-----------------------------------|--|----------------|--|----------------|--|--|
|                                   | OUTDOORS   |                | INDOORS  |                | OUTDOORS   | INDOORS  |
| Octave Band Center Frequency, Hz. | Octave Band Sound Pressure Level, dB                                 |                | Octave Band Sound Pressure Level, dB                                 |                | Octave Band Sound Pressure Level, dB   | Octave Band Sound Pressure Level, dB                                   |
| Time                              | 7 a.m.-10 p.m.   | 10 p.m.-7 a.m. | 7 a.m.-10 p.m.   | 10 p.m.-7 a.m. | 24 Hours   | 24 Hours   |
| 31.5                              | 96   | 86             | 86   | 76             | 96   | 86   |
| 63                                | 82   | 71             | 72   | 61             | 82   | 72   |
| 125                               | 74   | 61             | 64   | 51             | 74   | 64   |
| 250                               | 67   | 53             | 57   | 43             | 67   | 57   |
| 500                               | 63   | 48             | 53   | 38             | 63   | 53   |
| 1,000                             | 60   | 45             | 50   | 35             | 60   | 50   |
| 2,000                             | 57   | 42             | 47   | 32             | 57   | 47   |
| 4,000                             | 55   | 40             | 45   | 30             | 55   | 45   |
| 8,000                             | 53   | 38             | 42   | 28             | 53   | 43   |

Note: When octave measurements are made, the sound from the source must be constant in level and character. If octave band sound pressure level variations exceed plus or minus 2 dB in the bands containing the principal source frequencies, discontinue the measurement.

**§ 133-8. Sound Production Devices**

No person shall cause, suffer, allow, or permit the operation of any sound production device in such a manner that the sound crosses a property line and raises the total sound levels above the neighborhood residual sound level by more than the permissible sound level limits set forth in Table IV when measured within the residence of a complainant according to the measurement protocol in VI(B) of this ordinance. These sound level measurements shall be conducted with the sound level meter set for "C" weighting, "fast" response.

**TABLE IV  
MAXIMUM PERMISSIBLE INCREASE IN TOTAL SOUND LEVELS  
WITHIN A RESIDENTIAL PROPERTY**

|   |                 |
|---|-----------------|
| Week nights<br>10:00 p.m. - 7:00 a.m.<br>Weekend nights<br>11:00 p.m. and 9:00 a.m. | All other times |
| 3 dB(C)   | 6 dB(C)         |

**§ 133-9. Restricted Uses and Activities**

The following standards shall apply to the activities or sources of sound set forth below:

- A. Power tools, home maintenance tools, landscaping and/or yard maintenance equipment used by a residential property owner or tenant shall not be operated between the hours of 8:00 p.m. and 8:00 a.m., unless such activities can meet the applicable limits set forth in Tables I, II or III. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device.
- B. Power tools, landscaping and/or yard maintenance equipment used by nonresidential operators (e.g. commercial operators, public employees) shall not be operated on a residential, commercial, industrial or public (e.g. golf course, parks, athletic fields) property between the hours of 6:00 p.m. and 8:00 a.m. on weekdays, or between the hours of 6:00 p.m. and 9:00 a.m. on weekends or federal holidays, unless such activities can meet the limits set forth in Tables I, II or III. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device. Emergency work, as defined in this section, is excluded from the above restrictions.
- C. All construction and demolition activity, excluding emergency work, shall not be performed between the hours of 6:00 p.m. and 8:00 a.m. on weekdays, or at any time during weekends and federal holidays. . Work crews may be on site between 7:00 a.m. and 8:00 a.m. to do preparatory work, but no motorized equipment including but not limited to; pile drivers, jackhammers, riveters, stone breakers, cranes, earth moving equipment, compressors, saws and cutting equipment, and any other such equipment that is plainly audible beyond the real property line,

shall be operated before 8:00 a.m. Work may take place after hours and on weekends only with express authorization from the approving Board and only after a noise mitigation plan has been submitted to that Board. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in construction and demolition activity shall be operated with a muffler and/or sound reduction device.

- D. Alterations or repairs to existing owner-occupied or rental dwellings, community service facilities, or schools may be performed on Saturdays and Sundays between the hours of 10:00 a.m. and 4:00 p.m.
- E. Motorized snow removal equipment shall be operated with a muffler and/or a sound reduction device when being used for snow removal. At all other times the limits set forth in Tables I, II or III do not apply.
- F. All interior and exterior burglar alarms of a building or motor vehicle must be activated in such a manner that the burglar alarm terminates its operation within five (5) minutes for continuous airborne sound and fifteen (15) minutes for intermittent sound after it has been activated. At all other times the limits set forth in Tables I, II or III do not apply.
- G. Self-contained, portable, non-vehicular music or sound production devices shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., sound, operated on a public space or public right-of-way, from such equipment shall not be plainly audible at a distance of 25 feet in any direction from the operator.
- H. All music or other unreasonable noise originating from a sound production device in connection with the operation of any commercial establishment or enterprise when the level of sound attributable to such music or noise, as measured inside any receiving property dwelling unit is in excess of measures established in Table IV, shall be prohibited.
- I. It shall be unlawful for any property owner or tenant to allow any domesticated or caged animal to create a sound across a real property line which unreasonably disturbs or interferes with the peace, comfort, and repose of any resident, or to refuse or intentionally fail to cease the unreasonable noise when ordered to do so by a Noise Control Officer or Noise Control Investigator. Prima facie evidence of a violation of this section shall include but not be limited to:
  - 1. Vocalizing (howling, yelping, barking, squawking etc.) for five (5) minutes without interruption, defined as an average of four or more vocalizations per minute in that period; or,
  - 2. Vocalizing for twenty (20) minutes intermittently, defined as an average of two vocalizations or more per minute in that period.

It is an affirmative defense under this subsection that the dog or other animal was intentionally provoked to bark or make any other noise.

#### **§ 133-10. Motor Vehicles**

- A. No person shall remove or render inoperative, or cause to be removed or rendered inoperative or less effective than originally equipped, other than for the purposes of maintenance, repair, or replacement, of any device or element of design incorporated in any motor vehicle for the purpose of noise control. No person shall

operate a motor vehicle or motorcycle which has been so modified. A vehicle not meeting these requirements shall be deemed in violation of this provision if it is operated stationary or in motion in any public space or public right-of-way.

- B. No motorcycle shall be operated stationary or in motion unless it has a muffler that complies with and is labeled in accordance with the Federal Noise Regulations under 40 CFR Part 205.
- C. Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at distance of 25 feet in any direction from the operator between the hours of 10:00 p.m. and 8:00 a.m.
- D. Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that is plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Ice cream and other food vending trucks, while in residential neighborhoods, are prohibited from the playing of jingles while stationary. Jingles may only be played when the vehicle is in motion.
- E. Commercial vehicles shall not be permitted to idle for more than 5 minutes in any residential district.
- F. The use of vehicle horns shall not be permitted except as a warning in situations of imminent danger.

#### **§ 133-11. Enforcement**

- A. Violation of any provision of this ordinance shall be cause for a Notice of Violation (NOV) or a Notice of Penalty Assessment (NOPA) document to be issued to the violator by the Noise Control Officer or Noise Control Investigator.
- B. Any person who violates any provision of this ordinance shall be subject to a civil penalty for each offense of not more than \$3,000. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.
- C. Upon identification of a violation of this Ordinance the Noise Control Officer or Noise Control Investigator shall issue an enforcement document to the violator. The enforcement document shall identify the condition or activity that constitutes the violation and the specific provision of this Ordinance that has been violated. It shall also indicate whether the violator has a period of time to correct the violation before a penalty is sought.
- D. If the violation is deemed by the Noise Control Officer or Noise Control Investigator to be a minor violation (as defined in Section II of this ordinance) a NOV shall be issued to the violator.
  - 1. The document shall indicate that the purpose of the NOV is intended to serve as a notice to warn the responsible party/violator of the violation conditions in order to provide them with an opportunity to voluntarily investigate the matter and voluntarily take corrective action to address the identified violation.
  - 2. The NOV shall identify the time period (up to 90 days), pursuant to the Grace Period Law, N.J.S.A. 13:1D-125 et seq. where the responsible party' s/violator' s voluntary action can prevent a formal enforcement action with penalties issued by the City of Hoboken, or the Hudson Regional Health

Commission. It shall be noted that the NOV does not constitute a formal enforcement action, a final agency action or a final legal determination that a violation has occurred. Therefore, the NOV may not be appealed or contested.

- E. If the violation is deemed by the Noise Control Officer or Noise Control Investigator to be a non-minor violation the violator shall be notified that if the violation is not immediately corrected a NOPA with a civil penalty of no more than \$3,000 will be issued. If a non-minor violation is immediately corrected a NOV without a civil penalty shall still be issued to document the violation. If the violation occurs again (within 12 months of the initial violation) a NOPA shall be issued regardless of whether the violation is immediately corrected or not.
- F. The violator may request from the Noise Control Officer or Noise Control Investigator, an extension of the compliance deadline in the enforcement action. The Noise Control Officer or Noise Control Investigator shall have the option to approve any reasonable request for an extension (not to exceed 180 days) if the violator can demonstrate that a good faith effort has been made to achieve compliance. If an extension is not granted and the violation continues to exist after the grace period ends, a NOPA shall be issued.
- G. The recipient of a NOPA shall be entitled to a hearing in a municipal court having jurisdiction to contest such action.
- H. The Noise Control Officer or Noise Control Investigator may seek injunctive relief if the responsible party does not remediate the violation within the period of time specified in the NOPA issued.
- I. Any claim for a civil penalty may be compromised and settled based on the following factors:
  - 1. Mitigating or any other extenuating circumstances;
  - 2. The timely implementation by the violator of measures which lead to compliance;
  - 3. The conduct of the violator; and
  - 4. The compliance history of the violator.
- J. No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this ordinance or from other law.

### **§ 133-12. Consistency, Severability and Repealer**

- A. If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.
- B. All ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.

### **SECTION THREE: AMENDMENTS**

The following sections of Chapter 145, entitled “Peace and Good Order” the City Code of the City of Hoboken, are hereby amended to conform with the new language in Chapter 133 (~~deletions shall be noted by strikethrough~~ and additions shall be noted by double underline):

~~§ 145-1.1. Construction noise restrictions.~~

- ~~A. General provisions and standards. No person shall make, continue, or cause to be made or continued, any loud, unnecessary, and/or prolonged noise derived from construction machinery such as jackhammers which annoys, disturbs, injures, or endangers the comfort, health, welfare, peace, or safety of others, except in case of urgent necessity in the interest of public health and safety, and then only with the permission of the Construction Official.~~
- ~~B. Jackhammers. Noises such as those which emanate from a jackhammer are hereby declared to be loud and disturbing noises in violation of this section, except in case of urgent necessity in the interest of public health and safety, and then only with the permission of the Construction Official.~~
- ~~C. No one shall operate a jackhammer within the city boundaries unless such operation occurs between the hours of 8:00 a.m. and 6:00 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with the permission of the Construction Official.~~
- ~~D. Any person who violates any provision of this section or any rule promulgated hereunder shall be liable to a fine of not less than seventy-five dollars (\$75.) nor more than three hundred and fifty dollars (\$350.). For the first offense of this section, a penalty of seventy-five dollars (\$75.) shall be imposed. For the second offense of this section, a penalty of one hundred and fifty dollars (\$150.) shall be imposed. Each and every subsequent offense of this section shall be a matter of judicial discretion and/or determination. Each day a violation of this section shall continue shall constitute a separate offense.~~

**§ 145-1.2 1.1. Radios and other such similar machines and/or devices noise restrictions.**

- A. ~~Radios, tape players, compact disc players, boom boxes, phonographs, amplified musical instruments, motor vehicle sound systems and similar devices.~~ Playing or permitting the playing of any radio, tape players, compact disc players, boom boxes, phonographs, amplified musical instruments, motor vehicle sound systems and similar devices so as to not comply with the decibel level requirements of the Hoboken Code, Section 133, entitled Noise Control shall be considered a violation of the peace and good order pursuant to this chapter. Further, the following uses shall also be considered violations of this chapter:
- ~~(1) In such a manner as to create a noise disturbance across real property boundaries or within a noise sensitive zone;~~
- ~~(2) (1) When played in any motor vehicle, in such a manner as to create a noise disturbance outside of the vehicle or as to be plainly audible at a distance of fifty (50) feet;~~
- ~~(3) When played in any motor vehicle in such a manner as to create a sound level of sixty-five (65) decibels on the A-scale as read by the slow response of a sound level meter when read at the curb line of the~~

~~adjoining street from 7:00 a.m. to 10:00 p.m. or in such a manner as to produce sound which is plainly audible to anyone other than occupants of the motor vehicle between 10:00 p.m. and 7:00 a.m.:~~

~~(4) When played on any street or sidewalk, playground, school, park or common area of any building, in such a manner so as to create a noise disturbance;~~

~~(5)~~ (2) When played by any passenger on a common carrier, in such a manner as to be heard by any other passenger;

~~(6) When played in any residential neighborhood so as to produce sixty-five (65) decibels on the A scale as read by the slow response of a sound level meter when measured at a distance of twenty-five (25) feet or at the next adjoining fill property line between the hours of 7:00 a.m. and 10:00 p.m. or when played between the hours of 10:00 p.m. and 7:00 a.m. on any street, playground, school, park, or common area of any building in such a manner as to be heard by anyone other than the operator of the device.~~

- B. Any person who violates any provision of this section or any rule promulgated hereunder shall be liable to a fine of not less than seventy-five dollars (\$75.) nor more than three hundred and fifty dollars (\$350.). For the first offense of this section, a penalty of seventy-five dollars (\$75.) shall be imposed. For the second offense of this section, a penalty of one hundred and fifty dollars (\$150.) shall be imposed. Each and every subsequent offense of this section shall be a matter of judicial discretion and/or determination. Each day a violation of this section shall continue shall constitute a separate offense.

**§ 145-~~1.3~~ 1.2. Gas powered go-peds, mopeds, and skateboards noise restrictions.**

- A. All gas powered go-peds, mopeds, and skateboards that do not comply with the decibel level requirements of the Hoboken Code, Section 133, entitled Noise Control shall be considered a violation of the peace and good order pursuant to this chapter. Further, the following uses shall also be considered violations of this chapter:

(1) When used in such a manner to create a noise disturbance across real property boundaries or within a noise sensitive zone;

(2) When used on any street or sidewalk, playground, school, park, or common area of any building, in such a manner as to create a noise disturbance.

- B. Any person who violates any provision of this section or any rule promulgated hereunder shall be liable for a fine of not less than seventy-five dollars (\$75.) nor more than three hundred and fifty dollars (\$350.). For the first offense of this section, a penalty of seventy-five dollars (\$75.) shall be imposed. For the second offense of this section, a penalty of one hundred and fifty dollars (\$150.) shall be imposed. Each and every subsequent offense of this section

shall be a matter of judicial discretion and/or determination. Each day a violation of this section shall continue shall constitute a separate offense.

**SECTION FOUR: REPEAL OF INCONSISTENT PROVISIONS**

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

**SECTION FIVE: SEVERABILITY**

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

**SECTION SIX: EFFECTIVE DATE**

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

**SECTION SEVEN: CODIFICATION**

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

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

---President Marsh moved that the ordinance pass its first reading as read and be laid on the table for public inspection to be further considered for final passage at a meeting of the Council to be held on **OCTOBER 20, 2010 at 7:00 PM.**

---Motion duly seconded by Councilman Bhalla.

---Adopted by the following vote: YEAS: 9 - NAYS: 0

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: None.

**10-644**

**Z-63**

**AN ORDINANCE TO AMEND AND SUPPLEMENT SECTIONS 190-41.1 OF THE GENERAL CODE OF THE CITY OF HOBOKEN TO AMEND THE DRIVEWAY PARKING PERMIT REQUIREMENTS.**

**WHEREAS**, pursuant to Title 39 of the New Jersey Statutes, the City of Hoboken is entitled to create, repeal and amend ordinances relating to parking on municipal rights of way;

**WHEREAS**, the General Code of the City of Hoboken, at Section 190-41.1, currently regulates driveway parking permits within the City;

**WHEREAS**, the City Council seeks to amend Section 190-41.1 to clarify obligations and rights relating to driveway permit parking.

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

**Section One: Section 190-41.1 Amendments**

The following amendments are hereby made to Hoboken General Code Section 190-41.1 (additions noted in underline, ~~deletions noted in strikethrough~~):

§ 190-41.1. Parking in front of driveway.

- A. Pursuant to N.J.S.A. 39:4-138.4, the Director of the Parking Utility may issue to owners of private driveways and, in the case of a private residence to members of the same household, permits authorizing the parking of private passenger vehicles in front of the owner's driveway. The Director may require an owner to file a complete application for such a permit on a form provided by the Director. An owner of a private driveway shall be eligible to apply for up to three (3) permits for his or her own motor vehicles or for use by other parties authorized by the owner to park in front of the private driveway. In the case of a private residence, e~~E~~ach member of the owner's household who owns a motor vehicle shall also be eligible to apply for a permit issued under this section. The ~~e~~D~~e~~Director may require an applicant to provide evidence that the driveway was legally established in accordance with the ~~office of~~ municipal Zoning Code.
- B. The permit shall identify the location of the driveway and the vehicle authorized to park in front of the driveway. The permit shall be five and one-half inches by eight and one-half (5 1/2 x 8 1/2) inches in size. Shall bear an appropriate certification of authenticity and shall be displayed prominently within the vehicle when parked so as to be seen from the middle of the street.
- C. Provided that such parking is not otherwise prohibited and does not interfere with a normal flow of traffic, it is an affirmative defense to prosecution for violation of N.J.S.A. 39:4-138(d) if:
  1. The parked vehicle and driveway where the vehicle is parked are owned by the same person; or
  2. The parked vehicle is owned by a member of the same household as the owner of the private driveway; or
  3. The owner of the private driveway authorized the parking of the parked vehicle in front of the private driveway; or

4. This defense may be presented by form of affidavit as provided for in the New Jersey Court Rule 7:6-6(a); or

5. The rights of this parking permit shall supersede all other parking permit regulations, which are found in Hoboken General Code Section 190-6.2 and 141A-2H.

D. ~~(5) No owner may permit any vehicle to park in front of the owner's driveway without a valid Driveway parking permit displayed prominently within the vehicle when parked so as to be seen from the middle of the street. ~~other than a vehicle registered in the name of the owner or member of the owner's household residing with the owner.~~~~

E. ~~(6) No owner may charge a fee for permitting anyone to park a vehicle in front of the owner's driveway.~~

F. ~~(7) The parked vehicle must be parked parallel to the curb in front of the driveway. No vehicle shall be parked in such a way as to block access to the sidewalk.~~

### **Section Two: Repeal of Inconsistent Provisions**

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

Proper signs shall be erected in accordance with the current "Manual on Traffic Control Devices." The City Clerk shall immediately forward a certified copy of this Ordinance to the New Jersey Department of Transportation.

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.

---President Marsh moved that the ordinance pass its first reading as read and be laid on the table for public inspection to be further considered for final passage at a meeting of the Council to be held on **OCTOBER 20, 2010 at 7:00 PM.**

---Motion duly seconded by Councilman

---Adopted by the following vote: YEAS: 8 - NAYS: 1

---Yeas: Council persons Bhalla, Cunningham, Giacchi, Lenz, Mason, Mello, Russo and President Marsh.

---Nays: Castellano.

### NEW BUSINESS

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Councilwoman Castellano comments on letter and not to have another lawsuit

Director Forbes comments

Councilwoman Mason comments on Rent Control, received a draft

asked Business Administrator on Claims for Print Cartridges

Councilman Russo comments

Councilman Lenz comments their needs some research

Council President there needs some research

Councilman Russo asks Director Pellegrini for the result of the financials of expenses and what the revenue gets generated for the City

Director Pellegrini Spring netted 34K will get back to the Council for the Fall

Councilman Russo questions Director Trasente and would like the breakdown of his schedule  
Business Administrator he works on Saturday and nights

Council President has left the table at 11:50 PM

Council President has returned to the table at 11:53 PM

Councilman Russo asks Director Maier about knowledge of termites in the basement

Director Maier comments that she has known this for 3 mo. and the exterminators said that it is an ongoing problem and it can't be done until the area is empty and no termites in Violations

Councilman Russo asks Director Sacs about physical layouts of the new space

Business Administrator no plans to move yet and has to look at the impact

Director Sacs comments about mechanical drawings or general space layout

Councilman Russo comments on

Director Sacs comments that there is no secret on final decision on the move

Business Administrator comments

Councilman Lenz comments on the move for the Parking Utility

Business Administrator comments would need some sort of bond for the facility and budgeting the design, the impact of neighborhoods, parking issues

Councilman Lenz comments especially costs and don't think necessarily the South East section is the best place

Councilman Giacchi comments on QLC on Maxwell Place and 911 Memorial which a new plan has been rendered

Councilman Cunningham holding 3 meetings Foxhill, Jubilee Center, Elk's Club and discuss with Stevens on Incubator Space and discuss this next week and NJ Transit

Councilman Mello comments and questions the IT Director about the Governor coming into Elysian Charter last week

Council President concludes New Business, going to back to Resolution #22A, #22B and #22C

**PUBLIC PORTION**

The following members of the public spoke at the "Public Portion" of the meeting: Patricia Waiters, Linda Walker, Helen Hirsch, Lane Bajardi, Ron Simoncini, Hamed Amed.

At 12:46 A.M. the Governing Body on a motion by Council President duly seconded by the Governing Body.

President Marsh then adjourned the meeting at 12:46 A.M.

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PRESIDENT OF THE COUNCIL

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CITY CLERK