

MEETING OF FEBRUARY 2, 2011

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, FEBRUARY 2, 2011 AT 7:00 PM

President Mason opened the meeting at 7:06 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, Marsh, Mello, Occhipinti, Russo and President Mason.

PUBLIC HEARING and FINAL VOTE ON ORDINANCES

Second Reading / Public Hearing and Final Vote

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 190 OF THE GENERAL CODE OF THE CITY OF HOBOKEN ENTITLED "VEHICLES AND TRAFFIC" AND CHAPTER 146 OF THE GENERAL CODE OF THE CITY OF HOBOKEN ENTITLED "PARKING PERMITS" TO DELETE PORTIONS OF SECTION 190-6B, AND TO AMEND PORTIONS OF SECTION 190-7, 190-9, AND 141a-2 (Z-81)

Councilman Mello would like to pull 2nd Reading

Council President announces that some changes on the agenda, pulling pay to play Ordinance, deadline should be the Thursday prior to the week of the meeting and asks the rest of the Governing Body if they would like to pull any other Ordinances. Council President asks Victor Afanador Victor Afanador requests to pull the Rent Control Ordinance till the next meeting.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF HOBOKEN FOR CERTAIN ENCROACHMENTS WITHIN THE PUBLIC RIGHT OF WAY AT THE SITE OF REAL PROPERTY LOCATED AT 1208 PARK AVENUE, HOBOKEN, NEW JERSEY, MORE PARTICULARLY KNOWN AS BLOCK 174 LOT 28 ON THE TAX MAP OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, STATE OF NEW JERSEY. (Z-83)

President Mason 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.

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

President Mason moved that the hearing be closed.
Motion duly seconded by Councilman Russo.

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

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

---Nays: None.

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

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

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

---Nays: None.

---Abstain: Marsh.

PETITIONS AND COMMUNICATIONS

11-835

February 2, 2011

Dear Council President Mason:

Thank you for meeting with me to discuss how my Administration and the City Council can work together. I write to you in the spirit of cooperation and in the interest of extending that dialog.

As I mentioned in my follow up email to you, it is important that we receive in writing your perspective on how the Administration should work with the Council regarding development of the Council meeting agenda.

Also, at the recent Finance sub-committee, there was a discussion about the process for introducing the budget. Please confirm in writing by Friday, February 4 that both you and Finance chair Russo agree on the process that was discussed at the Finance subcommittee this week.

NJDOT Funding:

I am very pleased to report that as a result of our application for funding from the New Jersey Department of Transportation's Municipal Aid Program, we were awarded a grant in the amount of \$400,125.00 to resurface our streets. Please see the attached memo from Commissioner James Simpson.

Surplus:

First, I want to thank Councilman Giacchi for providing his position on this matter.

As a follow-up, I am writing to ask if you could provide your position on what the surplus level should have been last year. I recall that many public positions were taken on this issue, but never heard a clear number on what you believed the surplus level should have been. Again, this information will help my Administration to finalize a budget that addresses the Council's concerns.

Budget Update, Timing of Introduction:

Per the attached notice, the State has advised us that the statutory deadline to introduce the budget has been extended from February 10th to March 11th. Per statutory regulations, we will plan to provide a copy of the budget to the Council by February 25th, any my Administration intends to introduce the budget at the following Council meeting on March 2nd ahead of the statutory date. This is a result of the fact that the State will not be able to provide its revenue numbers to us until late February. Since pending union

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negotiations, which have reached a critical stage, as well as the Fire audit, which has been delayed, may also influence the budget, we are planning for the introduction on March 2nd to meet the statutory deadline.

Invite to State of the City Address on February 22nd:

Prior to the budget introduction, I will be giving a State of the City at 7pm on February 22nd. The location will be announced shortly. I am writing to formally invite all City Council members to attend.

Pay to Play Ordinance:

This revised ordinance primarily reflects amendments requested by the People for Open Government to address their concerns about loopholes in the law. They will be available at the meeting to explain the changes they proposed for the revised legislation. In addition, the Administration has added language to ensure that it is clear that pay-to-play applies to areas currently being studied for redevelopment, and not just designated redevelopment areas.

As we work to bring balanced development to our City, it is essential that developers, and elected officials take our pay-to-play law seriously. Therefore, language has been added at my request that makes it so that violators risk not being able to develop in Hoboken for five years. With this measure, our City can make it clear that we are committed to bringing balanced development to Hoboken. This legislation sends a straightforward message that development rights cannot be bought through elected officials in our City. With the passage of this law, property owners and developers will understand that they take on a serious risk if they try to improperly influence the development process in Hoboken.

The ordinance also includes an anti-wheeling section, added by my Administration, which closes a loophole in campaign finance law dealing with personal contribution limits. The intent of the proposed law is to prevent individuals from using political committees to circumvent personal contribution limits. Specifically, it prevents individuals from raising their personal contributions limit from \$2,600 to \$10,800 through giving their own money to a political committee that is 75% or more self-funded. Anti-wheeling legislation has been adopted in a number of municipalities and proposed at the state level by State Senator Loretta Weinberg. It is my aim to keep Hoboken at the forefront of ethical reform in New Jersey.

I urge you to pass this legislation on first reading so that together we may move it forward and take action to ensure balanced development and good government in Hoboken.

Thank you and best regards,
Dawn Zimmer
cc/City Council
Received and Filed.

11-836

PROCLAMATION FROM MAYOR ZIMMER RECOGNIZING FRIDAY, FEBRUARY 4, 2011 AS “NATIONAL WEAR RED DAY FOR WOMEN”

WHEREAS, diseases of the heart are the nation’s leading cause of death, and stroke is the third leading cause of death; and

WHEREAS, cardiovascular diseases (CVD) claim the lives of up to 422,000 American women (about one death per minute) each year; and

WHEREAS, each year 52 percent of all cardiovascular disease deaths and 60 percent of stroke deaths occur in females; and

WHEREAS, in 2008 the direct and indirect cost of cardiovascular disease, stroke and all other cardiovascular diseases and stroke in the United States was estimated at \$431.8 billion; and

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WHEREAS, nearly as many women die of heart disease, stroke and all other cardiovascular diseases than the next four leading causes of death combined, including all cancers; and

WHEREAS, February is designated as American Heart Month; and

Whereas, **Go Red For Women** is the **American Heart Association's** national movement to make women aware of their risk for heart disease – the leading cause of death for women – and to empower women to take action to reduce that risk; and

WHEREAS, all women should learn their own person risk for heart disease, using tools such as the **American Heart Association's Go Red for Women Heart Check-Up, Go Red for Women Better U** and by talking to their health care provider;

NOW, THEREFORE, I DAWN ZIMMER, Mayor of the City of Hoboken, in recognition of the importance of the ongoing fight against heart disease and stroke, do hereby proclaim **Friday, February 4, 2011** to be "**National Wear Red Day for Women**" in the City of Hoboken and urge all citizens to "Go Red" for the day and wear red on **February 4, 2011** to call attention to the magnitude of cardiovascular disease in women and as a show of support to fight it, and, in recognition of family, friends and neighbors who have suffered from cardiovascular disease.

Received and Filed.

11-837

PROCLAMATION FROM MAYOR ZIMMER PROCLAIMING FEBRUARY 2011 AS AFRICAN-AMERICAN HISTORY MONTH

WHEREAS, each year, our nation recognizes February as **African-American History Month** to celebrate and honor the positive achievements and diverse voices of the **African-American** community which has helped share this nation and the community's social fabric; and

WHEREAS, the **African-American** community has persevered and demonstrated great courage in their struggle to overcome our nation's historic injustices of slavery and racial discrimination and reminded our nation of its promise for equality and justice; and

WHEREAS, **African-American** have always fought to protect our country's ideals on the battlefield, from the birth of our nation during the Revolutionary War, to the fight for the freedom of million during the Civil War, and their brave efforts played a key role in advancing desegregation in our country; and

WHEREAS, our nation has benefited greatly from the vast cultural contributions from the **African-American** community including in the areas of music, arts, poetry, and cuisine, and from inventors, doctors, and lawyers who have brought critical advancements to medicine, science, agriculture, law, and more;

NOW, THEREFORE, BE IT PROCLAIMED, that I, **DAWN ZIMMER**, Mayor of the City of Hoboken, do hereby proclaim February 2011 as **African-American History Month** and invite all citizens of the City of Hoboken to celebrate and learn about the vast contributions of **African-Americans** to our community.

Received and Filed.

11-838

RESOLUTION FROM THE CITY COUNCIL ACKNOWLEDGING BLACK HISTORY MONTH

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11-839

APPLICATIONS FOR MISCELLANEOUS LICENSES

Taxi,Livery/LimoDrivers -----	12
Raffles-----	1

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

Committee Reports

Rent Control sub-committee public hearing update on Monday, January 24, 2011

Councilman Bhalla comments and gives an overview of the public hearing
Councilman Russo comments

Parking and Transportation sub-committee meeting on Monday, January 24, 2011

Received and Filed.

Councilwoman Castellano comments and gives an overview and wants to schedule another meeting for Monday, February 7th at 6 PM in the Transportation and Parking committee and looking for any citizens in serving on the Handicap Sub-committee and fill it out in the City Clerk's office
Councilman Cunningham comments

Quality of life sub-committee meeting on update on Wednesday, January 26, 2011.

Councilman Giacchi comments about the 911 memorial and a location will be put near the walkway with the current memorial, next meeting there will be an appropriate resolution to address this hopefully for the next meeting. Noise Ordinance were proposed and minor, however any change made it must be made by the Dept. of Environmental Protection, discussed about all the parks in town and what type of improvements were needed along with costs, Director Liston mentioned that it can be bonded by the administration, recreation fees addressed and under deliberation
Councilman Cunningham questions Councilman Giacchi about Park improvements.

Revenue and Finance sub-committee meeting scheduled for Tuesday, February 1, 2011 *

Councilman Russo gives an overview about the meeting regarding the new firm as the auditor who were the new bid, which save the City of Hoboken \$13K/annually and the process to move forward on the budget and hopefully get more data for the Council. The Director of Finance Dept. and the B.A. will provide something more substantial, Corporation Counsel comments about the procedure issue with Resolution #2

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Economic Development and Open Space Acquisition sub-committee meeting scheduled for Thursday, February 3, 2011 *

Councilman Occhipinti mentions the next meeting will be tomorrow night at 7:00 PM in the basement conference room

Councilwoman Castellano requests if times would be recorded for the meetings

Councilman Cunningham comments about the meeting and hopefully vet out the planner for the NJ Transit project

Councilwoman Marsh questions about the committee about the waterfront

Council President comments

Director Forbes comments

Council President requests a daily report along the Waterfront on the Hudson River

Corporation Counsel comments and will follow-up with the City Engineer first thing tomorrow morning

Councilwoman Castellano comments

Councilwoman Marsh comments about the email regarding the rules committee and asks Council President to schedule the meeting to discuss further

Councilman Cunningham comments about the City Engineer

Council President comments about resolutions that were tabled.

11-840

---By Councilman Russo

CLAIMS

Total for this agenda \$328,254.62

Motion duly seconded by Councilman Occhipinti

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

Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Marsh, Mello, Occhipinti, Russo and President Mason

Nays: None.

11-841

---By Councilman Russo

PAYROLLS

For the two week period starting January 6, 2011 – January 26, 2011

Regular Payroll	O/T Pay	Pay	
\$1,407,601.04	\$57,642.22		\$1,742,901.75

Motion duly seconded by Councilman Occhipinti

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

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

Nays: None.

RESOLUTIONS

Meeting Date of February 2, 2011

Presented and Read

11-842

---By Councilman Russo

THIS RESOLUTION REJECTS ALL BID PROPOSALS FOR THE PROVISIONS OF VEHICLE TOWING SERVICES FOR THE CITY IN UNDER THE SPECIFICATIONS IN BID NUMBER 10-32.

WHEREAS, proposals were received on Tuesday, January 4, 2011 for the provisions vehicle towing services for the City of Hoboken, as specified in Bid Number 10-32; and,

WHEREAS, two (2) proposals were received from the following bidders:

MILE SQUARE TOWING, LLC
1520 JEFFERSON STREET
HOBOKEN, NEW JERSEY 07030

AND

JOHNS MAIN AUTO BODY
1445 UNION TURNPIKE
NORTH BERGEN, NEW JERSEY 07047

WHEREAS, since the date of publication of Bid No. 10-32, the City has become aware of certain towing needs which will not be adequately met by entering into a contract pursuant to the terms and specification of Bid No. 10-32; and,

WHEREAS, as a result, the Office of Corporation Counsel recommends that the City Council of the City of Hoboken reject all bid submissions for the provision of vehicle towing services under Bid No. 10-32, pursuant to N.J.S.A. 40A:11-13.2, to allow the City to revise the bid specifications.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Hoboken hereby rejects all bid proposals submitted for the provision of vehicle towing services under Bid No. 10-32, pursuant to N.J.S.A. 40A:11-13.2; and,

BE IT FURTHER RESOLVED that the City Council requests the Administration determine what towing services are necessary to maintain the public safety, health and welfare on a day-to-day basis and on an emergency basis, based on recently developed information; and,

BE IT FURTHER RESOLVED, the City Council requests the Administration revise and publish bid specification for the provision of towing services accordingly.

---Motion duly seconded by Councilman Giacchi

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

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

---Nays: None.

11-843

RESOLUTION SUPPORTING A POLICY TO CREATE UPDATED AFFORDABLE HOUSING STANDARDS WITHIN THE CITY

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This resolution was given a number by mistake but was taken off the agenda.

11-844

---By Councilwoman Mason

A RESOLUTION TO AMEND THE CONTRACT FOR SPECIAL COUNSEL –RENT CONTROL LITIGATION WITH VICTOR AFANADOR, ESQ. TO INCREASE THE NOT TO EXCEED AMOUNT PREVIOUSLY AWARDED BY \$50,000.00

WHEREAS, the City of Hoboken sought competitive proposals for the position of Special Counsel – Rent Control Litigation, and received a proposal from Victor Afanador, Esq. of Lite DePalma; and,

WHEREAS, the City Council approved a contract with Victor Afanador, Esq. by Resolution dated August 11, 2010 for a one year contract in an amount not to exceed Fifty Thousand (\$50,000.00) Dollars; and,

WHEREAS, a contract was entered into between Victor Afanador, Esq. and the City of Hoboken for a one year term in an amount not to exceed Fifty Thousand (\$50,000.00) Dollars for Special Counsel services relating to Rent Leveling litigation in the City of Hoboken; and

WHEREAS, Victor Afanador, Esq. has continuously provided the City with his litigation services relating to the City’s rent leveling cases, and has also provided the City, at the City’s request, with his services relating to the drafting of rent leveling legislation; and

WHEREAS, the additional work which Victor Afanador has provided on behalf of the City has resulted in an increase in the costs of his services, and his services have reached greater than 85% of the City’s original not to exceed amount of Fifty Thousand (\$50,000.00) Dollars; and

WHEREAS, the City needs to amend its current contract with Victor Afanador to increase the not to exceed amount to take into account the additional work which the City has requested of Mr. Afanador, without any change in the remaining terms of the contract, including, but not limited to, the contract period.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Hoboken in the County of Hudson that:

1. The above recitals are incorporated herein as thoughtfully set forth at length; and
2. The City Council hereby requests amendment of the City’s contract with Victor Afanador, Esq. for services as Special Counsel – Rent Control Litigation to increase the not to exceed amount by Fifty Thousand (\$50,000.00) so that the total not to exceed amount shall be One Hundred Thousand (\$100,000.00) Dollars; and,
3. The City Council hereby directs that no other terms of the original agreement be amended, including, but not limited to, the contract term.
4. The City Council directs the Mayor or her agent to take steps to effectuate the recitals herein.
5. This resolution shall take effect immediately.

---Motion duly seconded by Councilman Russo

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

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

---Nays: None.

11-845

---By Councilman Occhipinti

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RESOLUTION AUTHORIZING A SHARED SERVICE AGREEMENT WITH THE HOBOKEN HOUSING AUTHORITY FOR A FEASIBILITY STUDY OF MAMA JOHNSON FIELD AND AUTHORIZING THE APPOINTMENT OF BOSWELL ENGINEERING FOR THE STUDY

This Agreement is made on this _____ day of _____, 2011, between the HOUSING AUTHORITY OF THE CITY OF HOBOKEN, a public body corporate, with offices located at 400 Harrison Street, Hoboken, New Jersey 07030 (hereinafter referred to as the "Authority") and the CITY OF HOBOKEN a public body corporate, with offices located at 94 Washington Street, Hoboken, New Jersey 07030 (hereinafter referred to as the "City").

RECITALS

WHEREAS, the Uniform Shared Services and Consolidation Act, *N.J.S.A. 40A:65-1, et seq.*, permits, authorizes and encourages public bodies such as municipalities and other autonomous public entities to enter into agreements with each other to contract for the provision of any service which the parties to such agreement are empowered to render under and within its own jurisdiction, whether administrative or otherwise; and

WHEREAS, the Authority and the City previously determined that shared use and maintenance of Mama Johnson Field would assist the City in providing more field opportunities for its recreation programs while also assisting the Authority in maintaining and updating Mama Johnson Field to make use of the field more enjoyable for the Authority's residents; and

WHEREAS, the Authority and City acknowledge that Mama Johnson Field is currently in significant need of rehabilitation and revitalization prior to the parties entering into a finalized agreement for shared usage and maintenance; and

WHEREAS, prior to entering into any rehabilitation and revitalization agreement and subsequent usage and maintenance agreement, the Authority and City acknowledge an engineering feasibility study must be done to Mama Johnson field to determine the necessary improvements, the optional improvements, the likely procedure that will need to be taken and the types of materials that will be necessary to preserve the rehabilitated field for an extended period of time; and,

WHEREAS, the parties have agreed to use the services of a general engineer, appointed by the Authority by way of an Request for Proposals under the Fair and Open Process, for the engineering feasibility study, but with both parties able to provide comment and obtain all reports and other documentation produced by the engineer in the course of its investigation; and,

WHEREAS, the parties wish to memorialize the arrangement of an engineering feasibility study through the creation of a shared service agreement (the "Agreement") by and among the parties for the purpose of determining the best plans and materials and the connected costs associated with the parties plans for rehabilitation and revitalization of Mama Johnson field; and

WHEREAS, the City shall share the cost of the study with the Authority, in an amount which shall not exceed Twenty Thousand (\$20,000.00) Dollars; and

WHEREAS, the parties contemplate that no services shall be otherwise provided pursuant to this Agreement, except in accordance with applicable federal, state, and local laws and regulations governing HUD.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

**SECTION ONE
DURATION, CANCELLATION, AND DEFINITIONS**

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A. DURATION OF AGREEMENT AND RIGHT OF CANCELLATION

The term for this Agreement shall commence on the date of execution and shall extend through June 30, 2011. This Agreement will continue in effect on the terms and conditions provided herein until cancelled by either party. Cancellation shall be effected by any party providing thirty (30) days written notice to the other of its intent to terminate the Agreement, and such cancellation shall be effective on the 31st day following either party's timely service of the notice of intent to cancel the Agreement.

B. DEFINITIONS

As used in this Agreement, unless the context indicates otherwise, the following terms shall have the following meanings and are to be interpreted consistent with the context of this Agreement in which each term is used:

1. "Agreement" shall refer to the within Shared Service Agreement executed by the City and the Authority.
2. "Authority" shall refer to the Hoboken Housing Authority.
3. "Engineer" shall refer to the general engineering firm chosen by the Authority pursuant to the Fair and Open Process.
4. "City" shall refer to the City of Hoboken.
5. "Reports" shall mean written submissions from the Engineer setting forth all results of the feasibility study. The Reports shall reflect and include the types of rehabilitation which are available and the likely amortization period for those improvements, time to complete work, as well as recommendations on the cost of repairs, as well as guidance on the production of bid specifications, as needed, to obtain contractors to perform the rehabilitation services in accordance with the best practices determined by the City and the Authority under the feasibility study.

SECTION TWO SERVICES

A. Engineering Services shall be provided according to the following terms and conditions:

1. The Authority shall be solely responsible for providing the services of a general engineering firm to perform the feasibility study. The Authority agrees to obtain and appoint the general engineering firm pursuant to the Fair and Open Process by way of a Request for Proposals or Request for Qualifications.
2. The Authority and City shall share the right to direct all activities of the Engineer as directed herein. The City and its City Engineer may review all reports of the Engineer, and may direct the Engineer to perform specific feasibility services in the event the City Engineer does not concur with the Engineer's reports. In all other instances, the Authority shall have the ultimate authority to determine the direction of the services to be rendered by the Engineer.
3. The parties expect final completion of the feasibility study to occur on or before June 30, 2011. Pursuant to the request of the City Engineer, the parties agree that the Engineer will perform the studies or services after the ground at Mama Johnson Field is no longer snow covered. The parties further agree that the Engineer will perform the study during a significant rain event so that drainage issues can be assessed and adequately addressed in the feasibility report.
4. The Engineer's services under this agreement shall be limited to performing a feasibility study, to include potential plans for the rehabilitation and revitalization of Mama Johnson field; any additional work done by the Engineer on behalf of the parties shall require a new agreement and new compensation terms.

SECTION THREE COMPENSATION

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The City shall share the responsibility of compensating the Engineer in an amount not to exceed Twenty Thousand (\$20,000.00) Dollars, or Fifty Percent (50%) of the total cost of the services, whichever is less. The remaining balance owed to the Engineer is the sole responsibility of the Authority. The Authority shall submit true and accurate copies of the Engineer's invoices to the City within twenty (20) days of receipt by the Authority. The City shall submit payment to the Authority, in the name of the Authority, constituting Fifty Percent (50%) of each engineering invoice received, within Thirty (30) days of receipt from the Authority. The City shall continue to receive invoices from the Authority according to this Section Three after the City has compensated the Authority to its maximum, Twenty Thousand Dollars (\$20,000.00), but the City shall not have any obligation to make payments towards such invoices.

SECTION FOUR DEFAULT

The following events shall constitute default of this Agreement:

- A. The appointment of a receiver or other trustee for either of the parties;
- B. Failure of either party to perform or fulfill any other covenants or conditions set forth in this Agreement, when such failure continues for a period of fourteen (14) days after notice of such failure from the non-defaulting party.
- C. The failure of either party to appropriate funds to compensate the Engineer pursuant to Section Three.

SECTION FIVE TERMINATION

1. In the event of default as defined in Section Four of this Agreement, the non-defaulting party may serve upon the defaulting party a written notice of its intent to terminate this Agreement and demand that the defaulting party cure such default within fourteen (14) days from the date of such written notice. If the defaulting party cures the default within fourteen (14) days from the date of such notice, then the notice of intent to terminate shall have no force or effect. If, however, the defaulting party has not cured the default by the end of the fourteen (14) day period, after the expiration of the period, the non-defaulting party may serve upon the defaulting party written notice of the former party's intent to terminate this Agreement immediately.

2. The rights granted pursuant to this Section Five are in addition to any other rights and remedies for breach of contract available to the non-defaulting party at law or in equity.

SECTION SIX SUCCESSORS AND ASSIGNS

The terms of this Agreement shall be binding upon all transferees, successors, or assigns of the parties as though named in this Agreement.

SECTION SEVEN NOTICE

1. All notices, request, or approvals required or permitted under this Agreement shall be in writing and shall be deposited in the United States mail, postage prepaid, and shall be registered or certified or may be provided via personal service or via Federal Express or other recognized national overnight mail carrier.
2. If intended for the Authority, such correspondence shall be sent to the Executive Director at 400 Harrison Street, Hoboken, New Jersey 07030. If intended for the City, all such correspondence shall be sent to the Council President, City Attorney and City Clerk, located at 94 Washington Street, Hoboken, New Jersey 07030.
3. A change in address must be noticed in the manner set forth in this Section. Any notice, request or approval required or permitted shall be deemed given and received by the addressee on the third business day after mailing or upon delivery, if personally delivered or sent by overnight carrier.

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**SECTION EIGHT
RESOLUTION OF DISPUTES**

Should any bona fide dispute arise between the parties with respect to any of the terms and conditions hereunder, such bona fide dispute shall be presented to the New Jersey State Board of Mediation for mediation. The parties agree that every best effort shall be made by both parties to resolve any and all disputes prior to mediation and, if no resolution is reached, the dispute shall be presented to mediation. In the event mediation fails, all disputes arising under this Agreement shall be subject to binding arbitration.

**SECTION NINE
WAIVER**

A party's waiver of a breach of any term of this Agreement shall not constitute a waiver of any subsequent breach of the same or another terms contained in this Agreement. A party's subsequent acceptance of performance by the other party shall not be construed as a waiver of a preceding breach of this Agreement other than failure to perform the particular duties so accepted.

**SECTION TEN
MISCELLANEOUS**

A. If any provision of this Agreement is held unenforceable or invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected.

B. Entire Agreement/Modifications. This Agreement supersedes any and all prior or other oral or written agreements between the parties. This Agreement may be altered, modified or amended only in writing executed by both of the parties hereto. This Agreement contains the entirety of the Agreement between the parties. There are no other oral agreements or presentations binding the parties hereto.

C. Governing Law. This Contract shall be governed by the laws of the State of New Jersey and in compliance with all directives and policies of the Department of Housing and Urban Development (HUD) and all ordinances, policies and provisions of the City.

**SECTION ELEVEN
EFFECTIVE DATE**

This Agreement shall become effective upon final approval by the Authority and the City Council, the adoption of whichever resolution is later.

**SECTION TWELVE
SIGNATURES**

The parties agree that this Agreement may be signed and executed in counterpart, and that the failure of the parties to be mutually present during such signing or execution, or that the failure of all parties' signatures to appear on the same original of the Agreement, shall not be construed as taking from the validity and effect of same.

---Motion duly seconded by Councilman Russo

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

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

---Nays: None.

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11-846

---By Councilman Russo

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 **\$ 8,198.61**

<u>NAME</u>	<u>BL/LT/UNIT</u>	<u>PROPERTY</u>	<u>QTR/YEAR</u>	<u>AMOUNT</u>
GAIDA, ROBERT & HEATHER 231-233 MONROE ST #3N HOBOKEN, NJ 07030	38/12/C0003	231-233 MONROE ST	3/09	\$ 2,648.05
CHASE HOME FINANCE CORELOGIC INC 1 CORELOGIC DRIVE WESTLAKE, TX 76262	68/6/C0303	511-515 MADISON ST	4/10	\$ 2,784.51
WU, MICHAEL & WOAN JEN 1125 MAXWELL LANE #1204 HOBOKEN, NJ 07030	261.03/1/C1204	1125 MAXWELL LANE	3/10	\$ 2,766.05

---Motion duly seconded by Councilman Occhipinti

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

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

---Nays: None.

ORDINANCES

Introduction and First Reading

11-847

Z-84

AN ORDINANCE AMENDING THE PREVIOUSLY ADOPTED CHAPTER 133 “NOISE CONTROL” ADDRESSING REVISIONS REQUIRED BY THE STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

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; 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.

Meeting Date of February 2, 2011

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**.

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.

dB - 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.

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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 133-9 and 133-10 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 133-9 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

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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 to the procedures set forth in 133-6.B 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 133-3.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 133-6.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
TIME	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 133-6.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 10:00 p.m. - 7:00 a.m. Weekend nights 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. subject to compliance with Tables I, II and III as applicable.

- 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 three (3) 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 section of Chapter 145, entitled "Peace and Good Order" of the municipal code of the City of Hoboken shall be deleted in their entirety.

§ 145-1.1. Construction noise restrictions. [Added 3-1-2000 by Ord. No. R-426]

§ 145-1.2. Radios and other such similar machines and/or devices noise restrictions. [Added 3-1-2000 by Ord. No. R-426]

§ 145-1.3. Bicycles, Gas powered go-peds, mopeds, and skateboards noise restrictions. [Added 9-5-2001 by Ord. No. DR-8]

Section 145-1 shall be amended as follows for purposes of consistency with Chapter 133; addition is noted by underline.

§ 145-1. Disturbing the peace.

No person shall make or assist in making any improper noise, riot, disturbance or breach of the peace in the streets or elsewhere within the City and no persons shall collect in bodies or crowds for idle or unlawful purposes to the annoyance or disturbance of citizens or travelers.

See also Chapter 133 – NOISE CONTROL

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

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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.

Council President Mason 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 **FEBRUARY 16, 2011 at 7:00 PM.**

---Motion duly seconded by Councilman Giacchi

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

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

---Nays: None.

11-848
Z-85

AN ORDINANCE TO AMEND AND SUPPLEMENT ARTICLE IV "STOP STREETS" OF CHAPTER 190 OF THE ADMINISTRATIVE CODE OF THE CITY OF HOBOKEN ENTITLED "VEHICLES AND TRAFFIC"

NOW, THEREFORE, BE IT ORDAINED by the Hoboken City Council, County of Hudson, in the State of New Jersey as follows (deletions noted by ~~strike through~~, additions noted by underline):

Section One: Section 190-9 Additions

190-9: Stop Streets Designated

Pursuant to the provisions of N.J.S.A. 39:4-140, the intersections described are hereby designated as a Stop Intersection. Stop sign shall be installed as provided therein.

Intersection
Observer Highway & Harrison Street

Stop Sign Locations
Southbound Harrison St.

12th Street & Park Avenue

Southbound and westbound approach

SectionTwo: 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

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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 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.

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.

Councilwoman Castellano 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 **FEBRUARY 16, 2011 at 7:00 PM.**

---Motion duly seconded by Councilman Occhipinti

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

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

---Nays: None.

11-849

Z-86

AN ORDINANCE TO AMEND CHAPTER 179A ENTITLED "TAXIS" TO MAKE A CORRECTIVE CHANGE TO THE LANGUAGE OF SECTION

WHEREAS, on June 6, 2010 amendments to Chapter 179A passed final reading of the City Council; and,

WHEREAS, it has come to the attention of the City Council that a handful of words were left out of §179A-18C(8) which completely change the enforcement of the section from that which was intended; and

WHEREAS, the City has determined there is a need for a corrective amendment to the wording of §179A-18C(8) to maintain the intent of the overall amendments adopted June 6, 2010.

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NOW, THEREFORE, BE IT ORDAINED by the Hoboken City Council, County of Hudson, in the State of New Jersey as follows (additions noted in underline, deletions noted in ~~strike through~~):

Section One: Amendments

Chapter 179A – Taxicabs

Section 18 - Taxicab equipment and maintenance; inspection and inspection licenses.

Subsection C - Every vehicle operating under this chapter shall be kept in a clean and sanitary condition according to the rules and regulations promulgated by the Division of Taxi and Limousine Licensing, including but not limited to:

8. Vehicles used as taxicabs must not be more than four (4) years old or have greater than one hundred twenty five thousand (125,000) miles, whichever occurs ~~second~~ later.

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.

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.

Councilman Castellano 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 **FEBRUARY 16, 2011 at 7:00 PM.**

---Motion duly seconded by Councilman Mello

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

---Yeas: Council persons Bhalla, Castellano, Cunningham, Giacchi, Marsh, Mello, Occhipinti,

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Russo and President Mason.

---Nays: None.

NEW BUSINESS

Councilwoman Castellano thanks City Employees comments about the handicap committee, Monday night, Feb. 6th at 7PM looking for 1 more committee member addresses the B.A.

B.A. responds

Councilwoman Marsh thanks City Employees and asks for update on the inspections of the waterfront

Councilwoman Castellano comments needs the update for tomorrow night

Corporation Counsel responds

Councilman Bhalla comments and addresses the Chinese New Year Eve, questions for the update on voter fraud

Councilwoman Castellano has left the table at 9:21 PM

Councilwoman Castellano has returned to the table at 9:22 PM

Corporation Counsel comments and the matters are being reviewed and would get back to the office

Councilman Occhipinti comments about the press announcement on being removed on 1st and 3rd St. and was not notified by the Administration and found out on the City of Hoboken Facebook page

SW Redevelopment Plan

Director Forbes comments

Councilman Occhipinti comments about the traffic of Harrison and Observer, thanks Director Sacs and the Transportation Committee, Monroe and Observer, asked NJ Transit 87 Bus to re-route their roads, it will continue on Newark and make a right on Willow toward the PATH, thanks NJ Transit for this effort, request to update it on the website for a communication page, excited about Mama Johnson Field, the City of Hoboken is a stakeholder for the gas pipeline, addresses Mr. Liston about Construction office, if there is an emergency, if there is a major fire dept., who is the point of contact

B.A. comments and responds

Councilman Occhipinti is willing to work with his colleagues to help out the 4th Ward and thinks the

Council needs to work together and does not want to divide this city

Councilman Mello responds to Councilman Occhipinti and reads that the Skyline Condo Association invited him

Councilman Occhipinti comments

Councilwoman Castellano comments

Councilman Mello comments

Council President comments

Councilman Giacchi comments about the Quality of Life sub-committee and is a reminder is the St. Patty's day parade in the first Saturday of March with a zero-tolerance policy

Councilman Mello comments

Councilman Cunningham comments and thank the colleagues for the "Stop Sign" Ordinance on 12th and Park St., thanks Director Sacs, snow removal thanks the city employees, landlords of vacant lots on 14th and Willow b/w Willow and Clinton and has not been shoveled by the property owner and to remind the administration and find the owner to create a safe path, seniors for Fox Hill parking placards, 40 some members, free discount prescription card – public private partnership with the City of Hoboken and Heinz Family foundation and highlights some of the benefits for the residents, reads off the card, the more types of engagements, it will create a more efficient government and help the residents with the cost of healthcare with the economic downturn, this is a great benefit

Councilwoman Castellano comments that the senior placard is coordinated with the City

Councilman Mello asks Director Sacs asks about 1st and Harrison traffic about a daycare

Director Sacs responds and is trying to find an effective way would

Councilwoman Castellano questions the Director

Director Sacs comments

Councilwoman Marsh questions the Director about potholes

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Director Sacs comments that Director Maier might be able to help, there are two types of fillings – cold patch and hot patch, please email the Environmental Services dept.
Councilman Mello asks B.A. about the next steps for the property value tax maps
B.A. comments and responds that there's a company to award for a revalue
Councilman Mello comments about the snow procedures and request a binder archived for the future
B.A. comments that there is a policy and procedure
Councilman Mello comments about Newark and Willow with the trucks and buses, wondering if there were public outreach were done to the 1st ward
Councilman Occhipinti and Councilwoman Castellano comments
Councilman Mello would liked to be looped in that would be appreciated
Councilman Russo comments about the senior parking permits and glad to hear it was a success, midtown garage does not have a senior discount and suggests a standard across the city, echoes Councilman Occhipinti concerns on 3rd and 4th ward, but would like better communication and it is administrations responsibility to let them know, there is no cooperation
Council President comments about the waterfront and where it stands, why the crane is up against a building by the shipyard
B.A. comments that the crane is the County's project, will follow-up
Council President asks about the budget and the fire audit
B.A. comments hopefully by the week of the 25th, introduction for the meeting is March 2nd, the weather has affected the fire audit and hopefully meet with them soon
Council President asks about the Safer Grant and any outstanding grants or seek
B.A. will get details from the Chief
Council President comments about the spirit of cooperation of the Council and would like the Communications Director to communicate it to the Council, asks the rules committee and access to it, also the use of city council emails and a procedure
Council Marsh asks Council President for the rules committee – website joint effort with the Council, Clerk's office, and administration, allow Councilman Occhipinti to post on the website to reach out to constituents, appropriate emails that are council related, asks guidance for emails and communications and website
Corporation Counsel comments that not every communication is a public record

Councilman Occhipinti has left the table at 9:58 PM
Councilman Occhipinti has returned to the table at 10:04 PM

All regular business concluded the following members of the public spoke at the Public Portion” of the meeting: MaryAnn Bogan, Rebecca Lewis, Mark Casablo, Pedro Alvarez, Perry Belfiore, Mark Villamar, Ron Simoncini, Dan Tumpson, Cheryl Fallick, Mary Ondrejka, Eileen Lynch, Joe Murray, Scott Siegel, Mikes Evers, Forde Prigot, Alice Crozier,

Council President has an issue with the wording on the Resolution to enter into Closed Session and also please add the proper heading before entering into Closed Session
Corporation Counsel comments that Action may be taken coming out of Closed Session

---Motion duly Councilman Russo seconded by Councilwoman Marsh t at 10:57 PM

Council President calls the Roll Call, the governing body is present along with Corporation Counsel and the B.A.

At 11:06 P.M. The Governing Body entered into a closed session.

11-850

---By President Mason

Meeting Date of February 2, 2011

RESOLUTION AUTHORIZING CLOSED SESSION PURSUANT TO N.J.S.A. 10:4-12B TO DISCUSS MATTERS RELATING TO PENDING AND ANTICIPATED LITIGATION OF A CURRENT EMPLOYEE AND CREPE GRILL LEASE DISPUTE.

WHEREAS, the Council of the City of Hoboken is authorized to go into closed executive session for the reasons set forth in the Open Public Meetings Act, pursuant to N.J.S.A. 20:4-12b; and

WHEREAS, one of these reasons is to receive updates, information, and legal guidance relating to pending and/or anticipated litigation in which the City is or may become a party, and another is to discuss employment matters relating to current employee #470's settlement of litigation and the City's lease to Crepe Grill; and,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken that it enter into closed session for said purposes; and,

BE IT FURTHER RESOLVED that when the need for confidentiality no longer exists the decisions made therein will be made available to the public.

---Motion duly seconded by Councilman Russo

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

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

---Nays: None.

11-850A

---By President Mason

RESOLUTION TO APPROVE THE ATTACHED SETTLEMENT AGREEMENT WITH MUNICIPAL EMPLOYEE #470.

WHEREAS, the City has negotiated a settlement agreement with municipal employee #470 relating to his employment, which is attached hereto; and,

WHEREAS, legal counsel for the municipality has represented that the attached settlement agreement provides the City of Hoboken with the best terms possible under the circumstances.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hoboken as follows:

- A. This resolution approves the attached settlement agreement between the City of Hoboken and municipal employee #470;
- B. The Mayor or her agent is hereby authorized to enter into the attached agreement, or a modified agreement with substantially similar terms which does not have any substantive changes;
- C. This resolution shall take effect immediately upon passage.

---Motion duly seconded by Councilman Russo

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

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

---Nays: None.

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At 11:30 p.m. motion to come out of closed session duly by Councilman Russo and duly seconded by Council President Mason.

President Mason then adjourned the meeting at 11:30 P.M.

PRESIDENT OF THE COUNCIL

CITY CLERK

Meeting Date of February 2, 2011