

**MEETING OF FEBRUARY 20, 2013**

**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 20, 2013 AT 7:00 PM**

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President Cunningham opened the meeting at 7:05 PM. 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 published in the Jersey Journal, City website, copies were provided in the Hoboken Reporter, The Record, The Newark Star-Ledger and also placed on the bulletin board in the lobby of City Hall

The Clerk then called the Roll:

PRESENT: Council persons Bhalla, Castellano, Giattino, Mason, Mello, Occhipinti, Russo and President Cunningham.

**ORDINANCES**

**Second and Final Reading**

AN ORDINANCE TO AMEND CHAPTER 179A ENTITLED "TAXICABS" TO FURTHER CLARIFY THE MUNICIPALITY'S INSURANCE REQUIREMENTS FOR TAXICAB LICENSES **(sponsored by Councilman Mello and Councilman Bhalla) (Z-227) (Carried to March city council meeting)**

AN ORDINANCE AMENDING CHAPTER §196 ZONING BY DELETING THE CURRENT ARTICLE II IN ITS ENTIRETY AND REPLACING IT WITH A NEW ARTICLE II "DEFINITIONS" **(sponsored by Councilman Mello and Councilman Bhalla) (Z-228) (Carried to March city council meeting pending planning board review)**

~~AN ORDINANCE OF THE COUNCIL OF THE CITY OF HOBOKEN GRANTING A NON-EXCLUSIVE TEMPORARY REVOCABLE EASEMENT FOR CERTAIN ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY ALONG OBSERVER HIGHWAY, BETWEEN PATERSON AVENUE AND JACKSON STREET, MORE PARTICULARLY KNOWN AS BLOCK 14, LOT 1 ON THE TAX MAPS OF THE CITY OF HOBOKEN, AND COMMONLY REFERED TO AS 61 JACKSON STREET~~  
**(sponsored by Councilman Mello and Councilman Bhalla) (Z-229)**  
**(PULLED FROM SECOND READING DUE TO SUBSTANTIVE AMENDMENTS, SEE 1<sup>ST</sup> READING ORDINANCE #1)**

**PUBLIC PORTION**

All regular business concluded the following members of the public spoke at the "Public Portion" of the meeting: Patricia Waiters, Michael Evers, Phil Cohen, Cheryl Fallick, Dan Tumpson, Mary Ondrejka, Ines Garcia Keim.

**13-89**

**APPLICATION FOR MISCELLANEOUS LICENSES**

RAFFLES-----2 ITEM

VENDOR-----1 ITEM

PARKING FACILITY-----1 ITEM

---Councilwoman Giattino moved that the licenses be granted.

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

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

---Nays: None.

**13-90**

Annual Debt & Financial Statement submitted by the CFO for CY 2012

Received and Filed.

**13-91**

A report from the Municipal Tax Collector Sharon Curran for taxes collected for the month of January 2013 \$15,829,735.19 (Abatement Totals – \$21,341.31)

Received and Filed.

**13-92**

A report from Municipal Court indicating receipts for the month of January 2013 as **\$318,982.73.**

Received and Filed.

**13-93**

---By Councilman

**CLAIMS** - Total for this agenda \$4,511,217.16

---Adopted by the following vote: YEAS: 7 – NAYS: 1

---Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello, Russo and President Cunningham

---Nays: Occhipinti

Councilwoman Mason comments on winter carnival supplies PO# 12-04195 \$10, 157.00 and PO# 12-04198 \$1,185.00

Councilman Russo comments on PO #13-00180 \$15,000.00 Lenox Consulting

Councilman Russo comments on PO #12-04556 \$515.00 and PO #12-04557 \$622.00

Councilman Occhipinti comments on PO #12-02510 \$10,635.00 Paul Condon, Esq. Sp. Counsel

Council President comments on PO#13-00113 for \$641.34 Cooperative Communications, Inc.

**13-94**

---By Councilman

**PAYROLL**

For the two week period starting January 17, 2013 –January 30, 2013

Regular Payroll	O/T Pay	Other Pay
\$1,545,220.12	\$51,657.07	\$77,730.04

Total \$1,674,607.23

---Motion duly seconded by Councilman

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

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

---Nays: Mason on (O/T)

Councilman Russo comments on Emergency Management on Payroll

Councilman Occhipinti comments on outside employment

Councilwoman Giattion comments on Salary and Wages under O/T Pay (02)

BA Wiest comments storm related adjustment for previous O/T

**PUBLIC PORTION ON RESOLUTIONS**

Patricia Waiters comments on resolution #1

Mary Ondrejka comments on resolution #6

Cheryl Fallick comments on resolution #6

Brenda Luchetti comments on resolution #3

**RESOLUTIONS**

**13-95**

---By Councilman Occhipinti

**RESOLUTION IN SUPPORT OF NATIONAL AFRICAN AMERICAN HISTORY MONTH 2013**

**WHEREAS**, in February 1926, Dr. Carter G. Woodson, a noted African American author and scholar, began what was then called Negro History Week to educate non-black Americans about Black American culture and history and to engender pride among African Americans; and

**WHEREAS**, Dr. Woodson chose the month of February for the celebration because the month marks the birthdays of President Abraham Lincoln, who signed the Emancipation Proclamation ending slavery, and Frederick Douglass, the noted African American abolitionist; and

**WHEREAS**, an additional reason why Dr. Woodson chose the month of February for this important event was that the National Association for the Advancement of Colored People, the nation's oldest civil rights organization, was founded in February 1909; and

**WHEREAS**, in 1972, Negro History Week became Black History Week, and in 1976, the nation's bicentennial, Black History Week became Black History Month with the purpose of honoring the contribution African Americans have made to all walks of American life and to recall important milestones in black history;

**WHEREAS**, Black History Month is also known as National African American History Month.

**NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HOBOKEN** that it declares its support for National African American History Month 2013.

---Motion duly seconded by President Cunningham

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

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

---Nays: None.

**13-96**

---By Councilman Occhipinti

**RESOLUTION EXPRESSING STRONG CITY COUNCIL SUPPORT FOR A SPECIAL HEARING INTO THE NJDOT PULASKI HIGHWAY PROPOSAL PRIOR TO EFFECTUATING A COMPLETE CLOSURE OF THE SKYWAY**

**WHEREAS** the Pulaski Skyway is a major transportation artery and serves as an integral roadway for the region. For more than 80 years, the Skyway has been saving commuters time and easing congestion and traffic for the entire region; and,

**WHEREAS** we firmly support repairs on the Pulaski Skyway to ensure our aging overpass meets today's safety standards; however, our concern is that suspending all Northbound travel on the Skyway will have deleterious effects on Hudson County's infrastructure and residents, especially in the event of an unfortunate emergency; and,

**WHEREAS** a complete shutdown of the Northbound lanes of the Skyway would effectively render transportation in the region a virtual nightmare; and,

**WHEREAS** the proposed closure will have a negative impact on Hoboken's local economy because New Jersey residents traveling from South Jersey will have a more difficult time visiting our city and thus supporting our local restaurants, pubs, eateries, and retail and commercial businesses.

**NOW THEREFORE BE IT RESOLVED THAT**, that the City of Hoboken opposes the complete shutdown of northbound traffic on the Pulaski Skyway.

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken strongly urge the entire Senate and Assembly Transportation Committees to consider a special hearing into this proposal from NJDOT.

**BE IT FURTHER RESOLVED** that this resolution shall take effect immediately, and shall be served upon all members of the Transportation Committees of both the State Senate and the State Assembly.

---Motion duly seconded by Councilwoman Mason

---Adopted **AS AMENDED** by the following vote: YEAS: 8 –NAYS: 0

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

---Nays: None.

**13-97**

---By Councilwoman Castellano

**RESOLUTION IN SUPPORT OF ADOPTING LEGISLATION TO INSTITUTE A MENTAL HEALTH COMPONENT IN LEGISLATION BANNING ALL ASSAULT WEAPONS AND HIGH-CAPACITY MAGAZINES FOR COMPREHENSIVE GUN CONTROL**

**WHEREAS**, the City Council of the City of Hoboken City, with the entire country, mourns the loss of life in the horrific events at Sandy Hook Elementary School on Friday, December 14, 2012 in Newtown, Connecticut; and

**WHEREAS**, the City Council has recognized the need to address stricter gun control by passing a resolution which supports a petition being circulated by the New York Daily News that speaks to the issue of stricter gun control; and

**WHEREAS**, the City Council recognizes that a mental health component is critical; and

**WHEREAS**, in July 2010, the City Council unanimously supported declaring the City Hoboken as a "Stigma Free Zone," the first city to do so, regarding mental health. Mental health professionals at Hoboken University Medical Center introduced the "Stigma Free Zone" concept; and

**WHEREAS**, the City Council acknowledges that the expertise in this area rests with mental health professionals.

**NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HOBOKEN** that it declares its support for calls for the adoption of legislation to institute a mental health component in legislation banning all assault weapons and high-capacity magazines for comprehensive gun control; and,

**BE IT FURTHER RESOLVED** that the Council urges all Hoboken residents to take whatever other methods they see fit to make their voices heard on this critical public safety issue; and,

**BE IT FURTHER RESOLVED** that the City Clerk shall transmit certified copies of this resolution to President Barack Obama, Senators Robert Menendez and Frank Lautenberg, Congressman Albio Sires, Governor Christopher Christie and our 33<sup>rd</sup> District legislative delegation.

The speaker who spoke: Brenda Luchetti.

---Motion duly seconded by Councilman Russo

---Adopted **AS AMENDED** by the following vote: YEAS: 8 – NAYS: 0

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

Nays: None.

**13-98**

---By Councilwoman Giattino

**RESOLUTION AUTHORIZING THE CLOSURE OF A BANK ACCOUNT AT THE RECOMMENDATION OF THE DEPARTMENT OF REVENUE AND FINANCE**

**WHEREAS**, The Department of Revenue and Finance of the City of Hoboken has recommended the closure of the following Bank Account which have been dormant:

City of Hoboken TD Open Space Trust	#4141932585
City of Hoboken TD Fire Education Fund	#3982549602
City of Hoboken TD Dog License Fund	#3982692847
City of Hoboken TD Hudson County CDBG	#3982692818
City of Hoboken TD Hazmat Account	#3982692562
City of Hoboken TD Law Enforcement Trust	#3982549615
City of Hoboken TD Fire Dept Reg Penalties	#3982549692
City of Hoboken TD O&M Fund	#3982549563
City of Hoboken TD Tax Collector Premium Acct.	#3452441512

**NOW, THEREFORE, BE IT RESOLVED**, that the Department of Revenue & Finance be and is hereby authorized to close the aforementioned bank account and to execute any and all documents necessary for the closure of said accounts; and be it further

**RESOLVED**, that the TD Bank, which administer the accounts noted above shall be furnished with a certified copy of this resolution.

---Motion duly seconded by Councilman Bhalla

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

--Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello, Occhipinti, Russo and President Cunningham  
--Nays: None.

**13-99**

--By Councilman Mello

**RESOLUTION TO APPROVE A "LICENSE AGREEMENT" BETWEEN THE CITY OF HOBOKEN AND THE OWNER OF BLOCK 169 LOT 38 (A/K/A 704 Park Avenue) FOR USE AND MAINTENANCE OF A PORTION OF THE PUBLIC RIGHT OF WAY ADJACENT TO SAID PROPERTY**

WHEREAS, the City of Hoboken requires property owners to maintain the public right-of-way adjacent to their property, including but not limited to sidewalks, stairs, stoops, fences, areaways, trees and other landscaping; and

WHEREAS, the City of Hoboken encourages property owners to landscape and otherwise improve said right-of-way to enhance the urban landscape; and

WHEREAS, the City of Hoboken desires to grant to Damian & Ashley Chapman, owners of Block 169 Lot 38, more commonly known as 704 Park Avenue, Hoboken, such a license.

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

- 1) Approval of the attached "License Agreement" between the City of Hoboken and Damian & Ashley Chapman, owners of Block 169, Lot 38, more commonly known as 704 Park Avenue, shall be subject and limited to the specifications included in Exhibit "A" (metes and bounds survey and architectural drawing attached hereto);
- 2) The Mayor or her agent is hereby authorized to enter into the attached agreement; and
- 3) This resolution shall become effective immediately upon adoption.

--Motion duly seconded by Councilman Bhalla

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

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

--Nays: None.

**13-100**

--By Councilwoman Giattino

**RESOLUTION TO AUTHORIZE A PROFESSIONAL SERVICE CONTRACT WITH CHASAN LEYNER & LAMPARELLO PC AS SPECIAL LEGAL COUNSEL-GENERAL AND OUTSTANDING LITIGATION TO THE CITY OF HOBOKEN TO COMMENCE JANUARY 1, 2013 AND EXPIRE DECEMBER 31, 2013 FOR A NOT TO EXCEED AMOUNT OF \$4,500.00**

**WHEREAS**, service to the City as Special Counsel – General and Outstanding Litigation 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**, the City of Hoboken published its annual Request for Proposals for the Professional Services of Special Legal Counsel in accordance with the Fair and Open Process and Hoboken Ordinance #DR-154, which Chasen Leyner & Lamparello PC responded to; and,

**WHEREAS**, Chasen Leyner & Lamparello PC, however, has special expertise and intricate knowledge of the below listed litigation because it is currently representing the City of Hoboken in outstanding litigation which carries over from last year as follows:

1. In Re Contest of the November 6, 2012 Election Results for the City of Hoboken, Public Question No. 2, HUD-L-5773-12; and,
2. November 2012 Election Law Order to Show Cause on Behalf of the City of Hoboken.

***WHEREAS**, Chasen Leyner & Lamparello PC, is thereby exempt from the fair and open process for those pieces of litigation it is currently representing the City in, due to its special knowledge and expertise, is approved as to any future general litigation pursuant to their responsive proposal to the City's General Litigation RFP for 2013, and it is hereby required to continue to abide by the "pay-to-play" requirements of the Hoboken Public Contracting Reform Ordinance, codified as §20A-11 et seq. of the Administrative Code of the City of Hoboken as well as the Affirmative Action laws and policies under which the City operates; and,*

**WHEREAS**, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$4,500.00 is available in the following appropriation 03-01-20-156-020 in the CY2013 temporary appropriations; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

**NOW THEREFORE, BE IT RESOLVED**, that a contract with Chasen Leyner & Lamparello PC to represent the City as Special Legal Counsel-2013 General and Outstanding Litigation be awarded, for a term to commence January 1, 2013 and expire December 31, 2013, with a total not to exceed amount of Four Thousand Five Hundred Dollars (\$4,500.00); and

**BE IT FURTHER RESOLVED**, that the contract shall cover those matters expressly stated above as well as any future litigation matters assigned by the Administration, and any invoice on the matters listed herein shall be provided to the City separate and apart from any other contract which Chasen Leyner & Lamparello PC has with the City during the contact duration described herein; and,

**BE IT FURTHER RESOLVED**, the contract shall include the following term: Chasen Leyner & Lamparello PC shall be paid maximum hourly rates of \$150.00/hour for attorneys, \$50.00/hour for paralegals, and \$20/hour for support staff for services rendered,

these are the only charges for services allowable under this agreement, and charges for filing fees and costs shall be allowable, but must be clearly identified and described in full in the appropriate monthly invoice; and

**BE IT FURTHER RESOLVED**, the contract shall expressly state that said firm shall be obligated to provide prompt notice to the City when its invoicing reaches 80% of the not to exceed amount if the firm believes additional funds will be necessary, and the City shall have no liability for payment of funds in excess of the not to exceed amount; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-4 of the Code of the City of Hoboken), and any and all state Pay to Play laws, is a continuing obligation of Chasen Leyner & Lamparello PC; 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 and Corporation Counsel 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 Councilman Bhalla

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

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

--Nays: None.

**13-101**

--By Councilwoman Giattino

**RESOLUTION TO AUTHORIZE AN AMENDMENT TO THE PROFESSIONAL SERVICE CONTRACT WITH FLORIO PERRUCCI STEINHART FADER AS SPECIAL LEGAL COUNSEL- LABOR AND EMPLOYMENT TO THE CITY OF HOBOKEN TO COMMENCE JANUARY 1, 2013 AND EXPIRE DECEMBER 31, 2013 FOR AN INCREASE IN THE NOT TO EXCEED AMOUNT BY \$25,000.00 TOTAL NOT TO EXCEED AMOUNT OF \$50,250.00**

**WHEREAS**, service to the City as Special Counsel –Labor and Employment 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**, the City of Hoboken published its annual Request for Proposals for the Professional Services of Special Legal Counsel-2013 Labor and Employment in accordance with the Fair and Open Process and Hoboken Ordinance #DR-154, which Florio Perrucci Steinhart Fader responded to, and a contract was awarded to Florio Perrucci Steinhart Fader on January 16, 2013; and,

**WHEREAS**, the City has become aware that the representation by the firm will require additional funds, in the amount of Twenty Five Thousand Dollars (\$25,000.00); and,

***WHEREAS, Florio Perrucci Steinhart Fader is hereby required to continue to abide by the “pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, codified as §20A-11 et seq. of the Administrative Code of the City of Hoboken as well as the Affirmative Action laws and policies under which the City operates; and,***

**WHEREAS**, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$25,000.00 is available in the following appropriation 30120156020 in the temporary CY2013 budget; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

**NOW THEREFORE, BE IT RESOLVED**, that the contract with Florio Perrucci Steinhart Fader to represent the City as Special Legal Counsel- 2013 Labor and Employment be amended with an increase in the not to exceed amount by Twenty Five Thousand Dollars, for a total not to exceed amount of Fifty Thousand Two Hundred Fifty Dollars (\$25,250.00); and

**BE IT FURTHER RESOLVED**, all of the remaining terms of the previously awarded contract shall remain unchanged; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-4 of the Code of the City of Hoboken), and any and all state Pay to Play laws, is a continuing obligation of Florio Perrucci Steinhart Fader; 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 and Corporation Counsel 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 Councilman Bhalla

---**FAILED** by the following vote: YEAS: 4 – NAYS: 4

---Yeas: Council persons Bhalla, Giattino, Mason, Mello and President Cunningham

---Nays: Castellano, Mason, Occhipinti and Russo

**13-102**

---By Councilwoman Giattino

**RESOLUTION TO AUTHORIZE A CONTRACT WITH T&M ASSOCIATES FOR SERVICES AS THE CITY'S PROFESSIONAL CONSULTANT WITH REGARDS TO THE ELECTRICAL REPAIR WORK THE MIDTOWN GARAGE TO COMMENCE JANUARY 21, 2013 AND EXPIRE UPON COMPLETION, BUT NOT LATER THAN JANUARY 20, 2014, FOR A NOT TO EXCEED AMOUNT OF NINE THOUSAND NINE HUNDRED DOLLARS (\$9,900.00)**

**WHEREAS**, consulting services for the repair of the Midtown Garage Elevators (2) is subject to a request for quotations pursuant to the Fair and Open Process, even though it is exempt from public bidding; and,

**WHEREAS**, the Administration requested a quote for said services, and has determined that T&M Associates can provide the City with the most effective and efficient consulting services; and,

***WHEREAS**, the City wishes to provide a not to exceed amount to the contract in an amount of Nine Thousand Nine Hundred Dollars (\$9,900.00); and,*

***WHEREAS**, T&M Associates is hereby required to abide by the "pay-to-play" requirements of the Hoboken Public Contracting Reform Ordinance, codified as §20A-11 *et seq.* of the Administrative Code of the City of Hoboken as well as the Affirmative Action laws and policies under which the City operates; and,*

**WHEREAS**, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$9,900.00 is available in the following appropriation \_\_\_\_\_ in the CY2013 temporary appropriations; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said temporary appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

**NOW THEREFORE, BE IT RESOLVED**, that a contract with T&M Associates to provide the City with consulting services for repair of the electrical in the Midtown Garage, in accordance with the attached proposal, be executed, for a term to commence January 21, 2013 and expire upon completion of the project, but in no event later than January 20, 2014, with a not to exceed amount of **Nine Thousand Nine Hundred Dollars (\$9,900.00)**; and

**BE IT FURTHER RESOLVED**, no additional fees or invoices shall be allowable under this agreement unless prior approval is provided by the City in accordance with all legal guidelines; and,

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-1 *et seq.* of the Code of the City of Hoboken), and any and all state Pay to Play laws, is a continuing obligation of the vendor; 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 and Corporation Counsel 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 Councilman Bhalla  
---Adopted by the following vote: YEAS: 6 – NAYS: 1 - PRESENT: 1  
---Yeas: Council persons Bhalla, Castellano, Giattino, Mello, Russo and President Cunningham  
---Nays: Mason  
---Present: Occhipinti

**13-103**

---By Councilman Bhalla

**RESOLUTION AWARDING A CONTRACT TO HARLEY DAVIDSON BUELL OF LONG BRANCH FOR FOUR (4) HARLEY DAVIDSON MOTORCYCLES IN ACCORDANCE WITH THE CITY'S BID NO. 13-03 IN THE TOTAL AMOUNT OF \$78,630.00**

**WHEREAS**, proposals were received for Bid Number 13-03 for the purchase of four (4) Harley Davidson motorcycles; and,

**WHEREAS**, one (1) bid proposal was received, which was considered responsible and responsive:

<u>VENDOR</u>	<u>TOTAL AMOUNT PROPOSED</u>
Harley Davidson Buell of Long Branch 671 Broadway Street Long Branch, NJ 07740	\$78,630.00

**WHEREAS**, pursuant to the recommendation of the Purchasing Department (attached hereto) the City wishes to contract for the services specified in Bid No. 13-03, and Harley Davidson Buell of Long Branch submitted a responsible, and responsive bid in the amount of \$78,630.00; and,

**WHEREAS**, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$25,000.00 is available in the following appropriation 3-01-55-901-014 in the temporary appropriations of CY2013; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

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

- A. This resolution awards a contract to Harley Davidson Buell of Long Branch for Bid No. 13-03, in the total amount of Seventy Eight Thousand Six Hundred Thirty Dollars (\$78,630.00), for four (4) 2013 Harley Davidson motorcycles are described in the specs and proposal, to be provided by Harley Davidson Buell of Long Branch in accordance with the specifications as set forth in Bid No. 13-03.
- B. If the contract, as provided by the City of Hoboken, is not executed by Harley Davidson Buell of Long Branch within 21 days of award, then this award shall lapse and the City of Hoboken shall have the right to rebid the project.
- C. The contract shall be in accordance with the terms of the specifications and Harley Davidson Buell of Long Branch's corresponding bid proposal documents. No exceptions were noted in the Purchasing Agent's recommendation; therefore, none will be accepted in performing obligations under the bid.
- D. Pursuant to the provisions of N.J.S.A. 40A:11-11(5), the Mayor or her agent is hereby authorized to enter into an Agreement with Foley for said purchase and sale.
- E. This resolution shall take effect immediately upon passage.

---Motion duly seconded by Councilman Mello

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

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

---Nays: None.

**13-104**

---Councilwoman Giattino

**RESOLUTION TO AUTHORIZE A CONTRACT WITH DEMAIO ELECTRICAL SERVICES FOR ELECTRICAL WORK SERVICES WITH REGARDS TO THE ELECTRICAL REPAIR WORK THE MIDTOWN GARAGE TO COMMENCE FEBRUARY 20, 2013 AND EXPIRE UPON COMPLETION, BUT NOT LATER THAN FEBRUARY 19, 2014, FOR A NOT TO EXCEED AMOUNT OF SEVENTY FIVE THOUSAND SIX HUNDRED DOLLARS (\$75,600.00)**

**WHEREAS**, electrical services at the Midtown Garage are subject to public bidding, however, the City's current emergency circumstances trigger an exemption from the normal bidding process, and the City sought emergency quotations on the services, instead of utilizing the normal bidding process; and,

**WHEREAS**, the Administration's consultant, T&M Associates, requested a quote for said services, and T&M Associates has determined that DeMaio Electrical can provide the City with the most effective and efficient electrical services at the Midtown Garage; and,

***WHEREAS**, the City wishes to provide a not to exceed amount to the contract in an amount of Seventy Five Thousand Six Hundred Dollars (\$75,600.00); and,*

***WHEREAS**, DeMaio Electrical is hereby required to abide by the “pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, codified as §20A-11 et seq. of the Administrative Code of the City of Hoboken as well as the Affirmative Action laws and policies under which the City operates; and,*

**WHEREAS**, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$75,600.00 is available in the following appropriation 3-01-55-901-014 in the CY2013 temporary appropriations; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said temporary appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

**NOW THEREFORE, BE IT RESOLVED**, that a contract with DeMaio Electrical to provide the City with electrical services for repair of the electrical in the Midtown Garage, in accordance with the attached proposal, be executed, for a term to commence February 20, 2013 and expire upon completion of the project, but in no event later than February 19, 2014, with a not to exceed amount of **Seventy Five Thousand Six Hundred Dollars (\$75,600.00)**; and

**BE IT FURTHER RESOLVED**, no additional fees or invoices shall be allowable under this agreement unless prior approval is provided by the City in accordance with all legal guidelines; and,

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-1 et seq. of the Code of the City of Hoboken), and any and all state Pay to Play laws, is a continuing obligation of the vendor; 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 and Corporation Counsel 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 Councilman Bhalla

---Adopted by the following vote: YEAS: 7 – NAYS: 1

---Yeas: Council persons Bhalla, Castellano, Giattino, Mello, Occhipinti, Russo and President Cunningham

---Nays: Mason

**RESOLUTION OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, APPOINTING ACACIA FINANCIAL GROUP, INC. TO SERVE AS FINANCIAL ADVISOR TO THE CITY OF HOBOKEN IN CONNECTION WITH THE ISSUANCE AND SALE OF GENERAL OBLIGATION REFUNDING BONDS (PARKING UTILITY) OF THE CITY, AND FOR THE OBTAINMENT OF MUNICIPAL CREDIT RATINGS FOR THE CITY**

---

**BACKGROUND**

**WHEREAS**, the City of Hoboken, County of Hudson, New Jersey ("City") has a need for a firm specializing in the provision of financial advisory services to assist the City in matters relating to; (i) the issuance and sale of general obligation (Parking Utility) refunding bonds of the City ("Refunding Bonds") to refinance all or a portion of the City's outstanding callable Parking Utility General Obligation Bonds, Series 2002A, dated December 15, 2002 ("Refunding Project"); and (ii) the obtainment of municipal credit ratings for the City from Standard & Poor's Rating Services and/or Moody's Investors Service in connection with the issuance of the Refunding Bonds, if issued, and for the issuance of other debt obligations to be hereafter issued by the City ("Ratings Project"); and

**WHEREAS**, the City has solicited proposals for the provision of financial advisory services in connection with the Refunding Project and the Ratings Project by the dissemination to various qualified firms of formal requests for proposals (collectively, the "RFP"); and

**WHEREAS**, thereafter, the City evaluated all proposals received and, by Resolution No. 15 of August 15, 2012, the City authorized a pool of financial advisors found to be acceptable for utilization by the Administration; and

**WHEREAS**, following a review of the proposals received by the Financial Advisors authorized for inclusion in the City's FA pool, it was determined that the proposal submitted by Acacia Financial Group, Inc., was the most advantageous in meeting the current needs of the City; and

**WHEREAS**, the City is now desirous of appointing Acacia Financial Group, Inc. to provide financial advisory services to the City in connection with the Refunding Project and the Ratings Project in accordance with the provisions of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, AS FOLLOWS:**

**Section 1.** Acacia Financial Group, Inc., with its principal office located at Four Greentree Centre, Suite 206, 13000 Lincoln Drive West, Marlton, New Jersey 08053, is hereby appointed as financial advisor to the City in connection with the undertaking by the City of the Refunding Project and the Ratings Project ("Financial Advisor").

**Section 2.** The Business Administrator, Assistant Business Administrator, Director of Finance and Chief Financial Officer are each hereby authorized and directed to execute, on behalf of the City, an agreement or agreements with the Financial Advisor for the financial advisory services to be rendered.

**Section 3.** The maximum fee to be paid to the Financial Advisor for the services to be provided in connection with the Refunding Project shall in no event exceed \$15,000.00, unless otherwise specifically authorized by further action of City Council ("Refunding Project Fee"). Further, the Refunding Project Fee shall be payable to the Financial Advisor only upon the successful closing of the Refunding Bonds.

The Financial Advisor shall be entitled to a separate fee for services performed in connection with the Ratings Project in an amount not to exceed \$15,000.00 ("Ratings Project Fee"), to be billed in accordance with the Financial Advisor's fee schedule submitted as a part of its proposal. Payment of such Ratings Project Fee to the Financial Advisor shall not, however, be conditioned upon the closing of the Refunding Bonds.

**Section 4,** certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$15,000.00 is available in the following appropriation \_\_\_\_\_ in the CY2013 temporary appropriations; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

**Section 4.** All resolutions, or parts thereof, inconsistent herewith are hereby repealed and rescinded to the extent of any such inconsistency.

**Section 5.** This resolution shall take effect immediately upon adoption this 20th day of February, 2013.

---Motion duly seconded by Councilman Bhalla  
---Adopted by the following vote: YEAS: 5 – NAYS: 3  
---Yeas: Council persons Bhalla, Giattino, Mason, Mello and President Cunningham  
---Nays: Castellano, Occhipinti, Russo

**13-106**

---By Councilwoman Giattino

**RESOLUTION AMENDING RESOLUTION NO. 5 OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, DULY ADOPTED ON DECEMBER 19, 2012, WHICH RESOLUTION AUTHORIZED A SPECIAL EMERGENCY APPROPRIATION FOR EXTRAORDINARY EXPENSES ASSOCIATED WITH DAMAGE FROM HURRICANE SANDY**

---

**BACKGROUND**

**WHEREAS,** the Local Budget Law, constituting Chapter 169 of the Laws of the State of New Jersey, as amended and supplemented ("Local Budget Law"), authorizes, inter alia, municipalities to adopt resolutions authorizing special emergency appropriations to cover the cost of extraordinary expenses including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel, for the repair, reconstruction of streets, roads or bridges or other public property damaged by flood or hurricane where such expense was not foreseen at the time of the adoption of the municipality's budget; and

**WHEREAS**, the Local Budget Law also authorizes municipalities to adopt resolutions authorizing special emergency appropriations to cover the costs of extraordinary expenses including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel, for the repair and reconstruction of private property damaged by flood or hurricane in accordance with the Rules and Regulations promulgated by the Department of Community Affairs for a Municipal Disaster Relief Grant Program; and

**WHEREAS**, On October 29, 2012, Hurricane Sandy (the "Storm"), struck the City of Hoboken ("City"), causing massive flooding, widespread power outages and extensive property damage throughout the City as a result of storm surge and heavy amounts of rain; and

**WHEREAS**, as a result of the impacts of the Storm, the Governor of the State of New Jersey ("State") issued Executive Order No.104 on October 28, 2012 declaring a State of Emergency for the entire State, including the City; and

**WHEREAS**, the effects of the Storm, and in particular the flooding caused by the Storm, have significantly impacted the City by damaging or destroying infrastructure, roadways, buildings, equipment and public and private property throughout the City requiring extensive reconstruction, repair and clean-up; and

**WHEREAS**, in order to protect the public health, safety and welfare of the citizens of the City, the City determined that it was necessary to undertake the immediate clean-up, reconstruction and repair of such damaged infrastructure, roadways, buildings, equipment and public and private property; and

**WHEREAS**, the original estimated cost of such clean-up, reconstruction and repair was approximated at \$6,750,000; and

**WHEREAS**, the Storm and its economic impact upon the City was unforeseen and was unanticipated at the time of adoption of the 2012 City budget and, as a result, the City Council did not provide for appropriations sufficient to meet the costs of the clean-up, reconstruction and repairs resulting from the Storm; and

**WHEREAS**, pursuant to and in accordance with N.J.S.A. 40A:4-54, pursuant to a resolutions adopted by the City Council on November 13, 2012, November 28, 2012 and December 19, 2012 (collectively, the "Original Resolutions"), the City created special emergency appropriations in the aggregate amount of \$6,750,000 to provide for the costs of the clean-up, reconstruction and repair of the damage caused by the Storm to the City including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel related thereto ("Original Appropriations"); and

**WHEREAS**, subsequent to the adoption of the Original Resolutions, the City was better able to assess and determined the actual costs of the damages caused by the Storm, which costs far exceeded those payable by the Original Appropriations; and

**WHEREAS**, as a result of such assessment, the City has now determined that an additional \$500,000 special emergency appropriation will be needed to fully fund and pay for all of the costs associated with the clean-up, reconstruction and repair of damage caused by the Storm including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel related thereto ("Additional Appropriation"); and

**WHEREAS**, as was the case for the Original Appropriations, the Additional Appropriation was unforeseen and was unanticipated at the time of adoption of the City's budget and, as a result, the City Council did not provide for appropriations sufficient to meet the total costs of the clean-up, reconstruction and repairs resulting from the Storm; and

**WHEREAS**, the City is now desirous of amending Resolution No. 5 duly adopted by the City Council on December 19, 2012 and entitled, "RESOLUTION OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION FOR EXTRAORDINARY EXPENSES IN THE AMOUNT OF \$2,550,000.00 ASSOCIATED WITH DAMAGE FROM HURRICANE SANDY" ("December Resolution"), for the purpose of increasing the total amount of the special emergency appropriations authorized for the costs of the clean-up, reconstruction and repairs resulting from the Storm to include the amount of the Additional Appropriation.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, AS FOLLOWS:

**Section 1.** Section 1 of the December Resolution is hereby amended and restated in its entirety to provide as follows:

"Pursuant to the Local Budget Law, and in particular N.J.S.A. 40A:4-54, a special emergency appropriation in the amount of \$3,050,000 for the purpose of paying the costs and expenses including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel, associated with the clean-up, reconstruction and repair of infrastructure, roadways, buildings, equipment and public and private property in the City resulting from the impacts of the Storm is hereby authorized and approved."

**Section 2.** To the extent necessary or required, the City's Budget shall be amended to include the amount of the Additional Appropriation authorized hereby.

**Section 3.** All other parts of the December Resolution not amended hereby shall remain in full force and effect.

**Section 4.** All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

**Section 5.** In accordance with the Local Budget Law, a copy of this Resolution shall be forwarded to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs immediately upon adoption.

**Section 6.** This Resolution shall take effect immediately upon adoption this 20th day of November 2012.

Councilman Mello comments and motions an amendment to the resolution to add \$100,000 to the HOP Bus budget line and seconded by Councilwoman Giattino

**---MOTION TO AMEND THE RESOLUTION** by the following vote:

--- Yeas: 5 – NAYS: 3

---Yeas: Council persons Bhalla, Castellano, Giattino, Mello and President Cunningham

---Nays: Mason, Occhipinti, Russo

---Motion duly seconded by Councilman Bhalla

---Adopted AS **AMENDED** by the following vote: YEAS: 6 – NAYS: 2

---Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello and President Cunningham

---Nays: Occhipinti, Russo

Councilwoman Mason has left the table at 10:55 PM  
Councilwoman Mason has returned to the table at 11:00 PM

Councilman Russo has left the table at 10:58 PM  
Councilman Russo has returned to the table at 11:03 PM

Councilman Occhipinti has left the table at 11:20 PM  
Councilman Occhipinti has returned to the table at 11:21 PM

### **13-107**

---By Councilwoman Giattino

**RESOLUTION OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL EMERGENCY NOTES OF THE CITY OF HOBOKEN IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$700,000; MAKING CERTAIN COVENANTS TO EFFECT AND MAINTAIN THE EXEMPTION OF INTEREST ON SAID NOTES FROM FEDERAL INCOME TAXATION; AND AUTHORIZING SUCH FURTHER ACTIONS AND MAKING SUCH DETERMINATIONS AS MAY BE NECESSARY OR APPROPRIATE TO EFFECTUATE THE ISSUANCE AND SALE OF THE NOTES**

---

### **BACKGROUND**

**WHEREAS**, the Local Budget Law, constituting Chapter 169 of the Laws of the State of New Jersey, as amended and supplemented ("Local Budget Law"), authorizes, inter alia, municipalities to adopt resolutions authorizing special emergency appropriations to cover the cost of extraordinary expenses including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel, for the repair, reconstruction of streets, roads or bridges or other public property damaged by flood or hurricane, where such expense was not foreseen at the time of the adoption of the municipality's budget; and

**WHEREAS**, the City Council ("Council") of the City of Hoboken, County of Hudson, New Jersey ("City"), duly and finally adopted Resolution No. 5 on December 19, 2012, as amended by a resolution duly and finally adopted on February 20, 2013 (as amended, the "Resolution"), appropriating the aggregate sum of \$3,250,000 to pay the cost of extraordinary expenses including, but not limited to, capital expenditures and expenses related to salaries and wages of municipal personnel, for the clean-up, reconstruction and repair of infrastructure, roadways, buildings, equipment and public property damaged by flood resulting from Hurricane Sandy, as further described in the Resolution ("Project"), as such expense was not foreseen at the time of the adoption of the budget; and

**WHEREAS**, Section 55 of the Local Budget Law, N.J.S.A. 40A:4-55, authorizes the City to borrow money and issue special emergency notes to finance the costs of such extraordinary expenses described above, which Notes may be renewed from time to time; provided, however, at least 1/5 of all such special emergency notes, and the renewals thereof, shall mature and be paid in each year, so that all special emergency notes and renewals shall have matured and have been paid not later than the last day of the fifth year following the date of the special emergency resolution.

**WHEREAS**, it is the desire of the City to issue its special emergency notes in the principal amount of up to \$700,000, the proceeds of which will be used to pay the costs of the Project.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, (NOT LESS THAN TWO-THIRDS OF ALL MEMBERS THEREOF AFFIRMATIVELY CONCURRING) PURSUANT TO THE LOCAL BUDGET LAW, AS FOLLOWS:

**Section 1.** Pursuant to the Local Budget Law, the issuance of special emergency notes of the City, to be designated, substantially, "City of Hoboken, County of Hudson, New Jersey, Special Emergency Notes" ("Notes"), in an aggregate principal amount of up to \$700,000 is hereby authorized and approved.

**Section 2.** Payment of the Notes shall be provided for by the inclusion of an annual appropriation of at least 1/5 of the total amount appropriated by the Resolution. Said appropriation shall be paid annually from the City's budget.

**Section 3.** The Chief Financial Officer, with the assistance of Parker McCay P.A. ("Bond Counsel"), is hereby authorized and directed to award and sell the Notes, at public or private sale, in such amount as may be determined, at a price not less than par, plus accrued interest, and to deliver the same to the purchaser thereof, upon receipt of the purchase price for the Notes.

**Section 4.** The Notes shall be executed in the name of the City by the manual signatures of the Mayor and Chief Financial Officer, and shall be under the corporate seal of the City affixed, imprinted, or reproduced thereon, and attested by the manual signatures of the City Clerk or Deputy City Clerk.

**Section 5.** The Notes shall be dated their date of delivery, may be renewed from time to time, but shall be paid and mature in accordance with the provisions of Section 55(b) of the Local Budget Law, N.J.S.A. 40A:4-55(b).

**Section 6.** The Notes shall not be subject to redemption prior to maturity, shall be issued in registered or bearer form, shall be in the denomination of \$50,000 or greater, and shall be in the form permitted by the Local Budget Law and as Bond Counsel shall approve.

**Section 7.** At the next meeting of the City Council after the sale of the Notes, the Chief Financial Officer is hereby authorized and directed to report, in writing, to the City Council, the principal amount, rate of interest and the name of the purchaser of the Notes.

**Section 8.** The Notes are ultimately payable from ad valorem taxes that shall be levied upon all taxable real property in the City without limitation as to rate or amount.

**Section 9.** The City hereby covenants that it will not make any use of the proceeds of the Notes or do or suffer any other action that would cause: (i) the Notes to be "arbitrage bonds" as such term is defined in Section 148(a) of the Internal Revenue Code of 1986, as amended ("Code"), and the Regulations promulgated thereunder; (ii) the interest on the Notes to be included in the gross income of the owners thereof for federal income taxation purposes; or (iii) the interest on the Notes to be treated as an item of tax preference under Section 57(a)(5) of the Code.

**Section 10.** The City hereby covenants as follows: (i) it shall timely file, or cause to be filed, with the Internal Revenue Service, such information report or reports as may be required by Sections 148(f) and 149(e) of the Code; and (ii) it shall take no action that would cause the Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 11.** The City hereby covenants that it shall make, or cause to be made, the rebate required by Section 148(f) of the Code in the manner described in Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149(b)-1, 1.149(d)-1, 1.149(g)-1, 1.150-1 and 1.150-2, as such regulations and statutory provisions may be modified insofar as they apply to the Notes.

**Section 12.** All actions heretofore taken and documents prepared or executed by or on behalf of the City by the Mayor, Business Administrator, Director of Finance, Chief Financial Officer, City Clerk, Deputy City Clerk, other City officials or by the City's professional advisors, in connection with the issuance and sale of the Notes are hereby ratified, confirmed, approved and adopted.

**Section 13.** The Mayor, Business Administrator, Director of Finance, Chief Financial Officer, City Clerk and Deputy City Clerk are each hereby authorized and directed to determine all matters and execute all documents and instruments in connection with the Notes not determined or otherwise directed to be executed by the Local Budget Law or by this or any subsequent resolution, and the signatures of the Mayor, Business Administrator, Director of Finance, Chief Financial Officer, City Clerk or Deputy City Clerk on such documents or instruments shall be conclusive as to such determinations.

**Section 14.** All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

**Section 15.** This Resolution shall take effect immediately upon adoption this 20th day of February, 2013.

Councilman Mello comments and motions an amendment to the resolution to add \$100,000 to the resolution and seconded by Councilwoman Giattino

**---MOTION TO AMEND THE RESOLUTION** by the following vote:

---Yeas: 5 – NAYS: 3

---Yeas: Council persons Bhalla, Giattino, Mason, Mello and President Cunningham

---Nays: Castellano, Occhipinti, Russo

**---FAILED by the Amended Resolution** by the following vote: YEAS: 5 – NAYS: 3

---Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello, and President Cunningham

---Nays: Castellano, Occhipinti, Russo

Councilman Russo has left the meeting at 11:30 PM

Councilman Russo has returned to the meeting at 11:32 PM

**13-108**

---By Councilwoman Giattino

**RESOLUTION AWARDING A CONTRACT TO SHARP FOR THE LEASE TO PURCHASE OF TWENTY FOUR (24) COPIERS FOR THE CITY OF HOBOKEN IN ACCORDANCE WITH SHARP'S STATE CONTRACT (M003/A82710) IN THE TOTAL AMOUNT OF \$213,929.28.00 OVER FORTY-EIGHT (48) MONTHS**

**WHEREAS**, Sharp has copiers available for lease to purchase under their state contract, which copies the City of Hoboken seeks to purchase; and,

**WHEREAS**, pursuant to the recommendation of the Purchasing Department (attached hereto) the City wishes to contract for the goods specified (5 copiers for the HPD and 19 copiers for the City Administration), and Sharp can provide said goods under their state contract, under a lease to purchase agreement, in an amount of \$213929.28 for the forty-eight month term, for a lease to own contract with payments of \$4,456.86 per month each and a buy-out amount of \$1.00 at the end of the lease, which results in an annual expenditure of \$53,482.32; and,

**WHEREAS**, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$8,913.47 is available in the following appropriation 03-01-23-213-031 in the temporary appropriations of CY2013; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013; and I further certify that upon adoption of the CY2013 budget I will attempt to certify the remaining \$44,568.85 for CY2013 of the agreement, and at the annual date of execution of the contract, I will attempt to certify funds in the amount of \$53,482.32 for that years expenditures under this agreement, and if such certifications shall not occur I will notify the Business Administrator in writing no more than twenty-four hours after adoption of the CY2013 budget with regards to the CY2013 term, and at least twenty-four (24) hours prior to the annual date of execution for all other terms; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: \_\_\_\_\_, George DeStefano, CFO

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

- F. This resolution awards a contract to Sharp under their state contract (M003/A82710), in the total amount of Two Hundred Thirteen Thousand Nine Hundred Twenty Nine Dollars and Twenty Eight Cents (\$213,929.28), which shall be payable in forty eight equal monthly installments of \$4,456.86, for an annual amount of \$53,482.32, and the contract shall be subject to a non-appropriations clause for years two through four of the lease agreement.
- G. If the contract, as provided by the City of Hoboken, is not executed by the vendor within 21 days of award, then this award shall lapse and the City of Hoboken shall have the right to rebid the project.
- H. The contract shall be in accordance with the terms of the state contract documents. No exceptions were noted in the Purchasing Agent's recommendation; therefore, none will be accepted in performing obligations under the bid.
- I. This agreement shall be subject to a standard non-appropriation clause in favor of the City of Hoboken.
- J. Pursuant to the provisions of N.J.S.A. 40A:11-11(5), the Mayor or her agent is hereby authorized to enter into an Agreement with Sharp for said purchase and sale.
- K. This resolution shall take effect immediately upon passage.

---Motion duly seconded by Councilman Bhalla  
---Adopted by the following vote: YEAS: 7 – NAYS: 1  
---Yeas: Council persons Bhalla, Castellano, Giattino, Mello, Occhipinti, Russo and President Cunningham  
---Nays: Mason

**13-109**

---By Councilman Bhalla

**RESOLUTION TO AUTHORIZE A CONTRACT WITH WILLIAMS SCOTSMAN INC. FOR MODULAR SPACE LEASE FOR THE HPD TO COMMENCE FEBRUARY 20, 2013 AND EXPIRE UPON COMPLETION, BUT NOT LATER THAN FEBRUARY 19, 2014, FOR A NOT TO EXCEED AMOUNT OF TWENTY SEVEN THOUSAND TWO HUNDRED SEVENTY TWO DOLLARS AND FORTY ONE CENTS (\$27,272.41)**

**WHEREAS**, the lease of modular space is subject to local public contracts law, but since the total cost is less than the bidding threshold, the City appropriately requested three quotes in order to determine the successful vendor; and,

**WHEREAS**, the Administration requested quotes for said services, and has determined that Williams Scotsman Inc. can provide the City with the most effective and efficient modular space lease for the HPD; and,

**WHEREAS**, *the City wishes to provide a not to exceed amount to the contract in an amount of Twenty Seven Thousand Two Hundred Seventy Two Dollars and Forty One Cents (\$27,272.41); and,*

**WHEREAS**, *Williams Scotsman Inc. is hereby required to abide by the “pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, codified as §20A-11 et seq. of the Administrative Code of the City of Hoboken as well as the Affirmative Action laws and policies under which the City operates; and,*

**WHEREAS**, certification of funds is available as follows:

**I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$27,272.41 is available in the following appropriation C-04-60-711-330 in the CY2013 capital budget; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said temporary appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.**

Signed: \_\_\_\_\_, George DeStefano, CFO

**NOW THEREFORE, BE IT RESOLVED**, that a contract with Williams Scotsman Inc. to provide the City with a modular space lease for the HPD, in accordance with the attached proposal, be executed, for a term to commence February 20, 2013 and expire upon completion of the project, but in no event later than February 19, 2014, with a not to exceed amount of **Twenty Seven Thousand Two Hundred Seventy Two Dollars and Forty One Cents (\$27,272.41); and**

**BE IT FURTHER RESOLVED**, no additional fees or invoices shall be allowable

under this agreement unless prior approval is provided by the City in accordance with all legal guidelines; and,

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-1 et seq. of the Code of the City of Hoboken), and any and all state Pay to Play laws, is a continuing obligation of the vendor; 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 and Corporation Counsel 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 Councilman Mello

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

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

---Nays: None.

**13-110**

---By Councilwoman Giattino

**AUTHORIZING THE CITY OF HOBOKEN TO ACCEPT AND QUALIFY RESPONSES TO ISSUED REQUESTS FOR QUALIFICATION FOR GENERAL MUNICIPAL ENGINEERS FROM JANUARY 1, 2013 THROUGH DECEMBER 31, 2013**

**WHEREAS**, it is necessary for the City of Hoboken to engage, from time-to-time, the services of a qualified firm and/or professional to provide Professional Services as General Municipal Engineers; and,

**WHEREAS**, N.J.S.A. 19:44A-20.1 et seq., commonly known as the State “Pay to Play” Law took effect on January 1, 2006; and,

**WHEREAS**, the City has fully complied with the “fair and open” process set forth under N.J.S.A. 19:44A-20.1 et. seq., by issuing a Request for Qualifications for General Municipal Engineers; and,

**WHEREAS**, the City is in receipt of responses to the issued RFQ; and

**WHEREAS**, the City’s review team has determined that the below listed respondents to the RFQ provide the City with the best options for efficient and effective engineering services during CY2013, and are each qualified to be considered by the City Administration, if and when the Administration finds it necessary, to engage the services of such respondent;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Hoboken that the below listed respondents be and are hereby deemed qualified to be contracted for General

Engineering Services for the City during the January 1, 2013 through December 31, 2013 period:

1. T&M Associates
2. Neglia Engineering Associates
3. Boswell Engineering
4. Suburban Consulting Engineers Inc.
5. Maser Consulting PA

---Motion duly seconded by Councilman Bhalla

---**FAILED** by the following vote: YEAS: 4 – NAYS: 4

---Yeas: Council persons Bhalla, Giattino, Mello and President Cunningham

---Nays: Castellano, Mason, Occhipinti, Russo

**13-111**

---By Councilwoman Giattino

**RESOLUTION AWARDING A PROFESSIONAL SERVICE CONTRACT TO BOSWELL ENGINEERING FOR CITY ENGINEER (ON-CALL) IN AN AMOUNT NOT TO EXCEED ONE HUNDRED FORTY FIVE THOUSAND DOLLARS (\$145,000.00) FOR A ONE YEAR TERM TO COMMENCE JANUARY 1, 2013 AND EXPIRE DECEMBER 31, 2013**

**WHEREAS**, the City of Hoboken published RFP's for general municipal engineering services; and,

**WHEREAS**, the Administration evaluated the proposal provided in response to said RFP, and the Administration has determined that Boswell Engineering can provide the City with the most effective and efficient General City Engineering On-Call services for the 2013 calendar year; and,

**WHEREAS**, in accordance with the direction of the Administration, the City Council is asked to award a contract for the City's General Engineering On-Call services for a total contract amount of One Hundred Forty Five Thousand Dollars (\$145,000.00), with a one (1) year term to commence on January 1, 2013; and,

**WHEREAS**, certification of funds is available as follows:

**I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$45,000.00 is available in the following appropriation 3-01-31-401-000 in the CY2013 temporary appropriation and \$30,000.00 is available in the following appropriation C-04-60-711-220 in the capital fund and \$70,000.00 is available in the following appropriation C-04-60-711-370 in the capital fund; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013 temporary appropriation or the capital funds; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.**

**Signed: \_\_\_\_\_, George DeStefano, CFO**

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Hoboken that a contract with the below listed vendor is awarded for an amount not to exceed One Hundred Forty Five Thousand Dollars (\$145,000.00), with a one (1) year term to commence on January 1, 2013, for services as General Municipal Engineer On Call, as follows:

1. The above recitals are incorporated herein as though fully set forth at length.
2. The terms of the RFP and Boswell's responsive proposal shall govern the contract, and no changes may be made without the prior written consent of both parties.
3. Any change orders which shall become necessary shall be subject to the City's ability to appropriate sufficient funds, which appropriation shall be at the sole discretion of the City Council.
4. The Council hereby authorizes the Mayor, or her designee to execute any and all documents and take any and all actions necessary to complete and realize the intent and purpose of this resolution.
5. The Mayor, or her designee is hereby authorized to execute an agreement, for the above referenced goods and/or services based upon the following information:

Boswell Engineering  
South Hackensack, New Jersey

---Motion duly seconded by Councilman Bhalla  
---**FAILED** by the following vote: YEAS: 4 – NAYS: 4  
---Yeas: Council persons Bhalla, Giattino, Mello and President Cunningham  
---Nays: Castellano, Mason, Occhipinti, Russo

**13-112**

---By Councilwoman Giattino

**RESOLUTION CONFIRMS AN EMERGENCY CONTRACT AWARDED TO CHERRY HILL WINNER FORD FOR REPLACEMENT OF TWO TRUCKS AND ACCESSORIES (2013 FORD E350'S) (\$34,193.00/EACH) DUE TO DAMAGE AND DESTRUCTION OF ORIGINAL VEHICLES AND EQUIPMENT OF THE CITY IN THE WAKE OF HURRICANE SANDY IN A TOTAL AMOUNT NOT TO EXCEED SIXTY EIGHT THOUSAND THREE HUNDRED EIGHTY SIX DOLLARS (\$68,386.00) FOR GOODS TO BE PROVIDED WITHIN SIXTY DAYS (60) OF TRANSMISSION OF THIS ACCEPTANCE OF THEIR OFFER**

**WHEREAS**, the City of Hoboken was faced with an emergency situation which has the potential to create serious risks to the safety, health and welfare of the general public, specifically, the debris remaining throughout the City and the financial hardships of the local government which resulted from Hurricane Sandy; and,

**WHEREAS**, the Administration consulted and negotiated with multiple vendors of commercial vehicles and accessory equipment for the City for necessary replacement commercial (municipal) vehicles and accessories (Two 2013 Ford E350's), and thereafter entered into an emergency contract for said services in accordance with N.J.S.A. 40A:11-6 and Hoboken Code § 60-11; and,

**WHEREAS**, in accordance with the direction of the City Business Administrator, the City Administration awarded an emergency contract to Cherry Hill Winner Ford for the PURCHASE of said vehicles following Hurricane Sandy, and the Council now seeks to ratify the award of the contract to Cherry Hill Winner Ford for a total contract amount of **SIXTY EIGHT THOUSAND THREE HUNDRED EIGHTY SIX DOLLARS (\$68,386.00)**, for goods to be provided within sixty (60) days of transmission of this acceptance of their offer; and,

WHEREAS, certification of funds is available as follows:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$68,386.00 is available in the following appropriation 2-01-46-870-015 in the CY2012 budget; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2012; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed

Signed: \_\_\_\_\_, George DeStefano, CFO

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hoboken that the emergency PURCHASE contract with the below listed vendor is authorized and ratified for an amount not to exceed **SIXTY EIGHT THOUSAND THREE HUNDRED EIGHTY SIX DOLLARS (\$68,386.00)**, as follows:

1. The above recitals are incorporated herein as though fully set forth at length.
2. The terms of the attached proposal shall govern the contract, and no changes may be made without the prior written consent of both parties, except that the Administration is authorized to PURCHASE an extended warranty on each vehicle purchased under this agreement, subject to certification of funds.
3. Any change orders which shall become necessary shall be subject to the City's ability to appropriate sufficient funds, which appropriation shall be at the sole discretion of the City Council.
4. The Council hereby authorizes the Mayor, or her designee to execute any and all documents and take any and all actions necessary to complete and realize the intent and purpose of this resolution.
5. The Mayor, or her designee is hereby authorized to execute an agreement, for the above referenced goods and/or services based upon the following information:

Cherry Hill Winner Ford

---Motion duly seconded by Councilman Bhalla

---Adopted by the following vote: YEAS: 7 – NAYS: 1

---Yeas: Council persons Bhalla, Castellano, Giattino, Mello, Occhipinti, Russo and President Cunningham

---Nays: Mason

**13-113**

---By Councilwoman Giattino

**RESOLUTION CONFIRMS AN EMERGENCY CONTRACT AWARDED TO AMANO MCGANN, INC. FOR REPLACEMENT OF REVENUE CONTROL EQUIPMENT DUE TO WATER DAMAGE FOR THE CITY IN THE WAKE OF HURRICANE SANDY IN AN AMOUNT NOT TO EXCEED \$183,000.00 FOR GOODS TO BE PROVIDED WITHIN NINETY DAYS OF EXECUTION OF CONTRACT**

WHEREAS, the City of Hoboken was faced with an emergency situation which has the potential to create serious risks to the safety, health and welfare of the general public,

specifically, the financial hardships of the local government which resulted from Hurricane Sandy; and,

**WHEREAS**, the Administration consulted and negotiated with the single source vendor of parking garage revenue control equipment for the City for necessary replacement revenue control equipment resulting from the hurricane, and thereafter entered into an emergency contract for said services in accordance with N.J.S.A. 40A:11-6 and Hoboken Code § 60-11; and,

**WHEREAS**, in accordance with the direction of the City Business Administrator, the City Administration awarded an emergency contract to Amano McGann, Inc. for said goods following Hurricane Sandy, and the Council now seeks to ratify the award of the contract to Amano McGann Inc. for a total contract amount of One Hundred Seventy Five Thousand Dollars (**\$183,000.00**), for goods to be provided within ninety (90) days of execution of the agreement; and,

**WHEREAS**, certification of funds is available as follows:

**I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$183,00.00 is available in the following appropriation 3-01-55-901-014 in the CY2012 budget; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2012; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.**

Signed: \_\_\_\_\_, **George DeStefano, CFO**

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Hoboken that the emergency contract with the below listed vendor is authorized and ratified for an amount not to exceed One Hundred Seventy Five Thousand Dollars (**\$183,000.00**) as follows:

6. The above recitals are incorporated herein as though fully set forth at length.
7. The terms of the attached proposal (NOT including the vendor's form contract entitled "Terms and Conditions", which is REJECTED in its entirety) shall govern the contract, and no changes may be made without the prior written consent of both parties.
8. Any change orders which shall become necessary shall be subject to the City's ability to appropriate sufficient funds, which appropriation shall be at the sole discretion of the City Council.
9. The Council hereby authorizes the Mayor, or her designee to execute any and all documents and take any and all actions necessary to complete and realize the intent and purpose of this resolution.
10. The Mayor, or her designee is hereby authorized to execute an agreement, for the above referenced goods and/or services based upon the following information:

Amano McGann Inc.  
140 Harrison Avenue  
Roseland, New Jersey 07068

---Motion duly seconded by Councilman Mello

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

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

---Nays: None.

**13-114**

---By Councilwoman Giattino

**RESOLUTION APPROVING A CONTRACT WITH BEYER FORD D/B/A BEYER FLEET FOR VEHICLES FOR THE CITY OF HOBOKEN IN THE TOTAL AMOUNT OF \$174,821.00 PURSUANT TO STATE AND COOPERATIVE CONTRACTS**

**WHEREAS**, the City of Hoboken hereby awards a contract to Beyer Ford for the purchase of the following six (6) vehicles, pursuant to Beyer Ford's state contract (A83013), and the MCC Purchasing Cooperative, and the Cranford Purchasing Cooperative, all of which render the sales exempt from public bidding; and

**WHEREAS**, the City Council is called upon to award the contract to Beyer Ford in the total amount of \$174,821.00 for the following vehicles (as more thoroughly described in the attached proposal): one 2013 Ford F-350 (for the HFD), two 2013 Ford Expeditions (for the HFD), and three 2013 Ford Explorers (1 for HPD and 2 for HFD); and

**WHEREAS**, certification of funds is available as follows:

**I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$174,821.00 is available in the following appropriation 3-01-55-901-014 in the CY2013 temporary appropriation; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2013 temporary appropriation; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.**

**Signed: \_\_\_\_\_, George DeStefano, CFO**

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council does hereby a contract to Beyer Ford d/b/a Beyer Fleet in the amount of One Hundred Seventy Four Thousand Eight Hundred Twenty One Dollars and Zero Cents (\$174,821.00) for the six (6) vehicles listed above and more thorough described on the attached proposal.

---Motion duly seconded by Councilman Bhalla

---Adopted by the following vote: YEAS: 6 – NAYS: 2

---Yeas: Council persons Bhalla, Castellano, Giattino, Mello, Occhipinti and President Cunningham

---Nays: Mason, Russo

**13-115**

---By Councilwoman Giattino

**CANCELLATION OF LEAD LOTS, MERGED AND TAXABLE TO EXEMPT PROPERTIES 2013 - 1<sup>ST</sup> & 2<sup>ND</sup> QUARTERS**

RESOLVED, by the Council of the City of Hoboken;

WHEREAS, per the Tax Assessor's memo the attached list of Block and Lots have been deleted and no longer exist. The 2013 First and Second quarter billing for the Lead Lots, Merged and Taxable to Exempt Properties are to be cancelled.

Whereas, the list of properties have been subdivided into units and will be billed on the 2013 Third and Fourth quarters.

RESOLVED, that the list of 2013 First and Second quarter billing be cancelled from the Tax Duplicate.

<u>Block</u>	<u>Lot</u>	<u>Address</u>	<u>1<sup>st</sup> &amp; 2<sup>nd</sup> Quarters to be Cancelled</u>
29	25	118 Jefferson Street	\$6,856.63
30	22	114 Adams Street	\$6,768.75
33	7	115 Clinton Street	\$2,968.75
34	21	130 Park Avenue	\$2,850.00
34	22	128 Park Avenue	\$3,562.50
34	23.01	126 Park Avenue	\$3,562.50
34	23.02	124 Park Avenue	\$3,562.50
38	3	213 Monroe Street	\$1,781.25
60	3	405 Jefferson Street	\$8,906.25
61	2	403 Adams Street	\$6,870.88
74	24	620 Monroe Street	\$1,781.25
165	20	232 Park Avenue	\$11,685.00
166	37	300 Park Avenue	\$13,808.25
170	13	833 Willow Avenue	\$4,156.25
184	34	914 Garden Street	\$9,352.75
188	10.02	119 Garden Street	\$9,500.00
194	21	735 Garden Street	\$8,656.88
194	32	728 Bloomfield Street	\$8,409.88
196	17	933 Garden Street	\$8,146.25
204	2.01	503 Bloomfield Street	\$4,519.63
214.01	32	306 Hudson Street	\$6,768.75
218	20.01	714-716 Hudson Street	\$11,183.88
243	11	1119 Washington Street	\$9,452.50
269.02	1	1450 Washington Street	\$32,361.75
122	23.01	1408-1414 Clinton Street	\$5,581.25
122	27	1406 Clinton Street	\$1,484.38
122	28	1404 Clinton Street	\$1,484.38
228	1	601-605 Hudson Street	\$7,412.38
228	3	607 Hudson Street	\$9,025.00
228	4	609 Hudson Street	\$8,531.00
228	5	611 Hudson Street	\$8,312.50
228	6	613 Hudson Street	\$10,687.50
228	7	615 Hudson Street	\$8,934.75
228	9	619 Hudson Street	\$9,977.38

---Motion duly seconded by Councilman Bhalla

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

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

---Nays: None.

**13-116**

---By Councilman Bhalla

**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 the refunds be made;

**NOW THEREFORE BE IT RESOLVED**, that a warrant be drawn on the City Treasurer made payable to the following totaling **\$ 215,901.14**

<u>NAME</u>	<u>BL/LOT/UNIT</u>	<u>PROPERTY</u>	<u>YEAR</u>	<u>AMOUNT</u>
Ventura, Miesowitz, Keough & Warner Counselors at Law 783 Springfield Ave Summit, NJ 07901-2332	150/3	1032-1040 Grand St	2010	\$37,960.00
Ventura, Miesowitz, Keough & Warner Counselors at Law 783 Springfield Ave Summit, NJ 07901-2332	150/3	1032-1040 Grand St	2011	\$36,968.00
Ventura, Miesowitz, Keough & Warner Counselors at Law 783 Springfield Ave Summit, NJ 07901-2332	150/3	1032-1040 Grand St	2012	\$42,750.00
Horn Law Group, LLC Attorneys at Law 200 Corporate Circle, Suite 2 Toms River, NJ 08755	189/9	219 Garden Street	2011	\$1,386.30
Horn Law Group, LLC Attorneys at Law 200 Corporate Circle, Suite 2 Toms River, NJ 08755	189/9	219 Garden Street	2012	\$1,425.00
Horn Law Group, LLC Attorneys at Law 200 Corporate Circle, Suite 2 Toms River, NJ 08755	221/24/C0509	1000-12 Hudson St	2011	\$ 184.84
Horn Law Group, LLC Attorneys at Law 200 Corporate Circle, Suite 2 Toms River, NJ 08755	221/24/C0509	1000-12 Hudson St	2012	\$ 190.00
Beattie Padovano, LLC Counsellors at Law 50 Chestnut Ridge Road Ste 208 P O Box 244	263.03/1	1401 Hudson St	2011	\$23,105.00

Montvale, NJ 07645-0244

Beattie Padovano, LLC      263.03/1      1401 Hudson St      2012      \$42,750.00  
Counsellors at Law  
50 Chestnut Ridge Road Ste 208  
P O Box 244  
Montvale, NJ 07645-0244

Beattie Padovano, LLC    269/10      60-68 Fourteenth St    2010 \$9,490.00  
Counsellors at Law  
50 Chestnut Ridge Road Ste 208  
P O Box 244  
Montvale, NJ 07645-0244

Beattie Padovano, LLC      269/10      60-68 Fourteenth St      2011      \$9,242.00  
Counsellors at Law  
50 Chestnut Ridge Road Ste 208  
P O Box 244  
Montvale, NJ 07645-0244

Beattie Padovano, LLC    269/10      60-68 Fourteenth St      2012      \$9,500.00  
Counsellors at Law  
50 Chestnut Ridge Road Ste 208  
P O Box 244  
Montvale, NJ 07645-0244

Lynch, Herbert & R  
Dickovitch                      268.01/1/C004D    1501 Garden/1500 Bloom    2012 \$ 950.00  
1500 Garden St #4D  
Hoboken, NJ 07030

---Motion duly seconded by Councilwoman Giattino  
---Adopted by the following vote: YEAS: 8 – NAYS: 0  
---Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello, Occhipinti, Russo and  
President Cunningham  
---Nays: None.

**13-117**

---By Councilwoman Giattino

**RESOLVED**, that filed minutes for the Hoboken City Council Special meeting on November 13, 2012, regular meetings of November 28, 2012, December 5, 2012 and December 19, 2012 have been reviewed and approved as to legal form and content.

---Motion duly seconded by Councilman Mello  
---Adopted by the following vote: YEAS: 7 – NAYS: 1  
---Yeas: Council persons Bhalla, Castellano, Giattino, Mello, Occhipinti, Russo and Cunningham  
---Nays: Mason

**ORDINANCES**

Introduction and First Reading

**13-119**  
**Z-230**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF HOBOKEN GRANTING A NONEXCLUSIVE TEMPORARY REVOCABLE EASEMENT FOR CERTAIN ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY ALONG OBSERVER HIGHWAY, BETWEEN PATERSON AVENUE AND JACKSON STREET, MORE PARTICULARLY KNOWN AS BLOCK 14, LOT 1 ON THE TAX MAPS OF THE CITY OF HOBOKEN, AND COMMONLY REFERED TO AS 61 JACKSON STREET

**WHEREAS**, Stephen R. Spector, attorney for the applicant, 118 Clinton Street LLC (hereinafter called "Grantee"), has petitioned the City of Hoboken (hereinafter call "Grantor"), on behalf of his client, who desires the use of municipal land, identified on the attached property survey as certain portions of the right-of-way along Observer Highway between Paterson Avenue and Jackson Streets, as an easement including the right to construct, operate and maintain structural columns, walls, a roof over-hang, and walkway errantly constructed outside of the property line; and

**WHEREAS**, the Zoning Board of Adjustment has conditioned development approval of the property at 61 Jackson Street, more particularly described as Block 14, Lot 1, on the Tax Map of the City of Hoboken, upon obtaining an encroachment agreement ("Easement") from the governing body of the City of Hoboken; and

**WHEREAS**, in consideration of \$16,758.84 per annum for the term of the easement, as determined in the sole discretion of the City, which amount shall be subject to the CPI terms herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, Grantor is willing to enter into a non-exclusive temporary revocable easement for the use of the property as described herein, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

- A. Grantor hereby grants Grantee a Non-Exclusive Temporary Revocable Easement to use the following described property (the site plan shall be attached to this agreement as Schedule A, and shall be incorporated by reference):

BEGINNING at a point in the northerly line of Observer Highway, a distance of 4.83 feet easterly from the intersection formed by the easterly line of Jackson Street and the northerly line of Observer Highway and running thence:

1. S-12°-39'-21.6"-W and onto the R.O.W of Observer Highway, a distance of 7.83 feet to a point; thence
2. S-77°-20'-38.4"-E and continuing along the R.O.W. of Observer Highway, a distance of 48.47 feet to a point; thence
3. N-12°-39'-21.6"-E and continuing along the R.O.W. of Observer Highway, a distance of 6.15 feet to a point in the northerly line of Observer Highway; thence
4. S-77°-20'-38.4"-W and continuing along the R.O.W. of Observer Highway, a distance of 12.90 feet to a point; thence
5. N-12°-39'-21.6"-E and continuing along the R.O.W. of Observer Highway, a distance of 1.33 feet onto the northerly line of Observer Highway;

6. N-77°-20'-38.4"-W and continuing along the northerly line of Observer Highway, a distance of 64.90 feet to a point, said point or place of beginning.

The above being known as a portion of the public right-of-way of Observer Highway fronting Lot 1 in Block 14, as shown on the official Tax Map of the City of Hoboken, and commonly known as 61 Jackson Street; the encroachment includes columns, a roof overhang, walkway, and concrete platform elevated above sidewalk grade along Observer Highway, said encroachment area is 399.02 square feet.

- B. This Easement grants the right to construct, operate and maintain structural columns, walls, and a roof over-hang making up the southerly wall of the bar/restaurant to be known as *The Downtown Pub*, and an elevated walkway adjacent thereto (hereinafter "Improvements") within the above described property. Grantee agrees to assume sole responsibility for the construction, operation and maintenance of said Improvements within the property. Grantee agrees to, upon Grantor's request, timely repair any damage to Grantor's property or improvements occurring from Grantee's construction, operation or maintenance of said Improvement.
- C. Only such rights are granted hereby as are necessary for construction, operation and maintenance of the Improvements. Grantor reserves the right to use the property in any manner and for any purpose not inconsistent with the aforesaid purpose. Grantee agrees to relocate said improvements, at its sole cost and expense upon termination of this agreement.
- D. Grantee agrees to defend, indemnify and hold harmless Grantor, its officers, agents and employees, from and against all claims, demands, judgments, costs and expenses (including reasonable attorney's fees) which may arise by reason of injury to any person or damage to any property attributable to the negligence of Grantee, Grantee's officers, agents and employees, in connection with Grantee's construction, operation and maintenance of said Improvements and its use of or presence on the property.
- E. Grantee agrees to provide for general liability insurance in an amount of at least \$1,000,000.00/\$2,000,000.00, which shall include the City of Hoboken and its officers and employees as additional insured. Said insurance shall have a thirty day notice of policy cancellation upon the City of Hoboken. A copy of said insurance coverage shall be provided to the Office of Corporation Counsel prior to this easement becoming effective. If at any point the insurance lapses or is otherwise terminated, for any reason, this easement shall terminate effective immediately without notice or opportunity to cure.
- F. This Easement shall automatically cease upon non-use for any six (6) consecutive months, and all interests granted herein shall revert to Grantor, or its successors in interest.
- G. This Easement shall automatically cease upon destruction, or partial destruction, of the Improvements, by or for any reason, whereby reconstruction of the Improvements would be necessary to continue use of the building.
- H. This Easement shall be for a term up to Ninety-Nine (99) years after the date of adoption by the governing body. The termination date may be extended only by mutual written consent of both parties and subsequent adoption of an ordinance extending the term, which shall be in the sole discretion of the City; provided, however, that no amendment to the Easement, whether to the term or otherwise, shall be effective unless in writing, adopted by ordinance of the governing body, and signed by both parties. This easement shall terminate immediately if at any point the annual fee lapses for greater than a thirty day period past the payment due date, for any reason, without the need for notice or opportunity to cure. The annual fee shall be paid on the date the Ordinance approving the within Easement becomes effective according to applicable law, and annually on the same date thereafter.

- I. In addition to the rights of termination as described herein, the City shall have the right, in its sole discretion, to terminate this Easement for cause, which shall include but not be limited to concerns of public safety, health and welfare, upon Ninety (90) days written notice to grantee.
- J. All notices referred to in the Easement shall be sent to the respective parties at the address stated in § K, *infra*.
- K. The rights granted to and duties assumed by Grantee under this Easement are personal, and shall not run with the land, and may not be assigned or delegated by Grantee without the prior written consent of Grantor. Any attempted assignment or delegation by Grantee without the prior written consent of the Grantor shall be void ab initio.
- L. This Easement may be amended from time to time, as may be necessary, by mutual written consent of both parties; provided, however, that no amendment to the Easement shall be effective unless in writing, adopted by ordinance of the governing body, and signed by both parties.
- M. Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed. Both parties were represented by competent legal counsel of their own choosing during the drafting of this agreement, and this agreement shall not be construed in favor of or against either party. This agreement shall be subject to and interpreted in accordance with the laws of the State of New Jersey.
- N. The annual fee for Grantee's rights under this Agreement shall be Sixteen Thousand Seven Hundred Fifty Eight Dollars and Eighty Four Cents (\$16,758.84) per annum, which represents \$3.50/s.f./month at 399.02 s.f. of encroachment. This fee shall be subject to all the terms herein, including but not limited to Section O.
- O. CPI Adjustments Upon Fifth Anniversary and Every Subsequent Fifth Year of Term. Effective as of the first day of each five-year anniversary of the Commencement Date, the annual fee payable hereunder shall escalate on a five-year basis as follows:

#### CONSUMER PRICE INDEX ESCALATION

(a) Definitions. For purposes of this clause, the following definitions shall apply:

(1) the term "Base Month" shall mean the month in which the Commencement Date shall occur.

(2) the term "Consumer Price Index" or "CPI" shall mean the U.S. Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers, New York, N.Y. - Northeastern N.J. (1982-84 equals 100). All items, or any renamed local index covering the metropolitan New York, Northeastern New Jersey area or any other successor or substitute index appropriately adjusted.

(3) the term "Base Index" shall mean the Consumer Price Index that shall be in effect in the Base Month.

(4) the term "Change Date" shall mean the first day of every five-year anniversary of the Commencement Date, and on that same date every five (5) years thereafter.

(b) Adjustment. Effective on the Change Date, the annual fee payable hereunder shall escalate as follows:

The escalation of annual fees shall be based on one-half of the percentage increase of the Consumer Price Index for the month prior to the Change Date (the "Percentage Increase"). In the event that the Consumer Price Index for the month prior to the Change Date exceeds the Base Index, **then the annual fee shall be increased by the Percentage Increase**: the annual fee shall be multiplied by the Percentage Increase, and the resulting product shall be added to the annual fee; such sum shall be the escalated annual fee effective as of the Change Date. Grantee covenants and agrees that said escalated fee shall thereafter be payable until the next Change Date pursuant to the terms of this Agreement.

(c) Formula and Example. The following illustrates the intentions of the parties hereto as to the computation of the aforesaid escalation of annual fee:

(1) Formula. The formula used to calculate the escalation of annual fee pursuant to this clause shall be:

$$\frac{(\text{Current CPI} - \text{Base Index}) \times 1/2 \times \text{Fee} + \text{Fee}}{\text{Base Index}} = \text{Escalated Fee}$$

(2) Example. **Assume** that the monthly fee is \$156,250, the Base Index (February, 2018) is 178.6, and the CPI for the month preceding the Change Date is 200.0:

$$\begin{aligned} 200.0 - 178.6 &= 21.4 \\ 21.4/178.6 &= 0.12 \\ 1/2 \text{ of } .12 &= 0.06 \\ 0.06 \times \$156,250 &= \$9,375 \\ \$156,250 + \$9,375 &= \$165,625 \end{aligned}$$

(d) Figures Unavailable. In the event that the Consumer Price Index is unavailable as of the Change Date, Grantee shall continue to make annual fee payments based on the fee the Grantee had been paying immediately prior to the Change Date Until such Consumer Price Index is Made available; at that time the annual fee shall escalate in accordance with this clause and Grantee shall make a retroactive payment to Grantor equal to the difference between (i) the fee due from the date the first increase in the fee became effective until the increase was finally computed; and (ii) the fee actually paid by Grantee from the date the increase became effective until the date such increase was finally computed.

(e) No Recomputations. No subsequent adjustments or recomputations, retroactive or otherwise, shall be made to the Consumer Price Index due to any revision that may later be made to the first published figure of the Consumer Price Index for any month.

(f) No Fee Decrease. In no event shall the annual fee in a given year be less than the annual fee for the immediately preceding year.

(g) No Waiver. Any delay or failure of Grantor in computing, billing or requesting payment by Grantee of the escalation of annual fee as provided herein shall not constitute a waiver of or in any way impair the continuing obligation of Grantee to pay such escalation of annual fees.

(h) Survival. Grantee's obligation to pay escalated annual fees pursuant to this clause shall continue and shall cover all periods up to the date that this Agreement is scheduled to expire, and shall survive any expiration, earlier termination, or extension of this Agreement.

(i) Right to Use Old Index. In the event that the Consumer Price Index ceases to use 1982/84=100 as the basis of calculation, or if, in Grantor's sole judgment, a substantial change is made in the method used by the federal government to determine the Consumer Price Index or the items used to calculate the Consumer Price Index, then the Consumer Price Index shall be converted ("Conversion") to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the Consumer Price Index in effect as of the date of this Agreement not been altered. As used herein, it shall be deemed a "substantial change" in the manner in which the Consumer Price Index is calculated if the federal government adjusts the method in which the Consumer Price Index is determined in an attempt to more accurately reflect changes in the cost-of-living.

(j) Option to Use Now CPI. If, in Grantor's sole judgment, the Conversion is impossible or impractical, then the revised Consumer Price Index shall be deemed to replace the original Consumer Price Index for purposes of this clause.

P. Both parties represent and warrant that they have the authority to execute this Easement agreement.

GRANTEE:  
118 Clinton Street LLC  
Danny Tattoli, Agent of Record  
401 Jefferson Street  
Hoboken, New Jersey 07030

GRANTOR:  
City of Hoboken  
Dawn Zimmer, Mayor  
94 Washington Street  
Hoboken, New Jersey 07030

Q. If the construction as contemplated herein is not complete, and a certificate of occupancy obtained on or before September 1, 2013, then this easement shall terminate automatically, without refund of the fees paid and consideration obtained.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

THIS EASEMENT AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Hoboken (Grantor), and 118 Clinton Street LLC (Grantee), whose agent is Danny Tattoli.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement to be effective on the day and year first above written.

President Cunningham moved that the ordinance pass its first reading as read and be laid of

the table for public inspection to be further considered for final passage at a meeting of the Council to be held on **February 20 2013** at 7:00 PM.

- Motion duly seconded by Councilwoman
- Adopted by the following vote: YEAS: 8 – NAYS: 0
- Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello, Occhipinti, Russo and President Cunningham
- Nays: None.

**13-120**  
**Z-231**

**AN ORDINANCE TO AMEND CHAPTER 190 ENTITLED “VEHICLES AND TRAFFIC” TO UPDATE AND ADD TO THE SNOW EMERGENCY ROUTES LISTED IN**

**WHEREAS**, the City has determined that inclusion of the length of roadway between Jackson and Harrison Streets as a snow emergency route is necessary to effectuate the proper purpose of the snow routes in the Southwestern portion of the City.

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

**SECTION ONE: AMENDMENTS TO THE SUBSTANCE OF HOBOKEN CODE §190-36 :**

**§ 190-36 SNOW EMERGENCIES.**

A. Whenever snow has fallen and the accumulation is such that it covers the street or highway, or whenever a snow emergency has been declared by the municipality, an emergency shall exist and no vehicle shall be parked on the following street or highways or portion thereof.

	<b>Name of Street</b>	<b>Side</b>	<b>Location</b>
	Fifth Street	South	Clinton Street to River Street
	Fourth Street	South	River Street to <u>Harrison</u> <del>Jackson</del> Street
	Ninth Street	North	Jackson Street to River Street
	Seventeenth Street	Both	Willow Avenue to Jefferson Street
	Third Street	North	Jackson Street to River Street
	Thirteenth Street	North	Washington Street to Willow Avenue

Washington Street	Both	Observer Highway to northern boundary	B. The above parking prohibitions shall remain in effect after the snow has ceased,
Willow Avenue (H.C. Rd. No. 675)	West	Observer Highway to Eleventh Street	

until the streets have been plowed sufficiently and to the extent that parking will not interfere with the normal flow of traffic.

**SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS**

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

**SECTION THREE: SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not 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 immediately upon passage and publication as provided by law.

**SECTION FIVE: CODIFICATION**

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

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

President Cunningham moved that the ordinance pass its first reading as read and be laid of the table for public inspection to be further considered for final passage at a meeting of the Council to be held on **February 20 2013** at 7:00 PM.

- Motion duly seconded by Councilwoman
- Adopted by the following vote: YEAS: 8 – NAYS: 0
- Yeas: Council persons Bhalla, Castellano, Giattino, Mason, Mello, Occhipinti, Russo and President Cunningham
- Nays: None.

13-121  
Z-232

AN ORDINANCE AMENDING CHAPTER §44 (LAND USE PROCEDURES) UPDATING AND CONSOLIDATING THE PROCESSES AND PROCEDURES FOR LAND USE BOARDS

**WHEREAS**, the City Council wishes to update administrative procedures for the Planning Board and Zoning Board of Adjustment to assure consistency with the city's land use goals set forth in the Master Plan; and

**WHEREAS**, the consolidation of administrative procedures for the Planning Board and Zoning Board of Adjustment to a single location (chapter) within the Municipal Code is a matter of significant convenience for residents of the City of Hoboken and to users of the Municipal Code.

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

**SECTION ONE: AMENDMENT**

Chapter 44, Land Use Procedures, of the Code of the City of Hoboken is hereby amended as follows; deletions to the current ordinance are noted in ~~striketrough~~, additions to the current ordinance are noted in underline.

**Chapter 44. LAND USE PROCEDURES**

**Article I. Planning Board**

**§ 44-~~101~~. Establishment; ~~e~~Composition.**

- A. Members. There is hereby established a Planning Board of pursuant to P.L. 1975, c. 291, in the City of Hoboken, a Planning Board of nine members consisting of the following four classes in accordance with the provisions of N.J.S.A. 40:55D-23:
- (1) One (1) Class I member: the Mayor or the Mayor's designee in the absence of the Mayor;
  - (2) One (1) Class II member: ~~one of the~~ an officials of the municipality, other than a member of the governing body, to be appointed by the Mayor;
  - (3) One (1) Class III member: a member of the governing body to be appointed by it; and

(4) Six (6) Class IV members: ~~six other~~ citizens of the municipality to be appointed by the Mayor.

~~(3) The members of Class IV shall hold no other municipal office, position or employment. For purposes of this section, membership on a municipal board or commission whose function is advisory in nature and the establishment of which is discretionary and not required by statute shall not be considered the holding of municipal office.~~

~~(4) Alternate members.~~

B. Alternate members.

(1) ~~Not more than~~ Two alternate members, who ~~shall~~ meet the qualifications of Class IV members, ~~may~~ shall be appointed by the Mayor. Such alternate members shall be designated, at the time of appointment, as "Alternate No. 1" and "Alternate No. 2." ~~The terms of the alternate members shall be for two years, except such terms shall be such that the term of not more than one alternate member shall expire in any one year; provided, however, that in no instance shall the term of the alternate member first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the Mayor for the unexpired term only.~~

(2) Alternate members may participate in discussions of the proceedings but may not vote, except in the absence or disqualification of ~~any a regular~~ any a regular member of the ~~regular any~~ regular any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

C. Substitute members. If the Planning Board lacks a quorum because regular or alternate members are prohibited from acting on a matter due to the member's personal or financial interest therein, regular members of the Zoning Board of Adjustment shall be called upon to serve as substitute members in accordance with N.J.S.A. 40:55D-23.2.

D. Class IV members shall hold no other municipal office, position or employment.

§ 44-102. Terms of Office.

A. The term of the ~~member composing~~ Class I member shall ~~correspond with his official tenure~~ coincide with the term of the Mayor, except that if the Mayor appoints a designee as the Class I member, the designee shall serve at the pleasure of the Mayor.

B. The terms of the ~~members composing~~ Class II and Class III members shall be for one year or shall terminate at the completion of their respective terms of office whichever occurs first.

C. The terms of all Class IV members first appointed pursuant to this chapter shall be so determined that, to the greatest practicable extent, the expiration of such terms shall be distributed evenly over the first four years after their appointments, as determined by resolution of the governing body; provided, however, that no term of any member shall exceed four years, and further provided that nothing herein shall affect the term of any present member of the Planning Board, all of whom shall continue in office until the completion of the terms for which they were appointed. Thereafter, all Class IV members shall be appointed for terms of four years except as otherwise hereinabove provided. All terms shall run from January 1 of the year in which the appointment is made.

D. The terms of the Alternate members shall be for two years. Expirations of Alternate terms shall be distributed such that not more than one alternate member shall expire in any one year.

**§ 44-103. Vacancies.**

If a vacancy of any class shall occur otherwise than by expiration of terms, it shall be filled by appointment as above provided for the unexpired terms.

**§ 44-104. Organization.**

A. ~~The Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary, who may be either a member of the Planning Board or a municipal employee designated by it~~ in accordance with N.J.S.A. 40:55D-24.

~~B. The Secretary of the Board shall ensure that at least one copy of all applications is kept at all times in the Board's files in the custody of the recording secretary. All pending applications on file with the Board shall be listed on the Board's regular meeting agenda, whether the Board is required to take action thereon or not.~~

B. The Planning Board shall select a secretary who may be either a member or alternate member of the Planning Board or a municipal employee designated by it.

C. There is hereby created the position of Planning Board Attorney. The Planning Board may annually appoint, fix the compensation of, or agree upon the rate of compensation of the Planning Board Attorney, who shall be an attorney other than the Municipal Attorney.

D. The Planning Board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use unless a court of competent jurisdiction finds the appropriation to be unreasonable.

E. The Planning Board Chair shall appoint four (4) regular members of the Board which shall be known as the "Subdivision and Site Plan Review Committee" (Committee). The Committee shall operate in the following manner and have the following powers and duties:

(1) To review all applications submitted to the Board prior to a formal hearing thereon.

(2) To grant informal review of a concept plan for a development for which the developer intends to prepare or submit an application for development.

(a) The fee charged for such review shall be the same as that charged on the application for development, except that such fee shall be a credit toward the subsequent application fee.

(b) Neither the developer nor the Committee shall be bound by any concept plan review.

(3) In the case of minor subdivision applications, such Committee may unanimously approve the same in accordance with this chapter.

- (4) In the case of major subdivision and site plan applications, the Committee shall submit a written report to the entire Board prior to the formal hearing thereon.
- (5) The Committee shall keep minutes of all of its meetings and shall not consider any application unless it has been formally filed with the Secretary of the Board.
- (6) Three members of the Committee shall constitute a quorum.

~~C. Subdivision and Site Plan Review Committee. The Board shall appoint a Committee consisting of four regular members of the Board which shall be known as the "Subdivision and Site Plan Review Committee." The Committee shall review all applications submitted to the Board prior to a formal hearing thereon. The Committee shall also grant informal review of a concept plan for a development for which the developer intends to prepare or submit an application for development. The fee charged for such review shall be the same as that charged on the application for development, except that such fee shall be a credit toward the subsequent application fee. Neither the developer nor the Committee shall be bound by any concept plan review. In the case of minor subdivision applications, such Committee may unanimously approve the same in accordance with the 1959 Land Subdivision Ordinance of the City of Hoboken. In the case of major subdivisions, site plan and conditional use application, the Committee shall submit a written report to the entire Board prior to the formal hearing thereon. The Committee shall keep minutes of all of its meetings and shall not consider any application unless it has been formally filed with the Secretary of the Board. Three members of the Committee shall constitute a quorum.~~

**~~§ 44-5. Planning Board Attorney.~~**

~~There is hereby created the office of Planning Board Attorney. The Planning Board may annually appoint, fix the compensation of or agree upon the rate of compensation of the Planning Board Attorney, who shall be an attorney other than the Municipal Attorney.~~

**~~§ 44-6. Experts and staff.~~**

~~The Planning Board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.~~

**§ 44-7105. Powers and Duties of the Planning Board.**

The Board, in accordance with N.J.S.A. 40:55D-25, shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of the subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply. It shall also have the following powers and duties:

- A. To ~~make~~ prepare and, after public hearing, adopt or amend a Master Plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare and, at least every six years, reexamine and amend, if necessary, a Master Plan for the physical development of the municipality in accordance with the provisions of N.J.S.A. 40:55D-28.

- B. To reexamine, at least every ~~six~~ sixteen (10) years, the Master Plan and development regulations; ~~of the City and recommend,~~ prepare and adopt by resolution, to the governing body, a report on the findings of such reexamination in accordance with N.J.S.A. 40:55D-89, ~~by written resolution to the governing body,~~ and any necessary amendments thereto resulting there from.
- C. To review and approve preliminary and final subdivision applications, in accordance with Chapter 34, Subdivision of Land, of the Code of the City of Hoboken, and attach reasonable conditions to the approval thereof.
- D. To review and approve preliminary and final site plan applications, in accordance with this Chapter and with Chapter 196 Zoning, of the Code of the City of Hoboken, and attach reasonable conditions to the approval thereof.
- E. To review and approve conditional use applications, in accordance with Chapter 196 Zoning, of the Code of the City of Hoboken, ~~including special review in the W District~~ and attach reasonable conditions to the approval thereof. In cases where a “d” variance is involved, the application for conditional use will be heard by the Zoning Board of Adjustment.
- ~~F. To approve planned development applications and allow a greater concentration of density or intensity of land use within a section or sections of development, whether it be earlier, later or simultaneous in the development than in others.~~
- ~~G. To grant general development plan approval to provide the increased flexibility desirable to promote mutual agreement between the applicant and the Planning Board on the basic scheme of a planned development.~~
- F. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- G. To assemble data on a continuing basis as part of a continuous planning process.
- H. To prepare annually ~~prepare~~ a program of municipal capital improvement projects over a term of sixteen (10) years, and amendments thereto, and recommend the same to the governing body.
- I. To consider and make a report to the governing body, within 35 days after referral, as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also to review ~~pass upon~~ other matters specifically referred to the Planning Board by the governing body, pursuant to the provisions of N.J.S.A. 40:55D-26b.
- J. Granting of ~~Relief;~~ Variances; Direction for Issuance of Certain Permits.
  - (1) When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:
    - (a) Variances pursuant to ~~Section 57c of P.L. 1975, c. 291~~ N.J.S.A. 4:55D-70c.
    - (b) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.

(c) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.

~~(c) Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit as the case may be.~~

(2) Whenever relief is requested pursuant to this subsection, notice of the hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.

~~(2)~~

(3) The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and ~~Zoning Ordinance~~Chapter 196.

K. To require a developer, as a condition of subdivision or site plan approval, to execute a developer's agreement, post performance and/or maintenance guarantees, and/or pay pro rata cost for off-tract improvements as permitted by law. Off-tract improvements shall include but not be limited to ~~To require a developer, as a condition for approval of a subdivision or site plan, to pay his pro rata share of the cost of providing only reasonable and necessary street improvements, improvements to and water, sewerage and drainage facilities, and easements therefore, located outside the property limits of the subdivision or development but necessitated or required by construction or improvements within such subdivision or development. Such r~~ Regulations shall be based on circulation and comprehensive utility service plans in accordance with the Master Plan, of the City of Hoboken, respectively, and shall establish fair and reasonable standards to determine the proportionate or pro rata amount of the cost of such facilities, that shall be borne by each developer or owner within a related and common area, which standards shall not be altered subsequent to preliminary approval. Where a developer pays the amount determined as his pro rata share under protest, he shall institute legal action within one year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

L. To grant exceptions from this chapter and the requirements of subdivision and site plan approval pursuant to N.J.S.A. 40:55D-25(6) and 40:55D-51.

M. To i ~~Issue~~ Issue subdivision certificates pursuant to N.J.S.A. 40:55D-56.

N. To perform such other advisory duties as ~~and~~ are assigned to it, by ordinance or resolution of the governing body, for the aid and assistance of the governing body, ~~Zoning Board of Adjustment~~ or other agencies or officers.

O. Issue subpoenas, administer oaths and take testimony in accordance with the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1, et seq.)

P. To perform such other duties as may be provided by law.

§ 44-8106. ~~Procedure; time limits~~ Time of Decision.

- A. Minor subdivisions. Minor subdivision approvals shall be granted or denied within 45 days of the ~~date of submission of a complete~~ an application to the Planning Board is deemed complete or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the statutory period prescribed shall constitute minor subdivision approval. Approval of a minor subdivision shall expire 190 days from the date of Planning Board approval unless, within such period, a plat in conformity with such approval and the provisions of the Map Filing Law, N.J.S.A. 46:23-9.9, et seq., or a deed clearly describing the approved minor subdivision, is filed by the developer with the ~~eCounty rRecording oOfficer,~~ the Municipal Engineer and the Municipal Tax Assessor. Any such plat or deed must be signed by the Chairman and Secretary of the Planning Board ~~before it will be accepted for filing by the county recording officer.~~ The Planning Board may extend the one-hundred-ninety-day period for filing a minor subdivision plat or deed if the developer proves to the reasonable satisfaction of the Planning Board that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.
- B. Preliminary approval of major subdivisions ~~approval.~~ Upon submission of ~~an complete application for a subdivision of 10 or fewer lots, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such submission is deemed complete~~ or within such further time as may be consented to by the developer, ~~unless such application includes a variance request, in which event the Board shall have 120 days from the date of a complete application to render its decision.~~ Upon submission of ~~an complete application for a subdivision of more than 10 lots, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such submission is deemed complete~~ or within such further time as may be consented to by the developer, ~~unless such application includes a variance request, in which event the board shall have 120 days from the date of a complete application to render its decision.~~ Otherwise, the Planning Board shall be deemed to have granted preliminary approval for the subdivision.
- (1) ~~If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application shall be submitted and proceeded upon, as in the case of the original application for development.~~
- (2) ~~Preliminary subdivision approval and any variances granted incidental thereto shall remain valid for three years from the date of such approval. Requests for extensions of such three-year period pursuant to N.J.S.A. 40:55D-49c shall be made within such three-year period.~~
- C. Ancillary powers. Whenever an application for approval of a subdivision plat, site plan or conditional use includes a request for variance relief or direction for the issuance of a permit pursuant to §44-105.J, the Planning Board shall grant or deny approval of the application within 120 days of the date the application is deemed complete or within such further time as may be consented to by the applicant. In the event that the

developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance or direction for issuance of a permit. The period for granting or denying and subsequent approval shall be as otherwise provided by these regulations. Failure of the Planning Board to act within the statutory period prescribed shall constitute approval of the application, and a certificate of the Administrative Officer as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval herein required and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.

- D. Final approval. Application for final subdivision approval shall be granted or denied within 45 days of the date the application is deemed complete or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed by law shall constitute final approval and a certificate of the Administrative Officer as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats. Final approval of a major subdivision shall expire 95 days from the date of signing of the plat by the Chair and Secretary of the Board unless within such period the plat shall have been duly filed by the developer with the County Recording Officer. The Planning Board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat. The Planning Board may for good cause shown extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat. The Planning Board may extend the ninety-five-day or one-hundred-ninety-day period if the developer provides to the reasonable satisfaction of the Planning Board that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.

C. ~~Final major subdivision approval.~~

~~(1) Application for final subdivision approval shall be granted or denied within 45 days of submission of a complete application or within such further time as may be consented to by the applicant. Whenever review or approval of the application by the County Planning Board is required, such approval shall be conditioned upon timely receipt of a favorable report on the application by the County Planning Board.~~

~~(2) Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless, within such period, the plat shall have been duly filed by the developer with the county recording officer. The Planning Board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat.~~

~~(3) The Planning Board shall grant final subdivision approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established for the same, the conditions of preliminary approval and the standards prescribed by the Map Filing Law, P.L. 1960, c. 141, N.J.S.A. 46:23-9.9 et seq., provided that in the case of a planned unit development, planned unit residential development or~~

~~residential cluster, the Planning Board may permit minimal deviations from the conditions of preliminary approval necessitated by change of conditions beyond the control of the developer since the date of preliminary approval without the developer being required to submit another application for preliminary approval.~~

~~D. Site plan approval. Preliminary and final site plan approval shall be governed by Article IX, § 196-26 et seq. of the City of Hoboken Zoning Ordinance, subject to the following:~~

~~(1) A copy of any application for property within the CBD(H) Subdistrict shall be contemporaneously filed with the Hoboken Historic District Commission.~~

~~(2) On all applications involving a variance request, the Board shall have 120 days from the date of a complete application to render its decision.~~

~~(3) The Board, on granting site plan approval, shall find and set forth in its resolution of approval that the application provides for:~~

~~(a) Preservation of existing natural resources on the site, if any.~~

~~(b) Safe and efficient vehicular and pedestrian circulation, parking and loading.~~

~~(c) Screening, landscaping and proper location of structures.~~

~~(d) Exterior lighting needed for safety reasons in addition to any requirements for street lighting.~~

~~(e) Conservation of energy and use of renewable energy sources.~~

~~(f) Recycling of recyclable materials.~~

~~(4) If preliminary approval is granted, the written resolution of the Planning Board granting the same shall be signed by the Chairman and Secretary of the Board and sent to the applicant and the Zoning Officer, who may grant a first certificate of zoning compliance, subject to the conditions of the resolution, unless such condition(s) necessitate fulfillment prior to the issuance of such certificate. If final approval is granted, the written resolution of approval and the site plan shall be signed by the Chairman and Secretary of the Board and sent to the applicant and the Zoning Officer, who may grant a final certificate of zoning compliance, subject to the conditions of the written final resolution, unless such condition(s) necessitate fulfillment prior to the issuance of such certificate. If a site plan has been denied approval, the written resolution of disapproval shall be signed by the Chairman and Secretary of the Board and sent to the applicant and the Zoning Officer.~~

~~(5) Preliminary site plan approval and any variances granted incidental thereto shall remain valid for three years from the date of such approval. Requests for extension of such three-year period pursuant to N.J.S.A. 40:55D-49c shall be made within such three-year period.~~

~~E. Conditional use approval. Conditional use approval shall be governed by Article X, § 196-35 et seq. of the City of Hoboken Zoning Ordinance, subject to the following:~~

~~Where an application involves a variance request, the Board shall have 120 days from the date of a complete application to render its decision.~~

~~F. Planned unit development. Prior to the approval of any planned development, the Planning Board shall find the following facts and conclusions:~~

~~(1) The departures by the proposed development from zoning regulations otherwise applicable to the property conform to the standards of urban design review for planned developments under § 196-27.1 of the City of Hoboken Zoning Ordinance.~~

~~(2) The proposals for maintenance and conservation of common open space are reliable, and the amount, location and purpose of the common open space are adequate.~~

~~(3) The provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic and the amenities of light and air, recreation and visual enjoyment are adequate.~~

~~(4) The proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.~~

~~(5) In the case of a proposed development which contemplates construction over a period of years, the terms and conditions intended to protect the interest of the public and the residents, occupants and owners of the proposed development in the total completion of the development are adequate.~~

~~G. General development plan. General development plan approval shall be governed by Article IX, § 196-34 et seq. of the City of Hoboken Zoning Ordinance, subject to the following provisions:~~

~~(1) The general development plan shall set forth the permitted number of dwelling units, the amount of nonresidential floor space, the residential density and the nonresidential floor area for the planned development, in its entirety, according to a schedule which sets forth the timing of the various sections of the development.~~

~~(2) The planned development shall be developed in accordance with the general development plan approved by the Planning Board, notwithstanding any provision of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or an ordinance or regulation adopted pursuant thereto after the effective date of the approval.~~

~~(3) The term of the effect of the general development plan approval shall be determined by the Planning Board using the guidelines set forth in Subsection G(4) of this section, except that the term of the effect of the approval shall not exceed 20 years from the date upon which the developer receives final approval of the first section of the planned development pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.~~

~~(4) In making its determination regarding the duration of the effect of approval of the development plan, the Planning Board shall consider the number of dwelling units or amount of nonresidential floor area to be constructed, prevailing economic conditions, the timing schedule to be followed in completing the development and the likelihood of its fulfillment, the developer's capability of completing the proposed development and the contents of the general development plan and any conditions which the Planning Board attached to the approval thereof.~~

~~(5) The Planning Board shall grant or deny general development plan approval within 95 days after submission of a complete application to the administrative officer or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute general development plan approval of the planned development.~~

~~(6) In the event that the developer seeks to modify the proposed timing schedule, such modification shall require the approval of the Planning Board. The Planning Board shall, in deciding whether or not to grant approval of the modification, take into consideration prevailing economic and market conditions, anticipated and actual needs for residential~~

~~units and nonresidential space within the municipality and the region and the availability and capacity of public facilities to accommodate the proposed development.~~

~~(7) The developer shall be required to gain the prior approval of the Planning Board if, after approval of the general development plan, the developer wishes to make any variation in the location of land uses within the planned development or to increase the density of residential development or the floor area ratio of nonresidential development in any section of the planned development. However, any variation in the location of land uses or increase in density or floor area ratio proposed in reaction to a negative decision of or condition of development approval imposed by the Department of Environmental protection pursuant to P.L. 1973, c. 185 (N.J.S.A. 13:19-1 et seq.) shall be approved by the Planning Board if the developer can demonstrate, to the satisfaction of the Planning Board, that the variation being proposed is a direct result of such determination by the Department of Environmental Protection.~~

~~(8) Once a general development plan has been approved by the Planning Board, it may be amended or revised only upon application by the developer approved by the Planning Board. However, a developer, without violating the terms of the approval pursuant to this act, may, in undertaking any section of the planned development, reduce the number of residential units or amounts of nonresidential floor space by no more than 15% or reduce the residential density or nonresidential floor area ratio by no more than 15%; provided, however, that a developer may not reduce the number of residential units to be provided pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., without prior municipal approval.~~

~~(9) Upon the completion of each section of the development, as set forth in the approved general development plan, the developer shall notify the administrative officer, by certified mail, as evidence that the developer is fulfilling his obligations under the approved plan. For the purposes of this section, "completion of any section of the development" shall mean that the developer has acquired a certificate of occupancy for every residential unit or every nonresidential structure, as set forth in the approved general development plan and pursuant to Section 15 of P.L. 1975, c. 217 (N.J.S.A. 52:27D-133). If the municipality does not receive such notification at the completion of any section of the development, the municipality shall notify the developer, by certified mail, in order to determine whether or not the terms of the approved plan are being complied with. If a developer does not complete any section of the development within eight months of the date provided for in the approved plan or if at any time the municipality has cause to believe that the developer is not fulfilling his obligations pursuant to the approved plan, the municipality shall notify the developer, by certified mail, and the developer shall have 10 days within which to give evidence that he is fulfilling his obligations pursuant to the approved plan. The municipality thereafter shall conduct a hearing to determine whether or not the developer is in violation of the approved plan. If, after such a hearing, the municipality finds good cause to terminate the approval, it shall provide written notice of the same to the developer and the approval shall be terminated 30 days thereafter.~~

~~(10) In the event that a developer who has general development plan approval does not apply for preliminary approval for the planned development which is the subject of that general development plan approval within five years of the date upon which the general development plan has been approved by the Planning Board, the municipality shall have cause to terminate the approval.~~

~~(11) In the event that a development which is the subject of an approved general development plan is completed before the end of the term of the approval, the approval shall terminate with the completion of the development. For the purposes of this section, a~~

~~development shall be considered complete on the date upon which a certificate of occupancy has been issued for the final residential or nonresidential structure in the last section of the development, in accordance with the timing schedule set forth in the approved general development plan, and the developer has fulfilled all of his obligations pursuant to the approval.~~

~~H. Ancillary power. Whenever the Planning Board is called upon to exercise its ancillary power to grant a variance as set forth in Article I, § 44-7L(1) of this chapter, the Planning Board shall grant or deny approval of the application within 120 days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance or direction for issuance of a permit. The period for granting or denying and subsequent approval shall be as otherwise provided in this chapter. Failure of the Planning Board to act within the time prescribed shall constitute approval of the application and a certificate of the administrative officer as to the failure of the Planning Board to act shall be issued upon request of the applicant.~~

**§ 44-9107. Applications; ~~p~~Procedure; Concept Plan Approval. ~~for filing.~~**

A. Applications for development within the jurisdiction of the Planning Board ~~pursuant to the provisions of P.L. 1975, c. 291,~~ shall be filed with the Secretary of the Planning Board at least 25 days before the monthly meeting of the Board. The applicant shall file at least 14 days before the date of the monthly meeting of the board seven copies of a sketch plat; seven copies of an application for minor subdivision approval; seven copies of an application for major subdivision approval or seven copies of an application for site plan review, conditional use approval or planned development. At the time of filing the application but in no event less than 10 days prior to the date set for hearing, the applicant shall also file seven copies of its plot plans, maps or other papers for which approval is sought or required by virtue of any provision of this chapter or any rule of the Planning Board. The applicant shall obtain all necessary forms, including the applicable checklist, from the Secretary of the Planning Board. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board and the Subdivision and Site Plan Committee. A complete application shall mean an application certified as complete by the Secretary of the Board in consultation with the Board's professionals and the applicable municipal commissions; pursuant to §44-304. Whenever the term "administrative officer" appears in this chapter or in the Municipal Land Use Law, P.L. 1975, c. 291, N.J.S.A. 40:5D-1 et seq., it shall refer to the Secretary of the Board.

B. At the request of the developer, the Planning Board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The developer shall not be bound by any concept plan for which review is required, and the Planning Board shall not be bound by any such review.

~~B. Subdivision certificate.~~

~~(1) Any person desiring information as to whether land has been subject to or is statutorily exempt from subdivision approval may apply to the Planning Board for a certificate as to approval of subdivision of land, such application shall include:~~

~~(a) A copy of the current deed to the land.~~

- ~~(b) A survey of the land.~~
- ~~(c) A check in the amount of \$10 payable to the City of Hoboken.~~
- ~~(d) Such additional facts and/or documents that the applicant desires the Board to consider in issuance of the certificate.~~

~~(2) The certificate shall be issued within 15 days after receipt of the application and fee therefor. Such certificate shall be designated a "certificate as to approval of subdivision of land" and shall certify:~~

~~(a) There exists in the City of Hoboken a duly established Planning Board and an ordinance controlling subdivision of land.~~

~~(b) Whether a subdivision has been approved by the Planning Board as to the land. If a subdivision has been approved, a copy of the written resolution of approval shall be attached to the certificate.~~

~~(c) If there has been no subdivision approval, whether or not such land is statutorily exempt from the requirement of approval under the definition of subdivision set forth in N.J.S.A. 40:55D-7.~~

~~(3) The administrative officer shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of the Board's office.~~

#### **§ 44-108. Advisory Committee.**

The Mayor may appoint one or more persons as a citizens' advisory committee to assist or collaborate with the Planning Board in its duties, but such person or persons shall have no power to vote or take other action required of the Board. Such person or persons shall serve at the pleasure of the Mayor.

## **Article II. Zoning Board of Adjustment**

### **§ 44-11201. Establishment; eComposition.**

- A. Members. A Zoning Board of Adjustment There is hereby established a Zoning Board of Adjustment of the City of Hoboken, consisting of seven (7) Class IV members, appointed by the governing body, in accordance with pursuant to N.J.S.A. 40:55D-69, et seq., consisting of seven residents of the City of Hoboken appointed by the City Council to serve for terms of four years from January 1 of the year of their appointment. Members of the Zoning Board of Adjustment shall be appointed by the City Council. The terms of the members first appointed shall be so determined that, to the greatest practicable extent, the expiration of such terms shall be evenly distributed over the first four years. Thereafter, the term of each member shall be for four years. Nothing in this chapter shall, however, be construed to effect the term of any present members of the Zoning Board of Adjustment, all of whom shall continue in office until the completion of the term for which they were appointed.
- B. No member of the Zoning Board of Adjustment may hold any elective office or position under the municipality.
- C. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.

~~D. Alternate members.~~

~~(1) Not more than four alternate members, who shall meet the qualifications of Class IV members, may be appointed by the City Council. Such alternate members shall be designated at the time of appointment as "Alternate No. 1", "Alternate No. 2," "Alternate No. 3" and "Alternate No. 4." The terms of the alternate members shall be for two years, except that such terms shall be such that the term of not more than one alternate member shall expire in any one year; provided, however, that in no instance shall the term of the alternate member first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.~~

~~(2) Alternate No. 1 shall have a term expiring December 31, 2011. Alternate No. 2 shall have terms expiring on December 31, 2010. Alternate No. 3 shall have a term expiring December 31, 2011 and Alternate No. 4 shall have a term expiring on December 31, 2010. Thereafter, the terms of the alternate members shall be for two years, and the terms of not more than two alternate members shall expire in any one year.~~

~~(3) A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.~~

~~(4) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of any regular member of the Board. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternate members shall vote in the order of their numerical designations.~~

B. Alternate members.

(1) Not more than four (4) alternate members, who shall meet the qualification of Class IV members, may be appointed by the governing body. Such alternate members shall be designated at the time of appointment as "Alternate No. 1", "Alternate No. 2", "Alternate No. 3" and "Alternate No. 4".

(2) Alternate members may participate in discussions of the proceedings but may not vote, except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternates shall vote in their order of appointment; Alternate No. 1 first, Alternate No. 2 second, and so on.

C. Substitute members. If the Zoning Board lacks a quorum because regular or alternate members are prohibited from acting on a matter due to the member's personal or financial interest therein. Class IV members of the Planning Board shall be called upon to serve as substitute members in accordance with N.J.S.A. 40:55D-69.1.

D. No member of the Zoning Board of Adjustment shall hold any municipal office, position or employment.

§ 44-202. Terms of Office.

- A. The term of all Class IV members shall be four years. The terms of the members first appointed shall be so determined that, to the greatest practicable extent, the expiration of such terms shall be distributed evenly over the first four years after their appointment, provided, however, that no term of any member shall exceed four years. Thereafter, all Class IV members shall be appointed for terms of four years. Nothing herein shall affect the term of any present member of the Zoning Board of Adjustment, all of whom shall continue in office until the completion of the terms for which they were appointed. All terms shall run from January 1 of the year in which the appointment is made.
- B. The term of all Alternate members shall be two years. Expiration of such terms shall be distributed such that not more than two alternate members shall expire in any one year.

#### § 44-203. Vacancies.

If a vacancy of any Class IV or Alternate shall occur otherwise than by expiration of terms, it shall be filled by appointment as above provided for the unexpired terms.

#### ~~§ 44-12~~204. Officers. Organization.

- A. The Board of Adjustment shall elect a Chairman and Vice Chairman from its Class IV members and shall also select a Secretary, who may be a Board member or another municipal employee in accordance with N.J.S.A. 40:55D-69.
- B. The Zoning Board of Adjustment shall select a secretary who may be either a member or alternate member of the Zoning Board or a municipal employee designated by it.
- C. There is hereby created the position of Zoning Board Attorney. The Zoning Board may annually appoint, fix the compensation of, or agree upon the rate of compensation of the Zoning Board Attorney, who shall be an attorney other than the Municipal Attorney.
- D. The Zoning Board of Adjustment may also employ or contract for the services of experts and other staff and services as it may deem necessary. The Zoning Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use unless a court of competent jurisdiction finds the appropriation to be unreasonable.

#### ~~§ 44-13. Board of Adjustment Attorney.~~

~~There is hereby created the office of Attorney to the Zoning Board of Adjustment. The Zoning Board of Adjustment may annually appoint, fix the compensation of or agree upon the rate of compensation of the Zoning Board of Adjustment Attorney, who shall be an attorney other than the Municipal Attorney.~~

#### ~~§ 44-14. Experts and staff.~~

~~The Zoning Board of Adjustment may also employ or contract for and fix the compensation of such experts and other staff and services as it may deem necessary. The Board shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.~~

#### ~~§ 44-15~~205. Promulgation of rRules and rRegulations.

The Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1, et seq.) shall apply.

**§ 44-16206. Powers and ~~d~~Duties of the Zoning Board of Adjustment.**

- A. The powers of the Zoning Board of Adjustment shall be in accordance with N.J.S.A. 40:55D-69, et seq. and amendments and supplements thereto and with the provisions of this chapter.
- B. It is further the intent of this chapter to confer upon the Zoning Board of Adjustment as full and complete powers as may lawfully be conferred upon such Board, including, but not by way of limitation, the authority, in connection with any case, action or proceeding before the Board, to interpret and construe the provisions of this chapter or any term, clause, sentence or word hereof and the Zoning Map, in accordance with the general rules of construction, applicable to legislative enactments.
- C. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of Chapter 196, Zoning, in accordance with the general or specific rules contained herein and with the general rules hereby laid down, that equity shall be done in cases where the strict construction of the provisions of that chapter would work undue hardship. The powers and duties of the Board having been delegated to and imposed upon it by statute, the Board shall in all cases follow the provisions applicable to it in N.J.S.A. 40:55D-1, et seq. or subsequent statutes in such case made and provided, and it shall from time to time furnish to any person requesting the same a copy of its rules and information as to how appeals or applications may be properly filed with the Board for its decision thereon. ~~when acting upon applications for preliminary or minor subdivision and preliminary site plan approval, shall have the power to grant such exceptions from the requirements for such approval as may be reasonable and within the general purpose and intent of the provisions for preliminary or minor subdivision and site plan review, as well as this chapter, if the literal enforcement of one or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question, and it shall, from time to time, furnish to any person requesting the same a copy of its rules and information as to how appeals or applications may properly be filed with the Board for its decision thereon.~~
- D. The Board shall annually review its decisions and prepare and adopt by resolution a report of its findings on Zoning Ordinance provisions, which were the subject of variance requests, and its recommendations for Zoning Ordinance amendments, if any. Copies of the report and resolution shall be submitted to the City Council and the Planning Board.

**§ 44-17207. Appeals and ~~a~~Applications.**

- A. Appeals to the Board of Adjustment may be taken by any interested party affected by any from a decision or action by of the Zoning Officer in regard to the based on or made in the enforcement of Chapter 196, Zoning, Ordinance or Official Map, including the denial of a certificate of zoning compliance or the issuance of the same subject to conditions based upon the report of the Historic Preservation Commission. Each appeal shall be taken within the 20 days prescribed by the statute by filing a notice of appeal with the ~~Zoning~~ Officer from whom the appeal is taken, together with three (3) copies of

said notice with the Secretary of the Board of Adjustment. Said notice of appeal shall specify the grounds for said appeal. The Zoning Officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

~~[Amended 3-20-1991 by Ord. No. P-136]~~

- B. Applications addressed to the original jurisdiction of the Board of Adjustment without prior application to the ~~Building Subcode Official~~ Zoning Officer shall be filed with the Secretary of the Zoning Board of Adjustment at least 25 days before the monthly meeting of the Board. The applicant shall obtain all necessary forms from the Secretary of the Board, who shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board. A complete application shall mean an application certified as complete by the Secretary of the Board in consultation with the Board's professionals and the applicable municipal commissions; pursuant to §44-304. Three copies of the application shall be filed. At the time of filing the appeal or application, but in no event less than 10 days prior to the date set for hearing, the applicant shall also file all plot plans, maps or other papers required by virtue of any provision of this chapter or any rule of the Board of Adjustment. The applicant shall obtain all necessary forms from the Secretary of the Zoning Board of Adjustment. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board.
- C. An appeal to the Board of Adjustment stays all proceedings in furtherance of the action in respect of which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with ~~him~~ said officer, that, by reason of facts stated in the certificate, a stay would, in ~~his~~ said officer's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by an restraining order, which may be granted by the Board of Adjustment or by of the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on due cause shown.

**§ 44-18208. Power to ~~re~~Reverse or ~~m~~Modify ~~d~~Decisions.**

In exercising the above-mentioned power, the Board of Adjustment may, in conformity with the provisions of ~~P.L. 1975, c. 291~~ N.J.S.A. 40:55D-1, et seq., or amendments thereto or subsequent statutes applying, reverse or affirm wholly or ~~partly~~ in part, or may modify the order, requirement, decision or determination appealed from, and make such other requirement, decision or determination as ought to be made, and, to that end, have all the powers of the administrative officer from whom the appeal was taken.

**§ 44-19209. Expiration of variance.**

Any variance from the terms of ~~this~~ Chapter 196, Zoning, hereafter granted by the Board of Adjustment, permitting the erection or alteration of any structure or structures or permitting a specified use of any premises, shall expire by limitation, unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced, within one (1) year from the date of publication of the notice of the judgment or determination of the Board of Adjustment, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the governing body or to a court of competent jurisdiction, until the termination in any

manner of such appeal or proceeding. The Board of Adjustment, upon written request of the developer, and for good cause shown, may grant an extension of time beyond the one (1) year limitation, up to but not exceeding two additional years.

**§ 44-20210. Powers granted by law.**

A. The Board of Adjustment shall have such powers as are granted by law, including but not limited to:

- (1) To hear and decide appeals ~~where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the Zoning Ordinance~~ pursuant to section §44-207.
- (2) To hear and decide requests for interpretations of the Zoning Map or Zoning Ordinance, or for decisions upon other special questions upon which such Board is authorized by ~~the Chapter 196, Zoning Ordinance to pass.~~
- (3) Variances.
  - (a) Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property; or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or by reason of an extraordinary and exceptional situation, uniquely affecting a specific piece of property, or the structures lawfully existing thereon, the strict application of any regulation in ~~the Zoning Ordinance~~ Chapter 196 Zoning would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to grant upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship.
  - (b) Where in an application or appeal relating to a specific piece of property the purposes of ~~this act~~ the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.) would be advanced by a deviation from the requirements of Chapter 196, Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, to grant a variance to allow departure from regulations pursuant to Chapter 196, the Zoning Ordinance; provided, however, that no variance from those departures enumerated in Subsection A(54) of this section shall be granted under this subsection, and further provided that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to Section 47a of the Municipal Land Use Law of 1975, P.L. 1975, c. 291 §44-105.J.
- (4) In particular cases and for special reasons, to grant a variance to allow departure from regulations pursuant to ~~Article 8 of P.L. 1975 c. 291~~ Chapter 196, Zoning, to permit a use or principal structure in a district restricted against such use or principal structure; an expansion of a nonconforming use; deviation from a specification or standard ~~under the Zoning Ordinance~~ pertaining solely to a conditional use; an increase in the permitted floor area ratio; or an increase in the permitted density, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling-unit buildings, which lot or lots are either an isolated

undersized lot or lots resulting from a minor subdivision; or a height of a principal structure which exceeds by 10 feet or 10% maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five (5) members.

- B. No variance or other relief may be granted under the provisions of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. Any application under any subsection of this section may be referred to any appropriate person or agency, including the Planning Board, Historic Preservation Commission, Shade Tree Commission, Environmental Commission and/or any Municipal Department, for its report, provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.

**§ 44-21211. Additional powers.**

- A. The Zoning Board of Adjustment shall, in addition to the powers specified in § 44-~~20210~~ of this Article, have power given by law in accordance with N.J.S.A. 40:55D-76, as amended and supplemented, to:

- (1) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainage way, flood-control basin or public area reserved on the Official Map.
- (2) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-365 for a building or structure not related to a street.
- (3) Grant to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to ~~Article 6 of P.L. 1975, c. 291~~ N.J.S.A. 40:55D-37, et seq., or conditional use approval pursuant to N.J.S.A. 40:55D-67 whenever the Board is reviewing an application for approval of a use variance pursuant to ~~Article II, § 44-20A(5)~~ §44-210.A of this chapter.

- B. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon the granting of all required subsequent approvals by the Board of Adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance. The number of votes of Board members required to grant any such subsequent approval shall be as otherwise provided in this chapter for the approval in question, and the special vote pursuant to §44-210.A(4) hereof shall not be required.

- ~~C. An application under this section shall be referred to the Planning Board for its report on such subdivision, site plan or conditional use application.~~

**§ 44-22212. Time for of dDecision.**

- A. The Board of Adjustment shall render its decision not later than 120 days after the date an appeal is taken from the decision of an administrative officer; or from the date the submission of a complete an application for development is deemed complete to the Board pursuant to the provisions of N.J.S.A. 40:55D-702b. Failure of the Board to

render a decision within such one-hundred-twenty-one-day period or within such further times as may be consented to by the applicant shall constitute a decision favorable to the applicant.

~~B. Failure of the Board to render a decision within such thirty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.~~

B. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance. The period for granting or denying any subsequent approval shall be as otherwise provided in this chapter. Failure of the Board of Adjustment to act within the period prescribed shall constitute approval of the application, and a certificate of the Administrative Officer as to the failure of the Board of Adjustment to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement of other evidence of approval herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.

C. Whenever review of approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3, in the case of a subdivision, or N.J.S.A. 40:27-6.6, in the case of a site plan, the Board of Adjustment shall condition any approval that is grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time.

#### **§44-213. Appeal of Zoning Board of Adjustment Decision.**

A. Any interested party may appeal to the governing body any final decision of the Board of Adjustment approving a "d" variance application for development, pursuant to N.J.S.A. 40:55D-17.

B. Appeal shall be made within 10 days of the date of publication of such final decision of the Board of Adjustment by serving the municipal clerk, in person or by certified mail, with a notice of appeal specifying the grounds thereof and the name and address of the appellant and name and address of his or her attorney, if represented. Such appeal shall be decided by the governing body only upon the record established before the Board of Adjustment.

C. Notice of hearings and required documents shall be provided in accordance with N.J.S.A. 40:55D-17.

D. The governing body shall conclude its review of the record not later than 95 days from the date of publication of the decision of the Board of Adjustment. The governing body may reverse, remand or affirm, with or without the imposition of conditions, the final decision of the Board of Adjustment approving such variance. The review shall be made on the record before the Board of Adjustment. The affirmative vote of a majority of the full authorized membership of the governing body shall be necessary to reverse, remand or affirm, with or without conditions, any final action of the Board of Adjustment.

E. Any appeal to the governing body shall stay all proceedings in furtherance of the action in respect to which the decision was made, unless the Board certifies to the governing body, that by reason of facts stated in a certificate, a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other

than by an order of the Superior Court on application upon notice to the Board from whom the appeal is taken and on good cause shown.

**Article III. Provisions Applicable to Both Planning Board and Zoning Board of Adjustment and ~~Historic Preservation Commission~~**

**§ 44-~~23~~301. Conflicts of interest.**

No member of the ~~municipal agency~~ Planning Board or Zoning Board of Adjustment shall act on any matter in which ~~he~~ that member has, either directly or indirectly, any personal or financial interest. Whenever any such member shall disqualify himself or herself from acting on a particular matter, he or she shall not continue to sit with the ~~municipal agency~~ Board on the hearing of such matter nor participate in any discussion or decisions relating thereto.

**§ 44-~~24~~302. Meetings.**

- A. Meetings of both the ~~municipal agency~~ Planning Board and Zoning Board of Adjustment shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless cancelled for lack of applications for development to process or for lack of a quorum.
- B. Special meetings may be provided for at the call of the Chairman or on the request of any two ~~agency~~ Board members, which shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- C. No action shall be taken at any meeting without a quorum being present.
- ~~D.~~ All actions shall be taken by a majority vote of the members of the municipal agency present at the meeting, except as otherwise required by any provision of P.L. 1975, c. 291 the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., or this chapter. Failure of a motion to receive the number of votes required to approve an application for development pursuant to the exceptional vote requirements of Section 44-125 of the Municipal Land Use Act, N.J.S.A. 40:55D-34, or Article II, Section 44-110.d, shall be deemed an action denying the application. ~~A member of the municipal agency who is absent from any hearing shall be eligible to vote on the matter upon which the hearing was conducted upon certifying, in writing, to the municipal agency that he has read the transcript or listened to the recording of all the hearing from which he was absent.~~
- E. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Law, P.L. 1975, c. 231, N.J.S.A. 10:4-6, et seq.
- F. A member of a Board who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his or her absence from one or more of the meetings; provided, however, that such Board member has available to him or her the transcript or recording of all the hearings from which he or she was absent and certifies in writing to the Board that he or she has read such transcript or listened to such recording.

**§ 44-~~25~~303. Minutes.**

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the ~~municipal agency~~Board and of the persons appearing by attorney, the action taken by the ~~municipal agency~~Board, and the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the Board office, ~~of the administrative officer~~. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for his use, as provided for in the rules of the ~~municipal agency~~Board.

**§ 44-26304. Applications Procedures.**

An application for development shall mean an application and checklists, on standard forms available in the Board office, on the City's web site, and attached to this Chapter and made a part hereof as Appendix A. Applications shall be filed with the Secretary of the Board at least 25 days before the monthly meeting of the Board. The Secretary of the Board shall certify the application as complete only after the application, checklist and all documents required by the checklist, fees and escrow have been received. ~~On all applications involving a site plan, subdivision or conditional use, the applicant shall be provided with the checklist covering such application set forth in the appendix to this chapter. An application shall be deemed complete upon certification of such fact by the municipal agency or its designee. In the event that an application is not certified as complete within 45 days of its submission, it shall be deemed complete for purposes of commencing the applicable time period for action by the municipal agency Board, unless the application lacks information indicated on the checklist or application form and the municipal agency has notified the applicant, in writing, of such deficiency, within 45 days of submission of the application. The applicant may request a waiver from one or more of the submission requirements, which waiver request shall be granted or denied within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The municipal agency Board, at its discretion, may subsequently require correction of any information found to be in error; and submission of additional information not specified in this chapter; or any revisions in to the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the municipal agency. All applications in the Historic District shall be referred to the Historic Preservation Commission for its recommendation and report. Any application for a property located within a historic district or one which is designated a Historic Site in Chapter 42 of the Code, shall be referred to the Historic Preservation Commission for its consideration and recommendations, which shall be submitted in writing to the Planning Board or Zoning Board of Adjustment prior to the reviewing Board's hearing of the application.~~

**§ 44-27305. Application Fees and Escrow Deposits.**

~~Fees for applications or for the rendering of any service by the municipal agency or any member of its administrative staff shall be as set forth in this chapter, the Zoning Ordinance of the City of Hoboken or the Land Subdivision Ordinance of the City of Hoboken.~~

A. Pursuant to N.J.S.A. 40:55D-8(b), the City shall be reimbursed for the administrative costs associated with a development application from application fees.

B. Pursuant to N.J.S.A. 40:55D-53.1 and 2, the City is further entitled to offset the costs of professional services engendered by a development application from escrow deposits.

(1) Escrow deposits shall be in addition to the application fees and shall be used by the municipal agency to pay professionals for services rendered for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of the Municipal Land Use Law. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of expertise of the professionals normally utilized by the municipality. The only cost that shall be added to any such charges shall be actual out-of-pocket expenses of such professionals or consultants, including normal and typical expenses incurred in processing applications and inspecting improvements. No applicant shall be charged, from escrow for any municipal, clerical or administrative functions, overhead expenses, meeting room charges or any of the municipal costs and expenses except as provided for specifically by statute, nor shall a municipal professional add any such charge to his or her bill.

(2) The City shall be entitled to be reimbursed for the review of applications, both as to completeness and as to content; for the review and preparation of documents, such as, but not limited to, drafting resolutions, developer's agreements and necessary correspondence with applicant or applicant's professionals.

(3) If review costs exceed the escrow deposited, the applicant shall pay the additional amount within fifteen (15) days of the request for additional funds. Failure to remit the additional required deposit within the requested timeline shall render the application incomplete, and no further action or proceedings shall be taken by the reviewing Board until after compliance. Where the review costs are less than the amount of the escrow deposit, the difference shall be returned to the applicant within one-hundred-twenty (120) days of final disposition of the application.

C. A schedule of application fees and escrow deposits shall be adopted by the governing body and attached hereto as *Appendix B*.

D. An application shall be deemed to be incomplete until all application fees and escrow deposits are submitted. Fees and escrow shall be submitted as separate checks, payable to the City of Hoboken, in the amounts indicated on the fee schedule. Where more than one fee category applies, the fee shall equal the combined total of fees required for each type of application.

**§ 44-28306. Hearings.**

A. Rules. The ~~municipal agency~~ Planning Board and Zoning Board of Adjustment shall make rules governing the conduct of hearings before such bodies, which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1, et seq. or of this chapter.

B. Oaths. The officer presiding at the hearing or such person as he or she may designate shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, ~~P.L. 1953, c. 38~~ (N.J.S.A. 2A:67A-1, et seq.), shall apply.

- C. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- D. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the municipal agency may exclude irrelevant, immaterial or unduly repetitious evidence.
- E. Records. Each ~~municipal agency~~ Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The municipal agency shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his or her expense. All transcripts shall be certified in writing by the transcriber to be accurate.

**§ 44-29307. Notice ~~Requirements~~ for ~~H~~earing.**

Whenever notice is required on an application for development pursuant to N.J.S.A. 40:55D-1, et seq. or pursuant to the determination of the municipal agency in question, the applicant shall give notice thereof as follows:

- A. Public notice shall be given by publication in the official newspapers of the municipality, ~~if there is one, or in a newspaper of general circulation in the municipality~~ at least 10 days prior to the date of the hearing, for the following applications for development:
  - (1) Any request for a variance from the requirements of Chapter 196, Zoning.
  - (2) Any request for conditional use approval.
  - (3) Any request for minor site plan approval or preliminary approval of a major site plan.
  - (4) Any request for a minor subdivision approval.
  - (5) Any request for preliminary approval of a major subdivision.
  - (6) Any request for the issuance of a permit to build within the bed of a mapped street, public drainage-way, flood control basin or public area reserved on the Official Map, or in a lot not abutting a street.
- B. Notice shall be given to the owners of all real property as shown on the current tax duplicate or duplicates located within 200 feet in all directions of the property which is the subject of such hearing and whether located within or without the municipality in which the applicant's land is located. Such notice shall be given by serving a copy thereof on the owner as shown on said current tax duplicate or his/her/their agent in charge of the property; or by mailing a copy thereof, by certified mail, to the property owner at his/her/their address as shown on said current tax duplicate. A return receipt is not required. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its President, a Vice President, Secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a limited liability company may be made by service upon any member thereof.

- C. Notice of all hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality, which notice shall be in addition to the notice required to be given pursuant to Subsection B of this section to the owners of lands in such adjoining municipality which are located within 200 feet of the subject premises.
- D. Notice shall be given by personal service or certified mail to the [Hudson](#) County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the Official County Map or on the County Master Plan adjoining other county land or situated within 200 feet of a municipal boundary.
- E. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
- F. Notice shall be given by personal service or certified mail to the State Planning Commission of hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the municipal agency, [pursuant to N.J.S.A. 40:55D-10](#).
- G. All notices hereinabove specified in this section shall be given at least 10 days prior to the date fixed for a hearing, and the applicant shall file an affidavit of proof of service with the ~~municipal agency~~ [Board](#) holding the hearing on the application for development at least one [business](#) day before the [date of the](#) hearing. [Notice pursuant to subsections C, D, E and F of this section shall not be deemed to be required unless public notice pursuant to N.J.S.A. 40:55D-12a and b is required.](#)
- H. Any notice made by certified mail as hereinabove required shall be deemed to be completed upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- I. Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the particular municipal agency before which the hearing is to be held, the date, time and place of the hearing, the nature of the matters to be considered, including a general description of the development, the developmental approval and each variance sought, and identification of the property proposed for development by street address, if any, and by reference to lot and block numbers as shown on the current tax duplicate in the Municipal Tax Assessor's office and the location and times at which any maps and documents for which approval is sought are available as required by law.
- J. ~~Applications before the Historic Preservation Commission shall not require notice unless requested by the Commission.~~ [\[Deleted pursuant to Historic Preservation Ord. Z-196 adopted 08/15/2012.\]](#)

**§ 44-~~30~~308. List of ~~p~~Property ~~e~~Owners ~~f~~Furnished.**

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the Board Secretary shall, within seven [\(7\)](#) days after receipt of a request therefor and upon receipt of payment of a fee of \$10, make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to § 44-~~29~~307B.

**§ 44-~~31~~309. Decisions.**

- A. ~~Each decision on any application for development shall be set forth, in writing, as a resolution of the municipal agency which will include findings of fact and legal conclusions based thereon.~~ The Planning Board and the Zoning Board of Adjustment shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing.
- B. The ~~municipal agency~~ reviewing Board shall provide the findings and conclusions through a resolution adopted at a meeting held within the time period provided ~~in the Act pursuant to N.J.S.A. 40:55D-1, et seq.~~ for action by the ~~municipal agency Board~~ on the application for development or a memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the municipal agency voted to grant or deny approval.
- C. Only the members of the ~~municipal agency~~ reviewing Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to this section, ~~Section 5 of the Act (N.J.S.A. 40:55D-9),~~ resulting from the failure of a motion to approve an application, shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the ~~municipal agency Board;~~ and not to be an action of the municipal agency; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by ~~Subdivisions h and i of N.J.S.A. 40:55D-10~~ § 44-309E and § 44-310.
- D. If the ~~municipal agency Board~~ fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the ~~municipal agency Board~~ to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality.
- E. A copy of the decision shall be mailed by the ~~municipal agency Board~~ within 10 days of the date of decision to the applicant or, if represented, then to his or her attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the ~~municipal agency Board~~ for such service. A copy of the decision shall also be filed in the office of the ~~Zoning Officer~~ Planning Board or Board of Adjustment, who shall make a copy of such filed decision available to any interested party upon payment of a fee calculated in the same manner as those established for copies of other public documents in the municipality.
- F. Whenever review of approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3, in the case of a subdivision, or N.J.S.A. 40:27-6.6, in the case of a site plan, the Planning Board or Board of Adjustment shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

**§ 44-~~32~~310. Publication of ~~d~~Decision.**

A brief notice of the decision shall be published within 10 days of the date of the decision in the official newspapers of the municipality, ~~if there is one, or in a newspaper of general circulation in the municipality.~~ Such publication shall be arranged by the applicant. Proof of

publication shall be filed with the Secretary of the ~~municipal agency~~ Board immediately following the same.

**§ 44-~~33~~311. Payment of ~~†~~Taxes.**

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the ~~municipal agency~~ Planning Board or Zoning Board of Adjustment shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application or, if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by either Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the municipality will be adequately protected.

**§ 44-312. Dismissal of Inactive Applications.**

- A. Applications that have not been deemed complete within six months of the submission date will be dismissed without prejudice.
- B. Applications that have been deemed complete shall be scheduled for a hearing before the appropriate board within the time of action stated in the Municipal Land Use Law. If an applicant fails to appear when scheduled before a board and the time for action pursuant to the Municipal Land Use Law will expire before the next regularly scheduled Planning Board of Board of Adjustment meeting, the application will be dismissed without prejudice.
- C. Extensions on the time for action may be granted for no more than one year from the required time for action, after which the application will be dismissed without prejudice.

**Article IV. Appeals**

**~~§ 44-34. Appeals from decisions of Zoning Board of Adjustment.~~**

~~Any appeal from the final decision of the Board of Adjustment approving a D variance may be taken to the governing body in accordance with N.J.S.A. 40:55D-17. The governing body may reverse, remand or affirm, with or without the imposition of conditions, the final decision of the Board of Adjustment approving such variance. The review shall be made on the record before the Board of Adjustment. The affirmative vote of a majority of the full authorized membership of the governing body shall be necessary to reverse, remand or affirm, with or without conditions, any final action of the Board of Adjustment. Any appeal to the governing body shall stay all proceedings in furtherance of the action in respect to which the decision was made, unless the Board certifies to the governing body, after filing of the notice of appeal, that by reason of facts stated in a certificate a stay would cause imminent peril to life or property. In such case, there shall be no stay other than by order of the Superior Court on application upon notice to the Board.~~

Article IV. [Reserved]

Article V. [Reserved]

*[NOTE: Article V, Historic Preservation Commission is already deleted pursuant to adoption of Ordinance No. Z-196 on 08/15/2012. Article V should be held in reserve should the city wish to establish an Environmental Commission or a Construction Board of Appeals.]*

## Article VI. Miscellaneous Provisions

### ~~§ 44-47~~601. Definitions.

Whenever a term is used in this chapter which is defined in ~~P.L. 1975, c. 291~~the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. or in Chapter 196, Zoning, of the Code of the City of Hoboken, such term is intended to have the meaning set forth in the definition of such term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter. The term "administrative officer" for all purposes under the Municipal Land Use Law and under this chapter shall mean the Secretary of the Planning Board or the Secretary of the Zoning Board of Adjustment, as the case may be, unless another official is specified herein.

### ~~§ 44-48~~602. ~~Repealer~~Interpretation.

~~All sections of the Land Subdivision Ordinance, Zoning Ordinance, Site Plan Review Ordinance or any other ordinance of the City of Hoboken which contains provisions contrary to the provisions of this chapter shall be and are hereby, to the extent of such inconsistency, repealed.~~

This chapter shall be read and interpreted in pari materia with the Municipal Land Use Law, N.J.S.A. 40:55d-1, et seq. as amended, the Zoning Ordinance of the City of Hoboken (Chapter 196), and the Subdivision of Land Ordinance of the City of Hoboken (Chapter 34), as amended.

### ~~§ 44-49~~. ~~Provisions continued~~.

~~The substantive provisions of the existing Land Subdivision Ordinance adopted April 1, 1959, and the Zoning Ordinance of the City of Hoboken adopted August 1979 and the development regulations set forth therein shall continued in full force and effect.~~

### ~~§ 44-50~~603. Pending ~~a~~Applications.

All applications for development filed prior to the effective date of this chapter may be continued under the provisions of the prior statute, but any appeals arising out of decisions made on any such application shall be governed by the provisions of ~~Article IV~~ § 44-213 of this chapter.

### ~~§44-51~~. ~~Title~~.

~~This chapter shall be known and may be cited as the "Land Use Procedures Ordinance of the City of Hoboken."~~

### ~~§ 44-52~~604. ~~Copy to be filed with County Planning Board~~Filing of Copy.

Immediately upon adoption of this chapter, the Municipal Clerk shall file a copy of this chapter with the Hudson County Planning Board, as required by law. The Clerk shall also file with said Hudson County Planning Board copies of all other ordinances of the municipality relating to land use, ~~such as the Subdivision Ordinance~~which have heretofore not been filed.

### ~~§ 44-53~~. ~~Interpretation~~.

~~This chapter shall be read and interpreted in pari materia with the Municipal Land Use Law, as amended, P.L. 1975, c. 291, the Zoning Ordinance of the City of Hoboken, adopted August 1979, and the Land Subdivision Ordinance of the City of Hoboken, approved April 1, 1959, as amended. Immediately upon adoption of this amended chapter, the Municipal Clerk shall file a copy of this amended chapter with the County Planning Board as required by law.~~

~~§ 44-54. When effective.~~

~~This chapter shall take effect on final adoption and publication according to law.~~

**SECTION TWO: ADDITIONAL AMENDMENTS**

The following Chapters and Sections of the Municipal Code of the City of Hoboken are hereby amended, for consistency with Chapter 44 (as amended); deletions to the current ordinance are noted in ~~striketrough~~, additions to the current ordinance are noted in underline.

**Chapter 34A, “Development Application Checklists” shall be deleted in its entirety.**

**Chapter 196, ZONING**

~~**Article XIV. Zoning Board of Adjustment**~~

~~**§ 196-54. Establishment, membership and organization.**~~

~~A. Establishment. The Zoning Board of Adjustment shall be continued pursuant to the requirements of Article II of the Land Use Procedures Ordinance of the City of Hoboken. *Editor's Note: See Ch. 44, Land Use Procedures.*~~

~~B. Membership.~~

~~**[Amended 1-20-2010 by Ord. No. Z-26]**~~

~~(1) The Zoning Board of Adjustment shall consist of seven members appointed by the City Council, subject to the conditions set forth in § 44-11 of the Hoboken City Code and N.J.S.A. 40:55D-69 et seq., concerning length of members' terms, ineligibility of those holding elective or appointive municipal office, exclusion from voting of members having any personal interest, directly or indirectly, in the issue under consideration and other items concerning members' appointment, tenure and conduct.~~

~~(2) The Zoning Board of Adjustment shall include four alternate members appointed by the City Council, subject to the conditions set forth in § 44-11 and N.J.S.A. 40:55D-69 et seq., concerning length of members' terms, ineligibility of those holding elective or appointive municipal office, exclusion from voting by members having any personal interest, directly or indirectly, in the issue under consideration, and other items concerning members' appointment, tenure and conduct.~~

~~C. Organization. The Zoning Board of Adjustment shall elect a Chairman and Vice Chairman from among its members and select a Secretary who may or may not be a member of the Board or a municipal employee.~~

~~**§ 196-55. Powers and responsibilities.**~~

~~A. Powers. The Zoning Board of Adjustment shall have the powers accorded to it in accordance with N.J.S.A. 40:55D-69 et seq., of the New Jersey Statutes as set forth in Article II of the Land Use Procedures Ordinance of the City of Hoboken *Editor's Note: See Ch. 44, Land Use Procedures.* as follows:~~

~~(1) Hear and decide appeals where it is alleged by the appellant that there is any order, requirement, decision or refusal made by the Zoning Officer or other administrative agency based on or made in the enforcement of the Zoning Ordinance.~~

~~(2) Hear and decide in accordance with the provisions of the Zoning Ordinance requests for interpretation of the Zoning Map or Ordinance or for decisions upon other special questions upon which such Board is authorized to pass by this ordinance.~~

~~(3) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or by reason of other extraordinary or exceptional situations uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of this section would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property, grant, upon an application or appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship. Where in an application or appeal relating to a specific piece of property the purposes of this act would be advanced by a deviance from the requirements of this section and the benefits of such deviation would substantially outweigh any detriment, a variance may be granted to allow departure from the strict interpretation of the regulations of this section. The foregoing is subject to the provision that no variance to permit those departures enumerated in Subsection B of this section shall be granted under this subsection, and provided further that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use in conjunction with which the planning Board has power to review a request for a variance pursuant to the requirements of the Land Use Procedures Ordinance. *Editor's Note: See Ch. 44, Land Use Procedures.*~~

~~[Amended 6-21-1989 by Ord. No. P-58]~~

~~(4) Grant a variance in particular cases and for special reasons to allow a structure or use in a district restricted against such structure or use, but only by affirmative vote of at least 2/3 of the full authorized membership of the Zoning Board of Adjustment.~~

~~B. Responsibilities and limitations.~~

~~(1) No variance or other relief may be granted under the terms of this subsection, unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the land use plan and Zoning Ordinance.~~

~~(2) On such matters as have not previously been reviewed by the Planning Board, the Zoning Board of Adjustment shall, at least 45 days before the required public hearing of any appeal or application, transmit a copy of such appeal or application to the Planning Board, together with a copy of the notice of such hearing so that the Planning Board may review and submit a report of its opinion prior to the date of such hearing. Planning Board failure to submit such report shall be considered approval of the application or appeal.~~

~~(3) The Zoning Board of Adjustment shall prepare an annual report on variances in accordance with the requirements of N.J.S.A. 40:55D-70.1, as specified in Article 9 of the Municipal Land Use Law.~~

~~[Added 6-21-1989 by Ord. No. P-58]~~

**§ 196-56. Procedure.**

~~A. Appeals from the Zoning Enforcement Officer. Appeals to the Zoning Board of Adjustment may be taken by any interested party affected by any decision of the Zoning Enforcement Officer of the City based on or made in the enforcement of this chapter or official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the Zoning Enforcement Officer specifying the grounds of such appeal. The Zoning Enforcement Officer shall immediately transmit to the Zoning Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.~~

~~[Amended 6-29-1994 by Ord. No. R-58]~~

~~B. Application for development.~~

~~(1) A developer may file an application for development with the Zoning Board of Adjustment for action under any of its powers without prior application to the Zoning Enforcement Officer.~~

~~(2) If an application for development is filed with the Zoning Board of Adjustment, whether or not an appeal from a decision of the Zoning Enforcement Officer is also taken, the applicant shall submit three copies of his completed application to the Secretary of the Zoning Board of Adjustment. The time for the Board's review shall not begin to run until the submission of a complete application with the required fee. Unless the applicant is informed in writing by the Secretary of the Zoning Board of Adjustment within 45 days of the actual submission of the application that it is incomplete, said application shall be deemed complete as of the date it was submitted.~~

~~(3) A complete application for development under this article shall consist of the following:~~

~~(a) A properly completed variance information application form.~~

~~(b) The required fee, as per § 196-63 of this chapter.~~

~~(c) If subdivision and/or site plan and/or conditional use approval is also sought as part of an application for a variance pursuant to this chapter, the applicant shall also include the information and documents required pursuant to the provisions of the Land Use Procedures Ordinance.~~

~~(4) The Secretary of the Zoning Board of Adjustment shall distribute the application for review and report and, where required, approval as follows:~~

~~(a) The Zoning Board of Adjustment.~~

~~(b) The Planning Board.~~

~~(c) The City Engineer.~~

**§ 196-57. Time for decision.**

The Zoning Board of Adjustment shall render a decision not later than 120 days after the date that an appeal is taken from the decision of the Zoning Enforcement Officer or the submission of a complete application for development to the Zoning Board of Adjustment pursuant to the requirements of this article. Failure of the Board to render a decision within such one-hundred-twenty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

**§ 196-58. Other powers and duties.**

All other powers and duties of the Zoning Board of Adjustment not specifically designated in this article shall be as set forth in the Land Use Procedures Ordinance. *Editor's Note: See Ch. 44, Land Use Procedures.*

**§ 196-63. Application and escrow fees.**

[Amended 6-21-1989 by Ord. No. P-58; 3-20-1991 by Ord. No. P-136; 5-1-2002 by Ord. No. DR-36; 5-7-2003 by Ord. No. DR-90; 6-18-2008 by Ord. No. DR-357; 9-1-2010 by Ord. No. Z-53]

Action Requested	Project Type	Project Size	Application Fee	Escrow Fee
<b>Site Plan, PUD, Conditional Use Approval</b>				
Minor site plan [per § 196-26A(1)(b)]\				
	Residential	3-9 dwelling units	\$500	\$5,000
	Nonresidential	3,000-4,999 square feet	\$500	\$5,000
	Other	per § 196-26	\$500	\$5,000
<b>Preliminary site plan, PUD, conditional use</b>				
	Residential	10+ dwelling units	\$750 plus \$50/dwelling unit	\$10,000 plus \$100/dwelling unit
	Nonresidential	under 5,000 square feet	\$750	\$5,000
	Nonresidential	5,000-9,999 square feet	\$1,000 plus \$50/1,000 square feet	\$7,500

Action Requested	Project Type	Project Size	Application Fee	Escrow Fee
		feet		
	Nonresidential	10,000-24,999 square feet	\$1,500 plus \$50/1,000 square feet	\$10,000
	Nonresidential	25,000 square feet and over	\$2,000 plus \$50/1,000 square feet	\$15,000
Final site plan	All	All	50% of preliminary	50% of preliminary
Amendment or extension of preliminary or final site plan or conditional use approval	All	All	\$500	\$2,500
<b>Appeals, Interpretations, Variances</b>				
Appeals, per N.J.S.A. 40:55D-70a	All	All	\$300	\$1,000
Interpretations, per N.J.S.A. 40:55D-70b	All	All	\$300	\$1,000
Hardship variance, per N.J.S.A. 40:55D-70e	All	All	\$300 for first \$150 for each additional	\$1,000 if NOT part of site plan \$3,000 if part of site plan
Use variance, per N.J.S.A. 40:55D-70d	All	All	\$500 for first \$250 for each additional	\$1,000 if NOT part of site plan \$3,000 if part of site plan
<b>Other Fees</b>				
Special meeting request	All	All	\$1,000	None

Action Requested	Project Type	Project Size	Application Fee	Escrow Fee
Informal <del>or</del> concept review	All	All	\$400	500
Redevelopment plan amendment	All	All	\$2,500	\$5,000
<b>Zoning Review</b>				
	Residential	1-4 dwelling units	\$100	None
	Residential	5+ dwelling units	\$100 plus \$25/dwelling unit over 4	None
	Nonresidential	under 5,000 square feet	\$100	None
	Nonresidential	5,000-9,999 square feet	\$200	None
	Nonresidential	10,000-49,999 square feet	\$400	None
	Nonresidential	50,000 square feet and over	\$500	None
<b>Historic Preservation Review</b>				
	Residential	1-4 dwelling units	\$50 \$35/dwelling unit	None
	Residential	5+ dwelling units	\$50/1,000 square feet	None
	Nonresidential	All		None

Action Requested	Project Type	Project Size	Application Fee	Escrow Fee
<b>Subdivision</b>	Minor <del>or</del> major	All	\$5/lot	None

**SECTION THREE: REPEAL OF INCONSISTENT PROVISIONS**

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

**SECTION FOUR: SEVERABILITY**

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

**SECTION FIVE: EFFECTIVE DATE**

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

**SECTION SIX: CODIFICATION**

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

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

President Cunningham moved that the ordinance pass its first reading as read and be laid of the table for public inspection to be further considered for final passage at a meeting of the Council to be held on **February 20 2013** at 7:00 PM.

- Adopted by the following vote: YEAS: 5 – NAYS: 3
- Yeas: Council persons Bhalla, Giattino, Mason, Mello and President Cunningham
- Nays: Castellano, Occhipinti, Russo

**NEW BUSINESS**

Councilman Bhalla comments on vote fraud with Nov. 6, 2012 massive amount of absentee ballots, campaign workers and have an investigation for the integrity of the voting process for future elections

Councilman Bhalla congratulated Mayor Zimmer for the City Address this past week and there would be no tax increase which is remarkable and we budgeted properly which allowed us adequate funds for a rainy day which was Sandy

Councilman Occhipinti comments and asked the administration for Greener by Design a no bid design in the amount of \$5,000.00

Councilman Occhipinti comments on the first Sat. in March, public safety Plan

BA Wiest comments that the approach would be the same as last year Councilman Occhipinti comments on the Madison St. Opening

Stephen Marks comments that Rebecca Meija from Boswell Engineering does not recommend Madison should open to Northbound traffic and it would create a backup on Observer heading East, I can distribute the memo to the Governing Body

Councilman Occhipinti comments on a resolution not presented this evening.

Council President comments that this resolution was not in emergent in nature and leaves it to the Governing Body.

Councilman Bhalla comments that there needs to be a written statement on why this is in emergent in nature and shouldn't be considered.

Councilman Occhipinti comments on the background of the Multi-service center – day care, Hoboken family planning, vital stats, senior center and the County operates its senior services out of this facility and this building needs to get fixed ASAP to service our residents working class and working poor and feel that it is urgent in nature BA Wiest comments that the proposals were submitted yesterday, the game plan is to restore the space with some minor modifications Council President comments and call the vote.

### 13-122

---By President Cunningham

**RESOLUTION TO AUTHORIZE A CONTRACT WITH RSC ARCHITECTS FOR PROFESSIONAL ARCHITECTURAL SERVICES TO THE CITY OF HOBOKEN FOR THE MULTI-SERVICE CENTER FLOOD DAMAGE REPAIRS TO COMMENCE FEBRUARY 20, 2013 AND EXPIRE UPON COMPLETION, BUT NOT LATER THAN FEBRUARY 19, 2014, FOR A NOT TO EXCEED AMOUNT OF FORTY ONE THOUSAND EIGHT HUNDRED DOLLARS (\$41,800.00)**

**WHEREAS**, architectural services are generally exempt from bidding but subject to the fair and open process; however, the City's current emergency circumstances trigger an exemption from the normal procurement process, and the City sought emergency quotations on the services, instead of utilizing the normal procurement process; and,

**WHEREAS**, the Administration requested a quote for said services, pursuant to the emergency procurement rules and regulations and has determined that RSC Architects can provide the City with the most effective and efficient services for the Multi-Service Center; and,

**WHEREAS**, *the City wishes to provide a not to exceed amount to the contract in an amount of Forty One Thousand Eight Hundred Dollars (\$41,800.00); and,*

*WHEREAS, RSC Architects is hereby required to abide by the “pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, codified as §20A-11 et seq. of the Administrative Code of the City of Hoboken as well as the Affirmative Action laws and policies under which the City operates; and,*

**WHEREAS**, certification of funds is available as follows:

**I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$41,800.00 is available in the following appropriation 3-01-55-901-014 in the CY2013 temporary appropriations; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said temporary appropriation for the CY2013; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.**

Signed: \_\_\_\_\_, George DeStefano, CFO

**NOW THEREFORE, BE IT RESOLVED**, that a contract with RSC Architects to provide the City with architectural services for repair of the Multiservice Center, in accordance with the attached proposal, be executed, for a term to commence February 20, 2013 and expire upon completion of the project, but in no event later than February 19, 2014, with a not to exceed amount of **Forty One Thousand Eight Hundred Dollars (\$41,800.00)**; and

**BE IT FURTHER RESOLVED**, no additional fees or invoices shall be allowable under this agreement unless prior approval is provided by the City in accordance with all legal guidelines; and,

**BE IT FURTHER RESOLVED** that the City Council of the City of Hoboken specifically finds that compliance with Hoboken Ordinance #DR-154 (codified as §20A-1 et seq. of the Code of the City of Hoboken), and any and all state Pay to Play laws, is a continuing obligation of the vendor; 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 and Corporation Counsel 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 Councilwoman

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

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

--Nays: None.

Councilman Russo comments also on the other resolution pertaining to the Medicaid expansion and reads an article from the Star Ledger and would also like this resolution to be heard tonight seconded by the Councilwoman Mason

Councilman Bhalla comments that it did not follow the council procedures

Councilman Russo comments that this is a dire situation

---To be heard by the following vote: YEAS: 4 – NAYS: 4

---Yeas: Council persons Castellano, Mason, Occhipinti and Russo

---Nays: Bhalla, Giattino, Mason, Mello and President Cunningham

Vote will not be considered this evening

Councilman Occhipinti comments that this Saturday, 2-6 PM Hoboken Volunteers will kick off their Chili kick off, tickets are \$25 at the Door

BA Wiest comments that Greener by Design are not professionals who do not have a professional license, wanted to clarify and there are undeniably consultants Councilman Mello comments and would like the City to have a procedure manual for Hurricane events, so the City can archive our knowledge and checklist each departments so we can be pro-active and have some institutional knowledge and have the Council to see it and give feedback to it.

Councilwoman Giattino next week at Fox Hill Thur. 311 13<sup>th</sup> Street, 6:30-8:30 Parks meeting and includes the Elysian Park Councilman Russo comments on a resolution for the engineer and will need to go back out and RFP and advise the administration to do it and advise the current engineer not to do anything in the mean time Councilman Russo comments on the inaction of the Governing Body for a vote on Medicaid provision in NJ and not think it's emergent in nature Councilman Bhalla comments on the Medicaid issue statewide and read the editorial from the Star Ledger and agree with you and hopes the Governor accepts the funding with a 10% but I hope the funding is coming from the Governor's office but our Governing Body is a non-partisan body and don't think it's our place since it's partisan, I support Voting by Mail if you can't make it to vote, but I don't believe for those who are being paid to Vote by Mail and any public officials who connects themselves to voter fraud is a big risk, it's not a republican/democratic issue.

Councilwoman Mason comments first on the voter issue and disappointed and focus on assisting residents to vote whether its VBM or electronic means, there were 100's of people who were unable to vote due to no heat/ electricity, and focusing on these things when people who cannot vote due to the conditions we were in, #2 and to have a Special meeting to bring us up to speed, our insurance co. and a representative of FEMA to see how much we expect to get in return, #3, a break-down of boys vs. girls in sports in Title 9, which I still don't have, corporation counsel, where are the legal contracts located?

Corporation Counsel yes and the City Clerk's office should have it Councilwoman Mason comments that she does support the Monarch project, and questions the process

Councilwoman Mason comments on the Housing Authority, could there be a briefing, and what is transpiring from Councilman Mello and the Housing Authority, the status of vision 20/20.

Councilman Mello comments that he would be delighted  
Councilman Mello comments that the HHA Attorney presided when his  
contract was placed on the meeting.

Councilwoman Mason comments the median at 11<sup>th</sup> street, between  
Hudson and Washington near the pump station, a ton of garbage and have  
it picked up, thank you for the clean-up between 14<sup>th</sup> and 15<sup>th</sup> on Hudson  
St., 15<sup>th</sup> St. b/w Park and the Tea building, but fix the pot hole.

Councilwoman Castellano comments on the Adriani case update and also  
all updates of litigations with the city and give the updates to the  
Governing Body, also what is the update on the Hertz contract, is it re-  
Negotiated Councilman Mello comments that he would place it on the agenda for the  
next committee meeting

Councilwoman Castellano comments on the Medicaid resolution its not a  
partisan issue, it's a human level.

Councilman Mello comments that he would love to consider it on the next  
Meeting.

Ines Garcia-Keim comments the Quality of Life of Coalition, Green  
Initiatives and extremely disappointed since it was sent to the Governing  
Body and only a few responded to me.  
Council President comments that it will be heard at the next city council  
Meeting.

At 1:32 AM the Governing Body on a motion by Councilman Russo duly seconded by the  
Governing Body

Council President Cunningham then adjourned the meeting at 1:33 AM

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PRESIDENT OF THE COUNCIL

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CITY CLERK