

**MEETING OF THE CITY COUNCIL
OF HOBOKEN, NEW JERSEY
MISCELLANEOUS LICENSES
MAY 5, 2010**

Raffles _____ 1 item

St. Joseph's Church 2 Draws \$40.00 RA1339

Carnival _____ 1 item

St. Joseph's Church (2 days \$150.00

Taxi, Livery/Limousine Driver _____ 22 items

Vendor _____ 2 items

Elias Dominguez
T/A Graficos
2 Marine View Plaza
Hoboken, NJ

Jaime Figueroa
310 Jackson St. #352
Hoboken, NJ 07030

Ferraioli, Wielkocz, Cerullo & Cuva, P.A.

Charles J. Ferraioli, Jr., MBA, CPA, RMA
Steven D. Wielkocz, CPA, RMA
James J. Cerullo, CPA, RMA
Paul J. Cuva, CPA, RMA
Thomas M. Ferry, CPA, RMA

Certified Public Accountants
401 Wanaque Avenue
Pompton Lakes, New Jersey 07442
973-835-7900
Fax 973-835-6631

Newton Office
100B Main Street
Newton, N.J. 07860
973-579-3212
Fax 973-579-7128

April 30, 2010

Mayor Dawn Zimmer
City of Hoboken
94 Washington Street
Hoboken, NJ 07030

Dear Mayor Zimmer,

You have asked me to explain my reasons for believing that reverting from a State Fiscal Year Budget to a Calendar Year Budget would be beneficial to the City and its taxpayer. I believe that the advantages are substantial and I can identify no drawbacks to making the change. The advantages are as follows:

1. **Transparency.** As it stands now, the city is on a different fiscal year from the County, and even its taxpayers. This creates confusion and makes it hard for taxpayers to understand the bills that they receive. Matching the City's tax year with that of its taxpayers will make the tax process more understandable and transparent and reduce the time spent by city employees dealing with inquiries.
2. **Predictability and Cost Savings.** Currently, taxpayers receive two tax bills per year each covering two quarters. This means that taxpayers don't know the full amount of their tax liability until they receive their second tax bill. Changing to a calendar year will enable the City to send out a single tax bill – in June/July, covering a full year. This provides the taxpayer with more predictability and saves the City approximately \$30,000 per year - the cost of mailing the second tax bill.
3. **State Aid.** The shift to a calendar year will result in a shortened transitional budget year running from 7/1/10 – 12/31/10. Because all state aid is distributed to municipalities in the last six months of the year, Hoboken will receive a full year's worth of state aid (\$11,113,035) during this shortened budget year. By realizing a full year of state aid within a 6 month budget, Hoboken gains an enormous amount of financial flexibility that it can use to address its upcoming non-recurring expenses at no cost to the taxpayer.

It is important to note that this is not a benefit that we gain this year at the expense of subsequent years. Each calendar year budget will include a full year of state aid. The benefit we receive during the shortened transitional year is real, and will not be reduced over time.



Mayor Dawn Zimmer

April 30, 2010

Page 2.

It is also important to note that this is an accounting change only. The City will not be receiving any additional state aid and there has been no actual increase in the City's revenues. Therefore the benefits should not be used to offset the City's recurring operating costs. They should only be used to give the City the flexibility to address the non-recurring costs that we face in the budget.

4. **Budget.** As part of the application process to the Local Finance Board, I have prepared a pro-forma budget for the shortened transitional budget year of 7/1/10 – 12/31/10. The budget is based on the current year's budget and reflects the actual costs of running the City this year. It does not include any spending cuts that the administration may be able to implement. This pro forma budget is just, in effect, a demonstration of a potential budget and will by the six month budget to be developed by the administration and introduced and adopted by the City Council.

The financial flexibility created by the change to a calendar year enables this pro forma budget to cover the pension costs that were deferred in SFY 2009, \$1,619,393 of the over-expenditure that was incurred in SFY 2007, and to establish a \$2,500,000 reserve for pending tax appeals.

All this is accomplished without the need to increase taxes or use any of the City's accumulated surplus as revenue.

5. **Taxes.** The pro forma budget accomplishes all of the foregoing while reducing the tax levy as much as the law permits. It should be noted that in order for this decrease to be sustainable, it will be necessary for the City to make actual cuts in its operating expenses, something that I understand the administration is in the process of doing.

From an accounting standpoint, the benefits of the proposed change to a calendar year are substantial. In my opinion this change is serves the best interests of Hoboken and its taxpayers and I urge you to move forward with it.

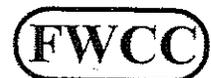
Very truly yours,



Steven D. Wielkotz, C.P.A.

Registered Municipal Accountant

SDW:ms



INTRODUCED BY: _____

SECONDED BY: _____

**CITY OF HOBOKEN
RESOLUTION NO.:** _____

**RESOLUTION AUTHORIZING RELEASE OF THE CITY OF HOBOKEN
FROM STATE FISCAL MONITORING**

WHEREAS, on or about October 6, 2009 the City of Hoboken was placed under the supervision of a State fiscal monitor by the New Jersey Local Finance Board as a result of the City Council's failure to timely adopt an annual budget and the Administration's failure to comply with the provisions of the New Jersey Local Budget Law, *N.J.S.A. 40A:4-1 et seq.*; and,

WHEREAS, the City of Hoboken has made significant progress under State fiscal supervision in correcting the practices which lead to State fiscal monitoring; and,

WHEREAS, the State Fiscal Monitor, Judith L. Tripodi, by letter dated April 28, 2010 to Marc Pfeiffer, Chair of the Local Finance Board (copy attached), has recommended that the City of Hoboken be released from State fiscal monitoring; and,

WHEREAS, Mayor Dawn Zimmer and representatives of her administration have met with the Local Finance Board to establish benchmarks for said release, and those benchmarks have been achieved by the efforts of the State Fiscal Monitor, the Mayor, her administration and the City Council, as follows:

1. The fiscal year 2009 audit was successfully completed;
2. The corrective action plan for fiscal year 2009 was completed and delivered to the Local Finance Board;
3. The City timely adopted its fiscal year 2010 budget; and
4. The City has hired a competent and accomplished Business Administrator who is ready, willing, and able to continue the cooperative working environment between the City Administration

and City Council in an effort to continue the progress towards full fiscal recovery.

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

1. The City Council of the City of Hoboken hereby ratifies and confirms the State Fiscal Monitor's request that the City of Hoboken be released from State fiscal monitoring;
2. The City Council of the City of Hoboken agrees to work cooperatively with the City Administration to continue the progress towards full fiscal recovery;
3. The City Council of the City of Hoboken respectfully requests that the Local Finance Board consider this resolution, the recommendation of the State Fiscal Monitor, the benchmarks which have been met by the City Administration, and any other relevant information in determining the City of Hoboken should be released from State fiscal monitoring effective immediately.

Date of Meeting: May 5, 2010

APPROVED:

Judith L. Tripodi
Fiscal Control Officer

APPROVED AS TO FORM:

Michael B. Kates, Esq.
Corporation Counsel

Introduced by: _____

Seconded by: _____

**CITY OF HOBOKEN
RESOLUTION NO. _____**

**RESOLUTION AMENDING RESOLUTION NO. 10-273 TO CORRECT BIDDER
REFERENCE**

WHEREAS, by resolution No. 10-273 adopted February 17, 2010, there was a reference to “AIG Valic” as one of two contractors submitting written proposals; and

WHEREAS, the bidding contractor Hartford and not AIG Valic was a second bidder;

NOW, THEREFORE, BE IT RESOLVED that Resolution No. 10-273 is hereby amended to reflect the second bidder as being Hartford.

BE IT FURTHER RESOLVED that the City’s Personnel Director, Michael Korman, is hereby designated as Local Plan Administrator for the Administration of the DEFERRED COMPENSATION PLAN.

Approved:

Approved as to form:

Judith L. Tripodi
Fiscal Control Officer

Michael B. Kates
Corporation Counsel

Date of Meeting: **May 5, 2010**

CITY OF HOBOKEN
RESOLUTION NO. _____

THIS RESOLUTION AUTHORIZES THE TRANSFER OF FUNDS WITHIN ACCOUNTS IN THE FISCAL YEAR 2010 CURRENT FUND APPROPRIATIONS.

BE IT RESOLVED, that the following SFY 2010 budget Current Fund appropriation transfers are hereby authorized for the City of Hoboken:

CURRENT FUND	FROM	TO
Operations - Within "Caps"		
Mayor's Office S/W		\$2,400.00
Mayor's Office O/E		\$500.00
City Clerk S/W		\$1,400.00
Legal Ads O/E		\$10,000.00
Purchasing O/E		\$500.00
Finance Director O/E		\$5,000.00
Construction Code Office S/W		\$25,000.00
Zoning Board of Adjust O/E		\$75,000.00
Public Defender S/W		\$800.00
Envir Svc Dir O/E		\$500.00
Street & Roads O/E		\$114,000.00
Solid Waste O/E		\$100,000.00
Housing Inspection S/W		\$25,000.00
Central Garage S/W		\$26,000.00
Planning Board S/W		\$5,500.00
Police S/W		\$1,500,000.00
Off of Emergency Mgnt S/W		\$9,000.00
PERS in Caps		\$156,000.00
Early Retirement Pension Adjustment		\$6,186.00
ABC S/W		\$200.00
Salary Settlements		\$300,000.00
Insurance O/E		\$50,000.00
Water & Sewer O/E		\$12,000.00
Purchasing S/W	\$5,000.00	
Zoning Administration S/W	\$5,000.00	
Revenue & Finance Dir S/W	\$25,000.00	
Tax Collector S/W	\$50,000.00	
Community Development S&W	\$20,000.00	

Fire S&W	\$300,000.00	
Street & Roads S&w	\$65,000.00	
Human Svc Director S/W	\$30,000.00	
ABC Board O/E	\$300.00	
Elections O/E	\$30,000.00	
Codification O/E	\$10,000.00	
Construction Code O/E	\$75,000.00	
Aquisit of Police Vehicles O/E	\$175,000.00	
Rent Control O/E	\$20,000.00	
Workers Comp O/E	\$25,000.00	
Electricity O/E	\$36,186.00	
Fuel Oil O/E	\$5,000.00	
Gasoline O/E	\$32,500.00	
Municipal Court O/E	\$15,000.00	
Cultural Affairs O/E	\$1,000.00	
Salary Adjustments	\$1,500,000.00	
	<hr/>	
	\$2,424,986.00	\$2,424,986.00

MEETING OF: May 5, 2010

APPROVED AS TO FORM:

Judith L. Tripodi
State Fiscal Monitor

Michael B. Kates
Corporation Counsel

Introduced by: _____

Seconded by: _____

**CITY OF HOBOKEN
RESOLUTION NO. _____**

Inserting a Special Item of Revenue into the SFY 2010 Municipal Budget

BODY ARMOR REPLACEMENT FUND PROGRAM

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget, and

WHEREAS, said Director may also approve the insertion of an item of appropriation for an equal amount, and

WHEREAS, the City of Hoboken has received notice of an award of \$4,309.19 from the State of New Jersey Division of Criminal Justice and wishes to amend it's SFY 2010 Budget to include this amount as a revenue.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken, in the County of Hudson, State of New Jersey, hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the budget of the year SFY 2010 in the sum of.....\$4,309.19 Which is now available as a revenue from:

Miscellaneous Revenues:

Special Items of General Revenue Anticipated
with Prior Written Consent of the Director of the
Division of Local Government Services:

State and Federal Revenues Off-set with
Appropriations:

New Jersey Division of Criminal Justice
2009 Body Armor Replacement

NOW, THEREFORE, BE IT RESOLVED that the like sum of.....\$4,309.19 be and the same is hereby appropriated under the caption of:

General Appropriations:

(a) Operations Excluded from CAPS
State and Federal Programs Off-Set by
Revenues:

New Jersey Division of Criminal Justice
2009 Body Armor Replacement
Other Expenses

NOW, THEREFORE, BE IT RESOLVED, that the City Clerk forward two certified copies of this resolution to the Director of Local Government Services for approval.

Date of Meeting: May 5, 2010

Approved:

Approved as to Form:

Judy L. Tripodi
State Fiscal Monitor

Michael B. Kates
Corporation Counsel

fd-s-223 (HC-2012)
040510
041610
042810

**CITY OF HOBOKEN
COUNTY OF HUDSON**

**RESOLUTION REVERSING THE GRANTING OF CERTAIN
VARIANCES BY THE
ZONING BOARD OF ADJUSTMENT OF THE
CITY OF HOBOKEN
WITH RESPECT TO THE PROPERTY KNOWN AS
511-521 NEWARK STREET, BLOCK 3.2, LOTS 6 THROUGH 11
AS SHOWN ON THE OFFICIAL TAX MAP OF THE
CITY OF HOBOKEN, COUNTY OF HUDSON, STATE OF NEW JERSEY**

WHEREAS, an application for preliminary site plan approval with certain variance relief was made to the Hoboken Zoning Board of Adjustment ("ZBA") by Kane Properties, LLC in connection with a proposed development upon property commonly known as 511-521 Newark Street, particularly described in Block 3.2, Lots 6 through 11 on the Official Tax Map of the City of Hoboken, County of Hudson, State of New Jersey (the "Property"); and

WHEREAS, the development application proposed a mixed use building with 72 residential dwelling units, 1,700 square feet of nursery school/child care use and 78 parking spaces in a 12 story, 125 foot high building (the "Project"); and

WHEREAS, above captioned development application required preliminary site plan approval and variance relief from the following sections of the subdivision of land and zoning ordinance of the City of Hoboken:

1. Section 196-18(B) where the residential use sought by the Applicant is not permitted [d(1) variance]; and

2. Section 196-18(e)(4), where nursery school (child care) use is not permitted [d(1) variance]; and

3. Section 196-18(6), where the Applicant proposed a floor area ratio ("F.A.R.") of 6.27, whereas the maximum FAR is 1.25 [d(4) variance]; and

4. Section 196-18(5), where the Applicant proposed a 12 story building, whereas the maximum number of stories permitted are 2 stories [d(6) variance]; and

5. Section 196-18(5), where the Applicant proposed a building height of 125 feet, whereas the maximum height permitted is 40 feet [d(6) variance]; and

6. Section 196-18(E)(4), where the Applicant proposed a lot coverage 100% for the first through third floors, 82% for the fourth through sixth floors and 61% for the seventh through twelfth floors, whereas the ordinance permits lot coverage of 60% for the principal building and 10% for an accessory building [c variance]; and

7. Section 196-18(7)(a), where the Applicant proposed a front yard of 0 feet, whereas the ordinance requires a minimum front yard of five feet [c variance]; and

8. Section 196-18(7)(b), where the Applicant proposed a side yard of 0 feet, whereas the ordinance requires a minimum side yard of five feet [c variance]; and

9. Section 196-18(7)(c), where the Applicant proposed a rear yard of 0 feet, whereas the ordinance requires a minimum rear yard of fifteen feet [c variance]; and

WHEREAS, the application was duly considered by the ZBA at public hearings on August 18, 2009; September 15, 2009 (at which no testimony was taken); October 1, 2009, October 13, 2009; and November 4, 2009; and

WHEREAS, the ZBA heard the sworn testimony of the owner of the site, Anthony Rey, the Applicant's Planner, Kenneth Ochab; the Applicant's Architect, Dean Marchetto; the Applicant's Traffic Engineer, Scott Parker; and the Executive Director of the Boys and Girls Clubs of Hudson County, Gary Greenberg, in support of the application; and

WHEREAS, the ZBA further heard the sworn testimony of Jason Kasler and the Treasurer of the Skyline Condominium Association, Inc., James Martinez in opposition to the application; and

WHEREAS, the public had an opportunity to be heard on the applications being permitted to both question witnesses and make statements; and

WHEREAS, after appropriate deliberation, on November 4, 2009 the ZBA granted preliminary site plan approval to the Applicant and further approved all of the variances sought by the Applicant as outlined above, subject to 15 conditions as more particularly described in the resolution of the ZBA adopted on December 15, 2009, which memorialized the ZBA's decision rendered on November 4, 2009; and

WHEREAS, pursuant to N.J.S.A. 40:55D-17, the City of Hoboken adopted Section 44-34 of the Code of the City of Hoboken which permits an appeal from a final decision of the ZBA which approves a "d" variance; and

WHEREAS, the objectors to the application, Skyline Condominium Association, Inc. ("Appellant") filed a timely appeal with the Clerk of the City of Hoboken seeking a review of the ZBA determination as set forth in the ZBA memorializing resolution of approval, adopted on December 15, 2009; and

WHEREAS, the Governing Body of the City of Hoboken ("Governing Body") established a schedule for the submission of transcripts, the record below, briefs and a hearing; and

WHEREAS, the record before the ZBA was submitted to the Governing Body consisting of the transcripts of each of the public hearings, together with all exhibits considered by the ZBA; and

WHEREAS, briefs in support of, and in opposition to, the actions of the ZBA were submitted by counsel for the Applicant, counsel for the Appellant and counsel for the ZBA; and

WHEREAS, on March 24, 2010 the Governing Body convened to consider the appeal by making a *de novo* determination based upon the record created before the ZBA, the exhibits submitted to the ZBA, and the briefs of the participants and argument of counsel; and

WHEREAS, the Governing Body determined that its substantive *de novo* review was limited to determining whether adequate proofs were submitted by the Applicant to justify the approval of the "d" variances set forth above; and

WHEREAS, after a review of the transcripts provided; the exhibits presented to the ZBA; the resolution of the ZBA adopted December 15, 2009; the oral argument presented at the March 24, 2010 hearing by Arnold K. Mytelka, Esq., Counsel for the Applicant; W. Mark O'Brien, Esq., Counsel for the Appellant; and Douglas M. Bern, Esq., Counsel for the ZBA, and after having questioned Counsel for those entities with regard to the application and the record created before the ZBA, the governing body makes the following *de novo* findings of fact:

1. The exhibits as set forth in the ZBA resolution of December 15, 2009 constitute all of the exhibits that were presented to the ZBA in connection with the application.

2. The application consists of a proposal to construct a mixed use building with 72 dwelling units, 1,700 square feet of nursery school/child care use, and 78 parking spaces in a 12 story, 125 foot high building ("Project"), located on Block 3.2, Lots 6 through 11 as shown on the Official Tax Map of the City of Hoboken ("Property") and commonly known as 511-521 Newark Street, Hoboken, New Jersey. The Property is located in the I-2 Zone.

3. The I-2 Zone includes as permitted uses, retail or personal service establishments, such as appliance sales and services; banks; bakeries; fruit stores; supermarkets; barber shops; beauty parlors; pharmacies; book card, and stationery stores; candy and tobacco shops; dry goods; variety stores; department and clothing stores; florists; garden supply stores; hardware stores; newspaper and periodical vendors; business and professional offices; package liquor stores; photographic supplies; services; tailors and dressmakers, and similar uses.

4. The description of the applicable provisions of the Zoning Code of the City of Hoboken and the comparable activities of the Applicant in connection with those particular provisions of the Code are accurately set forth in the Preamble to this resolution and represent the scope of the *de novo* hearing on which the governing body will render a *de novo* decision.

5. The Property was operated as a wholesale meat distribution business by its owner from 1980 through 2001. That wholesale meat distribution business required the use of low temperature equipment for freezers and medium temperature equipment for refrigeration as well as compressors located on the roof of the existing structure.

6. The operation of the business consisted of supply trucks bringing meat products to the Property and then said meat products being redistributed to retail establishments. Deliveries to the Property were made at various times of the day and night by refrigerated vehicles.

7. After the Skyline Condominiums were constructed (consisting of 104 units within a 15 story structure) in proximity to the Property, complaints about the noise generated by the facility and the delivery of the meat products were made to the City of Hoboken by, *inter alia*, owners of units within the Skyline Condominiums. From approximately 1992 through 2001 when the wholesale meat distribution business was abandoned, the City of Hoboken proceeded to investigate those complaints and issued a series of directives to stop the disturbances being experienced by other persons in proximity to the owner's operation of the wholesale meat distribution business. Moreover, delivery trucks to the site were being ticketed by the Hoboken Police Department.

8. In and around 2001, after approximately ten years of complaints from adjacent residents (Skyline Condominiums) and a variety of enforcement actions undertaken by the City, the owner abandoned the Property and relocated his business to North Bergen, New Jersey in conjunction with a merger with another company. The Property has been vacant since 2001 when the wholesale meat distribution facility ceased operation.

9. Although the Applicant testified that he had a fish wholesaler and a pastry importer interested in utilizing the structure subsequent to his vacating it, their interest waned when they became aware of the complaints of residents and the Police Department initiatives to curb and regulate noise and other disturbances to residents in proximity to the Property. The Property was boarded up and has been unused

from approximately 2001 to date.

10. The Property was not listed with a broker because the owner did not like brokers.

11. Given the various permitted uses in the I-2 Zone as listed above, there was no testimony as to the Applicant's attempt to find any prospective tenant or purchaser to utilize the Property in accordance with the permitted uses in the zone. The activities of the owner to utilize the Property after the wholesale meat distribution operation was terminated, was limited to a fish wholesaler and a pastry importer. Potential purchasers or tenants who would conduct an operation consisting of any of the categories of permitted use were neither contacted nor solicited.

12. While the Governing Body recognizes that the Applicant's qualified professional planner, Kenneth Ochab testified that the Property had been zoned into "inutility" because of the restrictive permitted uses in the I-2 Zone and that there was no reasonable expectation of property development in that fashion constituting an undue hardship, the Governing Body finds that such testimony was conclusory and not supported by any related facts. By way of example, but not limitation, there was no testimony by the Applicant's Planner as to whether the Property could be utilized consistent with any of the myriad of permitted uses in the I-2 Zone. Although the Governing Body acknowledges that certain retail uses would generate additional traffic and that there would have to be some innovative parking accommodations for retail use, there was no testimony indicating that such parking or other traffic

accommodations could not be adequately addressed for business and professional offices, a permitted use in the zone, in a manner not dissimilar to the on-site parking proposed as part of this Project. Multi-level parking for such office or professional services uses could be accomplished in a manner similar to that being proposed for the non-permitted residential use sought by the Applicant.

13. The Applicant's Planner testified that the Property is under-utilized from a planning and land use perspective. However, there was no testimony offered by the Applicant that the Property would continue to be under-utilized if any of the permitted uses were developed at the site. For example, a multi-story office building or multi-story retail with appropriate parking was not explored in any way by the Applicant or its experts, nor was there any testimony that such a use would represent an under-utilization of the Property.

14. The Applicant's Planner testified that residential development is consistent with the "dominant" residential development pattern in the surrounding area, but failed to acknowledge certain significant retail use within close proximity, i.e. approximately three blocks, in the adjacent City of Jersey City, consisting of a Target, Home Depot facility and other retail activity. Moreover, while there was testimony that half of the properties in the I-2 Zone are "non-conforming" to permitted uses, that leaves half the properties as being conforming to the uses permitted in the I-2 Zone.

15. The Board acknowledges that the site is a major gateway to the City of Hoboken and that the current boarded up, vacant building does not visually enhance the area and represents a negative physical approach to the City of Hoboken. That fact, however, does not translate into the need or justification for the creation of a non-permitted use on that site. Quite the contrary, the boarded up, vacant building could be replaced by a visually and aesthetically attractive structure for a use permitted in the zone which would create an appropriate and attractive entry-way to the City of Hoboken and still remain consistent with the uses set forth in the I-2 Zone.

16. The Governing Body notes that while the Master Plan of the City makes reference to residential use in this area, the Governing Body has elected to not modify the I-2 zoning in that area to reflect the concepts advanced in the Master Plan. Further, although industrial uses have declined in that zone and throughout the City of Hoboken, the Governing Body notes that the specific permitted uses in the I-2 Zone are many more than what one would consider the traditional "industrial" use. Thus, the identification of the zone as an I-2 Zone (industrial zone) is to some extent a *misnomer* since retail and personal services establishments are permitted, as well as business and professional offices. Accordingly, the title of the zone implies a limitation on use which is inaccurate given the broad expanse of other non-residential uses that can be constructed in that zone as a matter of right. Therefore, while traditional industrial use has declined and may even be inappropriate in certain

portions of this zoning district, the other permitted uses in the I-2 Zone continue to be appropriate uses for the Property in that zone. The Governing Body further acknowledges that the Southwest District Redevelopment Study done in 2007 found that the buildings on the Property and in the area are in need of rehabilitation and that although the adoption of the Redevelopment Study was voided, that particular fact does not detract from the fact that the structure on this Property is dilapidated and that the particular use as a wholesale meat distribution facility may be inappropriate for that Property. Nevertheless, a variety of permitted uses in the I-2 Zone can be accommodated on that Property without the need for having residential use. To that end, the Hoboken Master Plan designates that the area is an industrial transition district and recommends that residential uses be permitted as well as other uses that serve the community. Again, however, the Governing Body notes that it has not modified the zoning provisions in this district and that virtually all of the permitted uses in the I-2 Zone, as noted above, serve the community in a variety of positive ways.

17. The Governing Body recognizes that the nursery school/child care facility is effectively a "permitted use" in any non-residential district, such as the I-2 Zone, pursuant to N.J.S.A. 40:55D-66.6 and therefore that although the ZBA granted a variance to allow the same, such action is arguably superfluous. The Governing Body also notes that in the brief filed by the Appellant and in the course of the oral presentation made by Appellant's counsel, the Appellant confirmed that it was not

seeking to overturn the determination of the ZBA granting the d(1) variance for the nursery school/child care facility and the Governing Body, as will be set forth hereinafter, concurs that such a use is permitted by statute and to the extent that the ZBA granted a variance to allow it, that determination should be affirmed.

18. The Governing Body is aware that there has been high rise residential development and redevelopment in proximity to the Property. Indeed, the Appellant Condominium Association administers a 15 story residential condominium structure in proximity to this Property, consisting of a larger number of units and a higher structure. However, in spite of the residential growth in the area, the Governing Body has not seen fit to modify the applicable zoning ordinances regulating this Property, after having many years to consider doing so to reflect the increase of residential use in that area. Part of the reason for such inaction to modify the permitted uses to include residential use is the fact, as abovementioned, that this zone allows for a multitude of non-traditional industrial uses. Moreover, the Governing Body observes that the planning objectives of conserving open space, reducing energy and overall sprawl on a state and regional level, as the Applicant's Planner testified is accomplished by the Project, can also be accomplished by a multitude of the permitted uses in the I-2 Zone.

19. The Applicant's Architect testified that retail use was inappropriate at the site because its 12,900 square feet was too small an area to support retail use. While that conclusion may be accurate, there was no basis set forth in the record to

support the same. Similarly, the Applicant's Planner testified that utilizing the Property for commercial purposes would create more traffic problems than if the Property were utilized for residential, but failed to reconcile that the typical egress of vehicles and traffic during rush hour from the proposed residential structure with the similar ingress of traffic to an office structure during the same rush hour and, of course, the ingress of vehicles to the residential site during the evening rush hour as compared to the egress of vehicles at that same time by a permitted office structure. Furthermore, there was no testimony that retail use would aggravate any existing traffic deficiencies.

20. The Applicant's qualified architectural expert, Dean Marchetto described an attractive residential structure with a variety of "steps back" from front to back and side to side, simulating a wedding cake step back in three directions to minimize the perceived bulk of the building. The building also contains an arcade to create a pedestrian friendly atmosphere. Further, the proposed structure has a variety of sustainable design features including solar panels on the roof plan and a "green roof" which keeps the building cool by insulating it while generating oxygen into the air.

21. The Governing Body finds that the proposed structure is an aesthetically pleasing and attractive one, with a number of features that are innovative and advance the pedestrian friendly objectives that the Master Plan promotes. However, all of the features mentioned above are not limited to structures for residential use and could

just as easily be part of an attractive structure or structures on that site whose uses are consistent with the I-2 zoning ordinance in effect. There is nothing unique or special about a residential building that could not be similarly integrated into a non-residential structure as otherwise permitted under the I-2 zoning ordinance.

22. The Applicant's Architect testified that the F.A.R., while having been reduced from 6.60 to 6.27, continues to substantially exceed the F.A.R. of 1.25 in this zone. However, the 6.27 is 5 times greater than the F.A.R. permitted in the zone. No testimony was proffered by the Architect or any witness of the Applicant that a structure, even a residential one, could not be constructed on that site with either a conforming F.A.R. or, a less non-conforming F.A.R. This same reasoning and deficiency is evident with regard to the height variance and "story" variance. There was no testimony or other information in the record that explained why a building of 40 feet could not be appropriately constructed, nor a building with 2 stories. Further, there was no testimony or other information in the record to justify that a 12 story, 125 foot high structure, with a 6.27 F.A.R. was the **minimum** that could be developed on that site which was economically feasible. While those issues are not relevant if the proposed development conformed to all zoning restrictions, when an Applicant seeks to deviate from these use requirements, it must demonstrate why a less drastic deviation could not be requested. No testimony or other information in the record justified the particular parameters of this building, as opposed to a building with less drastic deviations.

23. Although the Governing Body finds that certain of the testimony of the Appellant's Planner vacillated, it is worthy to note that the burden of proof in the proceeding before the ZBA and the proceeding *de novo* before this Governing Body is on the Applicant, not on the Appellant. There is no presumption of validity of the ZBA determination and the Applicant must demonstrate that they have met the criteria to justify the granting of the "d" variances sought. The Governing Body acknowledges, as stated earlier, that there are a number of residential structures of a similar size in proximity to this particular Property, but that alone is no basis to justify similar deviations for other projects, particularly where the Governing Body has elected to not modify the zoning on the site in spite of this residential activity.

24. The Governing Body again acknowledges the existence of the Southwest District Redevelopment Study which had not been adopted and the fact that a sketch of a 12 story building similar to the Project is proposed in that plan. However, had the Governing Body wanted to modify the zoning in this district to accommodate and reflect the recommendations therein, it has certainly had the time to do so, but has elected to not do so.

25. A minority of the Council expressed the view that the I-2 Zone has become or is becoming obsolete for this area of the City and that the appropriate use for this area is residential. They found support for that position in the owner's testimony regarding the current non-use of the Property and his inability to rent or sell the Property for any of the permitted uses in the I-2 Zone. They felt that traffic

in this area of Hoboken was problematic and would be aggravated by the use of the Property for any of the permitted uses in the I-2 Zone. Similar uses to those that were carried out by the owner create in their view specific traffic problems related to backing vehicles into the truck bays. They felt that the very complaints that were raised by Skyline Condominiums residents to the use of the Property as permitted in the I-2 Zone would be resurrected if the Property were used in that fashion. In the view of the minority, this provided further support for the proposition that the use of the Property in an I-2 manner would be inconsistent with the well-being and general welfare of the residents.

It was the further position of the minority that the suitability of the site for residential use is apparent because of the several residential buildings in the surrounding area, both in Hoboken and Jersey City and that various goals of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. would be advanced by such residential use, including those set forth in N.J.S.A. 40:55D-2a, d, and e. The minority was of the view that the proposed project location was a "gateway to Hoboken" and that looking at the project in a common sense way justified the determinations of the Zoning Board of Adjustment and thus supported the granting of the variances requested. It was noted by the minority that once the proposed use changed to residential, the F.A.R. and the height regulations otherwise acceptable for non-residential use would be inappropriate for residential use and thus, that it was inappropriate to consider the requested variances from the F.A.R. and height in

isolation from the primary use variance sought. Finally, the minority would defer to the well-reasoned 31 page resolution adopted by the Zoning Board of Adjustment granting the variances.

NOW, THEREFORE, as a result of the above facts, the Governing Body makes the following conclusions of law and determinations in this matter:

1. In order to be entitled to a d(1) variance, the Applicant must demonstrate that there are "special reasons" to allow for a departure from the use regulations in a particular zone. Those special reasons are reflected when there is an undue hardship where the Property cannot be reasonably adapted to a conforming use or where the proposed use promotes the general welfare by the site being particularly suitable for the proposed use. Further, if the Property has been zoned into inutility, the special reasons criteria have been satisfied and thus the positive criteria for the granting of a d(1) variance will have been satisfied.

2. In addition to special reasons, the Applicant must meet the negative criteria as set forth in N.J.S.A. 40:55D-70. The negative criteria consist of the Applicant demonstrating that the relief requested for any of the "d" variances sought can be granted without substantial to the public good and without substantial impairment to the Master Plan and to the zoning ordinance.

3. The Courts in the State of New Jersey have provided guidance with regard to what constitutes "special reasons" to justify the grant of a "d" variance. In this case, there are d(1) variances involving use, a d(4) variance involving floor area

ratios and d(6) variances involving height. The Courts of New Jersey have provided guidance as to the level and types of proofs needed for each of those different "d" variances.

4. With regard to the d(1) variance related to residential use which is not permitted in the I-2 zone, the Governing Body is not satisfied that the Applicant has met its burden of proof. More specifically, the Governing Body is not convinced that the Property cannot be developed for a conforming use within the I-2 Zone, particularly given the fact that there are a broad expanse of uses in the I-2 Zone that are not strictly the traditional industrial development. Retail use, office and professional use, and other activities all constitute permitted uses. While those uses may not be as economically advantageous to the Applicant, an Applicant is not entitled to be able to make the most profitable use of its property.

5. Further, despite that this site is a "gateway" to Hoboken, there is no justification for concluding that this site is particularly or peculiarly suitable for residential use. Although there are other residential uses in the area, the record reflects that half of the parcels in the I-2 Zone have conforming uses. There was no testimony or other information in the record to demonstrate any uniqueness to this parcel which would make it more suitable for residential use than other parcels of property in the I-2 Zone. With regard to the F.A.R. variance where the Applicant seeks a 6.27 F.A.R., whereas a 1.25 F.A.R. is permitted in the zone, the special reasons that the Applicant must show to be entitled to a variance involves the fact that

the site will accommodate the problems that are associated with a proposed use with a larger F.A.R. than permitted. This in turn involves an analysis of the purpose of the F.A.R. requirements and the land use problems that could be caused were the variance granted. The Governing Body recognizes that the F.A.R. requirement was established based upon the permitted uses in the I-2 Zone and therefore, was not established as a residential standard. However, the record is devoid of any comparison of residential F.A.R. to the F.A.R. permitted in this zone. F.A.R. affects the intensity of use of a particular property, the higher the F.A.R. demonstrating, in most cases, a greater intensity of use. The Governing Body accepts the fact that one of the problems of a higher F.A.R. and greater intensity of use in a residential context is a greater number of vehicles and the need for a greater number of parking spaces. These needs were accommodated by the Applicant in its design and proposal to the ZBA. However, they were accommodated by partially creating the need for the greater F.A.R. being sought and further, they were accommodated by partially creating the need for the height and story variances. In short, the problems created by a greater F.A.R. could not be accommodated absent the granting of the very F.A.R. sought. Stated differently, the need for more parking (greater F.A.R.) necessitated a greater intensity of use of the site to accommodate more parking and a greater height to the structure to accommodate the parking within the structure. Thus, there is a cascading effect such that the granting of one variance begets the need to grant other variances as well as affecting the magnitude of the

variance being sought.

6. Just as important, the record is devoid of any testimony that a less deviant F.A.R. request or a less deviant height proposal (height and/or stories) could not be reasonably accommodated on the Property. There was no testimony that this proposal is the **minimum** intensity for an economically feasible development.

7. The above analysis and determinations with regard to the F.A.R. variance are equally applicable to the height variances. The same cascading effect and the lack of proofs that this proposal represented the **minimum** magnitude of deviation from the zoning requirements to be economically feasible resulted in a lack of justification and level of proofs adequate to grant the variances requested.

8. As abovementioned, an Applicant for "d" variances must also satisfy the negative criteria in N.J.S.A. 40:55D-70, i.e. that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the Master Plan and zoning ordinance. Again, the case law in the State of New Jersey has provided guidance to the Governing Body with regard to the factors to be considered when evaluating whether an Applicant has met the negative criteria. Substantial detriment to the public good typically relates to the effect of the variance on surrounding properties. The cases also remind the Governing Body that there is an enhanced quality of proof that the requested variance is not inconsistent with the intent and purpose of the Master Plan. One of the important factors that affects this evaluation is the

Governing Body's reaction to similar variances granted by the ZBA in proximity to the property and whether the Governing Body has modified its ordinances to legitimize those types of variances and/or has changed the ordinance to reflect those variances, making the zoning ordinance compatible with them. Since the Governing Body receives an Annual Report from the ZBA as to variances granted and recommendations for changes to the zoning ordinance, a Governing Body's determination to not change ordinances to reflect variances granted demonstrates a clear and strong implication that those variances are not condoned and that granting them will result in an arrogation by the ZBA of the zoning power which is exclusively in the hands and purview of the Governing Body.

9. Similarly, the Governing Body's reaction to other physical changes in the zone from the time that the zoning ordinance was enacted is indicative of whether the Governing Body desires to change the direction of its zoning plan or its zoning ordinance. In this case, despite the increase of residential uses in this zone of a height and intensity not dissimilar to the Applicant's proposal, the determination of the Governing Body to not modify the ordinances has been intentional and reflects support for the uses, F.A.R., and height and story requirements currently contained in the ordinance. The Governing Body concludes that the granting of the use variance, the F.A.R. variance, the height variance and the story variance sought by the Applicant will be substantially detrimental to the public good and will substantially impair the intent and purpose of the zoning ordinance. The Governing Body has

deliberately decided to not amend the ordinance to allow residential use, a greater F.A.R., a greater height or a greater story within this zone. The granting of this type of variance will impair that intention and result in an arrogation or an appropriation by the ZBA of the Governing Body's zoning power.

10. The minority would find justification for the granting of the variances requested and the satisfaction of the positive and negative criteria by the Applicant for the reasons as set forth in Paragraph 25 of the Findings of Fact.

NOW, THEREFORE, BE IT RESOLVED BY the Governing Body of the City of Hoboken, County of Hudson, State of New Jersey as follows:

1. The Governing Body reverses the granting of the d(1) residential use variance, the d(4) F.A.R. variance, the d(6) height variance and the d(6) "story" variance as granted by the Zoning Board of Adjustment of the City of Hoboken in their memorializing resolution adopted December 15, 2009 for the reasons as set forth herein.

2. The granting of the d(1) variance for the nursery school/child care facility, while perhaps superfluous, is hereby affirmed by the Governing Body for the reasons set forth in this resolution.

3. This is a memorializing resolution memorializing action taken at a meeting of the Governing Body held on March 24, 2010.

Approved:



Michael B. Kates, Corporation Counsel

Date: May 5, 2010

CERTIFICATION

I HEREBY CERTIFY the foregoing to be a true copy of a memorializing resolution adopted by the Governing Body of the City of Hoboken at a duly convened meeting held on May 5, 2010.

James J. Farina, City Clerk

Members Eligible to Vote as to the Reversal of the d(1), d(4) and d(6) variances:

Council President Peter Cunningham
Councilwoman Carol Marsh
Councilman Ravinder S. Bhalla
Councilman Michael Lentz
Councilman David Mello

Members Eligible to Vote as to the Affirmance of the d(1) variance (nursery school/child care):

Council President Peter Cunningham
Councilwoman Carol Marsh
Councilman Ravinder S. Bhalla
Councilman Michael Lentz
Councilman David Mello
Councilman Angelo Giacchi
Councilman Michael Russo
Councilwoman Theresa Castellano



THE BUZAK LAW GROUP, LLC

Attorneys at Law

EDWARD J. BUZAK
(MEMBER OF N.J. & D.C. BAR)
TIENA M. COFONI
JOHN P. MILLER
KELI L. GALLO
(MEMBER OF N.J. & N.Y. BAR)

MONTVILLE OFFICE PARK
150 RIVER ROAD SUITE N-4
MONTVILLE, NEW JERSEY 07045

(973) 335-0600

FAX: (973) 335-1145

E-MAIL: BLG@BUZAKLAWGROUP.COM

April 28, 2010

James J. Farina, City Clerk
City of Hoboken
City Hall
94 Washington Street
Hoboken, New Jersey 07030

E-MAIL

Re: Revised Memorializing Resolution -- Kane Properties, LLC

Dear Mr. Farina:

In accordance with instructions received, enclosed please find a revised memorializing resolution. The following are the only revisions contained in this resolution from the one previously distributed:

- o Paragraph 7 on Page 7 was changed by adding an introductory phrase to the second sentence related to the time period during which complaints were made and investigations undertaken.
- o Paragraph 8 on Page 7 was changed by adding introductory information involving the time span that complaints were received and enforcement actions were taken.
- o A new Paragraph 25 was added on Page 15.
- o A new Paragraph 10 was added on Page 22.

Other than the foregoing, the resolution is the same as previously distributed.

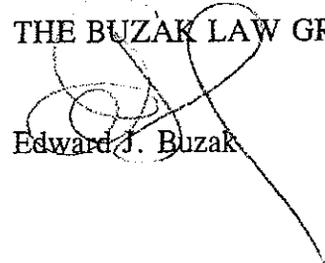
By copy of this letter I am distributing by e-mail copies of the revised resolution to the persons listed below.

Page 2

If you have any questions, please feel free to contact me.

Very truly yours,

THE BUZAK LAW GROUP, LLC


Edward J. Buzak

EJB:FD-S-223 (HC-2012)

Attachment

cc: asmickley@hobokennj.org - E-Mail
James J. Burke, Esq. - E-Mail
Arnold K. Mytelka, Esq. - E-Mail
W. Mark O'Brien, Esq. - E-Mail
Douglas M. Bern, Esq. - E-Mail

CITY OF HOBOKEN
RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE LOCATION OF THE UPTOWN FARMERS' MARKET ON THURSDAYS DURING THE MONTHS OF JUNE, JULY, AUGUST, SEPTEMBER AND OCTOBER

WHEREAS, the _____ of Hoboken and the City of Hoboken is sponsoring a farmers' market along the east side of Hudson Street between 12th and 13th Streets; and

WHEREAS, a sponsor, manager, vendors and their liability coverage will be determined and submitted prior to the Market's opening day, the Uptown Farmers' Market will take place every Thursday, beginning June 17, 2010 and every Thursday thereafter ending no earlier than Thursday October 29, 2010; and

WHEREAS, the City of Hoboken request that the Council of the City of Hoboken suspend parking rules on that section of the east side of Hudson Street between 12th and 13th Streets so that the farmers can park their trucks to unload and sell their goods.

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

1. The above recitals are incorporated herein as though fully set forth at length.
2. The Council hereby authorizes the Mayor or his designee to execute any and all documents and take any and all actions necessary to complete and receive the intent and purpose of this resolution.
3. The Police Division shall enforce this regulation.
4. A certified copy of this resolution is provided to Mayor Dawn Zimmer, Director Jennifer Maier, Police Chief Anthony Falco, Fire Chief Richard Bloom, Superintendent Joseph Bucino, Central Garage Supervisor William DeAngelo, and Ian Sacs, P.E., Director, Parking Utility.

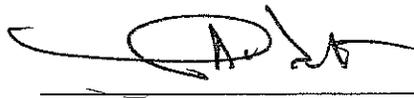
This Resolution is effective immediately.

Department of Environmental Services

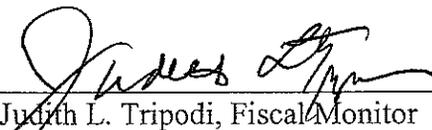
Approved as to form:



Jennifer W. Maier, Director



Michael B. Kates, Corporation Counsel



Judith L. Tripodi, Fiscal Monitor

Meeting Date: May 5, 2010

must be identified as such at the market by indicating the farm name and location where they were bought.

Full partnerships of two individual farmers sharing in the production of crops can participate in the Farmers Markets only with **written preapproval from the Market Manager** and supported with a partnership agreement filed in the county the farm is located. A full partnership is defined as two individual farmers actually sharing in the production (planting, cultivation, pest control, and harvest) of crops. This cannot be a brokerage arrangement. It is the grower participants responsibility to submit a legal partnership agreement to the Market Manager and the NJCFC before bringing the partnership's products to market.

INSPECTIONS: The NJCFC, or its agent, will inspect each registered farm during the marketing season to verify agricultural products being grown, acreage, and scheduled time of harvest. An approved farm inspection is required annually for each grower to be authorized to sell any product at the Farmers' Market. Advance notice will be provided before any farm inspection. *Growers must schedule an inspection within one week of being contacted by the inspector.* The NJCFC reserves the right to reinspect farms to clarify or resolve questions or complaints *with 48 hour advance notice.* *Farmer will be billed \$125 for reinspection if a violation is found.* Farmers will receive copies of their farm inspection report as well as the Manager of the market(s) the farmer is attending. The NJCFC will make at least one market inspection per year at each of the community sites to ensure produce being sold by the participating growers is on their **Crop Plan form** and /or **Purchased Product Request form(s)**. The results of this market inspection will be forwarded to the Market Managers.

VIOLATIONS: If a Market Manager in consultation with the NJCFC determines a grower is in violation of the regulations, the grower will be notified by phone or in person, and a written notice will follow. If the violation continues, the following penalties may be assessed:

PENALTIES: **One violation** - a warning letter issued and/or suspension from the market(s) *where the violation was found* for one day.

Two violations - suspension from the market(s) for up to one month and a mandatory meeting with NJCFC Executive Committee and Market Manager.

Additional violations - suspension from the market(s) for up to the remainder of the season. Re-application to the market(s) will be at the market manager's and community sponsor's discretion.

Major violations in which suspension from a market was necessary are cumulative and stay on a growers record for two years from the date of the violation. Minor violations in which only a warning letter was issued cumulate only during the year they were issued.

APPEALS: Upon receiving a violation notice, you may request an appearance before the NJCFC Executive Committee and the Market Manager to contest the findings. A meeting will be called within two weeks of your request. Items in violation may be suspended from sale until the hearing. To assure speedy resolution of violations, an enforcement subcommittee may hear your case in lieu of a full committee.

Market Contact:

Uptown Hoboken Farmers' Market
John Branchiforte
10th and Garden Street
Hoboken, NJ 07030
201-993-6768

not be permitted. Each producer is responsible for cleaning the area around his or her stall and providing at least one trash receptacle. Grower generated waste should be disposed back at the farm.

Producers will comply with all federal, state, and county regulations including, but not limited to, chapter 12 of the New Jersey Sanitary Code. Vendors must also comply with other terms and conditions that may be added for the public health, safety, and welfare.

VENDORS: The Uptown Hoboken Farmers' Market reserves the right to invite, or not invite, vendors as it sees fit. Products sold by vendors at the Uptown Hoboken Farmers' Market must either be grown/produced by New Jersey farmers directly or promote good nutrition and/or produce.

FARMERS' PRODUCTS: Only agricultural products produced from the farm of the grower can be sold* at the Farmers' Market, except as specified below:

Leased land - Growers may utilize leased land only if all aspects of production and maintenance are conducted under their direct management. The Market Manager and NJCFC may ask for a copy of the lease agreement *and proof that the farmer performs or supervises all work associated with the production of the crop. Proof may include but is not limited to seed receipts, pay roll records, spray records, orchard equipment, etc.*

Leasing of orchard land is permitted only if it is done on a long-term (+3 years). NJCFC will ask for a copy of the lease agreement which must be received by April 15, 2009. Legitimacy of all lease agreements will be judged by the NJCFC to determine if products can be brought to market.

Cider and fruit juice - Sold only by the producers of those fruits. Cider can be pressed off farm, if not pressed on the farm, provide name and address of mill at the market. At least 60% of fruit in the juice will come from grower's orchard. No cider or juices can come from anywhere other than New Jersey. No concentrates are permitted.

The sale of baked and other processed items is decided on a market by market basis by the municipality in which a market is located. Growers wishing to sell items freshly grown on their farm baked or processed on their premises must submit a copy of their County Health Department's annual Sanitary Inspection Report to the NJCFC and the Market Manager before the market season begins.

Products sold as organic must comply with the National Organic Program rules.

*All agricultural products to be sold must first be registered, as appropriate, on the **Crop Plan Form** or the **Purchased Product Request Form**.

PURCHASED ITEMS: A grower may petition the Market Manager to sell a purchased agricultural product at the farm market, not grown on his or her farm, for a specified period of time. The grower petitioning the Market Manager to sell a purchased product will submit a **Purchased Product Request Form** at least one week in advance of the starting date of sale of that product.

Based on the following criteria, the Market Manager will either approve, partially approve, or reject the grower's petition:

1. The product is purchased directly from another New Jersey farm operation where it was grown.
2. It has been determined by reviewing crop plans and surveying other growers in the market that there will not be a sufficient quantity *and quality* of that product in the market to satisfy demand during the specified time period. *Sales of purchased items will be allowed only after growers of the crop has been sold out.*
3. A maximum of *1-5 crops (based on number of farmers as follows: 1-2 farmers=0-5 crops, 3-4 farmers=0-4 crops, 4 or more farmers=0-3 crops) (all varieties/cultivars of a crop are counted as one crop)* may be purchased and will account for no more than 25% of all products offered for sale by the farmer, both in number and sales space, at the beginning of each sales day.
4. The offering for sale of purchased items will not deter from the purpose of the Farmers Market, nor negatively impact its viability. Approval may be withdrawn with one-week prior notice.

A listing of all purchased product approvals will be made available to all authorized farmers upon request. **Purchased items**

2010 UPTOWN HOBOKEN FARMERS' MARKET REGULATIONS

PURPOSE: The Uptown Hoboken Farmers' Market has been established as a community service to the City of Hoboken and as support for regional farmers, allowing them the opportunity to market quality products grown on their farms in a designated area. To remain competitive, farmers need to be able to develop new markets for agricultural products grown on their farms. Success in agricultural marketing helps significantly in economically preserving farmland and open space which in turn contributes to maintaining the quality of life in the region. Communities benefit from the fresh, nutritious, high quality produce it provides consumers access to and attracts business activity to downtown areas. The Uptown Hoboken Farmers' Market also serves as a community gathering place to exchange recipes and ideas in a non-political setting.

REGISTRATION: Participation is open to established farming operations engaged in the production of agricultural products and vendors whose products promote nutrition and/or produce.

FEES: **Registration** -\$50 Due with completed application
Market Fees -\$35/day

LOCATION/TIME: The market will operate on Hudson St. between 13th and 14th Sts. Arrive at least one-half hour before to set up. No sales will occur before 4:00 PM and breakdowns should be completed no later than 8:00 PM

INSURANCE: A certificate of liability insurance is required with a minimum coverage of \$1,000,000 naming the City of Hoboken as an additional insured. Certificates of insurance must be received and approved by the market manager before a grower is permitted to sell at the market.

SALES AUTHORIZATION: Authorization to sell agricultural products is available to growers who have an established farming operation under their direct management. Only one authorization per market will be issued for each farming operation. The authorization entitles the farmer, family members and employees of the farming operation to sell agricultural products grown by that farming operation. The authorization is not transferable and may be limited to a specific number per market. Each market reserves the right to select the growers that will participate. Selection will be based on size of market location, composition of products offered, and prior adherence to the market regulations. Authorization to sell at the market can be withdrawn by the sponsor if a grower violates market regulations or if the market must close due to lack of support by the community or participating growers.

SPACES: Spaces (of a specified size and location) will be assigned by the market manager. Spaces assigned to vendors are to be used only by that vendor. No leasing or lending of market stalls will be allowed. **When unable to attend, vendors must notify the Market Manager in advance (24 hours, if possible). Each vendor will be allowed parking for one vehicle on Hudson St. between 13th and 14th Sts. The Uptown Hoboken Farmers' Market will not be held responsible for parking violations of a second vehicle.**

ORDERLY MARKET OPERATION: The market manager is responsible for the orderly operation of the market. All questions and issues are to be directed to the market manager. **Disputes between vendors and/or market managers will not be tolerated at the market site.** The market manager has the right to evict any vendor from the market site. The vendor's recourse is a formal complaint in writing forwarded to both the Market Manager and the NJCFC. The Market Manager and the NJCFC are only responsible for acting upon written complaints.

DISPLAY: Tables displaying produce and related products will be set up, so that no seller blocks or limits the view or access of consumers to a neighboring seller. Vendors must supply their own scales, bags, tables, electrical power etc. Producers must maintain scales acceptable to the County Department of Weights and Measures. Produce may be sold by the count, weight, bunch, or in legally acceptable containers. All other containers must identify the net weight of the contents. Produce that is not of fresh or good quality will not be displayed nor sold at the market. The market manager has the right to require any produce that does not comply with the market regulations to be removed from any stand. All prices must be posted before and during sale time. **In addition, each seller must display a sign in a prominent place giving his or her farm name and address.** Producers and their employees must wear shirts, trousers/shorts/skirts and shoes. Hawking or shouting to attract customers will

Introduced By: _____

Second By: _____

**CITY OF HOBOKEN
RESOLUTION NO. _____**

RESOLUTION AUTHORIZING THE REFUND OF TAX OVERPAYMENTS

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

WHEREAS, Sharon Curran, Collector of Revenue recommends that refunds be made; now, therefore, be it-

RESOLVED, that a warrant be drawn on the City Treasurer made payable to the appearing on the attached list totaling **\$18,819.33**

<u>NAME</u>	<u>BL/LT/UNIT</u>	<u>PROPERTY</u>	<u>QTR/YEAR</u>	<u>AMOUNT</u>
ENEZIA, LOUIS 70 ADAMS ST #4J HOBOKEN, NJ 07030	18/4/C0P15	70 ADAMS ST	1/10	\$ 114.25
BRIAN H KAPPOCK 232 MADISON ST HOBOKEN, NJ 07030	37/18/CF2RS	232 MONROE ST	1/10	\$ 1,300.00
PICCOLO, JARED RYAN 415 EAST 80 TH STREET NEW YORK, NY 10021	51/17/C0005	333 ADAMS ST	4/09	\$ 4,200.00 EXCEL I
GREEN, EDWARD & HYE JIN JANG 1330 CLINTON ST #401 HOBOKEN, NJ 07030	115/9.01/C0401	1317-27 GRAND/ 1326 CLINTON	3/09	\$ 2,168.29
GREEN, EDWARD & HYE JIN JANG 1330 CLINTON ST #401 HOBOKEN, NJ 07030	115/9.01/C0P-6	1317-27 GRAND/ 1326 CLINTON	3/09	\$ 158.10
HERNANDEZ, STEVEN M 1313 WILLOW AVE #2B HOBOKEN, NJ 07030	117/2/C002B	1313-1315 WILLOW	4/09	\$ 1,372.33
GIORGIO, NICHOLAS A 2 WATER ST #11F NEW YORK, NY 10004	186/8/C004C	159-161 NEWARK ST	1/10	\$ 2,147.91
BENDER, JAMES R 90 WEST NEWELL AVE RUTHERFORD, NJ 07070	207/19.1/C0005	834 WASHINGTON ST	1/10	\$ 605.52

<u>NAME</u>	<u>BL/LT/UNIT</u>	<u>PROPERTY</u>	<u>QTR/YEAR</u>	<u>AMOUNT</u>
MOONEY, ANN C & TIMOTHY S MURPHY 1123 GARDEN ST HOBOKEN, NJ 07030	249/14.1/	1123 GARDEN ST	1/10	\$3,757.29
RUSSELL, DIANE & ANDREW 1500 WASHINGTON ST #5R HOBOKEN, NJ 07030	268.1/2/C005R	1500 WASHINGTON	1/10	\$ 2,995.64

Meeting: MAY 5, 2010

Approved as to Form:

CORPORATION COUNSEL

Sharon Curran

Introduced By: _____

Seconded By: _____

**CITY OF HOBOKEN
RESOLUTION NO. _____**

**RESOLUTION AUTHORIZING A PERMIT FOR THE ANNUAL
HOHA CLASSIC 5-MILE RACE AND 1-MILE FUN RUN**

WHEREAS, Hoboken Harriers Running Club and All Saints Community Development Corporation, working in conjunction as the HOHA Classic Race Committee, have requested a permit from the City of Hoboken to conduct the "Eleventh Annual HOHA Classic 5-Mile Race and 1-Mile Fun Run", (collectively the "Event") on May 16, 2010 in Hoboken, New Jersey; and

WHEREAS, the City of Hoboken is supportive of this endeavor provided that neither the Event does not unduly interfere with the health, safety and welfare of the citizens of Hoboken and the City will not incur any substantial expenses; and

NOW, THEREFORE, BE IT RESOLVED, that the Event to be held on May 16, 2010, between the hours of 8:15 a.m. and 1:00 p.m., is hereby approved by the Council of the City of Hoboken upon the condition that Hoboken Harriers Running Club and All Saints Community Development Corporation, working in conjunction as the HOHA Classic Race Committee (collectively referred to hereinafter as the "permittee") be issued a permit by the Business Administrator, in a form approved by the Office of the Corporation Counsel, with the following conditions:

1. Permittee shall deposit One Thousand Dollars (\$1,000.00) with the City of Hoboken as an estimated permit fee to cover the extraordinary expenses to the City for services in connection with the Event, for, by way of example and not limitation, employee overtime and trash removal. In the event such costs are less than One Thousand Dollars (\$1,000.00), the balance shall be returned to the Permittee. In the event such costs exceed One Thousand Dollars, Permittee shall pay such excess to the City upon presentation of an invoice from the City. This permit fee must be deposited with the City at least one week before the proposed race.
2. No alcoholic beverages shall be served by the Permittee, sponsors or vendors associated with the Event during the event.
3. Permittee shall provide uniformed Hoboken Police Officers for the safety and security of runners, spectators and other members of the public, in a sufficient number to be determined by the Chief of Police, and at its sole expense from 8:15 am to 1:00 pm on Sunday, May 16, 2010. These personnel may be in addition to Hoboken Police Officers assigned by the City to the Event.

4. Permittee must provide no less than four (4) Port-o-Sans for use by patrons during the Event. They shall be located in designations to be determined by the Business Administrator. The Port-o-Sans shall not be installed on the property before 9:00 am on Friday, May 11, 2010 and must be removed before 6:00 pm on Monday, May 14, 2010. Adequate toilet paper shall be provided for the Port-o-Sans.
5. Permittee shall provide for proper use and maintenance of trash receptacles which will be provided by the City of Hoboken, and must ensure that plastic bags in those receptacles are continuously emptied and disposed of in areas designated by the City of Hoboken as needed during the Event.
6. The Permittee shall provide civilian road guards to assist in erecting barricades and detouring vehicular and pedestrian traffic during the race as required by the Chief of Police.
7. No beverages in glass bottles shall be permitted to be sold by any vendors. The Permittee shall arrange security to prohibit glass bottles and alcoholic beverages from being carried by runners, spectators and/or members of the public during the event.
8. Before leaving the premises after the Event, the Permittee shall restore the property to the condition it was in prior to usage. Such restoration shall be subject to the satisfaction of the Director of the Department of Environmental Services.
9. The Permittee must contact Arch Liston, Business Administrator, at least twenty-four (24) hours prior to the commencement of any activities on the property to which access is granted by this permit. In his absence, Jennifer Maier, Director of Environmental Services, shall be contacted. In case of an emergency, when the Environmental Services may be inaccessible, the Permittee must contact the Hoboken Police Desk Officer at (201) 420-2161 who, in turn, will contact one of them.
10. There will be no modifications to any City property or property adjacent thereto, used by the Permittee.
11. The Permittee has the full responsibility to provide and have available such medical staff and medical assistance as necessary at its sole cost and expense.
12. The City's Police Chief shall have complete control over the activities of the Permittee associated with the use hereby permitted including the actions of personnel of the Permittee in matters related to safety.
13. The Permittee shall furnish evidence, which shall be attached to the Permit as an Exhibit, that with respect to all incidents to the operations, activities and use of the property permitted by and performed under the Permit, it carries Comprehensive General Liability Insurance naming the City of Hoboken as additional insured providing for not less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for bodily injury or death and property damage. It is to be understood and agreed that the procurement of

Insurance in those amounts does not in any way or manner whatsoever limit Permittee's liability to the City of Hoboken under the Permit and in the event insurance does not cover a particular loss, the Permittee shall be liable to the City of Hoboken, for the full amount of any and all loss and damage as provided therein.

14. The Permittee shall indemnify, keep and save harmless the City of Hoboken, its agents, employees, servants and officials, each and every one of them, against all claims, just or unjust, made against the City of Hoboken, its agents, employees, servants or officials on account of injuries, death, losses of any kind whatsoever, damages, suits, liabilities, judgments, claims for infringements of patent trademark or copyright, costs and expenses which may in any wise accrue against the City of Hoboken, its agents, employees, servants and officials, and the Permittee shall appear, defend and pay, at its own expense, all costs, including counsel fees, against the City of Hoboken, its agents, employees, servants and officials, in any action, the Permittee shall, at its own expense, satisfy and discharge the same.
15. In granting the Permit, the City of Hoboken will assume no obligation whatsoever in connection with the use by the Permittee and are not obliged to make any repairs to the property or furnish personnel, equipment or materials in connection therewith.
16. The City of Hoboken shall not be liable to the Permittee for loss, damage, or liability of any kind or nature whatsoever sustained by the Permittee, its successors or assigns, by reason of any failure to fulfill its obligations herein in the event of a strike or walkout on the part of their employees or on the part of any other person or persons or by reason of any embargo or requirement of any federal or state or other governmental authority or by reason of any other event of any kind beyond the control of the City of Hoboken which in any way affects the ability of the City of Hoboken to perform the obligations herein.
17. The Permit may be terminated by the City of Hoboken without notice if any of the above conditions of the Permit are not met. The terms and conditions of the Permit are considered as understood and agreed upon prior to the Permittee undertaking the use set forth herein, and any unauthorized activities not specifically allowed herein may be considered cause for termination.

Approved As To Form:



Michael B. Kates, Corporation Counsel

Meeting: May 5, 2010

**Resolution of the City of Hoboken in the County of Hudson
Making Application to the Local Finance Board for
Reversion to a Calendar Fiscal Year
Pursuant to N.J.S.A. 40A:4-3.2**

WHEREAS, the City of Hoboken operates under a State Fiscal Year pursuant to N.J.S.A. 40A:4-3.2); and,

WHEREAS, State law now allows municipalities that operate under a State Fiscal Year to revert to a Calendar Fiscal Year upon approval of an application to the Local Finance Board and passage of an ordinance authorizing the reversion; and,

WHEREAS, the Mayor and Council has considered the matter of reverting to a Calendar Fiscal Year and have found that the reversion is in the best interest of the City of Hoboken;

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

Section 1. That the City Auditor is directed to prepare and submit on behalf of the Mayor and Council an application to the Local Finance Board as required by the Board; and,

Section 2. The application to the Local Finance Board is hereby approved, and the Chief Financial Officer, along with other representatives of the City of Hoboken are hereby authorized to submit such application and to represent the City of Hoboken in matters pertaining thereto.

Section 4. The Certification of the Chief Financial Officer of the City of Hoboken, is incorporated into this Resolution as a certification of the truth and accuracy of the facts submitted in the application for Calendar Fiscal Year Reversion.

Section 5. The Clerk of the City of Hoboken is hereby directed to file a copy of this Calendar Fiscal Year Reversion resolution as part of the application with the Local Finance Board.

Section 6. The Local Finance Board is hereby respectfully requested to consider such application and to record its findings, recommendations and/or approvals as provided by law.

Recorded Vote

AYE:

NO:

ABSTAIN:

ABSENT:

Certification of Clerk:

The foregoing is a true copy of a resolution on Calendar Fiscal Year Reversion adopted by the Mayor and Council of the City of Hoboken on May ____, 2010.

(Signature and seal of clerk)

Date

Certification of Chief Financial Officer:

I, George DeStefano, Chief Financial Officer, of the City of Hoboken in the County of Hudson do hereby declare:

1. That the documents submitted herewith and the statements contained herein are true to the best of my knowledge and belief; and
2. That this application was considered, confirmed and approved, by this Resolution, by the governing body of the City of Hoboken on May ____, 2010.

Signature of Chief Financial Officer Date

**CITY OF HOBOKEN
COUNTY OF HUDSON, NJ**

**ORDINANCE AUTHORIZING THE REVERSION TO A CALENDAR FISCAL YEAR
PURSUANT TO N.J.S.A. 40A:4-3.2(b)**

Ordinance Number _____

WHEREAS, the City of Hoboken currently operates on a State Fiscal Year and the Mayor and City Council find it in the best interest of the residents of the City to revert to a calendar fiscal year; and,

WHEREAS, N.J.S.A., 40A:4-3.2(b) permits a municipality to make such a revision provided all fiscal year adjustment bonds issued in connection with the state fiscal year conversion have been retired, and the municipality is poised to make such a revision; and

WHEREAS, the municipality meets all the necessary requirements to make such a revision,

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Hoboken, in the County of Hudson, that the municipality revert to a calendar year commencing January 1, 2011, utilizing a transition year from July 1, 2010 to December 31, 2010.

BE IT FURTHER ORDAINED, that the City Business Administrator, Chief Financial Officer, City Auditor and other appropriate officials are hereby authorized and directed to make the required application to the Local Finance Board and prepare and execute any documents necessary in connection with such application and approval.

Sponsor: _____

Second: _____

CITY OF HOBOKEN
ORDINANCE #: _____

**AN ORDINANCE AMENDING THE "CITIZENS SERVICE ACT" TO PROVIDE FOR
DISCLOSURE OF CERTAIN POLITICAL CONTRIBUTIONS MADE BY THOSE
SEEKING APPOINTMENT TO MUNICIPAL BOARDS AND AGENCIES**

WHEREAS, in 2008 the Governing Body of the City of Hoboken adopted DR-374, the "Citizens Service Act," now codified at Sections 6-48 through 6-56 of the Code of the City of Hoboken; and,

WHEREAS, the purpose of the Citizens Service Act was to add transparency to the process of making appointments to the many municipal boards and agencies serving the City, and to help eliminate the widely-held perception that board appointments are often based upon politics rather than the qualifications of the appointee; and,

WHEREAS, many of the City's boards and agencies, including the Planning Board and Zoning Board of Adjustment, make decisions that affect the quality of life of all Hoboken residents, and ensuring the integrity of appointments to such boards is critical to restoring confidence in the government of this City; and,

WHEREAS, in furtherance of the spirit of the Citizens Service Act, it is appropriate for the Council and public to know when potential appointees to municipal boards and agencies have contributed significant sums to political candidates and organizations within the City of Hoboken before any decision is made on an appointment, and to combat the negative perception that board seats can be "bought" by making political contributions to particular officials;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HOBOKEN AS FOLLOWS:

1. Section 6-52 of the Code of the City of Hoboken is hereby amended to provide that the Application for Citizen Service required by any person interested in serving in an appointed municipal position provide for disclosure of whether the applicant has made any "contribution" (as such term is currently defined by the regulations of the New Jersey Election Law Enforcement Commission, and specifically including loans, pledges and in-kind contributions) to:
 - (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Hoboken or a holder of public office within Hoboken;

- (ii) any Hoboken or Hudson County political committee or political party committee;
- (iii) any political committee or continuing political committee that regularly engages in the support of Hoboken municipal or Hudson County elections and/or Hoboken municipal or Hudson County candidates, candidate committees, joint candidate committees, political committees, political parties, or political party committees.

An applicant seeking an appointed municipal position shall disclose all such contributions in excess of \$200 to any of the individuals or organizations listed above made within four (4) years preceding the date the application is filed. Failure to disclose this information shall disqualify the applicant from being appointed or re-appointed to an appointed municipal position.

2. The Clerk of the City of Hoboken shall immediately update the "Citizens Service Act" application form to provide for effective public disclosure of the foregoing information for all applications filed after the effective date of this Ordinance.
3. Repealer. All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.
4. 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.
5. Effective Date. This Ordinance shall take effect upon passage and publication as provided by law.
6. 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.

ADOPTED:

James J. Farina, City Clerk

APPROVED:

Dawn Zimmer, Mayor

APPROVED AS TO FORM:

Michael S. Kates esq
Michael Kates, Corporation Counsel

Date of Introduction:

Introduced by: _____

Seconded by: _____

**CITY OF HOBOKEN
RESOLUTION NO.: _____**

**RESOLUTION AUTHORIZING EXECUTIVE SESSION
RELATING TO COLLECTIVE BARGAINING NEGOTIATIONS**

WHEREAS, the Council of the City of Hoboken is authorized to go into closed executive session for the reasons set forth in the Open Public Meetings Act, pursuant to N.J.S.A. 10:4-12; and;

WHEREAS, one of these reasons is the request of the Business Administrator to discuss negotiations and/or terms and conditions related to collective bargaining agreements involving the City, pursuant to N.J.S.A. 10:4-12(4); and,

WHEREAS, the Council has determined that it is necessary to go into closed executive session for said purpose;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken that it enter into closed session to discuss the issues as herein set forth; and,

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

MEETING: May 5, 2010

APPROVED AS TO FORM:

Michael B. Kates
Corporation Counsel

Introduced by: _____

Seconded by: _____

**CITY OF HOBOKEN
RESOLUTION NO. : ____**

**RESOLUTION AUTHORIZING EXECUTIVE SESSION FOR POTENTIAL PURCHASE,
LEASE OR ACQUISITION OR REAL PROPERTIES WITH PUBLIC FUNDS**

WHEREAS, the Council of the City of Hoboken is authorized to go into closed executive session for the reasons set forth in the Open Public Meetings Act, pursuant to N.J.S.A. 10:4-12, more particularly to discuss any matter involving the purchase, lease or acquisition of real property with public funds as per subsection (5) of the statute; and

WHEREAS, the Council has determined that it is necessary to go into closed executive session for the foregoing purpose and receiving a briefing from the Corporation Counsel and the Director of Environmental Services;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken that it enter into closed session to discuss the issues hereandabove set forth; and

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

Meeting Date: May 5, 2010

APPROVED AS TO FORM:

Michael B. Kates
Corporation Counsel