

Department of Administration

CITY OF HOBOKEN

RAVINDER S. BHALLA

Mayor



BRIAN ALOIA, ESQ.

Corporation Counsel

LEGAL MEMORANDUM

To: Hoboken City Council

From: Corporation Counsel

Re: Amendment to Ordinance B-420

Please accept this legal opinion in lieu of a more formal opinion recommending that Hoboken Ordinance B-420 entitled “Amendment to Hoboken City Code Section 20D "Political Contribution Limits" to Specify that the Limitations in This Section Shall Not Apply to Unions” (hereinafter referred to as the “Ordinance”) be reconsidered by the Council. The facts are as follows.

The Ordinance was voted on by the Hoboken City Council for First Reading on December 1, 2021 and Second Reading on December 15, 2021. The Ordinance was approved on Second Reading. Prior to the Second Reading of the Ordinance, an amendment was made to the Ordinance (the “Amendment”). The Amendment changed the “Purpose” section of the ordinance by further explaining the reasoning behind the proposed change to Hoboken City Code Section 20D, and the effective date of the Ordinance. By way of the Amendment, it was clarified that the change proposed in the Ordinance would create a trigger event, namely, the resolution of a municipal court matter involving Hoboken City Code Section 20D.

Due to the timing and uniqueness of the proposed Amendment, there was insufficient time to opine with certainty on the legal implications of the Amendment including whether or not said Amendment constituted a substantial change which would require an additional reading prior to final passage.

In accordance with N.J.S.A. 40:41A-101 no amendment may be made to an ordinance which substantially alters the substance of the ordinance without new notice and publication and further hearing. The statute does not further define substantial amendment and there is no case law interpreting this statute. See § 10:2. Ordinances—Statutory requirements, 34 N.J. Prac., Local Government Law § 10:2 (4th ed.)

We must therefore turn to secondary sources discussing this provision. These sources indicate that the intent of the statute is to provide adequate notice to the public regarding what the governing body is enacting. Id. Therefore, if an amendment would increase objectors or persons who would come to a hearing to ask questions regarding an ordinance, the amendment should be considered substantial. Id. Additionally, even a change that “lessens” the impact of the proposed ordinance

could be considered substantial, as any change could lead to more questions or objections from different parties. Id.

In the instant situation, an argument can be made that the Amendment is not substantial because it does not actually impact the substance of the original ordinance, but instead dictates terms as to how the Ordinance would be applied. The Amendment is referred to as a “trigger” provision, essentially indicating that the Ordinance will come into effect upon a triggering event. In this case, the trigger would be the finding of the municipal court that is considering a case wherein the Ordinance is being applied. However, based upon these facts and with little available resources analyzing this provision, I opine that the Amendment if challenged would have a higher likelihood of being considered substantial. Foremost, it is likely that the proposed Amendment would increase the amount of citizens with questions and/or objections due to the unique nature of the trigger provision. For example, some citizens may have been in favor of the Ordinance as originally proposed, and therefore would object to a condition being added that it would only come into effect under certain circumstances. Other citizens may have questions regarding how the trigger provision would work. Therefore, in my opinion, the safest course of action in order to avoid the possibility of an adverse ruling in the event a challenge to the ordinance was filed would be reintroduce and reconsider the Ordinance in January 2022 or shortly thereafter. Reintroducing the Ordinance would eliminate any argument that the provisions of N.J.S.A. 40:41A-101 that require a second reading if an amendments is made, was violated. I note that the Ordinance will be enforced and will be considered valid even if the Council does not reintroduce the Ordinance. Reintroduction simply eliminates the potential of a challenger of the Ordinance making the argument that the Ordinance should be found to be invalid based upon the inclusion of the amendment without the necessary additional reading and publication.

For the reasons stated above, it is my recommendation that the Council reconsider the Ordinance in the New Year.