

(The following is not a verbatim transcript of comments or discussion that occurred during the meeting, but rather a summarization intended for general informational purposes. All motions and votes are the official records).

REGULAR MEETING – CITY COUNCIL

-DECEMBER 17, 2012-

Regular meeting of the City Council was held on Monday, December 17, 2012 in the Council Chambers, City Hall, Cranston, Rhode Island.

The meeting was called to order at 7:00 P.M. by the Council President.

Roll call showed the following members present: Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

Absent: Councilwoman Bucci -1.

Also Present: Gerald Cordy, Director of Administration; Carlos Lopez, Chief of Staff; Robert Strom, Director of Finance; Evan Kirshenbaum, Assistant City Solicitor; Patrick Quinlan, City Council Legal Counsel; Roy Damiano, City Council Internal Auditor.

On motion by Councilwoman Luciano, seconded by Councilman Favicchio, it was voted to dispense with the reading of the minutes of the last meeting and they stand approved as recorded. Motion passed on a vote of 8-0. The following being recorded as voting “aye”: Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

-DECEMBER 17, 2012-

I. PUBLIC ACKNOWLEDGEMENTS AND COMMENDATIONS

Councilman Santamaria presented plaques to outgoing Council members Luciano, Donahue, Navarro, Council President Lupino and former Councilman Pelletier.

II. PUBLIC HEARINGS

(limited to docketed matters)

11-12-1 ORDINANCE IN AMENDMENT OF CHAPTER 17 OF THE CODE OF THE CITY OF CRANSTON, 2005, ENTITLED 'ZONING' (Narragansett Blvd. and Pierce Place).

Aram Garabedian, 173 Belvedere Dr., appeared to speak and asked that the City Council sustain support of the Mayor's veto regarding proposed Ordinance 9-12-3. He stated that he spoke to Real Estate brokers who feel that allowing residents to keep chickens would be a negative to property value. Chickens would bring rodents into the City, more then what we have now.

Wayne Kazarian, 1157 Narragansett Blvd., Senior Vice-President and General Counsel for Johnson & Wales, appeared to speak in favor of proposed Ordinance 11-12-1.

George Krashier, appeared to speak regarding proposed Ordinance 11-12-1.

Ed Lanna, Real Estate Broker, 485 Wilbur Ave., appeared to speak regarding proposed Ordinance 9-12-3 and stated that value of homes adjacent to a 4,000 to 6,000 sq. ft. lot with chicken in their yards would be detrimental. He would hate to see this occur.

Donald Botts, 65 Tennyson Rd., appeared to speak and asked that the City Council to sustain the Mayor's veto regarding proposed Ordinance 9-12-3. He stated that there is a rat issue in Ward 2. This Ordinance would only add more rodent problems to the problem that already exists.

Sara Lee, 131 Shaw Ave., appeared to speak in favor of proposed Ordinance 9-12-3 and stated that if people follow the Ordinance, as written, chickens will not increase rodents in the City.

III. RESOLUTIONS

None.

-DECEMBER 17, 2012-

IV. REPORT OF COMMITTEES

ORDINANCE COMMITTEE

(Paul H. Archetto, Chair)

11-12-1 ORDINANCE IN AMENDMENT OF CHAPTER 17 OF THE CODE OF THE CITY OF CRANSTON, 2005, ENTITLED 'ZONING' (Narragansett Blvd. and Pierce Place).

On motion by Councilman Donahue, seconded by Councilwoman Luciano, the above Ordinance was adopted on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

FINANCE COMMITTEE

(Paul H. Archetto, Chair)

RESOLUTION AUTHORIZING REAL ESTATE TAX ABATEMENTS

On motion by Councilman Archetto, seconded by Councilwoman Luciano, the above Resolution was adopted on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

RESOLUTION AUTHORIZING MOTOR VEHICLE TAX ABATEMENTS

On motion by Councilman Favicchio, seconded by Councilwoman Luciano, the above Resolution was adopted on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

TAX INTEREST WAIVER APPROVALS AS RECOMMENDED BY CITY TREASURER

On motion by Councilman Favicchio, seconded by Councilwoman Luciano, it was voted to approve the above list of Tax Interest Waiver Approvals as recommended by the City Treasurer. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

THE CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL
IN AMENDMENT OF CHAPTER 17 OF THE CODE OF THE CITY OF
CRANSTON, 2005, ENTITLED "ZONING"
(Narragansett Blvd and Pierce Place)



No. 2012-34

Passed:
December 17, 2012

Anthony J. Lupino, Council President

Approved:
December 18, 2012

Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

Section 1. That the Zoning Map accompanying and made a part of Chapter 17 of the Code of the City of Cranston, Rhode Island, 2005, entitled, "Zoning", as adopted January 24, 1966, as amended, is hereby further amended by deleting therefrom the following:

By deleting from a B-2 District, Lots 3240, 3368, 3901 and a portion of Lot 2949 on Zoning Plat 2/4 (see Metes and Bounds description attached as Exhibit "A" and made a part hereof) and Lot 681 on Zoning Plat 2/3 all located on easterly side of Narragansett Boulevard.

And by adding thereto the following:

E-1. Lots 3240, 3368, 3901 and a portion of Lot 2949 on Zoning Plat 2/4 (see Metes and Bounds description attached as Exhibit "A" and made a part hereof) and Lot 681 on Zoning Plat 2/3 all located on easterly side of Narragansett Boulevard.

Section 2. This ordinance shall take effect upon its final adoption.

Positive Endorsement:

Negative Endorsement: (Attach reasons)

Christopher M. Rawson Date
City Solicitor 12/17/12

Christopher M. Rawson Date
City Solicitor

Petition filed by: Johnson & Wales University

Referred to City Council December 17, 2012

EXHIBIT A TO APPLICATION FOR ZONING CHANGE



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Beginning at a point, said point being the northwesterly corner of the herein described parcel and further described as being the northeasterly corner of Lot Number 3368 on Cranston's Tax Assessor's Plat 2/4 and also being the northwesterly corner of Lot Number 2949 on said Tax Assessor's Plat 2/4.

Thence running in an easterly direction bounded northerly by other land or formerly of Sea View Realty Corporation a distance of 165 feet to a point being the northeasterly corner of the herein described parcel.

Thence turning and running in a southerly direction bounded easterly by other land now or formerly of Sea View Realty Corporation a distance of 110.24 feet, more or less, to a point.

Thence turning an interior angle of 270° and running in an easterly direction a distance of 31 feet to a point.

Thence turning an interior angle of 132°-50'-00" and running in a southerly direction a distance of 30 feet to a point.

Thence turning an interior angle of 47° -10 ' -00" and running in a westerly direction bounded by land now or formerly owned by Colony Motor Hotel Inc. a distance of 201.40 feet to a point .

Thence turning an interior angle of 90° and running in a northerly direction a distance of 8 feet to a point.

Thence turning an interior angle of 270° and running westerly to a point a distance of 15 feet to land now or formerly owned by Blazer Realty Co.

Thence turning an interior angle of 90° and running in a northerly direction bounded westerly by said Blazer land a distance of 124.24 feet, more or less, to the point and place of beginning.

The above described parcel contains 22,606 square feet and is further described as being the westerly portion of Lot Number 2949 as currently shown on the Cranston Zoning Plat 2/4 and is currently shown as Lot Number 2949 on the above mentioned Cranston Tax Assessor's Plat 2/4.

Allan W. Fung
Mayor

Peter S. Lapolla
Planning Director



1109 • Charles Rossi
Chairman

Michael Smith
Vice Chairman

Ken Mason, P.E.
Mark Motte
Gene Nadeau
James Moran
Robert Strom

CITY PLAN COMMISSION
Cranston City Hall
869 Park Avenue, Cranston, RI 02910

December 5, 2012

Councilman Paul Archetto
Ordinance Committee Chair
Cranston City Hall
869 Park Avenue
Cranston, RI 02910



RE: Ordinance #11-12-1 In Amendment of Chapter 17 of the Code of the City of Cranston, Entitled "Zoning" (Narragansett Blvd. and Pierce Place)

Dear Councilman Archetto:

On December 4, 2012, the above referenced ordinance was reviewed by the City Plan Commission for the purpose of providing the Council with an advisory recommendation, as required by Section 45-24-52 of the Rhode Island General Laws and Section 17.120.030 of the Cranston Zoning Code.

The owner of the land identified as Zoning Plat 2/4 Lots 3240, 3368, 3901 and a portion of Lot 2949 and Zoning Plat 2/3 Lot 681] have filed an application with the City Council to rezone said land. The request before the City Council is to rezone said land from B-2 Residential to EI Educational Institution.

The proposed rezone represents a final step in implementing a Memorandum of Understanding with respect of Payment in Lieu of Taxes [adopted by ordinance] between the City and Johnson and Wales University. As part of said memorandum, the City has agreed to a rezone of the above cited properties.

The Future Land Use Map of the 2010 Comprehensive Plan adopted in August, 2012 was amended to facilitate the proposed zone change. As part of the adoption, the land use designation for Zoning Plat 2/4 Lots 3240, 3368, 3901 and a portion of Lot 2949 and Zoning Plat 2/3 Lot 681] had been changed from Residential Less than 10.39 Units Per Acre to Mix Plan Development. The proposed rezone to EI is therefore consistent with The Future Land Use Map of the 2010 Comprehensive Plan.

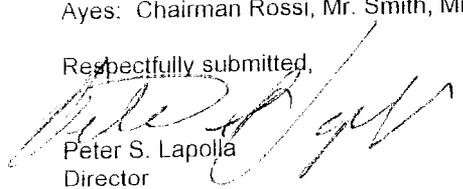
The land being rezoned is used for education activities by Johnson and Wales University and said use is not authorized in a B1 Zoning District. The designation of the properties to EI would both reflect existing conditions and would bring the affected properties into conformity with the City's Zoning Ordinance.

Chapter 17.106 - EDUCATIONAL INSTITUTION ZONING DISTRICT of the zoning ordinance requires the submission of an institutional master plan to guide development to the City Plan Commission for any higher education institutions desiring to utilize this Chapter 17.106. Chapter 17.106 further gives the City Plan Commission the authority to amend said plan upon application. An institution master plan was submitted in support of the 2005 rezone of the Johnson and Wales campus in Cranston to EI. This plan did not include the 5 properties being rezoned. The Commission would suggest that as a final step in the rezoning process an amendment to include said properties in the institutional master plan be filed with the City Plan Commission.

Recommendation: 1) The rezone of the land to EI is part of a Memorandum of Understanding between the City and the University; 2) the rezone is consistent with the Future Land Use Map of the 2010 Comprehensive Plan; 3) a rezone to EI would reflect the current uses on the parcels and would bring the parcels into conformity with the zoning ordinance. Therefore, upon motion made by Mr. Motte and seconded by Mr. Smith, the Plan Commission unanimously voted to adopt a resolution approving the ordinance and its passage by the City Council.

Ayes: Chairman Rossi, Mr. Smith, Mr. Motte, Mr. Nadeau and Mr. Mason. Nays: none.

Respectfully submitted,


Peter S. Lapolla
Director

Telephone: (401) 461-1000 ext 3136

Fax: (401) 780-3171



1110. *OK LF*

**CITY OF CRANSTON
DEPARTMENT OF RECORDS - CITY CLERK'S OFFICE**

APPLICATION FOR CHANGE OF ZONE

Name(s) and address(es) of owner(s) of property

Johnson & Wales University

8 Abbott Park Place
Providence, RI 02903

Will provide METES AND BOUNDS FOR PORTION OF 2949

Zoning Plat Number
Location on Street

2/3 681 (~~also 681/999~~) *WJL*
1150 Narragansett Blvd.

Zoning Plat Number

2/4 Lot No(s)* *Portion of WJL* 2949 (~~also 2949/999~~), 3240, 3368 and 3901

Street Address or Location on Street

Portion of WJL 2949 and 2949/999 - 7 Pierce Place
3240 - 1144 Narragansett Blvd.
3368 - 1146 Narragansett Blvd.
3901 - 0 Narragansett Blvd.

*If only a portion of a lot, attach a full metes and bounds description.

Present Zoning:

B2

Zoning Requested:

E1

Property to be used for:

Higher Education Institutional Uses - consistent with comprehensive plan and Agreement dated March 21, 2012 unanimously ratified by the by the City Council on April 23, 2012.

Date: November 14, 2012

JOHNSON & WALES UNIVERSITY

Owner

By: *Wayne M. Kezirian, Sr. VP*

Owner

JOHNSON & WALES UNIVERSITY

Applicant

By: *Wayne M. Kezirian, Sr. VP*

Applicant

TRISHAMISCAZONCHIG

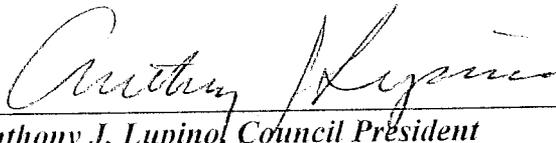
Johnson & Wales is represented by its general counsel with regard to this application.
Please address correspondence to:
Wayne M. Kezirian, Esq., Sr. VP & General Counsel
Johnson & Wales University
8 Abbott Park Place
Providence, RI 02903

THE CITY OF CRANSTON

RESOLUTION OF THE CITY COUNCIL
AUTHORIZING REAL ESTATE/TANGIBLE TAX ABATEMENTS AS
RECOMMENDED BY CITY ASSESSOR

No. 2012-50

Passed:
December 17, 2012



Anthony J. Lupino, Council President

Resolved, That

The request of the City Assessor for the following abatements for manifest errors and reasons therein stated be granted and that a certified copy of this Resolution be for the respective amounts a sufficient voucher for the City Treasurer.

(See attached list of Abatements)



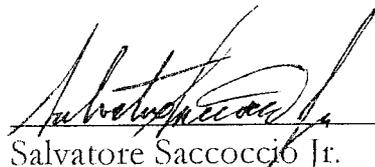
DIVISION OF ASSESSMENT
869 PARK AVE
CRANSTON, RI 02910

MEMO

DATE: November 29, 2012
TO: His Honor the Mayor and the Honorable City Council
FROM: City Assessor
RE: Real Estate and Tangible Abatements

The following assessments are recommended for abatement in the amounts and for the reasons hereinafter set forth:

<u>Assessment Date</u>	<u>Value</u>	<u>Tax</u>
December 31, 2011	1,486,682	49,610.62



Salvatore Saccoccio Jr.
City Assessor

City of Cranston
2012 Abatement List

1 0225118002 002-2595
 Location 2015 BROAD ST
 BENDETSON RICHARD K
 BENDETSON ANDREW P TRUSTEES
 63 ATLANTIC AVE
 BOSTON MA 02110

2 0225118001 002-0985
 Location 2045 BROAD ST
 BENDETSON RICHARD K
 BENDETSON ANDREW P TRUSTEES
 63 ATLANTIC AVE
 BOSTON MA 02110

3 0225247001 011-3157
 Location 101 OAKLAWN AV
 BENDETSON RICHARD K
 BENDETSON ANDREW P TRUSTEES
 63 ATLANTIC AVE
 BOSTON MA 02110

Value Tax
 Original : 1002800 34355.92
 ASSESSORS APPE : 62300 2134.40
 Adjusted : 940500 32221.52

Value Tax
 Original : 1014700 34763.62
 ASSESSORS APPE : 74200 2542.09
 Adjusted : 940500 32221.53

Value Tax
 Original : 5653700 193695.80
 ASSESSORS APPE : 803700 27534.76
 Adjusted : 4850000 166161.04

4 0418375001 021-0212
 Location HILLCREST DR
 DISTEFANO DONNA M
 120 NEW LONDON AVE
 WEST WARWICK RI 02893

5 0505390503 011-3364
 Location 1728 CRANSTON ST
 EVERGREEN INVESTMENTS LLC
 1665 HARTFORD AVE STE 16
 JOHNSTON RI 02919-3288

6 1916120508 009-0145-005
 Location 130 FORDSON AV #5
 RHODE ISLAND HOUSING & MORTGAG
 44 WASHINGTON STREET
 PROVIDENCE RI 02903-7120

Value Tax
 Original : 59100 1349.84
 ASSESSORS APPE : 37300 851.93
 Adjusted : 21800 497.91

Value Tax
 Original : 234200 8023.69
 ASSESSORS APPE : 47800 1637.63
 Adjusted : 186400 6386.06

Value Tax
 Original : 88600 2021.34
 Exemption Omit : 78559 1794.29
 Adjusted : 9941 227.05

7 2108764501 018-1044
 Location 153 BALD HILL RD
 TRT CRANSTON LLC
 C/O KEYPOINT PARTNERS
 205 WEST GROVE ST STE C
 MIDDLEBORO MA 02346-1462

Location 0000000000

Location 0000000000

Value Tax
 Original : 1931232 66164.00
 Exemption Omit : 382823 13115.52
 Adjusted : 1548409 53048.48

Original : :
 Exemption Omit : :
 Adjusted : :

Original : :
 Exemption Omit : :
 Adjusted : :

Value Tax
 Original 9984232 340374.21
 Abatements 1488682 49610.62
 Adjusted 8497550 290763.59

on 7 Accounts

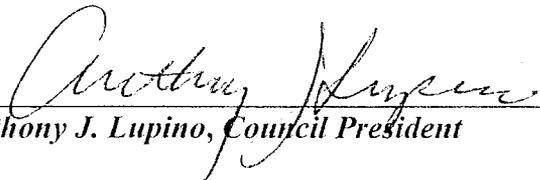
THE CITY OF CRANSTON

RESOLUTION OF THE CITY COUNCIL
AUTHORIZING MOTOR VEHICLE TAX ABATEMENTS AS RECOMMENDED
BY CITY ASSESSOR

No. 2012-51

Passed:

December 17, 2012



*Anthony J. Lupino, Council President***Resolved,** That

The request of the City Assessor for the following abatements for manifest errors and reasons therein stated be granted and that a certified copy of this Resolution be for the respective amounts a sufficient voucher for the City Treasurer.

(See attached list of Abatements)

U/RES.MV ABATE



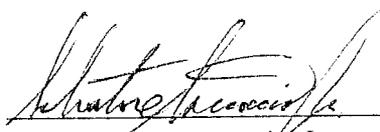
DIVISION OF ASSESSMENT
869 PARK AVE
CRANSTON, RI 02910

MEMO

DATE: November 29, 2012
TO: His Honor the Mayor and the Honorable City Council
FROM: City Assessor
RE: Motor Vehicle Abatements

The following assessments are recommended for abatement in the amounts and for the reasons hereinafter set forth:

<u>Assessment Date</u>	<u>Value</u>	<u>Tax</u>
December 31, 2007	1,199	50.89
December 31, 2008	9,985	423.76
December 31, 2009	11,570	491.03
December 31, 2010	9,244	392.30
December 31, 2011	<u>26,084</u>	<u>1,107.00</u>
Totals:	58,082	2,464.98



Salvatore Saccoccio Jr.
City Assessor

City of Cranston
2008 Motor Vehicle
Abatement List

1 34012700 0000041928 DD 45 00000000 0000000000
 Vehicle 2005 VOLV
 ID YV1MS90552049362
 DELSANTO DAVID A
 60 WINTON STREET
 Cranston RI 02910

Original Value	17,225	Original Tax	476.39	Original Value		Original Tax	
Duplicate Assessment			50.89	Adjusted Value		Adjusted Tax	
Adjusted Tax:		Adjusted Tax:	425.50				

For Tax Year: 2008

Original Value	17225	Tax	476.39	Accounts
Adjusted Tax			50.89	on 1
			425.50	

*** MECRIABT_CR.REP *** Printed 11/28/2012 at 13:09:11 by KARBJR

City of Cranston
2009 Motor Vehicle
Abatement List

1	34012520	0000040913	2	45002630	0000109559	
	Vehicle 2005	VOLV	DD 45	Vehicle 2005	SAT	GY 658
	ID VV1HS390552049362			ID 5GZCZ63495809236		
	DELSANTO DAVID A			OKLOWITCZ JOSEPH A		
	60 WINTON STREET			17 PLYMOUTH ST		
	Cranston RI 02910			Cranston RI 02920		

Original	:	Value		Original	:	Value	
DUPLICATE ASSESSMENT	:	14,100	Tax	OUT OF STATE REG	:	11375	
Adjusted Tax:	:		343.76	Adjusted Tax:	:		228.12
							80.00
							148.12

For Tax Year: 2009

Original	:	Value		Tax
Adjusted Tax	:	25475		571.88
				423.76 on 2 Accounts
				148.12

City of Cranston
2010 Motor Vehicle
Abatement List

Line	Vehicle ID	Year	Make	Model	Original Value	Adjusted Value	Original Tax	Adjusted Tax
1	34012500 Vehicle 2005 VOLV ID YV1MS390552049362 DELSANTO DAVID A 60 WINTON STREET Cranston RI 02910	DD	45		3,841	156.09	156.09	
2	45002420 Vehicle 2005 ID 5G2CZ63498809296 OKOLOMITCZ JOSEPH A 17 PLYMOUTH ST Cranston RI 02920	STRN	GY	658	8265	334.94	334.94	
	00000000 Vehicle 0000 ID				0000000000			

For Tax Year: 2010

Original Value : 12106 Tax 491.03
 Adjusted Tax : 491.03 on 2 Accounts

*** MECRIABT_CR.REP *** Printed 11282012 at 13:08:27 by KARBJR

City of Cranston
2011 Motor Vehicle
Abatement List

1	2	3
42018970 Vehicle 2003 ID 2C3HE66G09H527245 LOPEZ DOROTHY 1030 NARRAGANSETT BLVD Cranston RI 02905	46018560 Vehicle 2003 ID 4A3A446GX3E168088 PETRONICZ DAWN E 63 SHERWOOD ST Cranston RI 02920	50005880 Vehicle 2004 ID Y53FB49S141041579 TOBIN MELINDA H 52 CIRCUIT DR FL 1 CRANSTON RI 02905
0000085205 CHRY 860398	0000115289 MITS 799612	0000144188 SAA 907028
Value 4,826	Value 3705	Value 6338
Tax 183.60	Tax 136.02	Tax 247.76
Original STOLEN/SOLD/JUNK/TOT Adjusted Tax: 11.13	Original STOLEN/SOLD/JUNK/TOTA Adjusted Tax: 102.86	Original OUT OF COMMUNITY Adjusted Tax: 61.09

For Tax Year: 2011

Value	Tax	Accounts
Original : 14869	567.38	on 3
Adjusted Tax : 175.08	392.30	

City of Cranston
2012 Motor Vehicle
Abatement List

Line	Original Value	Original Tax	Adjusted Value	Adjusted Tax	Original Value	Original Tax	Adjusted Value	Adjusted Tax
1	34003060	0000036182	742554	742554	42018940	0000085161	850398	850398
	Vehicle 2001	FORD			Vehicle 2003	CHRY		
	ID 1FAFP40401F173375				ID 2C9HE666G3H527245			
	DANIELS CHRISTINA				LOPEZ DOROTHY			
	459 PONTIAC AVENUE 2ND				1030 NARRAGANSETT BLVD			
	Cranston RI 02910				Cranston RI 02905			
2	46012220	0000112183	003005	003005	46012220	0000112183	003005	003005
	Vehicle 2002	CHEV			Vehicle 2002	CHEV		
	ID 1GNEK13Z62R160096				ID 1GNEK13Z62R160096			
	PELOPIDA LOUIS R				30 OAKLAWN AVE #202			
	30 OAKLAWN AVE #202				CRANSTON RI 02920			
	CRANSTON RI 02920							
3	50009180	0000143834	838156	838156	50009180	0000143834	838156	838156
	Vehicle 2008	VOLK			Vehicle 2008	VOLK		
	ID 3VMRZ71K58M175887				ID 3VMRZ71K58M175887			
	TODARO JOSEPH N				720 PONTIAC AVENUE			
	720 PONTIAC AVENUE				CRANSTON RI 02910			
	CRANSTON RI 02910							
4	46018710	0000114572	799612	799612	50009080	0000143796	907028	907028
	Vehicle 2003	MTS			Vehicle 2004	SAA		
	ID 4A3A446G3E166088				ID YS3FB49S141041679			
	PETROMICZ DAMN E				TOBIN MELINDA H			
	63 SHERWOOD ST				52 CIRCUIT DR FL 1			
	Cranston RI 02920				Cranston RI 02905			
5	52008380	0000150626	DV 54	54	00000000	0000000000		
	Vehicle 2008	HOND			Vehicle 0000			
	ID 1HGCP26478A097798				ID			
	VITALE DANIEL J							
	143 HOFFMAN AVE							
	Cranston RI 02920							
6	50009180	0000143834	838156	838156	50009180	0000143834	838156	838156
	Vehicle 2008	VOLK			Vehicle 2008	VOLK		
	ID 3VMRZ71K58M175887				ID 3VMRZ71K58M175887			
	TODARO JOSEPH N				720 PONTIAC AVENUE			
	720 PONTIAC AVENUE				CRANSTON RI 02910			
	CRANSTON RI 02910							
7	52008380	0000150626	DV 54	54	00000000	0000000000		
	Vehicle 2008	HOND			Vehicle 0000			
	ID 1HGCP26478A097798				ID			
	VITALE DANIEL J							
	143 HOFFMAN AVE							
	Cranston RI 02920							

For Tax Year: 2012

Original Value	44635	Original Tax	2105.89
Adjusted Value	1107.00	Adjusted Tax	998.89

on 7

Accounts

Recommend To Approve:

<u>NAME</u>	<u>ADDRESS</u>	<u>TAX AMT</u>	<u>INTEREST</u>	<u>REASON</u>
Antonelli, Joseph	91 Cruz St	728.59	\$87.43	lostcheck
Barrie, James C.	1329 New London Ave	1,027.90	\$152.91	death
Blake, James	119 Stone Dr	1,660.76	\$199.29	illness
Colombo, Beverly	54 Starr St	1,376.42	\$206.44	lostcheck
Conklin, Patricia	50 Moorland Ave	1,124.27	\$168.64	lostcheck
Coppa, Raymond	171 Woodstock Ln	1,306.39	\$156.78	illness
Damico, Leo	17 Orchard Valley Dr	436.07	\$52.33	hardship
Decristofaro, Domenic	10 Thyme Dr	2,684.54	\$402.68	illness
D'Ovidio, Lillian	40 Midland Dr	993.26	\$130.64	illness
Elliott, Lillian	55 Eagle Rd	150.95	\$18.11	hardship
Fox, Agnes	40 Hayes St	946.42	\$135.36	illness
Gustafson, Stanley	40 Beech Ave	96.22	\$14.43	lostcheck
Iadimarco, Marie	40 Cornell St	\$1,111.44	\$133.37	hardship
Kay, Mary	59 Massasoit Ave	5,093.32	\$254.67	lostcheck
Lafazia, Palma	99 Amy Dr	1,719.85	\$257.97	lostcheck
Lynch, James	97 Heather St	991.76	\$154.23	illness
Maguire, Doris	30 Branch Ave	807.10	\$121.06	death
Melendez, Gerardo	126 Salem Ave	335.48	\$50.33	illness
Mignacca, David	341 Laten Knight Rd	6,358.52	\$334.62	hardship
Stoetzel, Craig	235 Beckwith St	1,355.52	\$162.66	lostcheck
W & M Associates	70 Tucker Ave	850.79	\$127.62	lostcheck

Recommend To Deny:

-DECEMBER 17, 2012-

TAX INTEREST WAIVER DENIALS AS RECOMMENDED BY CITY TREASURER

None.

ANNUAL CITY AUDIT REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2012

Mr. Strom asked representatives from Braver, PC to give a presentation on the City Audit.

Jim Prescott and **Erica Olobri** of Braver, PC appeared to speak.

Mr. Prescott stated that the City has two major funds: City's General Fund with a fund balance of \$23 million and the School's General Fund, which has a liability of \$13 million. School Department General Fund has approximately \$38 million in Revenue and ended up with an operating loss of \$236,000. Mr. Prescott stated that one negative of this Audit is the City's pension obligations. Overall, the City had a surplus in the General Fund.

Council Vice-President Navarro asked where the Rainy Day Fund is shown in the Audit. Mr. Prescott stated that that is identified as the unassigned of \$13.5 million.

Council President Lupino asked Mr. Damiano if he concurs with the statements made by the Auditing Company. Mr. Damiano stated, yes, he is in agreement with them.

On motion by Councilman Donahue, seconded by Councilman Favicchio, it was voted to accept the draft of the City Audit. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

Mr. Prescott stated that they looked into the ticketing issued by the Police Department. There is a 3% variance in Municipal Court revenues in the samples they collected. Mr. Strom stated that there could be timing issues. This is being looked into and investigated at this point. Solicitor Kirshenbaum stated that his understanding is that the person who was doing the deposits is no longer doing the deposits and is no longer with the City.

Council President Lupino suggested that the next City Council bring this issue up as a Council Member Communication at a Council meeting.

-DECEMBER 17, 2012-

PUBLIC WORKS COMMITTEE
(Emilio L. Navarro, Chair)

RHODE ISLAND RESOURCE RECOVERY CORPORATION APPEAL DATED NOVEMBER 9, 2012 OF OCTOBER 30, 2012 DECISION ON 2011 INDUSTRIAL PRE-TREATMENT INVOICE FOR FEE ADJUSTMENT. *(Bill for \$300,000, Requesting waiver of \$290,000.00).* [[click here to view](#)]

Solicitor Kirshenbaum stated that since the City has not had a Public Works Director for a few years, RIRRC has asked that this appeal be continued until next month in order to give them and the City an opportunity to discuss various issues. He asked that the Public Works Director be given an opportunity to meet with RIRRC to see if the proposals are viable for him.

On motion by Councilman Favicchio, seconded by Councilwoman Luciano, it was voted to continue this item to the January 28, 2013 Council meeting. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

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HinckleyAllenSnyder LLP
ATTORNEYS AT LAW50 Kennedy Plaza
Suite 1500
Providence, RI 02903-2319
TEL: 401.274.2000
FAX: 401.277.9600
www.haslaw.com**Gerald J. Petros**
gpetros@haslaw.com

12 NOV -9 PM 5:29

CITY OF CRANSTON

November 9, 2012

VIA HAND DELIVERYPublic Works Committee
City Council
City of Cranston
869 Park Avenue
Cranston, Rhode Island 02910

Re: Appeal of October 30, 2012, Decision on Rhode Island Resource Recovery Corporation's ("RIRRC") 2011 Industrial Pretreatment Invoice For Fee Adjustment

To the Public Works Committee:

Pursuant to Sections 13.08.670.F.10.f. and 13.08.510 of the Cranston Sewer Use Ordinance ("SUO"), Rhode Island Resource Recovery Corporation ("RIRRC") appeals the Director of the Cranston Department of Public Works ("DPW") October 30, 2012, Decision on RIRRC's Request for a Fee Adjustment on its 2011 Industrial Pretreatment Invoice (the "IP Invoice").¹ (The DPW Director's Decision is attached.)

The 2011 IP Invoice

The IP Invoice consisted of the charges assessed by the City on RIRRC's wastewater discharge during calendar year 2010. The Invoice totals \$370,012.37 and consists of three separate charges: (1) IP Fee of \$40,442.41; (2) IP Violation of \$151,691.58; and (3) IP Surcharge of \$177,878.38.

The IP Invoice was not accompanied by any backup data or any explanation for how the City calculated these three charges. RIRRC requested back up data from the Department of Public Works and was sent a two page calculation sheet dated August 24, 2011 prepared by Tutela Engineering. (The 2011 IP Invoice and this Tutela letter are attached).

¹ Section 13.08.670.F.10.f. of the SUO states that the DPW Director's decision "shall be subject to appeal to the public works committee pursuant Section 13.08.510." Section 13.08.510 states that the appeal of the Director's decision shall be made "to the city council." Therefore, RIRRC is submitting this appeal to both the Public Works Committee of the City Council, and to the City Council.

28 State Street, Boston, MA 02109-1775 TEL: 617.345.9000 FAX: 617.345.9020

20 Church Street, Hartford, CT 06103-1221 TEL: 860.725.6200 FAX: 860.278.3802

11 South Main Street, Suite 400, Concord, NH 03301-4846 TEL: 603.225.4334 FAX: 603.224.8350

30 South Pearl Street, Suite 901, Albany, NY 12207-3492 TEL: 518.396.3100 FAX: 518.396.3101

November 9, 2012

Page 2

On October 14, 2011, RIRRC requested a review of its 2011 Industrial Pretreatment Invoice (the "IP Invoice") to obtain a fee adjustment. RIRRC demonstrated that the IP Fee of \$370,012.37 was not calculated correctly, and should be adjusted to \$40,442.41.

In its Fee Adjustment Request, RIRRC noted that the City made several errors in the way the it had applied the Sewer Use Ordinance in calculating these fees, and RIRRC requested that the City make the adjustments to RIRRC's 2010 wastewater discharge fee by reducing the IP Violation Charge of \$151,691.59 to \$0, and by reducing the IP Surcharge of \$177,878.38 to \$0. (RIRRC's Fee Adjustment Request is attached.)

The DPW Director's Decision

The DPW Director was required to issue a decision on RIRRC's request within thirty days, or by November 14, 2011. Approximately one year later, on October 30, 2012, the Director finally issued his decision (the "DPW Director's Decision"). The DPW Director agreed to reduce the IP Violation Charge of \$151,691.59 to \$0, but kept the IP Surcharge of \$177,878.38 the same. The Director explained in his decision that RIRRC's calculation of the IP Surcharge fee was based on an "outdated" Sewer Use Ordinance. The Director stated that, "in June 2010, the City Council adopted modifications" to the SUO Section 13.08.670 ("Payments") that changed the "methodology" by which the City calculated the IP Surcharge, and that the City applied this new methodology in determining the IP Surcharge. The DPW Director's Decision provided no explanation or basis for its retroactive application of a new methodology it allegedly adopted in June 2010, to discharges that began six months prior, in January 1, 2010, to calculate the IP Surcharge.

The DPW Director Applied the Wrong Ordinance

Cranston's calculates sewer use assessments, including the IP Surcharge, at the end of each calendar year, after the twelve month calendar is completed, using data totals from the entire calendar. This data includes total annual flows, average flow rates, and sampling results of constituents taken over the entire calendar year. The City's calculation of an annual IP Surcharge fee must be based on the law and "methodology" in existence as of January 1, 2010. There is no basis for the City to retroactively calculate a surcharge on RIRRC's discharges based on a methodology that did not exist or apply at the time of the discharge. Here, for example, the City's revised surcharge calculation methodology includes a "pounds of pollutant discharged per year" factor, which is calculated "based on the highest measured concentration in excess of the permit value" during the calendar year. Several of these "highest" measured concentrations listed in Tutela's calculation sheet occurred on dates prior to June 2010. There is no basis for the City to calculate an annual fee, based on annual discharge, using a methodology that did not exist at the beginning of that calendar year. The City cannot retroactively apply its "revised" June 2010 ordinance to RIRRC's 2010 annual sewer assessment. The ordinance that applies to RIRRC's 2010 discharges is the one that existed as of January 1, 2010. Under that ordinance, as explained in RIRRC's October 14, 2011, Fee Adjustment Request, the IP Surcharge is \$0.

November 9, 2012

Page 3

The Validity of the June 2010 Ordinance Modifications

RIRRC received the DPW Director's Decision on November 1, and given the short ten day appeal period, RIRRC has not yet been able to determine whether the City followed the necessary procedures and notice requirements in enacting the June 2010 ordinance modification, including, but not limited to, Sections 3.11, 3.12, and 3.15 of the City Charter. RIRRC received no prior notice of these proposed modifications, and neither the City's invoice nor the Tutela calculations indicated that the City was retroactively applying a revised ordinance that it "adopted" halfway through the calendar year to RIRRC's 2010 discharge. In fact, *in April 2011*, the City's counsel Sean Coffey forwarded to us a copy of a 2010 red-lined ordinance showing the "proposed" revisions the City was planning to make to its SUO as part of its Substantial Modification to the MIPP request to RIDEM. The proposed red-lined revisions included the changes to the local limits, BOD and TKN surcharges, and the revised "methodology" for calculating the IP Surcharge in Section 13.08.670 ("Payments"). It is unclear why the City's submittal to RIDEM showed these as "proposed" changes to Section 13.08.670 of the SUO, and why Mr. Coffey sent these to RIRRC as "proposed" changes in April 2011, when the City claims it had already adopted these changes in June 2010. Thus, RIRRC also appeals the DPW Director's Decision on the basis that the June 2010 ordinance modifications were not validly enacted.

Additional Grounds

RIRRC reserves the right to assert other grounds for its appeal. RIRRC has had little time to consider the Director's decision or the new grounds asserted by the City, or to gather additional facts and information. Thus, RIRRC reserves the right to assert additional grounds for its appeal.

Further, the City's ordinances do not clearly indicate whether this appeal is to the Public Works Committee or to the City Council. RIRRC is filing this appeal with both bodies to ensure that its appeal is properly asserted.

Very truly yours,


Gerald J. Petros

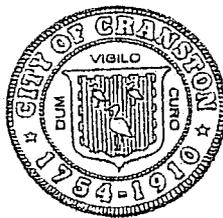
Enclosures

cc: Michael O'Connell – RIRRC

#51003898

ALLAN W. FUNG
MAYOR

RECEIVED
12 NOV -9 09 53
CITY
OFFICE



Kenneth R. Mason P.E.
Director of Public Works

DEPARTMENT OF PUBLIC WORKS
CITY HALL, ROOM 109
869 PARK AVENUE
CRANSTON, RHODE ISLAND 02910

October 30, 2012

Rhode Island Resource Recovery Corporation
65 Shun Pike
Johnston, RI 02919-4512

Attn: Mr. Michael O'Connell, Executive Director

Re: Appeal of the 2011 Industrial Pretreatment Charge
Municipal Industrial Pretreatment Program (MIPP)
Cranston, RI

Gentlemen:

On October 17, 2011 the City of Cranston Department of Public Works received an appeal from your firm of their 2011 Industrial Pretreatment (IP) charge of \$370,012.37. In the letter, your firm presents their basis for appeal in opposition of the calculated Surcharge and Violation Charge amounts as follows:

IP Surcharge

Your firm states in their letter that the Surcharge should be calculated based on the Permit limit value less the Chapter limit value. However, your firm appears to be quoting outdated City of Cranston Sewer Use Ordinance (SUO) language related to the determination of the Surcharge amount. In June 2010, the City Council adopted modifications to Section 13.08.670 (copy enclosed), entitled Payments, that indicates the "surcharge shall be calculated by first determining the difference between the industry's permitted concentration and the background concentration, then multiplying that difference times the gallonage in flow (in million gallons) associated with the priority pollutant times a conversion factor to determine the annual pound loading of priority pollutant." This methodology, as set forth in the SUO, was applied in the determination of your IP Surcharge as represented in the enclosed calculation summary sheet that was previously sent to your firm. Therefore, the City has determined that your argument is invalid and that the calculated Surcharge amount is correct.

IP Violation Charge

Your firm states in their letter that the Violation Charge should be calculated based on the highest concentration less the allowable discharge limit. However your firm appears to be misinterpreting the methodology set forth in the SUO for the determination of the Violation Charge amount. Section 13.08.670 of the SUO clearly states that "A violation of the permit concentration during the billing year shall cause the billing (*that is both Surcharge and Violation Charge*) to be based on the highest measured concentration in excess of the permit value." Therefore, for the violating concentrations exhibited by your firm for Arsenic, Beryllium, Mercury, and Total Toxic Organics, the Surcharge and Violation Charge were both based on these higher values less the background concentration amounts as prescribed by

(401) 780-3175

FAX (401)780-3176

the SUO. The application of the highest concentration to both the Surcharge and Violation Charge calculations results in "an increase in the dollar per pound rate for that priority pollutant by a factor of two."

The City has consulted with the MIPP and determined that no additional monitoring was performed during the billing year with respect to the violations of Arsenic, Beryllium, Mercury, and Total Toxic Organics. Therefore, the City has decided to reduce the 2011 IP charge by \$151,691.58, which represents the full Violation Charge amount. However, the City regards the remaining Surcharge fee as valid and due in full.

Your firm has indicated that an amount of \$92,503.09 was previously remitted to the City as a first quarter payment. Therefore, the remaining due amount to the City for payment of the 2011 IP Charge is \$370,012.37 less the Violation Charge of \$151,601.58, less the amount paid of \$92,503.09, for a remaining balance of \$125,817.70 plus interest and penalties. Should your firm make payment to the City within thirty (30) days from receipt of this notice, the City is willing to waive all accrued interest and penalty charges.

Should you have any questions regarding this matter, please contact the undersigned at (401)780-3245.

Sincerely,



Kenneth R. Mason, PE
Director of Public Works

Encls.

cc: G. Cordy, Cranston DOA, w/encls.
E. Tally, Cranston DPW, w/encls.
D. Gorka, Veolia Water North America w/encls.
A.J. Tutela, Tutela Engineering Associates, Inc. w/encls.

(401) 780-3175

FAX (401)780-3176



TUTELA ENGINEERING ASSOCIATES, INC.
 P.O. BOX 28066
 PROVIDENCE, RI 02908

MUNICIPAL INDUSTRIAL PRETREATMENT
 PROGRAM (MIPP)
 CRANSTON, RI 24-Aug-2011

Calc. by: AJT

Company: Rhode Island Resource Recovery Corporation

2011 BILLING CALCULATION SUMMARY SHEET

INDUSTRIAL PRETREATMENT (IP) FEE:

Total Industrial Sewer Assessment = \$3,298,513.46
 Total IP Fee Recovered = \$270,686.40

$$\text{IP Fee} = \$270,686.40 / \$3,298,513.46 \times \text{Industrial Sewer Assessment}^*$$

$$= 0.082063149 \times \text{Industrial Sewer Assessment}$$

* - Sewer Assessment for 2011 (based on 2010 data) = \$492,820.57

$$\text{IP Fee} = 0.082063149 \times \$492,820.57 = \underline{\underline{\$40,442.41}}$$

INDUSTRIAL PRETREATMENT (IP) SURCHARGE:

Average Daily Flow = 286,953 gals
 Total IP Surcharge Recovered = \$270,686.40
 Total Industrial Pollutant Discharge (all industries) = 9,489.78 lbs/year

Ref: Self-Monitoring Reports

Parameter	Highest Concentration in 2010 (mg/l)	Sample Date/Source *	Discharge Permit Limit (mg/l)	Sewer Use Ordinance Background Concentration (mg/l)	Adjusted Concentration = Highest Concentration or Discharge Permit Limit - Sewer Use Ordinance Background Concentration (mg/l)
Arsenic	0.520	11/16/2010 / S	ND	< 0.010	0.5100
Beryllium	0.0021	12/21/2010 / S	ND	< 0.002	0.0001
Cadmium	0.023	05/19/2010 / S	0.04	0.008	0.0320
Chromium	0.348	07/20/2010 / S	0.40	0.034	0.3660
Copper	0.032	01/05/2010 / M	1.00	0.051	0.0000
Lead	0.032	05/19/2010 / S	0.30	0.065	0.0000
Mercury	0.000057	10/19/2010 / S	ND	< 0.0005	0.0000
Nickel	0.120	12/21/2010 / S	0.70	0.047	0.6530
Silver	0.004	12/21/2010 / S	0.10	0.019	0.0000
Zinc	0.168	05/19/2010 / S	1.00	0.201	0.0000
TCN	0.023	07/20/2010 / S	0.30	0.082	0.0000
PCB	ND	--	< 0.001	< 0.001	0.0000
TTO	5.587	11/16/2010 / S	2.13	0.009	5.5780
Total:					7.1391

PCB - Polychlorinated Biphenyls
 TCN - Total Cyanide
 TTO - Total Toxic Organics

* Source: S - Self Monitoring Report
 M - Municipal Industrial Pretreatment Program (MIPP) Monitoring
 A - Average of a Split Sample (Program and Industrial Monitoring Analysis)

-- - Violation
 ND - Not Detected



TUTELA ENGINEERING ASSOCIATES, INC.
 P.O. BOX 28066
 PROVIDENCE, RI 02908

MUNICIPAL INDUSTRIAL PRETREATMENT
 PROGRAM (MIPP)
 GRANSTON, RI 24-Aug-2011

Company: Rhode Island Resource Recovery Corporation

Calc. by: AJT

2011 BILLING CALCULATION SUMMARY SHEET

INDUSTRIAL PRETREATMENT (IP) SURCHARGE: (cont'd)

$$\begin{aligned} \text{Pollutant Discharge (lbs/year)} &= \text{Total Adjusted Concentration (mg/l)} \times (\text{Flow (gpd)} / 1,000,000) \\ &\quad \times (\text{Flow (gpd)} / 1,000,000) \times 8.34 \times 52 \text{ Days per Year} \\ &= 7.139 \times (286,953 / 1,000,000 \text{ gal/MG}) \times 8.34 \\ &\quad \times 365 \text{ Days per Year} \\ &= 6,236.10 \text{ lbs/year} \end{aligned}$$

$$\begin{aligned} \text{IP Surcharge} &= (\text{Pollutant Discharge (lbs/year)} / \text{Total Industrial Pollutant Discharge (lbs/year)}) \\ &\quad \times \text{Total Adjusted IP Surcharge Recovered} \\ &= (6,236.10 / 9,489.78) \times \$270,686.40 \\ &= \underline{\underline{\$177,878.38}} \end{aligned}$$

INDUSTRIAL PRETREATMENT (IP) VIOLATION CHARGE: (based on highest concentration)

Violation Parameters	Highest Concentration in 2010 (mg/l)	Sewer Use Ordinance Background Concentration (mg/l)	Adjusted Concentration = Highest Concentration or Discharge Permit Limit - Sewer Use Ordinance Background Concentration (mg/l)
Arsenic	0.520	< 0.010	0.5100
Beryllium	0.0021	< 0.002	0.0001
Cadmium	NV	0.008	0.0000
Chromium	NV	0.034	0.0000
Copper	NV	0.051	0.0000
Lead	NV	0.065	0.0000
Mercury	0.000057	< 0.0005	0.0000
Nickel	NV	0.047	0.0000
Silver	NV	0.019	0.0000
Zinc	NV	0.201	0.0000
TCN	NV	0.082	0.0000
PCB	NV	< 0.001	0.0000
TTO	5.587	0.009	5.5780
			Total: 6.0881

NV - This parameter was not in violation during the billing year

$$\begin{aligned} \text{Cost per Pound of Toxics per Year (for all industries)} &= \text{Total IP Surcharge Recovered} / \text{Total Industrial Pollutant Discharge (lbs/year)} \\ &= \$28.52 \end{aligned}$$

$$\begin{aligned} \text{IP Violation Charge} &= \text{Total Adjusted Concentration (mg/l)} \times (\text{Flow (gpd)} / 1,000,000) \times 8.34 \\ &\quad \times 365 \text{ Days per Year} \times \text{Cost per Pound of Toxics per Year (for all industries)} \\ &= 6.088 \times (286,953 / 1,000,000 \text{ gal/MG}) \times 8.34 \\ &\quad \times 365 \text{ Days per Year} \times \$28.52 \\ &= \underline{\underline{\$151,691.58}} \end{aligned}$$

TOTAL INDUSTRIAL PRETREATMENT (IP) CHARGE:

$$\begin{aligned} \text{Total IP Charge} &= \text{IP Fee} + \text{IP Surcharge} + \text{IP Violation Charge} \\ &= \underline{\underline{\$370,012.37}} \end{aligned}$$

THE CITY OF CRANSTON

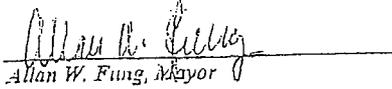
ORDINANCE OF THE CITY COUNCIL
 IN AMENDMENT OF TITLE 13 OF THE CODE OF THE CITY OF CRANSTON, 2005,
 ENTITLED "PUBLIC SERVICES"

No. 2010-16

Passed:
 June 14, 2010


 John E. Lanni, Jr., Council President

Approved:
 June 16, 2010


 Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

SECTION 1, Title 13.08 Section 670 Entitled "Payments" is hereby amended by deleting there from in its entirety the following section entitled:

(Sec. 13.08.670 Payments)

And by adding thereto the following:

Sec. 13.08.670 Payments.

A. Pursuant to the authority conferred by Section 10 of Chapter 750, of the Public Laws, 1939, as amended by Chapter 1372 of the Public Laws, 1943, and by Chapter 1891 of the Public Laws, 1947, the following annual charges for the use of the sewerage system of the city are established to be paid by every person whose particular sewer entered into such system at 12:01 a.m. January 1, 2010; and by every person whose particular sewer enters into such system at 12:01 a.m. January 1, of each year thereafter.

B. The annual charge shall be due and payable on July 15, 2010, and that all annual charges remaining unpaid at 4:00 p.m. on July 15, 2010, shall carry, until collected, a penalty at the rate of twelve (12) percent per annum from July 15, 2010, upon said unpaid annual charge, provided however, that said annual charge may be paid in four installments, the first installment of twenty-five (25) percent on or before the 15th day of July A.D. 2010, and the remaining installments as follows: twenty-five (25) percent on or before the 15th day of October A.D. 2010, twenty-five (25) percent on or before the 17th day of January A.D. 2011 and twenty-five (25) percent on or before the 15th day of April A.D. 2011.

196A.

C. Each installment of annual charge, if paid on or before the last day of the installment period successively and in order, shall be free from any charge for interest.

D. If the first installment of any succeeding installment of annual charge is not paid by the last day of the respective installment period or periods as they occur, then the whole annual charge or remaining unpaid balance of the annual charge, as the case may be, shall immediately become due and payable and shall carry until collected a penalty at the rate of twelve (12) percent per annum from July 15, 2010.

E. In the event of nonpayment, as noted herein, there shall be a penalty, of which shall be the same as the tax rate penalty set by ordinance.

F. For any building or premises situated within the city discharging sanitary sewage or industrial wastes, either directly or indirectly, into such sewerage system shall be charged the following rates per annum:

1. Dwellings and Apartments.

Single-family: \$384.90

Two-family: \$777.34

Three-family: \$1,166.01

Four-family: \$1,550.90

And three hundred eighty-four dollars and ninety cents (\$384.90) for each and every additional family unit. Duplex houses that have more than one connection shall be billed as separate units.

2. Buildings Containing Clubs, Libraries and Hospitals.

One unit: \$525.24

Two units: \$1,050.48

Three units: \$1,575.72

And five hundred and twenty-five dollars and twenty-four cents (\$525.24) for each unit in excess of three. Each such club, library and hospital and each dwelling or apartment contained in such building shall be deemed one unit. For purposes of this section, a unit shall be defined as housing a maximum of two people.

3. Buildings Containing Retail Establishments and Business Offices.

Each business office or retail establishment will be considered one unit. Any such charges shall be fixed and determined according to the flow at the rate of four thousand seven hundred and six dollars and nine cents (\$4,706.09) per million gallons and at a like rate for any fraction thereof. Subject to the determination of the charges, there shall be charged for each of the following establishments a minimum charge as follows:

a. Any such retail establishments or business office in which ten (10) or less persons are regularly employed shall be charged a minimum of five hundred and twenty-five dollars and twenty-four cents (\$525.24).

b. Any such retail establishment or business office in which eleven (11) but not more than twenty (20) persons are regularly employed shall be charged a minimum of one thousand fifty dollars and forty-seven cents (\$1,050.47).

1965.

c. Any such retail establishment or business office in which twenty-one (21) but not more than forty-nine (49) persons are regularly employed shall be charged a minimum of three thousand one hundred and fifty-one dollars and thirty-nine cents (\$3,151.39).

d. Any such retail establishment or business office in which fifty (50) but not more than one hundred (100) persons are regularly employed shall be charged a minimum of four thousand two hundred and one dollars and eighty-five cents (\$4,201.85).

e. Any such retail establishment or business office in which one hundred and one (101) but not more than two hundred (200) are regularly employed shall be charged a minimum of six thousand three hundred and two dollars and seventy-eight cents (\$6,302.78).

f. Any such retail establishment or business office in which more than two hundred (200) are regularly employed shall be charged a minimum of eight thousand four hundred and three dollars and seventy cents (\$8,403.70).

4. Restaurants, Cafes, Club C Licenses, and Automatic Self-Service Laundries. Such charges shall be fixed and determined according to the flow at the rate of four thousand seven hundred and six dollars and nine cents (\$4,706.09) per million gallons and at a like rate for any fraction thereof. Subject to the determination of the charges, there shall be charged for each of the following establishments a minimum charge as follows:

a. Restaurants and cafes having a seating capacity of twenty-five (25) or less shall be charged a minimum of one thousand thirty-one dollars and fifty-four cents (\$1,031.54).

b. Restaurants and cafes having a seating capacity of twenty-six (26) but not more than fifty (50) shall be charged a minimum of two thousand one hundred and forty-five dollars and eight cents (\$2,145.08).

c. Restaurants and cafes having a seating capacity of fifty-one (51) but not more than one hundred (100) shall be charged a minimum of three thousand two hundred and twenty-four dollars and ninety-four cents (\$3,224.94).

d. Restaurants and cafes having a seating capacity of more than one hundred (100) shall be charged a minimum of four thousand two hundred and ninety-four dollars and twenty-nine cents (\$4,294.29).

e. Class C liquor establishments shall be charged a minimum of six hundred twenty-six dollars and eight cents (\$626.08).

f. Automatic self-service laundries per washing unit shall be charged a minimum of two hundred fifty-four dollars and twenty-one cents (\$254.21).

5. Buildings Used for Manufacturing or Industrial Operations of Any Kind (Including Laundries and Dairies).

Such charges shall be fixed and determined according to the flow at the rate of four thousand seven hundred and six dollars and nine cents (\$4,706.09) per million gallons and at a like rate for any fraction thereof. Subject to the determination of the charges, there shall be charged for each of the following establishments a minimum charge as follows:

196C.

a. Any such establishment in which ten (10) or less persons are regularly employed shall be charged a minimum of one thousand three hundred and forty dollars and thirty-nine cents (\$1,340.39).

b. Any such establishment in which eleven (11) but not more than fifty (50) persons are regularly employed shall be charged a minimum of two thousand six hundred eighty-nine dollars and nineteen cents (\$2,689.19).

c. Any such establishment in which more than fifty (50) persons are regularly employed shall be charged a minimum of four thousand seven hundred and six dollars and nine cents (\$4,706.09).

d. For the purpose of this section, each individual business in the building or building complex shall be considered an independent establishment. For the purpose of assessing sewer usage fees for a business complex containing several individual businesses having similar or dissimilar usage classifications, the greater of the calculations between the total flow of the entire complex and the aggregate minimum fees of all individual businesses shall prevail. In the case of using the total flow calculation, it shall not be the responsibility of the City of Cranston to apportion the usage fee for individual businesses within the complex unless the property owner, at their own expense, installs and maintains flow meters within each individual business. However, upon request of the property owner, the City will assist, to the best of its ability, in providing an approximate apportionment of the total charges for each individual business within the complex.

e. To the above charges shall be added a pretreatment surcharge for all industries discharging any priority pollutant at a concentration in excess of the background concentration given in Section 13.08.340 of this chapter. That surcharge shall be calculated by first determining the difference between the industry's permitted concentration and the background concentration, then multiplying that difference times the gallonage of flow (in million gallons) associated with the priority pollutant times a conversion factor to determine the annual pound loading of priority pollutant, then multiplying that pound loading by a rate in dollars per pound loading established by the director for that priority pollutant. The rate for each priority pollutant shall be determined annually based on an equitable proportioning, as determined by the director, of fifty (50) percent of the actual costs to the city of administering the pretreatment program. (The remaining costs of administering the pretreatment program will be incorporated in the charges under subsection (F)(3)(a) of this section.) At the option of the director (or the building owner if the director does not exercise the option), each industry within a building housing more than one industry shall or need not have its own flow meter and monitoring facilities for industrial wastewaters. A violation of the permit concentration during the billing year shall cause the billing to be based on the highest measured concentration in excess of the permit value and an increase in the dollar per pound rate for that priority pollutant by a factor of two. That factor will serve the purpose of defraying costs of additional monitoring required for industries in violation of permit limits. The additional charges resulting from such violation shall be separate from and in addition to any fines or penalties levied as a result of such violation. The industry shall have the right to appeal to the director for a negotiated price in lieu of such additional cost, based on the actual cost to the city of the additional monitoring. Any further appeal process shall be in accordance with Section 13.08.510 of this chapter.

1960.

6. Sewage Disposal:
Fees, billing, and collection of fees for sewage disposal shall be administered by the authorized representative of the City.

7. Public Buildings:
There is established an annual charge of forty-four dollars and eleven cents (\$44.11) for each fixture located in buildings owned by the city.

8. Charge for Non-Users:
An annual charge of one hundred and fifteen dollars and fifty-four cents (\$115.54) is established to be paid by every owner of land on which there is located at 12:01 a.m. on January 1, 2010, and one which there is located at 12:01 a.m. on January 1st of each year thereafter, any building used for residential, business or industrial purposes, which land abuts upon that portion of any street or highway or right-of-way in which there is then a sewer and the sewerage of which land is not then connected with such sewer; such charge to be paid in full at the time and place that the first installment of the regular city taxes is payable. Fees collected under this chapter from non-users will only be used to recover costs of sewer system capital improvements.

9. Sewer Lateral Service Installations:
Sewer laterals are installed at the direction of the Cranston Public Works department from the sewer main line in the street to the property line. The charge for this installation will be equal to the actual construction costs. (Ord. 05-61 § 1; Ord. 05-24 § 1.)

10. Sewer Usage Fee Adjustment
A. It is the responsibility of each residential, commercial, or industrial user to verify the accuracy of the information on the billing statement for the Sewer Usage Fee. If the billing statement is viewed as inaccurate, the user may request a review for fee adjustment or cancellation.

B. The request for adjustment shall be made in writing no later than October 15th of the year the bill was issued. If the City of Cranston is not in receipt of the request for adjustment by said date, the City of Cranston will not consider the request for adjustment for the bill in question. Sewer adjustment issues shall include the following categories:

- A request for adjustment that is related to a Sewer Usage Fee statement error;
- A change in sewer classification, confirmed by the assessor or by inspection;
- Residential, commercial or industrial sewer service termination due to fire, demolition of a structure or other loss of "certificate of occupancy"; and/or
- Lack of sewer service to the building

196E.

C. All classifications for Sewer Usage Fees are based on building use as of January 1 of each year. Classification changes and loss of certificate of occupancy that occur after January 1 will not qualify for a Sewer Usage Fee adjustment for that year's bill, but will be applied towards the following year's bill.

D. The City of Cranston, on its own initiative, may adjust clerical errors in the Sewer Usage Fee. If the correction results in a decrease to the Sewer Usage Fee, and if the error is detected before October 15 of the billing year, then the Sewer Usage Fee may be adjusted for that year. If the correction is an increase to the Sewer Usage Fee, the City of Cranston may assess the user the full Sewer Usage Fee that would have been due but for the error. The City of Cranston will notify the user of this adjustment and the cause for the adjustment. If the Sewer Usage Fee was in error due to the user's violation of the ordinance, charges that would have been due but for the violation shall be assessed by the City of Cranston. In either case, a separate supplemental Sewer Usage Fee bill will be mailed reflecting the additional charge.

E. Sewer Usage Fee adjustment requests shall be processed using a form provided for this purpose. This form shall be signed and dated by the property owner and included with a copy of the Sewer Usage Fee bill in contention and any other pertinent information or documents supporting an adjustment. All forms and documents shall be submitted to:

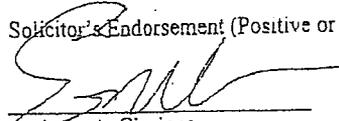
City of Cranston
Department of Public Works
869 Park Avenue
Cranston, RI 02910
Attention: Director

F. A written decision will be made by the Director to approve or deny the adjustment within 30 days from receipt of completed request, unless further information is required. All written decisions by the Director shall be final upon issuance of such written decision, but shall be subject to appeal to the Public Works Committee pursuant to Section 13.08.510 of the City of Cranston Codified Ordinance, including decisions on adjustment requests that were not filed within the time periods set forth in Subsection B above.

G. The Director shall prepare a report summarizing the number of Sewer Usage Fee adjustment requests, the number of requests approved and the reasons for such approvals, and such other information as he or she deems appropriate. Such report shall be delivered to the Public Works Committee by September 1 of each year for the prior fiscal year.

SECTION 2. This Ordinance shall take effect upon its final adoption.

Solicitor's Endorsement (Positive or Negative)



Anthony A. Cipriano
City Solicitor

Date



RECEIVED
12 NOV -9 PM 5:01

CLERK
CITY CLERK

Department of Public Works
City of Cranston
869 Park Avenue
Cranston, Rhode Island 02910
Attention: Director

Re: Request For Review of 2011 Industrial Pretreatment Invoice For Fee Adjustment
Pursuant to Section 13-08-670 of the Sewer Use Ordinance

65 Shun Pike

Johnston, RI 02881 Dear Director:

tel: (401) 942-1450

fax: (401) 946-5174

www.rirrc.org

Pursuant to Section 13-08-670 of the Cranston Sewer Use Ordinance, the Rhode Island Resource Recovery Corporation ("RIRRC") requests a review of its 2011 Industrial Pretreatment Invoice (the "IP Invoice") to obtain a fee adjustment.

The IP Invoice consists of the charges assessed by the City of Cranston for RIRRC's wastewater discharge in calendar year 2010. The Invoice totals \$370,012.37 and consists of three separate charges: (1) IP Fee of \$40,442.41; (2) IP Violation of \$151,691.58; and (3) IP Surcharge of \$177,878.38.

The IP Invoice was not accompanied by any backup data or any explanation for how the City calculated these three charges. Mr. Anderson of RIRRC requested back up data from the Department of Public Works and was sent a two page calculation sheet dated August 24, 2011 prepared by Tutela Engineering. (The IP Invoice and this Tutela letter are attached).

There are several errors in the way the City applied the Sewer Use Ordinance in calculating these fees, and RIRRC requests that the City review the IP Invoice and make the following adjustments to RIRRC's 2010 wastewater discharge fee.

IP Surcharge Fee

The IP Surcharge of \$ 177,878.38 is not calculated in accordance with the Sewer Use Ordinance. Section 13.08.670(5)(e) of the Sewer Use Ordinance states that in addition to the sewer use fee (the IP Fee), there "shall be added a surcharge for all industries discharging any priority pollutant at a concentration in excess of the limit given in Section 13.08.340 of this chapter." The surcharge

shall be calculated by first determining the difference between the industry's permitted concentration and the chapter limit, then multiplying that difference times the gallonage of flow (in million of gallons) associated with the priority pollutant times a conversion factor to determine the annual pound loading of priority pollutant, then multiplying

that pound loading by a rate in dollars per pound loading established by the director for that priority pollutant. The rate for each priority pollutant shall be determined annually based on an equitable proportioning, as determined by the director, of fifty percent of the actual costs to the city of administering the pretreatment program.

Because RIRRC's permitted concentration and the chapter limit are the same, the difference between these two numbers is zero. Multiplying zero by the gallonage flow and the pounding loading rate equals zero. Therefore, the IP surcharge fee under this provision should be \$0, not \$177,878.38.

The City miscalculated this charge because it used the listed background concentration instead of the listed allowable discharge limit set out in Section 13.08.340 in its calculation. There is no basis for Cranston to use the background concentration in this calculation.¹

IP Violation Fee

The IP Violation charge of \$151,691.58 is also not calculated in accordance with the Sewer Use Ordinance. Under Section 13.08.670(5)(e):

a violation of the permit concentration during the billing year shall cause the billing to be based on the highest measured concentration in excess of the permit value and an increase in the dollar per pound rate for that priority pollutant by a factor of two. That factor shall serve the purpose of defraying costs of additional monitoring required by industries in violation of permit limits. ... The industry shall have the right to appeal to the director for a negotiated price in lieu of such additional cost, based on the actual cost to the city of the additional monitoring.

This IP Violation Fee appears to be assessed because RIRRC exceeded its permit limit for several parameters, including total toxics, during the 2010 calendar year. However, there are several errors in the City's calculation. First, the "adjusted concentration" figure the City calculated at 6.088 mg/l is incorrect because it is based on comparing the highest concentration to the background concentration, rather than comparing the highest concentration to the allowable discharge limit. As the ordinance plainly states above, the correct figure is to be based on the permit limit, not the background concentration. Using the allowable permit limit for comparison, the correct adjusted concentration is 3.967 mg/l, and, using the other numbers in the City's calculation, the resulting fee calculation would total \$98,830.81, not \$151,691.58.

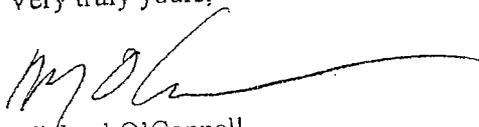
¹ It appears from a March 28, 2011 Resolution passed by the City Council that Cranston has proposed to amend its ordinance to replace the chapter limit with the background concentration, but we understand that proposed ordinance is still pending review at RIDEM and in any event, it was not the ordinance in effect during the 2010 calendar year and does not apply to this 2010 assessment.

Second, as the ordinance also states, the violation fee is to serve the purpose of defraying the cost of "additional" monitoring the City conducted as a result of the violation. Thus, the ordinance provides that the industry has a right to request a different fee in lieu of this calculated fee based on the "actual" cost to the City of the additional monitoring. Here, the City conducted no additional monitoring as a result of the violation, and thus the additional actual cost to the City as a result of this violation is \$0. This is underscored by the fact that the total costs for Tutela to run the MIPP program in 2009 and 2010 were approximately the same, and thus there were no additional costs in 2010 incurred by the City based on the referenced violation. (There was no IP Violation Fee in 2009). Accordingly, the IP Violation Fee should be \$0, not \$151,691.58.

Pursuant to Section 13-08-670 of the Sewer Use Ordinance, RIRRC hereby requests that the City review the 2011 Industrial Pretreatment Invoice, and adjust the fee from \$370,012.37 to \$40,442.41. Furthermore, since under the ordinance provision a request for review for a fee adjustment is due October 15, a month after the first quarterly payment of the Invoice due on September 15, 2011, RIRRC has already paid its first quarterly payment of \$92,503.09. RIRRC did so under protest, reserving its right to challenge the charges, and to seek a full refund. Based on the above, RIRRC requests that the City make the requested fee adjustment, and refund to RIRRC \$52,060.68, the amount it has overpaid.

Finally, RIRRC expressly reserves all of its rights and arguments, including those not raised in this request.

Very truly yours,



Michael O'Connell



City of Cranston, RI
2011 Tax Bill
 ASSESSED DECEMBER 31, 2010

Information regarding this tax bill is printed on the reverse of this sheet.

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

***** 2011 INDUSTRIAL PRETREATMENT CHARGE

RHODE ISLAND SOLID WASTE MANAGEMEN
 65 SHUN PIKE
 JOHNSTON RI 02919

RECEIVED

Rec # 24930
 P.D. #

Send Payments To: City of Cranston
 Tax Collector
 869 PARK AVENUE
 CRANSTON, RI 02910

ACCT # P:19-1517-35-01

	NET TAX
D40-0300 65 SHUN PIKE	
IP FEE	40,442.41
IP VIOLATION	151,691.58
IP SURCHARGE	177,878.38
To Pay by Credit Card Visit www.CranstonRI.com There will be a nominal fee charged for this service.	
Total Tax	370,012.37

PRIOR YEAR TAXES NOT INCLUDED
 PLEASE DO NOT STAPLE
 STUBS OR CHECKS

***** 2011 INDUSTRIAL PRETREATMENT CHARGE

370,012.37

City of Cranston 2011
Full Payment

Name: RHODE ISLAND SOLID WASTE MANAGEMEN
 65 SHUN PIKE
 JOHNSTON RI 02919

Due Date
 September 15, 2011

Account No.
 P:19-1517-35-01

Total Due
 370,012.37

RETURN THIS STUB WITH YOUR PAYMENT

City of Cranston 2011
1st Quarter

Due Date
 September 15, 2011

Name: RHODE ISLAND SOLID WASTE MANAGEMEN
 65 SHUN PIKE
 JOHNSTON RI 02919

RETURN THIS STUB WITH YOUR PAYMENT

Account No.	Total Tax	Total Due This Quarter
P:19-1517-35-01	370,012.37	92,503.09

City of Cranston 2011
2nd Quarter

Due Date
 October 17, 2011

Name: RHODE ISLAND SOLID WASTE MANAGEMEN
 65 SHUN PIKE
 JOHNSTON RI 02919

RETURN THIS STUB WITH YOUR PAYMENT

Account No.	Total Tax	Total Due This Quarter
P:19-1517-35-01	370,012.37	92,503.09

City of Cranston 2011
3rd Quarter

Due Date
 January 16, 2012

Name: RHODE ISLAND SOLID WASTE MANAGEMEN
 65 SHUN PIKE
 JOHNSTON RI 02919

RETURN THIS STUB WITH YOUR PAYMENT

Account No.	Total Tax	Total Due This Quarter
P:19-1517-35-01	370,012.37	92,503.09

City of Cranston 2011
4th Quarter

Due Date
 April 16, 2012

Name: RHODE ISLAND SOLID WASTE MANAGEMEN
 65 SHUN PIKE
 JOHNSTON RI 02919

RETURN THIS STUB WITH YOUR PAYMENT

Account No.	Total Tax	Total Due This Quarter
P:19-1517-35-01	370,012.37	92,503.10



TUTELA ENGINEERING ASSOCIATES, INC.
 P.O. BOX 28066
 PROVIDENCE, RI 02908

MUNICIPAL INDUSTRIAL PRETREATMENT
 PROGRAM (MIPP)
 CRANSTON, RI 24-Aug-2011

Calc. by: AJT

Company: Rhode Island Resource Recovery Corporation

2011 BILLING CALCULATION SUMMARY SHEET

INDUSTRIAL PRETREATMENT (IP) FEE:

Total Industrial Sewer Assessment = \$3,298,513.46
 Total IP Fee Recovered = \$270,686.40

$$\begin{aligned} \text{IP Fee} &= \$270,686.40 / \$3,298,513.46 \times \text{Industrial Sewer Assessment}^* \\ &= 0.082063149 \times \text{Industrial Sewer Assessment} \end{aligned}$$

* - Sewer Assessment for 2011 (based on 2010 data) = \$492,820.57

$$\text{IP Fee} = 0.082063149 \times \$492,820.57 = \underline{\underline{\$40,442.41}}$$

INDUSTRIAL PRETREATMENT (IP) SURCHARGE:

Average Daily Flow = 286,953 gals
 Total IP Surcharge Recovered = \$270,686.40
 Total Industrial Pollutant Discharge (all industries) = 9,489.78 lbs/year
 Ref: Self-Monitoring Reports

Parameter	Highest Concentration in 2010 (mg/l)	Sample Date/Source *	Discharge Permit Limit (mg/l)	Sewer Use Ordinance Background Concentration (mg/l)	Adjusted Concentration = Highest Concentration or Discharge Permit Limit - Sewer Use Ordinance Background Concentration (mg/l)
Arsenic	0.520	11/16/2010 / S **	ND	< 0.010	0.5100
Beryllium	0.0021	12/21/2010 / S **	ND	< 0.002	0.0001
Cadmium	0.023	05/19/2010 / S	0.04	0.008	0.0320
Chromium	0.348	07/20/2010 / S	0.40	0.034	0.3660
Copper	0.032	01/05/2010 / M	1.00	0.051	0.0000
Lead	0.032	05/19/2010 / S	0.30	0.065	0.0000
Mercury	0.000057	10/19/2010 / S **	ND	< 0.0005	0.0000
Nickel	0.120	12/21/2010 / S	0.70	0.047	0.6530
Silver	0.004	12/21/2010 / S	0.10	0.019	0.0000
Zinc	0.168	05/19/2010 / S	1.00	0.201	0.0000
TCN	0.023	07/20/2010 / S	0.30	0.082	0.0000
PCB	ND	--	< 0.001	< 0.001	0.0000
TTO	5.587	11/16/2010 / S **	2.13	0.009	5.5780
Total:					7.1391

PCB - Polychlorinated Biphenyls
 TCN - Total Cyanide
 TTO - Total Toxic Organics

* Source: S - Self Monitoring Report
 M - Municipal Industrial Pretreatment Program (MIPP) Monitoring
 A - Average of a Split Sample (Program and Industrial Monitoring Analysis)

** - Violation
 ND - Not Detected

50 Kennedy Plaza
Suite 1500
Providence, RI 02903-2319
TEL: 401.274.2000
FAX: 401.277.9600
www.haslaw.comRL
12 NOV -9 PM 5:33
CRANSTON
CITY OF**Gerald J. Petros**
gpetros@haslaw.com

November 9, 2012

VIA HAND DELIVERYCranston City Council
City of Cranston
869 Park Avenue
Cranston, Rhode Island 02910

Re: Appeal of October 30, 2012, Decision on Rhode Island Resource Recovery Corporation's ("RIRRC") 2012 Industrial Pretreatment Invoice For Fee Adjustment

To the City Council:

Pursuant to Sections 13.08.670.F.10.f. and 13.08.510 of the Cranston Sewer Use Ordinance ("SUO"), Rhode Island Resource Recovery Corporation ("RIRRC") appeals the Director of the Cranston Department of Public Works ("DPW") October 30, 2012, Decision on RIRRC's Request for a Fee Adjustment on its 2012 Industrial Pretreatment Invoice (the "IP Invoice").¹ (The DPW Director's Decision is attached.)

On October 15, 2012, RIRRC requested a review of its 2012 Industrial Pretreatment Invoice (the "IP Invoice") to obtain a fee adjustment. RIRRC contended that the IP Fee of \$271,461.24 was not calculated correctly, and should be adjusted to \$42,992.32. In its Fee Adjustment Request, RIRRC contended that the City made several errors in the way the it had applied the Sewer Use Ordinance in calculating these fees, and RIRRC requested that the City make the adjustments to RIRRC's 2010 wastewater discharge fee by reducing the IP Violation Charge of \$97,190.78 to \$0, and by reducing the IP Surcharge of \$131,278. to \$0. (RIRRC's Fee Adjustment Request is attached.)

The DPW Director's Decision

October 30, 2012, the Director issued his decision (the "DPW Director's Decision"). The DPW Director agreed to reduce the IP Violation Charge of \$97,190.78 to \$0, but kept the IP Surcharge of \$131,278.14 the same. The Director explained in his decision that

¹ Section 13.08.670.F.10.f. of the SUO states that the DPW Director's decision "shall be subject to appeal to the public works committee pursuant Section 13.08.510." Section 13.08.510 states that the appeal of the Director's decision shall be made "to the city council." Therefore, RIRRC is submitting this appeal to both the Public Works Committee of the City Council, and to the City Council.

28 State Street, Boston, MA 02109-1775 TEL: 617.345.9000 FAX: 617.345.9020

20 Church Street, Hartford, CT 06103-1221 TEL: 860.725.6200 FAX: 860.278.3802

11 South Main Street, Suite 400, Concord, NH 03301-4846 TEL: 603.225.4334 FAX: 603.224.8350

30 South Pearl Street, Suite 901, Albany, NY 12207-3492 TEL: 518.396.3100 FAX: 518.396.3101

November 9, 2012
Page 2

HinckleyAllenSnyder LLP
ATTORNEYS AT LAW

RIRRC's calculation of the IP Surcharge fee was based on an "outdated" Sewer Use Ordinance. The Director stated that, "in June 2010, the City Council adopted modifications" to the SUO Section 13.08.670 ("Payments") that changed the "methodology" by which the City calculated the IP Surcharge, and that the City applied this new methodology in determining the IP Surcharge.

The Validity of the June 2010 Ordinance Modifications

RIRRC received the DPW Director's Decision on November 1, and given the short ten day appeal period, RIRRC has not yet been able to determine whether the City followed the necessary procedures and notice requirements in enacting the June 2010 ordinance modification, including, but not limited to, Sections 3.11, 3.12, and 3.15 of the City Charter. In April 2011, the City's counsel Sean Coffey forwarded to us a copy of a 2010 red-lined ordinance showing the "proposed" revisions the City was planning to make to its SUO as part of its Substantial Modification to the MIPP request to RIDEM. The proposed red-lined revisions included the changes to the local limits, BOD and TKN surcharges, and the revised "methodology" for calculating the IP Surcharge in Section 13.08.670 ("Payments"). It is unclear why the City's submittal to RIDEM showed these as "proposed" changes to Section 13.08.670 of the SUO, and why Mr. Coffey sent these to RIRRC as "proposed" changes in April 2011, when the City claims it had already adopted these changes in June 2010. Thus, RIRRC also appeals the DPW Director's Decision on the basis that the June 2010 ordinance modifications were not validly enacted.

Additional Grounds

RIRRC reserves the right to assert other grounds for its appeal. RIRRC has had little time to consider the Director's decision or the new grounds asserted by the City, or to gather additional facts and information. Thus, RIRRC reserves the right to assert additional grounds for its appeal.

Further, the City's ordinances do not clearly indicate whether this appeal is to the Public Works Committee or to the City Council. RIRRC is filing this appeal with both bodies to ensure that its appeal is properly asserted.

Very truly yours,



Gerald J. Retros

Enclosures

cc: Cranston City Clerk
Michael O'Connell -RIRRC

51003144



RECEIVED
 12 NOV -9 PM 5:24
 October 15, 2012
 CITY OF CRANSTON

Kenneth Mason, Director
 Department of Public Works
 City of Cranston
 869 Park Avenue
 Cranston, Rhode Island 02910

Re: Request For Review of 2012 Industrial Pretreatment Invoice For Fee
 Adjustment Pursuant to Section 13-08-670 of the Sewer Use Ordinance

65 Shun Pike
 Johnston, RI 02919-4512

TEL: (401) 942-1430

FAX: (401) 946-5174

www.rirrc.org

Dear Director:

Pursuant to Section 13-08-670 of the Cranston Sewer Use Ordinance, the Rhode Island Resource Recovery Corporation ("RIRRC") requests a review of its 2012 Industrial Pretreatment Invoice (the "IP Invoice") to obtain a fee adjustment. (The IP Invoice is attached).

The IP Invoice consists of the charges assessed by the City of Cranston for RIRRC's wastewater discharge in calendar year 2011. The Invoice totals \$271,461.24 and consists of three separate charges: (1) IP Fee of \$42,992.32; (2) IP Violation of \$97,190.78; and (3) IP Surcharge of \$131,278.14.

The IP Invoice was not accompanied by any backup data or any explanation for how the Department of Public Works ("DPW") calculated these three charges. Mr. Anderson of RIRRC requested back up data from the DPW Director on October 2, 2012, but to date, RIRRC has not received any information explaining how the DPW calculated these fees.

RIRRC has reviewed the IP Invoice and believes the City made several errors in the way it applied the Sewer Use Ordinance in calculating these fees. While we do not have the data from DPW, it appears the City followed the same flawed methodology it used for last year's 2011 IP Invoice. As you know, RIRRC filed a request for a fee adjustment to its 2011 IP Invoice because the City's calculation of \$370,012.37 was wrong. RIRRC requested the fee be adjusted to the correct amount of \$40,442.41. The DPW Director was to issue a written decision on RIRRC's fee adjustment request within 30 days, or by November 14, 2011. RIRRC followed up in writing several times during the last year requesting a decision. To date, one year later, Cranston still has not issued a written decision on the RIRRC's 2011 fee adjustment request.

For this year's 2012 IP Invoice, RIRRC also requests a similar fee adjustment, because it appears the City has made the same errors as it did on last year's invoice. Thus, RIRRC requests that the City review the IP Invoice and make the following adjustments to RIRRC's 2011 wastewater discharge fee.

IP Surcharge Fee

The IP Surcharge of \$ 131,278.14 is not calculated in accordance with the Sewer Use Ordinance. Section 13.08.670(5)(e) of the Sewer Use Ordinance states that in addition to the sewer use fee (the IP Fee), there "shall be added a surcharge for all industries discharging any priority pollutant at a concentration in excess of the limit given in Section 13.08.340 of this chapter." The surcharge

shall be calculated by first determining the difference between the industry's permitted concentration and the chapter limit, then multiplying that difference times the gallonage of flow (in million of gallons) associated with the priority pollutant times a conversion factor to determine the annual pound loading of priority pollutant, then multiplying that pound loading by a rate in dollars per pound loading established by the director for that priority pollutant. The rate for each priority pollutant shall be determined annually based on an equitable proportioning, as determined by the director, of fifty percent of the actual costs to the city of administering the pretreatment program.

Because RIRRC's permitted concentration and the chapter limit are the same, the difference between these two numbers is zero. Multiplying zero by the gallonage flow and the pouding loading rate equals zero. Therefore, the IP surcharge fee under this provision should be \$0, not \$131,278.14.

RIRRC believes the City miscalculated this charge because we believe it used the listed background concentration instead of the listed allowable discharge limit set out in Section 13.08.340 in its calculation. There is no basis for Cranston to use the background concentration in this calculation.

IP Violation Fee

The IP Violation charge of \$97,190.78 is also not calculated in accordance with the Sewer Use Ordinance. Under Section 13.08.670(5)(e):

a violation of the permit concentration during the billing year shall cause the billing to be based on the highest measured concentration in excess of the permit value and an increase in the dollar per pound rate for that priority pollutant by a factor of two. That factor shall serve the purpose of defraying costs of additional monitoring required by industries in violation of permit limits.

...The industry shall have the right to appeal to the director for a negotiated price in lieu of such additional cost, based on the actual cost to the city of the additional monitoring.

This IP Violation Fee appears to be assessed because RIRRC exceeded its permit limit for several parameters, including total toxics, during the 2011 calendar year. However, while we do not have the backup data, we believe the City made the same errors as it did in calculating last years' "violation fee." That is, the City appears to have erroneously comparing the highest concentration to the background concentration, rather than comparing the highest concentration to the allowable discharge limit. As the ordinance plainly states above, the correct figure is to be based on the permit limit, not the background concentration. Using the allowable permit limit for comparison would result in a lower fee calculation.

Second, as the ordinance also states, the violation fee is to serve the purpose of defraying the cost of "additional" monitoring the City conducted as a result of the violation. Thus, the ordinance provides that the industry has a right to request a different fee in lieu of this calculated fee based on the "actual" cost to the City of the additional monitoring. Here, the City conducted no additional monitoring as a result of the violation, and thus the additional actual cost to the City as a result of this violation is \$0. This is underscored by the fact that the total costs for Tutela to run the MIPP program in 2009, 2010, and 2011 were approximately the same, and thus there were no additional costs in 2011 incurred by the City based on the referenced violation. Accordingly, the IP Violation Fee should be \$0, not \$97,190.78

Pursuant to Section 13-08-670 of the Sewer Use Ordinance, RIRRC hereby requests that the City review the 2012 Industrial Pretreatment Invoice, and adjust the fee from \$271,461.24 to \$42,992.32.

Finally, RIRRC expressly reserves all of its rights and arguments, including those not raised in this request.

Very truly yours,



William M. Anderson, PE
Engineering Manager

cc: Michael OConnell, Brian Card

50954724

ALLAN W. FUNG
MAYOR



Kenneth R. Mason P.E.
Director of Public Works

DEPARTMENT OF PUBLIC WORKS
CITY HALL, ROOM 109
869 PARK AVENUE
CRANSTON, RHODE ISLAND 02910

October 30, 2012

Rhode Island Resource Recovery Corporation
65 Shun Pike
Johnston, RI 02919-4512

Attn: Mr. William M. Anderson, PE, Engineering Manager

Re: Appeal of the 2012 Industrial Pretreatment Charge
Municipal Industrial Pretreatment Program (MIPP)
Cranston, RI

Gentlemen:

On October 15, 2012 the City of Cranston Department of Public Works received an appeal from your firm of their 2012 Industrial Pretreatment (IP) charge of \$271,461.24. In the letter, your firm presents their basis for appeal in opposition of the calculated Surcharge and Violation Charge amounts as follows:

IP Surcharge

Your firm states in their letter that the Surcharge should be calculated based on the Permit limit value less the Chapter limit value. However, your firm appears to be quoting outdated City of Cranston Sewer Use Ordinance (SUO) language related to the determination of the Surcharge amount. In June 2010, the City Council adopted modifications to Section 13.08.670 (copy enclosed), entitled Payments, that indicates the "surcharge shall be calculated by first determining the difference between the industry's permitted concentration and the background concentration, then multiplying that difference times the gallonage in flow (in million gallons) associated with the priority pollutant times a conversion factor to determine the annual pound loading of priority pollutant." This methodology, as set forth in the SUO, was applied in the determination of your IP Surcharge as represented in the enclosed calculation summary sheet. Therefore, the City has determined that your argument is invalid and that the calculated Surcharge amount is correct.

IP Violation Charge

Your firm states in their letter that the Violation Charge should be calculated based on the highest concentration less the allowable discharge limit. However your firm appears to be misinterpreting the methodology set forth in the SUO for the determination of the Violation Charge amount. Section 13.08.670 of the SUO clearly states that "A violation of the permit concentration during the billing year shall cause the billing (*that is both Surcharge and Violation Charge*) to be based on the highest measured concentration in excess of the permit value." Therefore, for the violating concentrations exhibited by your firm for Arsenic, Beryllium, and Total Toxic Organics, the Surcharge and Violation Charge were both based on these higher values less the background concentration amounts as prescribed by the SUO. The application of the highest concentration to both the Surcharge and Violation Charge calculations results in "an

(401) 780-3175

FAX (401) 780-3176

increase in the dollar per pound rate for that priority pollutant by a factor of two.”

The City has consulted with the MIPP and determined that no additional monitoring was performed during the billing year with respect to the violations of Arsenic, Beryllium, and Total Toxic Organics. Therefore, the City has decided to reduce the 2012 IP charge by \$97,190.78, which represents the full Violation Charge amount. However, the City regards the remaining Surcharge fee as valid and due in full.

Therefore, the remaining due amount to the City for payment of the 2012 IP Charge is \$271,461.24 less the Violation Charge of \$97,190.78, for a remaining balance of \$174,270.46. Your firm must make quarterly payments in full to the City in accordance with the payment schedule set forth on their bill, with the last payment equal to the remaining balance after previous payments have been applied. Failure to make payments in full within the required time frames will subject your firm to interest and penalty charges.

Should you have any questions regarding this matter, please contact the undersigned at (401)780-3245.

Sincerely,



Kenneth R. Mason, PE
Director of Public Works

Encls.

cc: G. Cordy, Cranston DOA, w/encls.
E. Tally, Cranston DPW, w/encls.
D. Gorka, Veolia Water North America w/encls.
A.J. Tutela, Tutela Engineering Associates, Inc. w/encls.



TUTELA ENGINEERING ASSOCIATES, INC.
 P.O. BOX 28066
 PROVIDENCE, RI 02908

MUNICIPAL INDUSTRIAL PRETREATMENT
 PROGRAM (MIPP)
 CRANSTON, RI 16-Oct-2012

Company: Rhode Island Resource Recovery Corporation

Calc. by: AJT

2012 BILLING CALCULATION SUMMARY SHEET

INDUSTRIAL PRETREATMENT (IP) FEE:

Total Industrial Sewer Assessment = \$3,814,319.30
 Total IP Fee Recovered = \$280,674.93

$$\text{IP Fee} = \$280,674.93 / \$3,814,319.30 \times \text{Industrial Sewer Assessment}^*$$

$$= 0.07358454 \times \text{Industrial Sewer Assessment}$$

* - Sewer Assessment for 2012 (based on 2011 data) = \$584,257.55

$$\text{IP Fee} = 0.07358454 \times \$584,257.55 = \underline{\underline{\$42,992.32}}$$

INDUSTRIAL PRETREATMENT (IP) SURCHARGE:

Average Daily Flow = 270,118 gals
 Total IP Surcharge Recovered = \$280,674.93
 Total Industrial Pollutant Discharge (all industries) = 6,899.16 lbs/year

Ref: Self-Monitoring Reports

Parameter	Highest Concentration in 2011 (mg/l)	Sample Date/Source *	Discharge Permit Limit (mg/l)	Sewer Use Ordinance Background Concentration (mg/l)	Adjusted Concentration = Highest Concentration or Discharge Permit Limit - Sewer Use Ordinance Background Concentration (mg/l)
Arsenic	0.341	01/04/2011 / M **	ND	0.010	0.3310
Beryllium	0.0015	11/05/2011 / S **	ND	0.002	0.0000
Cadmium	0.008	05/24/2011 / S	0.04	0.008	0.0000
Chromium	0.231	01/04/2011 / M	0.40	0.034	0.3660
Copper	0.035	01/04/2011 / M	1.00	0.051	0.0000
Lead	0.057	05/24/2011 / S	0.30	0.065	0.0000
Mercury	ND	--	ND	0.0005	0.0000
Nickel	0.140	05/24/2011 / S	0.70	0.047	0.6530
Silver	ND	--	0.10	0.019	0.0000
Zinc	0.054	12/16/2011 / S	1.00	0.201	0.0000
TCN	0.038	12/16/2011 / S	0.30	0.082	0.0000
PCB	ND	--	< 0.001	0.001	0.0000
TTO	2.5834	12/22/2011 / S **	2.13	0.009	2.5744
Total:					3.9244

PCB - Polychlorinated Biphenyls

TCN - Total Cyanide

TTO - Total Toxic Organics

* Source: S - Self Monitoring Report
 M - Municipal Industrial Pretreatment Program (MIPP) Monitoring
 A - Average of a Split Sample (Program and Industrial Monitoring Analysis)

** - Violation

ND - Not Detected



TUTELA ENGINEERING ASSOCIATES, INC.
 P.O. BOX 28066
 PROVIDENCE, RI 02908

MUNICIPAL INDUSTRIAL PRETREATMENT
 PROGRAM (MIPP)
 CRANSTON, RI 16-Oct-2012

Company: Rhode Island Resource Recovery Corporation

Calc. by: AJT

2012 BILLING CALCULATION SUMMARY SHEET

INDUSTRIAL PRETREATMENT (IP) SURCHARGE: (cont'd)

$$\begin{aligned} \text{Pollutant Discharge (lbs/year)} &= \text{Total Adjusted Concentration (mg/l)} \times (\text{Flow (gpd)} / 1,000,000) \\ &\quad \times (\text{Flow (gpd)} / 1,000,000) \times 8.34 \times 52 \text{ Days per Year} \\ &= 3.924 \times (270,118 / 1,000,000 \text{ gal/MG}) \times 8.34 \\ &\quad \times 365 \text{ Days per Year} \\ &= 3,226.90 \text{ lbs/year} \end{aligned}$$

$$\begin{aligned} \text{IP Surcharge} &= (\text{Pollutant Discharge (lbs/year)} / \text{Total Industrial Pollutant Discharge (lbs/year)}) \\ &\quad \times \text{Total Adjusted IP Surcharge Recovered} \\ &= (3,226.90 / 6,899.16) \times \$280,674.93 \\ &= \underline{\underline{\$131,278.14}} \end{aligned}$$

INDUSTRIAL PRETREATMENT (IP) VIOLATION CHARGE: (based on highest concentration)

Violation Parameters	Highest Concentration in 2011 (mg/l)	Sewer Use Ordinance Background Concentration (mg/l)	Adjusted Concentration = Highest Concentration or Discharge Permit Limit - Sewer Use Ordinance Background Concentration (mg/l)
Arsenic	0.3410	0.010	0.3310
Beryllium	0.0015	0.002	0.0000
Cadmium	NV	0.008	0.0000
Chromium	NV	0.034	0.0000
Copper	NV	0.051	0.0000
Lead	NV	0.065	0.0000
Mercury	NV	0.0005	0.0000
Nickel	NV	0.047	0.0000
Silver	NV	0.019	0.0000
Zinc	NV	0.201	0.0000
TCN	NV	0.082	0.0000
PCB	NV	0.001	0.0000
TTO	2.583	0.009	2.5744
			Total: 2.9054

NV - This parameter was not in violation during the billing year

$$\begin{aligned} \text{Cost per Pound of Toxics per Year (for all Industries)} &= \text{Total IP Surcharge Recovered} / \text{Total Industrial Pollutant Discharge (lbs/year)} \\ &= \$40.68 \end{aligned}$$

$$\begin{aligned} \text{IP Violation Charge} &= \text{Total Adjusted Concentration (mg/l)} \times (\text{Flow (gpd)} / 1,000,000) \times 8.34 \\ &\quad \times 365 \text{ Days per Year} \times \text{Cost per Pound of Toxics per Year (for all Industries)} \\ &= 2.905 \times (270,118 / 1,000,000 \text{ gal/MG}) \times 8.34 \\ &\quad \times 365 \text{ Days per Year} \times \$40.68 \\ &= \underline{\underline{\$97,190.78}} \end{aligned}$$

TOTAL INDUSTRIAL PRETREATMENT (IP) CHARGE:

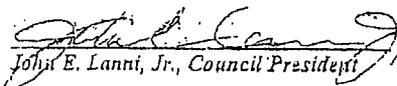
$$\begin{aligned} \text{Total IP Charge} &= \text{IP Fee} + \text{IP Surcharge} + \text{IP Violation Charge} \\ &= \underline{\underline{\$271,461.24}} \end{aligned}$$

THE CITY OF CRANSTON

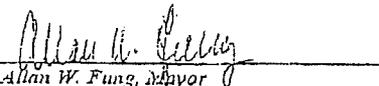
ORDINANCE OF THE CITY COUNCIL
 IN AMENDMENT OF TITLE 13 OF THE CODE OF THE CITY OF CRANSTON, 2005,
 ENTITLED "PUBLIC SERVICES"

No. 2010-16

Passed:
 June 14, 2010


 John E. Lanni, Jr., Council President

Approved:
 June 16, 2010


 Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

SECTION 1. Title 13.08 Section 670 Entitled "Payments" is hereby amended by deleting there from in its entirety the following section entitled:

(Sec.13.08.670 Payments)

And by adding thereto the following:

Sec.13.08.670 Payments

A. Pursuant to the authority conferred by Section 10 of Chapter 750, of the Public Laws, 1939, as amended by Chapter 1372 of the Public Laws, 1943, and by Chapter 1891 of the Public Laws, 1947, the following annual charges for the use of the sewerage system of the city are established to be paid by every person whose particular sewer entered into such system at 12:01 a.m. January 1, 2010, and by every person whose particular sewer enters into such system at 12:01 a.m. January 1, of each year thereafter.

B. The annual charge shall be due and payable on July 15, 2010, and that all annual charges remaining unpaid at 4:00 p.m. on July 15, 2010, shall carry, until collected, a penalty at the rate of twelve (12) percent per annum from July 15, 2010, upon said unpaid annual charge, provided however, that said annual charge may be paid in four installments, the first installment of twenty-five (25) percent on or before the 15th day of July A.D. 2010, and the remaining installments as follows: twenty-five (25) percent on or before the 15th day of October A.D. 2010, twenty-five (25) percent on or before the 17th day of January A.D. 2011 and twenty-five (25) percent on or before the 15th day of April A.D. 2011.

196A.

C. Each installment of annual charge, if paid on or before the last day of the installment period successively and in order, shall be free from any charge for interest.

D. If the first installment of any succeeding installment of annual charge is not paid by the last day of the respective installment period or periods as they occur, then the whole annual charge or remaining unpaid balance of the annual charge, as the case may be, shall immediately become due and payable and shall carry until collected, a penalty at the rate of twelve (12) percent per annum from July 15, 2010.

E. In the event of nonpayment, as noted herein, there shall be a penalty of which shall be the same as the tax rate penalty set by ordinance.

F. For any building or premises situated within the city discharging sanitary sewage or industrial wastes, either directly or indirectly, into such sewerage system shall be charged the following rates per annum:

1. Dwellings and Apartments.

Single-family: \$384.90

Two-family: \$777.34

Three-family: \$1,166.01

Four-family: \$1,550.90

And three hundred eighty-four dollars and ninety cents (\$384.90) for each and every additional family unit. Duplex houses that have more than one connection shall be billed as separate units.

2. Buildings Containing Clubs, Libraries and Hospitals.

One unit: \$525.24

Two units: \$1,050.48

Three units: \$1,575.72

And five hundred and twenty-five dollars and twenty-four cents (\$525.24) for each unit in excess of three. Each such club, library and hospital and each dwelling or apartment contained in such building shall be deemed one unit. For purposes of this section, a unit shall be defined as housing a maximum of two people.

3. Buildings Containing Retail Establishments and Business Offices.

Each business office or retail establishment will be considered one unit. Any such charges shall be fixed and determined according to the flow at the rate of four thousand seven hundred and six dollars and nine cents (\$4,706.09) per million gallons and at a like rate for any fraction thereof. Subject to the determination of the charges, there shall be charged for each of the following establishments a minimum charge as follows:

a. Any such retail establishments or business office in which ten (10) or less persons are regularly employed shall be charged a minimum of five hundred and twenty-five dollars and twenty-four cents (\$525.24).

b. Any such retail establishment or business office in which eleven (11) but not more than twenty (20) persons are regularly employed shall be charged a minimum of one thousand fifty dollars and forty-seven cents (\$1,050.47).

196B.

e. Any such retail establishment or business office in which twenty-one (21) but not more than forty-nine (49) persons are regularly employed shall be charged a minimum of three thousand one hundred and fifty-one dollars and thirty-nine cents (\$3,151.39).

d. Any such retail establishment or business office in which fifty (50) but not more than one hundred (100) persons are regularly employed shall be charged a minimum of four thousand two hundred and one dollars and eighty-five cents (\$4,201.85).

c. Any such retail establishment or business office in which one hundred and one (101) but not more than two hundred (200) are regularly employed shall be charged a minimum of six thousand three hundred and two dollars and seventy-eight cents (\$6,302.78).

f. Any such retail establishment or business office in which more than two hundred (200) are regularly employed shall be charged a minimum of eight thousand four hundred and three dollars and seventy cents (\$8,403.70).

4. Restaurants, Cafes, Club C Licenses, and Automatic Self-Service Laundries.

Such charges shall be fixed and determined according to the flow at the rate of four thousand seven hundred and six dollars and nine cents (\$4,706.09) per million gallons and at a like rate for any fraction thereof. Subject to the determination of the charges, there shall be charged for each of the following establishments a minimum charge as follows:

a. Restaurants and cafes having a seating capacity of twenty-five (25) or less shall be charged a minimum of one thousand thirty-one dollars and fifty-four cents (\$1,031.54).

b. Restaurants and cafes having a seating capacity of twenty-six (26) but not more than fifty (50) shall be charged a minimum of two thousand one hundred and forty-five dollars and eight cents (\$2,145.08).

c. Restaurants and cafes having a seating capacity of fifty-one (51) but not more than one hundred (100) shall be charged a minimum of three thousand two hundred and twenty-four dollars and ninety-four cents (\$3,224.94).

d. Restaurants and cafes having a seating capacity of more than one hundred (100) shall be charged a minimum of four thousand two hundred and ninety-four dollars and twenty-nine cents (\$4,294.29).

e. Class C liquor establishments shall be charged a minimum of six hundred twenty-six dollars and eight cents (\$626.08).

f. Automatic self-service laundries per washing unit shall be charged a minimum of two hundred fifty-four dollars and twenty-one cents (\$254.21).

5. Buildings Used for Manufacturing or Industrial Operations of Any Kind (Including Laundries and Dairies).

Such charges shall be fixed and determined according to the flow at the rate of four thousand seven hundred and six dollars and nine cents (\$4,706.09) per million gallons and at a like rate for any fraction thereof. Subject to the determination of the charges, there shall be charged for each of the following establishments a minimum charge as follows:

196C.

a. Any such establishment in which ten (10) or less persons are regularly employed shall be charged a minimum of one thousand three hundred and forty dollars and thirty-nine cents (\$1,340.39).

b. Any such establishment in which eleven (11) but not more than fifty (50) persons are regularly employed shall be charged a minimum of two thousand six hundred eighty-nine dollars and nineteen cents (\$2,689.19).

c. Any such establishment in which more than fifty (50) persons are regularly employed shall be charged a minimum of four thousand seven hundred and six dollars and nine cents (\$4,706.09).

d. For the purpose of this section, each individual business in the building or building complex shall be considered an independent establishment. For the purpose of assessing sewer usage fees for a business complex containing several individual businesses having similar or dissimilar usage classifications, the greater of the calculations between the total flow of the entire complex and the aggregate minimum fees of all individual businesses shall prevail. In the case of using the total flow calculation, it shall not be the responsibility of the City of Cranston to apportion the usage fee for individual businesses within the complex unless the property owner, at their own expense, installs and maintains flow meters within each individual business. However, upon request of the property owner, the City will assist, to the best of its ability, in providing an approximate apportionment of the total charges for each individual business within the complex.

e. To the above charges shall be added a pretreatment surcharge for all industries discharging any priority pollutant at a concentration in excess of the background concentration given in Section 13.08.340 of this chapter. That surcharge shall be calculated by first determining the difference between the industry's permitted concentration and the background concentration, then multiplying that difference times the gallonage of flow (in million gallons) associated with the priority pollutant times a conversion factor to determine the annual pound loading of priority pollutant, then multiplying that pound loading by a rate in dollars per pound (loading established by the director for that priority pollutant). The rate for each priority pollutant shall be determined annually based on an equitable proportioning, as determined by the director, of fifty (50) percent of the actual costs to the city of administering the pretreatment program. (The remaining costs of administering the pretreatment program will be incorporated in the charges under subsection (F)(5)(a) of this section.) At the option of the director (or the building owner if the director does not exercise the option), each industry within a building housing more than one industry shall or need not have its own flow meter and monitoring facilities for industrial wastewaters. A violation of the permit concentration during the billing year shall cause the billing to be based on the highest measured concentration in excess of the permit value and an increase in the dollar per pound rate for that priority pollutant by a factor of two. That factor will serve the purpose of defraying costs of additional monitoring required for industries in violation of permit limits. The additional charges resulting from such violation shall be separate from and in addition to any fines or penalties levied as a result of such violation. The industry shall have the right to appeal to the director for a negotiated price in lieu of such additional cost, based on the actual cost to the city of the additional monitoring. Any further appeal process shall be in accordance with Section 13.08.510 of this chapter.

196D.

6. Sewage Disposal:Fees, billing, and collection of fees for sewage disposal shall be administered by the authorized representative of the City.7. Public Buildings:There is established an annual charge of forty-four dollars and eleven cents (\$44.11) for each fixture located in buildings owned by the city.8. Charge for Non-Users:An annual charge of one hundred and fifteen dollars and fifty-four cents (\$115.54) is established to be paid by every owner of land on which there is located at 12:01 a.m. on January 1, 2010, and one which there is located at 12:01 a.m. on January 1st of each year thereafter, any building used for residential, business or industrial purposes, which land abuts upon that portion of any street or highway or right-of-way in which there is then a sewer and the sewerage of which land is not then connected with such sewer. Such charge to be paid in full at the time and place that the first installment of the regular city taxes is payable. Fees collected under this chapter from non-users will only be used to recover costs of sewer system capital improvements.9. Sewer Lateral Service Installations:Sewer laterals are installed at the direction of the Cranston Public Works department from the sewer main line in the street to the property line. The charge for this installation will be equal to the actual construction costs. (Ord. 05-61 §1; Ord. 05-24 §1).10. Sewer Usage Fee AdjustmentA. It is the responsibility of each residential, commercial, or industrial user to verify the accuracy of the information on the billing statement for the Sewer Usage Fee. If the billing statement is viewed as inaccurate, the user may request a review for fee adjustment or cancellation.B. The request for adjustment shall be made in writing no later than October 15th of the year the bill was issued. If the City of Cranston is not in receipt of the request for adjustment by said date, the City of Cranston will not consider the request for adjustment for the bill in question. Sewer adjustment issues shall include the following categories:

- A request for adjustment that is related to a Sewer Usage Fee statement error;
- A change in sewer classification confirmed by the assessor or by inspection;
- Residential, commercial, or industrial sewer service termination due to fire, demolition of a structure or other loss of "certificate of occupancy"; and/or
- Lack of sewer service to the building

196E.

C. All classifications for Sewer Usage Fees are based on building use as of January 1 of each year. Classification changes and loss of certificate of occupancy that occur after January 1 will not qualify for a Sewer Usage Fee adjustment for that year's bill, but will be applied towards the following year's bill.

D. The City of Cranston, on its own initiative, may adjust clerical errors in the Sewer Usage Fee. If the correction results in a decrease to the Sewer Usage Fee, and if the error is detected before October 15 of the billing year, then the Sewer Usage Fee may be adjusted for that year. If the correction is an increase to the Sewer Usage Fee, the City of Cranston may assess the user the full Sewer Usage Fee that would have been due but for the error. The City of Cranston will notify the user of this adjustment and the cause for the adjustment. If the Sewer Usage Fee was in error due to the user's violation of the ordinance, charges that would have been due but for the violation shall be assessed by the City of Cranston. In either case, a separate supplemental Sewer Usage Fee bill will be mailed reflecting the additional charge.

E. Sewer Usage Fee adjustment requests shall be processed using a form provided for this purpose. This form shall be signed and dated by the property owner and included with a copy of the Sewer Usage Fee bill in contention and any other pertinent information or documents supporting an adjustment. All forms and documents shall be submitted to:

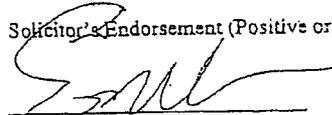
City of Cranston
Department of Public Works
869 Park Avenue
Cranston, RI 02910
Attention: Director

F. A written decision will be made by the Director to approve or deny the adjustment within 30 days from receipt of completed request, unless further information is required. All written decisions by the Director shall be final upon issuance of such written decision, but shall be subject to appeal to the Public Works Committee pursuant to Section 13.08.510 of the City of Cranston Codified Ordinance, including decisions on adjustment requests that were not filed within the time periods set forth in Subsection B above.

G. The Director shall prepare a report summarizing the number of Sewer Usage Fee adjustment requests, the number of requests approved and the reasons for such approvals, and such other information as he or she deems appropriate. Such report shall be delivered to the Public Works Committee by September 1 of each year for the prior fiscal year.

SECTION 2. This Ordinance shall take effect upon its final adoption.

Solicitor's Endorsement (Positive or Negative)



Anthony A. Cipriano
City Solicitor

Date

-DECEMBER 17, 2012-

SAFETY SERVICES & LICENSES COMMITTEE

(Richard D. Santamaria, Jr., Chair)

- 9-12-5 ORDINANCE IN AMENDMENT OF TITLE 10, CHAPTER 32 OF THE CODE OF THE CITY OF CRANSTON, 2005, ENTITLED 'MOTOR VEHICLES AND TRAFFIC' (Stop Fairfield Rd. with Summer St.).**
(Referred by Committee with no recommendation).

On motion by Councilman Santamaria, seconded by Councilman Archetto, it was voted to approve the above Ordinance.

On motion by councilman Archetto, seconded by Council Vice-President Navarro, it was voted to amend the above Ordinance as follows: line 21 amend "Section 032" to "Section 020"; line 22, after "Specific Streets", add "Stop Intersections Enumerated"; line 27, delete "Summer Street, at its intersection with Fairfield Road"; line 29, add "Section 2. Chapter 10.32.030 entitled Multi-way stop intersections-Enumerated by adding the following: Fairfield Road and Summer Street, 4 way stop". Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

On motion by Council Vice-President Navarro, seconded by Councilman Archetto, the above Ordinance was adopted as amended. Motion passed on a vote of 6-2. The following being recorded as voting "aye": Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, and Council Vice-President Navarro -6. The following being recorded as voting "nay": Councilwoman Luciano and Council President Lupino -2.

V. PUBLIC HEARINGS

(open to any matters)

Adam Lupino, 39 Sachem Dr., appeared to speak and thanked his dad, Council President Lupino, for serving on the School Committee and City Council.

Paul Valletta, President of Cranston Firefighters, appeared to speak on behalf of the firefighters and thanked the City Council for their service and wished them luck.

THE CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL

IN AMENDMENT OF TITLE 10, CHAPTER 32 OF THE CODE OF THE CITY OF CRANSTON, 2005, ENTITLED "MOTOR VEHICLES AND TRAFFIC"

(Stop Fairfield Road with Summer St)

*Proposed Amendment

No. 2012-35

*Amended by City Council 12/17/2012

Passed:

December 17, 2012

Handwritten signature of Anthony J. Lupino, Council President

Approved:

December 27, 2012 pursuant to Sect. 3.14 of the City Charter

Allan Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

Section 1. Chapter 10.32, Section .020 032 entitled "STOPPING, STANDING AND PARKING ON SPECIFIC STREETS *Stop Intersections Enumerated" is hereby amended by *deleting adding the following:

*Fairfield Road, at its intersection with Summer Street.

*[Summer Street, at its intersection with Fairfield Road]

*Section 2. Chapter 10.32.030 entitled Multiway stop intersections - Enumerated" by adding the following:

*Fairfield Road and Summer Street, 4 way stop

Section 2. This Ordinance shall take effect upon its final adoption.

Positive Endorsement

Negative Endorsement (attach reasons)

Handwritten signature of Christopher Rawson

Christopher Rawson, City Solicitor Date

12/17/12

Christopher Rawson, City Solicitor Date

Sponsored by: Councilman Navarro

Referred to Safety Services Committee October 1, 2012



Bureau of Traffic Safety

STAFF REPORT

To: City Clerk

From: Stephen Mulcahy, Traffic Engineer (Acting)

Subject: **Section 1.** Chapter 10.32, Section .020 entitled "Stop intersections-enumerated" is hereby amended by deleting the following:

Summer Street, at its intersection with Fairfield Road

Section 2. Chapter 10.32, Section .030 entitled "Multi-way stop intersections-enumerated" is hereby amended by adding the following:

Fairfield Road and Summer Street, 4 way stop

Ordinance Proposal No: 9-12-5

Date referred to staff: 9/25/12 (requested clarification from City Clerk on 11/8/12...amendment to original proposed ordinance required to concur with this report).

CC: Zanni; Cordy; Lopez; Giarrusso

BACKGROUND

Procedure: Pursuant to Section 9.06 of the City of Cranston Charter, the Bureau of Traffic Safety shall issue a report prior to the adoption of any rule, regulation, or order relating to traffic. Such reports may include in-house and/or field investigations to compile data relative to crash/accident incidence; roadway geometry; sight line distance; current codified ordinance; and other traffic control standards as defined in the *Manual on Uniform Traffic Control Devices*, 2009 edition, approved by the Federal Highway Administration.

Existing Condition:

- Fairfield Rd: two-lane uncontrolled low volume residential (25MPH) roadway; total ROW width of 45' including 9' paved and grass sidewalks; unrestricted parking on either side within subject segment; level grade on either approach to intersection, and good site line distance in either direction.
- Summer St: two-lane STOP controlled low volume residential (25MPH) roadway; total ROW width of 40' including 8' paved and grass sidewalks; unrestricted parking on either side within subject segment; level grade on either approach to intersection, and good site line distance in either direction.

Staff Analysis:

- No MUTCD warrant criteria have been satisfied for current ordinance proposal, as well as for previously approved STOP control on Summer St @ Fairfield Rd.
- No accidents reported within the three year period of 11/14/09-11/14/12.
- While no reason for imposing additional traffic control devices was provided to this office, as with many of these requests, they are driven by residents frustrated by speeding motorists. Research in the field indicates that the use of unwarranted traffic controls, especially the excessive use of STOP restrictions, tend to frustrate motorists, leading to an overall disrespect for signs, "rolling stops", ignoring signs completely, excessive engine noise and fuel consumption, increased cost to taxpayers for installation, maintenance, and enforcement, and increased air pollution as a result of frequent stopping and starting motions. Furthermore, studies show that of those motorists that do obey the STOP, many will speed between stops to make up for lost time. Additional STOP controls would only serve to further exacerbate these issues.

FISCAL IMPACT

Funds for material and perpetual maintenance of these devices shall be expended from the Division of Highway Maintenance operating budget under line item 101-1302-54103, Traffic Sign Materials.

RECOMMENDATION

Given that no MUTCD warrant criteria have been satisfied, and that a 2-way STOP control already exists, sound engineering judgment guides staff to **NOT recommend approval** of this ordinance.

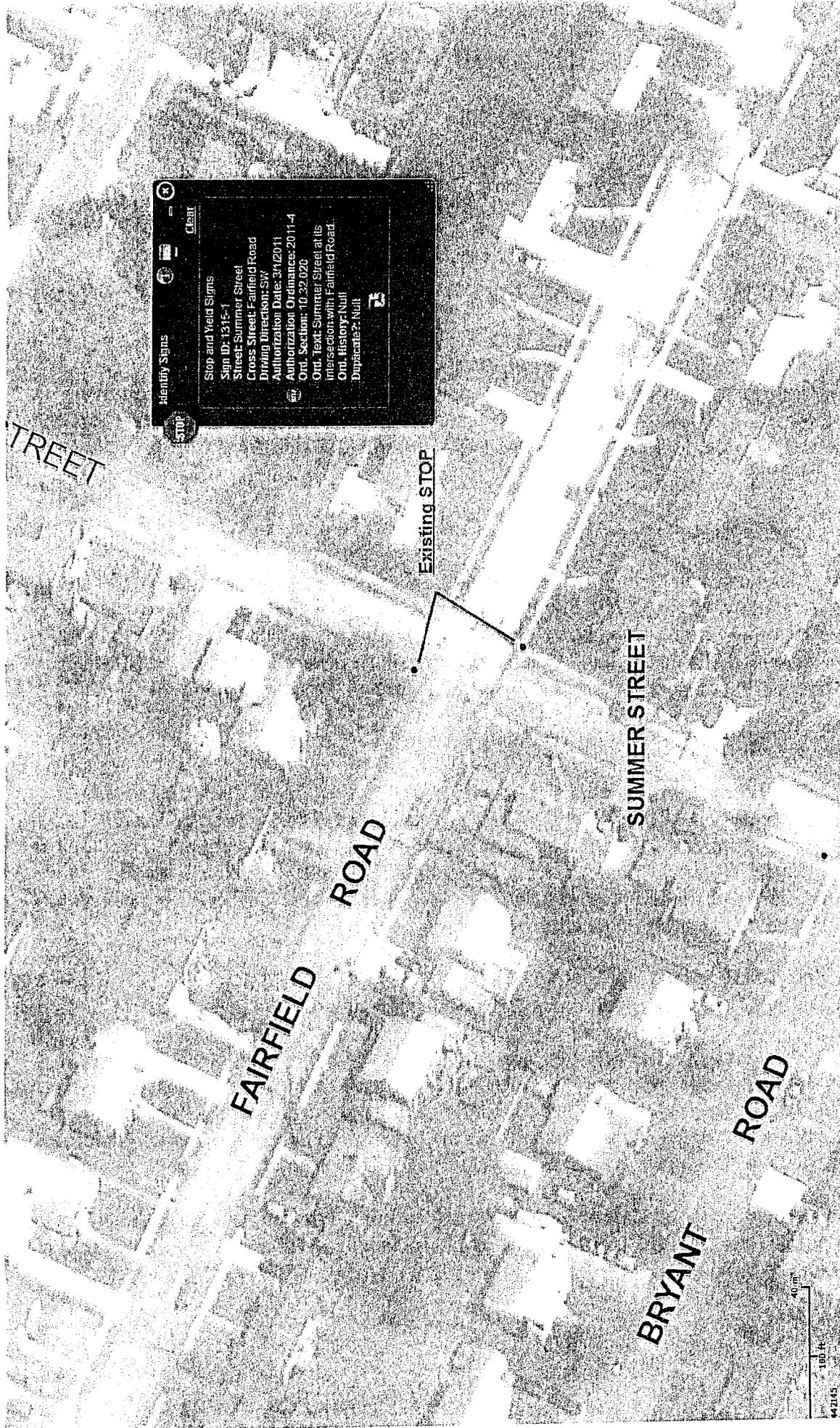
ATTACHMENTS

See annotated map.

Authorized Signature:



Date: 11/15/12



Identify Signs

Stop and Yield Signs

Sign ID: 1315-1

Street: Summer Street

Cross Street: Fairfield Road

Driving Direction: SW

Authorization Date: 3/12/2011

Ord. Section: 10.32.02C

Ord. Text: Summer Street at its intersection with Fairfield Road.

Ord. History: Null

Duplicate?: Null

CEBH



-DECEMBER 17, 2012-

VI. ELECTION OF CITY OFFICIALS

PROBATE JUDGE ADVISORY COMMISSION:

Anthony Cofone, Esq. - Appointment Councilman Favicchio

On motion by Councilman Favicchio, seconded by Council Vice-President Navarro, it was voted to appoint **ANTHONY COFONE, ESQ.**, as a member of the Probate Judge Advisory Commission. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

Vito Sciolto, Esq. - Appointment Councilman Santamaria

On motion by Councilman Santamaria, seconded by Councilman Archetto, it was voted to appoint **VITO SCIOLTO, ESQ.**, as a member of the Probate Judge Advisory Commission. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

Richard DelSesto - Appointment Councilman Santamaria

On motion by Councilman Santamaria, seconded by Councilwoman Luciano, it was voted to appoint **RICHARD DELSESTO**, as a member of the Probate Judge Advisory Commission. Motion passed on a vote of 7-1. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio and Council Vice-President Navarro -7. The following being recorded as voting "nay": Council President Lupino -1.

JUVENILE HEARING BOARD:

Louis Ricci - Reappointment Councilman Santamaria

On motion by Councilman Santamaria, seconded by Councilwoman Luciano, it was voted to appoint **LOUIS RICCI**, as a member of the Juvenile Hearing Board. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

Judge Raymond Coia appeared to speak and stated that Pamela Schiff would like to be re-appointed. There is still one additional Alternate vacancy that needs to be filled. He stated that Mr. Ricci would be filling the unexpired term of Iris Melo, who resigned.

-DECEMBER 17, 2012-

LIBRARY BOARD OF TRUSTEES:

Regina Spirito, Appointment (Replacement Deborah Brody)

On motion by Councilman Favicchio, seconded by Council Vice-President Navarro, it was voted to appoint **REGINA SPIRITO**, as a member of the Public Library Board of Trustees. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

ZONING BOARD OF REVIEW:

Craig Norcliff, Re-appointment Councilman Navarro

On motion by Council Vice-President Navarro, seconded by Councilman Santamaria, it was voted to re-appoint **CRAIG NORCLIFFE**, as a member of the Zoning Board of Review. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

VII. REPORT OF CITY OFFICERS

None.

VIII. EXECUTIVE COMMUNICATIONS

REPORT ON HIRING OF SPECIAL COUNSEL, CONSULTANTS, ETC., PURSUANT TO CHARTER SECTION 15.05.

No discussion was held.

CRANSTON FIRE DEPARTMENT:

Capt. James B. Dawber, Continuation in Service Request

On motion by Councilman Favicchio, seconded by Councilwoman Luciano, it was voted to approve the above request. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

CLAIM SETTLED BY THE SOLICITOR'S OFFICE:

- ***Josephine Iozzi***, \$10,000.00 - sewer claim

No discussion was held.

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IX. COUNCIL PRESIDENT COMMUNICATIONS

Council President Lupino thanked the families of the City Council members, Administration and staff, Clerk's Office and all the City Department Heads. He stated that it has been a pleasure to work with everyone. He thanked the first responders, Parks and Recreation and Building Maintenance. It was a pleasure to work with all of them. To the City Council, he stated that it was a pleasure working with them. He asked the incoming City Council and returning City Council members to keep the positive of our City.

X. COUNCIL MEMBER COMMUNICATIONS

Councilman Santamaria:

- ***Cranston Street Corridor Project*** (Resolution No. 2010-77) Adm. update

Mr. Cordy stated that the status has not changed since the last time this was reported on.

Councilman Santamaria asked that this be continued to next month's meeting.

- ***Fletcher Avenue Flood wall engineering study*** – Adm. Update

Mr. Cordy stated that the City is awaiting for NRCS and Fuss & O'Neil to schedule a meeting with the City for the design to date.

Councilman Santamaria asked that he be notified of any meetings.

- ***Macklin Street*** – no thru trucking issue

Councilman Santamaria asked that this item be continued.

Councilman Archetto:

Councilman Archetto extended his gratitude to the members of the City Council who will be leaving this term.

Council Vice-President Navarro:

Council Vice-President Navarro stated that it was an honor and a privilege to serve Ward 2. He thanked Councilman Santamaria for taking over Chairing the Public Works Committee, since due to his commitment to his job, he could not Chair the Committee. He also thanked the City Clerk and her staff for their work and assistance; Mr. Quinlan for his legal assistance; and the late Steve Woerner, former City Council Internal Auditor, for all his help during the budget hearings while he Chaired the Finance Committee; the Administration and staff for all their help and assistance. He wished the incoming Council members luck.

-DECEMBER 17, 2012-

Councilwoman Luciano:

Councilwoman Luciano stated that it has been a privilege and honor to represent her constituents and working with everyone in the City.

Councilman Donahue:

Councilman Donahue stated that it has been an honor and privilege in serving the residents of the City and in working along with the other Council members. It was also an honor to work with the Administration and its staff.

Councilman Favicchio:

Councilman Favicchio thanked the outgoing Council for all of their time and effort.

XI. OLD BUSINESS

None.

XII. INTRODUCTION OF NEW BUSINESS

Clerk read the following introduced items and the Committees and the date referred for public hearing:

Finance Committee – January 17, 2013

- 12-12-1 Ordinance in amendment of Title 3, of the Code of the City of Cranston, 2005, entitled “Revenue and Finance” (Tax Assessment Board of Review Compensation).
- 12-12-2 Ordinance amending the Budget for the Fiscal Year commencing July 1, 2012 and ending June 30, 2013 (Tax Assessment Board of Review).

Public Works Committee – January 14, 2013

Rhode Island Resource Recovery Corporation appeal dated December 7, 2012.

Claims Committee – January 28, 2013

*Property damage claim of Donald Alpaio for alleged incident on November 26, 2012.

*forwarded only to City Council, Solicitor and Anna Marino

On motion by Councilman Favicchio, seconded by Councilman Donahue, it was voted to refer the above new business to the respective Committees. Motion passed on a vote of 8-0. The following being recorded as voting “aye”: Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

12-12-1

THE CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL
IN AMENDMENT OF TITLE 3, OF THE CODE OF THE CITY OF CRANSTON,
2005 , ENTITLED "REVENUE AND FINANCE"
(Tax Assessment Board of Review Compensation)

No.

Passed:

Anthony J. Lupino, Council President

Approved:

Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

Section 1. Title 3, Chapter 8 , Section 3.08.0050 entitled "Tax Assessment Board of Review" is hereby amended as follows:

3.08.050 - Tax assessment board of review.

A.

All appraisals done for or on behalf of the tax assessment board of review of the city, shall be completed in accordance with Section 3.08.040 of the code.

B.

The tax assessment board of review members are [not] to be paid fifty dollars (\$50.00) per meeting subject to the following conditions:

1. A meeting is conducted in accordance with the Open Meetings statutes of Rhode Island state law and other applicable statutes.

2. Organizational meetings shall not be allowed for compensation purposes.

3. Meetings shall be of no less than one hour duration and shall have specific items to be considered and voted upon.

4. There shall be no more than one meeting per day.

5. Meetings exceeding five per calendar month shall require written approval of the city council president or the chairperson of the city council's finance committee.]

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Section 2: This Ordinance shall take effect upon its final adoption.

Positive Endorsement

Negative Endorsement (attach reasons)

Christopher Rawson, Solicitor	Date	Christopher Rawson, Solicitor	Date
-------------------------------	------	-------------------------------	------

Sponsored by: Councilman Archetto

Referred to Finance Committee January 17, 2013

12-12-2

THE CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL

AMENDING THE BUDGET FOR THE FISCAL YEAR COMMENCING JULY 1,
2012 AND ENDING JUNE 30, 2013
(Tax Assessment Bd of Review)

No.

Passed:

, Council President

Approved:

Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

Section 1: The budget for the fiscal year ending June 30, 2013 is hereby amended as follows:

Group 1901 Miscellaneous Boards and Commissions:

Expenditures:

52060 Tax Assessment Board of Review	[0]
	<u>4,000.00</u>

Group 1306 Refuse Removal & Disposal

Revenues

44404 RI Recycle Rebate Revenues	[100,000.00]
	<u>104,000.00</u>

Section 2: This ordinance shall take effect upon its final adoption.

Positive Endorsement	Negative Endorsement (attach reasons)
----------------------	---------------------------------------

_____ Christopher Rawson, Solicitor	Date	_____ Christopher Rawson, Solicitor	Date
--	------	--	------

I recommend adoption of the foregoing Ordinance Pursuant to Section 6.17 of the City Charter

Allan W. Fung, Mayor Date

12-12-2

1 Fiscal Note

2 I hereby certify that it is anticipated that sufficient funds will be available to fund this
3 appropriation.

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6 _____
Robert F. Strom, Director of Finance

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9 Sponsored by Councilman Archetto

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11 Referred to Finance Committee January 17, 2013

HinckleyAllenSnyder LLP
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Providence, RI 02903-2319
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www.haslaw.com*Gerald J. Petros*
gpetros@haslaw.com

December 7, 2012

VIA HAND DELIVERYCranston City Council
City of Cranston
City Hall
869 Park Avenue
Cranston, Rhode Island 02910Re: Appeal of Fine Notice
Rhode Island Resource Recovery Corporation

To the City Council:

On November 13, 2012, the Rhode Island Resource Recovery Corporation ("RIRRC") received a "ruling" (dated November 5, 2012) on its August 24, 2012, "Request for Reconsideration" of the City of Cranston's Department of Public Work's August 15, 2012, \$190,000 penalty in the "Fine Notice" issued to RIRRC. The City denied RIRRC's Request for Reconsideration. Pursuant to Section 13.08.510 of the Cranston Sewer Use Ordinance ("SUO"), on November 21, 2012, RIRRC filed a notice of appeal of the City's Fine Notice. RIRRC files this memorandum/further notice of appeal pursuant to its agreement with the City.

I. BackgroundA. The Fine Notice

On August 15, 2012, the City of Cranston issued a "Fine Notice" to RIRRC for alleged violations relating to Total Toxic Organics ("TTO") discharge limits in RIRRC's Industrial Wastewater Discharge Permit #1808 (the "Fine"). The Fine Notice assessed a penalty of \$190,000 based on a Narrative Description set forth in the Notice, and on a calculation that purported to follow the City's "Enforcement Response Plan" ("ERP"). The Fine Notice calculated a "total violation amount" of \$65,000 based on 15 instances of TTO exceedences in RIRRC's wastewater discharge. The City calculated this \$65,000 amount by applying the highest range from the ERP's penalty matrix amount for each of the 15 TTO exceedences. Thus, for each "moderate" violation, the City assessed \$4,000 (as opposed to say \$2,500 or \$3,000) and for each "significant" violation, the City assessed \$5,000 (as opposed to \$3,000, or \$3,500).

28 State Street, Boston, MA 02109-1775 TEL: 617.345.9000 FAX: 617.345.9020

20 Church Street, Hartford, CT 06103-1221 TEL: 860.725.6200 FAX: 860.278.3802

11 South Main Street, Suite 400, Concord, NH 03301-4846 TEL: 603.225.4334 FAX: 603.224.8350

REC'D
CITY
COUNCIL
DEC 10 AM 9:55
9:05 AM
J. Petros

The City next added a \$125,000 “adjustment” to the \$65,000 penalty based on a sum of \$25,000 for each of five different “mitigating” factors. Thus, the City added a \$25,000 penalty each for: (1) knowledge of the violation; (2) nature and seriousness of the offense; (3) need for deterrence; (4) history of noncompliance; and (5) adequacy of the evidence.” In its Fine Notice, the City gave no description of what the “mitigating factors” are, how they are defined, how they are applied in the City’s penalty worksheet, or what ranges of penalty the City used in applying these “mitigating” factors.

B. RIRRC’s Request for Reconsideration

On August 24, 2012, RIRRC filed a “Request for Reconsideration” of the August 15, 2012, “Fine Notice” pursuant to Section 13.08.500 of the SUO. RIRRC requested that the Director reconsider the assessment of the \$190,000 penalty, and reduce it to \$40,000.¹

In summary, RIRRC’s Request for Reconsideration demonstrated that the City’s penalty calculation did not comport with the City’s ERP, which includes the “enforcement response guide” (“ERG”) that the City applies “in responding to any form of non-compliance and includes the Fine Policy, which corresponds the type of violation and potential for harm to the recommended penalty amount.” See ERP at p. 39.

RIRRC’s Request for Reconsideration set forth in a detailed and specific manner how the City’s Narrative Description omitted key information, mischaracterized much of RIRRC’s actions and efforts to address the TTO issue, and appeared to be based on an underlying lack of understanding of RIRRC’s operations and facilities. In doing so, RIRRC responded to the various statements and allegations the City made in the Fine Notice concerning RIRRC’s interactions with Broadrock and with the City to counter the City’s incomplete and incorrect “historical” summary. RIRRC set forth facts that demonstrated, contrary to the City’s allegations, that RIRRC took good faith efforts to investigate the sources of the TTO and to determine ways to address this issue, and also described the steps it took to require Broadrock to treat its discharge.

RIRRC’s Request for Reconsideration also detailed how the City failed to follow its own ERP and Penalty Guidelines in assessing the \$190,000 penalty. As RIRRC explained, the point of a penalty policy is to ensure that a government agency applies penalty factors in a consistent and equitable manner so that members of the regulated community are treated similarly for similar violations. Thus, the calculation must be based on documents or references to the information the government relied upon in calculating the penalty, and should explain how the government applied the penalty policy methodology to the specific facts in the case.

RIRRC set forth how the City’s penalty worksheet and Fine provided no information, no facts and no rationale at all explaining why it applied the highest range penalty amount in the penalty matrix, or why that number was warranted, for any of the fifteen separate exceedences. The City appears to have arbitrarily chosen the largest penalty amount in the range allowed by its own

¹ Note that RIRRC’s Request for Reconsideration did not challenge the TTO violations themselves or request the penalty be reduced because it was not liable or responsible for these exceedences.

matrix, without any regard or consideration for the varying circumstances that surround each separate exceedence.

RIRRC's Request for Reconsideration also explained that the City provided no basis whatsoever for its upward adjustment of \$125,000. Its worksheet provided no information, facts, rationale, or analysis concerning the mitigating "factors," how or why the City applied them to RIRRC and to the circumstances of this case, or how it even determined the \$25,000 figure for each factor. Nor did the City cite to any other penalty policy or other document upon which it based this calculation. As RIRRC explained, the \$125,000 upward penalty "adjustment" is inherently flawed because without explanation, facts, and detail there is no information and no basis to sustain the penalty or substantiate its conformance to the City's ERP and RIRRC's due process rights. RIRRC also contended in its Request for Reconsideration that

any penalty adjustment that increases the penalty amount by 290 percent is, on its face, arbitrary and capricious and a clear abuse of discretion. Many federal and state penalty policies use similar adjustment factors to either increase or decrease penalty amounts by levels more close to the 10 to 15 percent range. These factors are not used or meant to be applied selectively by one government official against a sole industrial user simply to create a draconian and inequitable penalty amount that has no relation to the degree and seriousness of the alleged violation.

II. City of Cranston's "Ruling" on RIRRC's Request for Reconsideration

On November 5, 2012, the City issued a "ruling" on RIRRC's Request for Reconsideration, denying the request to reduce the penalty and "maintaining" the fine amount of \$190,000. As detailed below, the City's denial of RIRRC's Request for Reconsideration demonstrates further that the City's Fine Notice is arbitrary and capricious and an abuse of discretion.

A. Applicable Legal Standard

The City's own ERP cites to the applicable standard that applies to any administrative decision or action taken by the City against RIRRC: it must not be arbitrary or capricious or characterized by abuse of discretion or constitute a clearly unwarranted exercise of discretion. See ERP at p. 39. This is the guiding principle that applies to any action taken by an agency or a municipality in enforcing its laws. As the ERP states:

the [City] must be consistent in following the ERG, to do otherwise sends a signal to the User and the Public that the Program is not acting in an equitable manner which may be construed as arbitrary enforcement decision making.

ERP at p. 39.

B. The City's "Ruling" Demonstrates that Its Fine Notice Penalty Calculation Was Arbitrary and Capricious and an Abuse of Enforcement Discretion

The City's "ruling" does not address the applicable legal standard, or how its penalty calculation comported with the ERP. Instead, the City's "ruling" includes various "responses" that for the most part do not even address the issue of its penalty calculation or "reconsider" it based on RIRRC's Request. Instead, the City claims variously that: (1) since the City has the authority to enforce against RIRRC, the ERP does not apply to the City's penalty calculation, and that this somehow means the City did not abuse its discretion; (2) RIRRC's noncompliance is not "excused;" and (3) RIRRC is also, by the way, in violation of other permit conditions not alleged as part of the Fine Notice. The City then proceeds to add new and different reasons and bases – that are not in its Fine Notice – for its penalty calculation. We address each of these "responses" separately, below.

(1) The ERP Applies to the City's Penalty Calculation

In its "ruling," the City's response (in its paragraph #1) to RIRRC's demonstration that it did not follow the ERP is to disavow the ERP. The City claims the ERP is only a "guidance document" and "was not developed to restrict or limit the enforcement authority" of the City. The City thus claims it is "being neither arbitrary nor capricious towards taking [this] additional enforcement action. . . ." This nonsensical position confirms that the City not only failed to follow its own penalty policy, but demonstrates that the City failed to recognize that this failure proves that its penalty calculation is on its face arbitrary and capricious.

First, the City confuses the issue of whether it has authority under its ordinances to take an enforcement action with the issue of whether in this instance it appropriately exercised its enforcement discretion. The question is not whether the City has the authority to issue a notice of violation or a penalty against RIRRC; the issue is whether the City properly exercised that authority when it assessed an exorbitant penalty without a reasoned basis, and without following its own policy guidelines. Under the City's logic, because it has the authority to take an enforcement action, that authority is not restricted, and it can calculate any size penalty it wants without any reasoned explanation or reference to penalty guidelines. But as explained above, the City, as with any governmental agency or municipality, does not have unfettered discretion – it cannot abuse that discretion, or exercise it in an inequitable manner. It is, at a minimum, constrained by its own penalty policies and by due process protections.

Second, the City's claim that it is not "restricted" by the ERP violates the requirements of its own pretreatment program. Cranston has the authority to run its Municipal Industrial Pretreatment Program ("MIPP") pursuant to the Rhode Island Department of Environmental Management's ("RIDEM") approval of that program under EPA Clean Water Act regulations. To obtain that approval a municipality must "develop and **implement** an enforcement response plan." See 40 C.F.R. 403.8(f)(4). The City obtained approval from RIDEM to run its MIPP in part because it showed RIDEM it developed and intended to implement an ERP. The City's authority to assess penalties requires it to implement and follow its ERP; it cannot disregard its ERP and arbitrarily assess penalties. Thus, the City's authority to assess penalties against

industrial users is, in fact, restricted by its ERP. This is hardly an undue burden since the City drafted and adopted the ERP.

Third, the City's claim that it is not "restricted" by the ERP also ignores the simple fact that the City has acknowledged that it applied the ERP to calculate the \$190,000 penalty against RIRRC. For the City to now say, in the face of its own deficient calculation, that the ERP does not apply to its penalty calculation is tantamount to an admission that the City did not calculate the penalty in accordance with its own policy guidelines – the definition of an arbitrary calculation and an abuse of discretion.

(2) The City Confuses the Issue of the Penalty Calculation with the Issue of Compliance

As explained above, RIRRC's Request for Reconsideration showed that the City's "Narrative Description" for its penalty calculation included misstatements about RIRRC's actions with respect to Broadrock, and was incomplete and inaccurate. Thus, RIRRC's Request for Reconsideration contained factual responses to, and further information about, RIRRC's dealings with Broadrock. The City's "ruling" does not respond to any of RIRRC's information about Broadrock as it relates to the issue of the penalty calculation. Instead, the City responds (in its paragraph #2) with a non-sequitur, claiming broadly that it is "RIRRC's responsibility to comply," and that it will not "accept" any "distinctions" between RIRRC and Broadrock when it comes to "compliance." The City thus does not even "reconsider" its penalty calculation based on RIRRC's proffer that the narrative in the City's penalty worksheet calculation was inaccurate. The City instead concludes that because RIRRC is not in compliance, no other facts matter or are relevant. The City's position – that RIRRC is not in compliance – ignores RIRRC's request, and mixes up a determination of compliance, which is not at issue, with the City's determination of the size of penalty. That the City cannot distinguish between these issues underscores its inability to assess a penalty based on permissible factors and in an equitable manner, and its disregard for its ERP which was drafted and adopted to avoid this type of arbitrary and capricious approach.

The City's numbered paragraph 5 similarly misses the point. The City here responds to RIRRC's explanations for *why* exceedences occurred – which is part of the basis for any penalty calculation – with the statement that RIRRC's explanations are "not an acceptable excuse for noncompliance." The City misses the point: RIRRC was explaining why the City's penalty calculation relied on inaccurate information, and why the correct facts warranted a reduced penalty. This is yet further evidence that the City's penalty calculation is arbitrary, capricious, and an abuse of discretion.

(3) The City's New Allegations of Non-Compliance Have No Relevance to Whether the City's Penalty is Arbitrary and Capricious

The City's new allegations of noncompliance (in its paragraphs #3 & #4) have nothing to do with RIRRC's Fine Notice penalty calculation and are not relevant to RIRRC's appeal. RIRRC disputes these baseless and unsubstantiated allegations. Moreover, the City's random inclusion

of them in its “ruling” on the penalty calculation highlights the City’s inability to defend its arbitrary and inequitable \$190,000 penalty based on the applicable legal standard.

(4) The City Cannot Cure Its Deficient Penalty Calculation in the Fine Notice By Creating New Reasons After the Fact

The City’s ruling denies RIRRC’s Request for Reconsideration of the penalty, but not in response to the reasons RIRRC presented in its request. Instead of denying the Request by referring to the Fine Notice and its penalty calculation, and showing how the Fine Notice comported to the ERP and was not arbitrary, the City also conjures up new and different reasons that it now says form the basis of the penalty. The City’s response essentially admits that the Fine Notice was in fact deficient, and seeks post hoc to justify the \$190,000 penalty calculation.

The City is necessarily bound by the Narrative Description in its penalty worksheet, and the absence of any reasoned explanation for its upward adjustment of \$125,000. The City cannot change or supply the basis for the penalty in the middle of an appeal.

Further, the City’s new “explanations” do not, in any event, support the penalty calculation. The City still provides no basis for why it used the maximum penalty from the penalty matrix, or for its \$125,000 upward adjustment of the \$65,000 penalty calculated from that penalty matrix.

First, the City now claims that its \$65,000 penalty from the matrix is justified because “there is no basis to dispute the occurrence of the discharge” violations, and thus the City “could have” issued a higher penalty. The City states that, based on allegations that are not even included in the Fine Notice, it “could have” “applied a fine amount to each violation as a continuous daily noncompliance event up until the time that compliance was shown to be reestablished with the TTO parameter.” But, the City says, it made a “decision” to take a “more lenient approach” and “reduced the overall potential fine amount thereby warranting the application of the maximum penalty amount to each violation.”

The Fine Notice contains none of this information of course, and no reference to any continuous violation. There is no explanation in the Fine Notice that the City had any such evidence, or that the City considered it in its penalty calculation, or that the City made any “decision” to not apply it to the penalty because it was being “lenient.” The City cannot now rely on a new possible violation it never alleged, and on reasons never disclosed, to explain after the fact why it used the maximum penalty range amount from the matrix to calculate its penalty.

Second, the City’s new explanation fails. The City has no evidence that RIRRC violated its discharge permit on any days other than those in which sample results indicated a TTO exceedence. There is no statutory or regulatory provision (nor did the City cite any here) that allows the City to assess a penalty other than on a per day, per violation basis. The City has evidence of sample results that show an exceedence of a discharge limit on a particular set day, nothing more. The City cannot simply “assume” an exceedence “continued” without evidence. The City’s claim here underscores its miscomprehension of the law it is charged with enforcing.

The same principle applies to the City's attempts to now explain the upward adjustment of \$125,000. The City's "ruling" states: "The City has determined that the application of the additional punitive factors to the fine amount are for aggravating circumstances and are warranted as follows..." The City then provides a paragraph under each such "factor" that now purports to supply the reasoning for adjusting the penalty upwards by \$25,000 for each "factor."

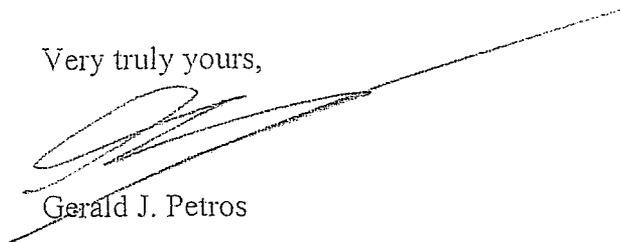
First, as explained above, the City's penalty calculation is already set forth in the Fine Notice and provides no basis whatsoever for the upward adjustment of \$125,000.

Second, the City's new explanation fails. For example, the City now contends that it applied a \$25,000 upward adjustment due to the "nature and seriousness of the offense" factor, based on its contention that phenol is a "listed hazardous substance, hazardous waste, and priority toxic pollutant" and that it presents a "toxicity issue to humans and the aquatic environment" among other things. The City does not explain or connect this information to the allegations of TTO exceedences here, or to RIRRC's contention that they did not cause Cranston to exceed its permit. The City's other "explanations" are also void of any connection to the ERP, or why the City has increased the penalty by \$25,000 because of these factors, especially given that the penalty matrix already takes into account the extent of the exceedence, and the duration of violation. Again, the City's new reasoning serves only to demonstrate further that the 290 percent upward adjustment is arbitrary and capricious, and unwarranted.

III. The City's Hearing on RIRRC's Appeal of the Fine Notice

The City exceeded its authority in calculating the penalty in the Fine Notice, and engaged in an unlawful procedure. Pursuant to Section 13.08.510 of the Cranston Sewer Use Ordinance ("SUO"), RIRRC's appeal of the Fine Notice to the City Council is subject to a hearing before the City Council. Based on our review of the documents the City produced in response to RIRRC's Record Request, it appears that individuals who are not City employees and personnel and/or who have not been delegated with the authority to make enforcement decisions on behalf of the City, participated or were involved in the City's exercise of discretion in calculating the penalty against RIRRC. RIRRC will subpoena and/or call as witnesses at the hearing these individuals to prove these violations of law and procedure.

Very truly yours,



Gerald J. Petros

cc: Michael O'Connell – RIRRC
 Evan Kirshenbaum, Esq.

51023846 (29915-144343)

-DECEMBER 17, 2012-

XIII. MISCELLANEOUS BUSINESS ON CLERK'S DESK

Mayoral Vetoes December 5, 2012

9-12-3 Ordinance in amendment of Title 6, Chapter 4 of the Code of the City of Cranston, 2005, entitled "Animals Generally" (Chicken Coops). As Amended 11/19/2012. [\[click here to view\]](#)

On motion by Councilman Stycos, seconded by Council President Lupino, it was voted to override the Mayor's Veto.

Under Discussion:

Councilman Stycos stated that as to the argument of property value being affected, that is not true. We have Ordinances for barking dogs and not maintaining properties. This Ordinance sets very strict guidelines. The other issue is rats. The Ordinance states that you have to have hardware wire at least six inches into the ground. This is very carefully regulated. We do have a rat problem, but we can't blame it on chickens. The chickens will not be flying around.

Councilman Archetto stated that he sees a number of problems with this Ordinance:

- A health issue.
- Fiscal problem - there is no Fiscal Note in this Ordinance. There will be a cost to the Animal Control and Inspections Departments.
- This Ordinance does not mirror the City of Providence's Ordinance, which allows only six chickens per coop. This Ordinance allows ten chickens per coop.
- Line 104 states that the chickens must be confined within the coop from sunset to sunrise. He questioned what happens between that? Will they be allowed to fly around?

Councilman Donahue stated that as to the rat issue, the City has brought in additional support to address the rat issue. He believes the Administration has done everything it can to address this issue.

Councilman Favicchio stated that his constituents feel that this is not good for their neighborhoods. The issue of rats needs to be addressed before allowing people to have chickens. This is not the time for this.

Councilwoman Luciano stated that this Ordinance does not address anything to protect the health of the chickens.

Council Vice-President Navarro stated that he is well aware of the rat problems in the City. He does not see the connection between the rat problem and people having chickens. He has received constituents' calls in favor of this. There are people already who have chickens and neighbors do not make noise. The Mayor's veto mentions property value going down. There is no documentation, it is just speculation.

-DECEMBER 17, 2012-

Councilman Stycos indicated to line 80 and line 93g and addressed Councilman Archetto's concern of chickens roaming.

Council President Lupino stated that if you are going to argue the issue of rats, the next Council needs to look at all the other Ordinances regarding dogs and cats and other animals because dog and cat food bring in rodents.

Councilman Archetto stated that come January, 2013, if this Ordinance does not pass, this area will no longer be his issue. It will become City Councilman-Elect Botts' issue because of the redistricting.

Roll call was taken on motion to override the Mayor's Veto and motion failed on a vote of 3-5. The following being recorded as voting "aye": Councilman Stycos, Council Vice-President Navarro and Council President Lupino -3. The following being recorded as voting "nay": Councilwoman Luciano, Councilmen Donahue, Archetto, Santamaria and Favicchio -5.

10-12-1 Ordinance in amendment of Title 10, Chapter 32 of the Code of the City of Cranston, 2005, entitled "Motor Vehicles & Traffic" (No Parking Weekdays Sprague Ave.). [[click here to view](#)]

On motion by Councilman Archetto, seconded by Councilman Santamaria, it was voted to override the Mayor's Veto.

On motion by Council Vice-President Navarro, seconded by Councilman Santamaria, it was voted to move the question. Motion passed on a vote of 6-2. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -6. The following being recorded as voting "nay": Councilmen Stycos and Archetto -2.

Roll call was taken on motion to override the Mayor's Veto and motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

10-12-2 Ordinance in amendment of Title 10, Chapter 32 of the Code of the City of Cranston, 2005, entitled "Motor Vehicles & Traffic" (Trough Trucking – Prohibited on America St., Back Street, Britton Street, Clemence Street, State Street, and Tweed Street). [[click here to view](#)]

On motion by Councilman Santamaria, seconded by Councilman Archetto, it was voted to override the Mayor's Veto. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

1 THE CITY OF CRANSTON

2
3
4 **ORDINANCE OF THE CITY COUNCIL**
5 **IN AMENDMENT OF TITLE 6, CHAPTER 4 OF THE CODE OF THE CITY OF**
6 **CRANSTON, 2012, ENTITLED "Animals Generally"**
7 **(Chicken Coops)**

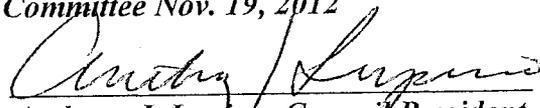
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9 *No.*

10 **Amended Ordinance Committee October 11, 2012*

11 ***Amended Ordinance Committee Nov. 19, 2012*

12
13 **Passed:**

14 November 26, 2012

15 
16 *Anthony J. Lupino, Council President*

17 **Approved:** Vetoed December 5, 2012

18 Reconsidered by the Council December 17, 2012 - failed to override veto

19 *Allan W. Fung, Mayor*

20
21
22 ***It is ordained by the City Council of the City of Cranston as follows:***

23
24 **Section 1.** Chapter 6.04, entitled "Animals Generally" is hereby amended by adding
25 thereto Section 6.04.40 – Domestic Chickens:

26
27 **6.04.40 Domestic Chickens**

28
29 (1) The keeping of chicken hens pursuant to this section shall be * ~~solely~~ primarily
30 for the purpose of raising chicken hens and collecting the eggs produced thereof: this
31 section shall not be construed to allow for the commercial slaughter **or sale of any
32 chicken hens **or eggs for *commercial ~~any~~ purpose.

33
34 (2) As used herein, "lot" shall mean one (1) or more parcels of land which are
35 contiguous and are under the same ownership according to the tax assessor's records and
36 which are zoned residential or are residential as a legal nonconforming use pursuant to
37 the zoning ordinance.

38 (3) The owner of any dwelling may deep or permit to be kept on the lot containing the
39 dwelling, one (1) hen per eight hundred (800) square feet of **open lot area, with a
40 maximum of ten (10) on any lot, provided that they comply with each and every
41 provisions of this section.

42 (4) The owner of the hen(s) must be a resident of said dwelling.

43
44 (5) No person shall keep any rooster.

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46 (6) No chicken hens may be kept or raised within the dwelling.

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(7) The raising of chicken hens shall be restricted to back yards or side yards; chicken hens shall not be permitted, at any time, on the part of the property directly abutting a main road or street.

(8) No hen house (coop) shall be built onto any shared fence.

**** (9) Prior to construction, plans must be submitted and approved by the Building Official, which shall include:**

a.) Site plan showing proposed location with relation to all property lines and adjacent structures.

b.) Construction details to comply with predator restraint guidelines as given.

c.) Inspection and Plan Review fees of \$35.00.

d.) Registration Certificate issued by City Clerk for verification.

** (9) (10) The coop and run shall not be located closer than twenty (20) feet to any residential structure on an adjacent property and must comply with zoning setback requirements pursuant to Cranston City Code Section 17.60.010.

** (10)-(11) All chicken hens must be provided with both a hen house (coop) and a fenced outdoor enclosure, subject to the following provisions:

a.) The coop must provide the chicken hens with adequate protection from the elements, inclement weather and provide for the chicken hens' good health and prevent unnecessary or unjustified suffering.

b.) The hen house must be covered, predator resistant, and well-ventilated.

c.) All above ground openings in the coop, such as windows and ventilation holes, must be covered with half-inch hardware cloth to prevent predator/rodent access.

d.) The hen house (coop) must have a floor and be surrounded by half-inch hardware cloth, buried at least twelve inches into the ground to prevent unwanted access from below.

e.) The hen house must provide a minimum of two (2) square feet per chicken.

f.) The hen house must be located upon a permeable surface that prevents waste runoff.

- g.) The fencing of the run must be surrounded on the sides and the top and adequately contain the chicken run.
- h.) The run must be kept clean and sanitary at all times; manure must be composted in enclosed bins, and
- i.) All enclosures must be so constructed or repaired as to prevent predators or rodents from being harbored.

~~** (11) (12)~~ All chicken hens must be fed subject to the requirements of Chapter 8.36.080 and feed must be stored securely.

~~** (12) (13)~~ All chicken hens must be confined within the coop from sunset to sunrise.

~~** (13) (14)~~ Notwithstanding the terms of this ordinance, private restrictions on the use of property shall remain enforceable and take precedence over this ordinance. Private restrictions include but are not limited to deed restrictions, condominium master deed restrictions, neighborhood association by-laws, and covenant deeds. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

~~** (14)~~
 (15) Whoever violates any provision of this section, or any order or regulation made in pursuance thereof, or obstructs or interferes with an execution of such order or willfully or illegally fails to obey such order, shall be guilty of an offense punishable as provided in this Code of Ordinances.

~~** (16) The provisions of this section shall be enforced by the animal control division of the City.~~

~~** (17) Attached please find three documents applicable to this Ordinance:~~

~~** (1) Parameters and a Fine and Fee Schedule;~~

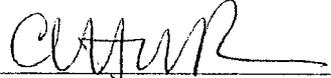
~~** (2) Registration Application; and~~

~~** (3) Structural Setback Chart.~~

Section 2. This Ordinance shall take effect upon its final adoption.

Positive Endorsement

Negative Endorsement (attach reasons)

 11/28/12
 Christopher M. Rawson Date
 City Solicitor

 Christopher M. Rawson Date
 City Solicitor

Sponsored by: Councilman Stycos

Referred to Ordinance Committee October 11, 2012

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****Chicken Hens in Residential Zones**

Cranston, RI

In accordance with Ordinance No. 00000, the raising of Chicken Hens is permitted within certain parameters. If you are interested in raising chicken hens you will need to take the following steps:

1. You must be able to comply with the regulations set forth in 00000 (attached)
2. Any hen house (coop) may require a Building Permit and be subject to all standard Dimensional Regulations. **You must meet with the Building Official to Determine if a permit will be required before completing the Chicken Hen Registration Application.**
3. Complete the enclosed Chicken Hen Registration Application and pay the Applicable fee. Please note, this registration is valid May 1st through April 30th and must be renewed annually.
4. Upon completion of the Registration Application, the owner will be provided with a Registration Certificate.

****FINE AND FEE SCHEDULE**

	Type	Fee / Fine
<u>Chicken Hens</u>		
	Registration fee Per house	\$25.00
	Renewal fee every two years	10.00
<u>Violations</u>		
	First offense	\$100.00
	Second offense	150.00
	Third offense	200.00

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City of Cranston
869 Park Avenue
Cranston, Rhode Island 02910
(401) 461-1000

****Chicken Hen Registration Application**

Please complete all items below

New application / Renewal (Circle One)

Owner Name: _____

Street Address: _____

Phone #: _____ Single Family House: Y N (Circle One)

E-mail Address: _____

(If provided we will send renewal reminder via-e-mail only)

Number of Hens: _____ Square Footage of Hen House: _____

Property Owner Signature Date

For New Applications: (To be completed by the Building Official)

_____ I have reviewed the Hen House / Coop plans and they DO NOT require a Building Permit

_____ I have reviewed the Hen House / Coop plans and a Building Permit IS required. Permit # _____ has been issued for this project

Building Official Date

Fee Schedule

Initial Registration Fee: \$25.00

Renewal Fee (every two years) 10.00

Check must be made payable to: City of Cranston

If renewing by mail, please enclose a self-addressed stamped envelope.

To: Cranston City Council
 From: Mayor Allan W. Fung
 Date: December 5, 2012
 RE: Veto of Ordinance 9-12-3

RECEIVED
 12 DEC -5 PM 4:13

CRANSTON
 CITY CLERK

As Mayor, I am exercising my veto privilege with respect to Ordinance 9-12-3, entitled "Chicken Coops." I am vetoing this ordinance, which would be applied citywide, based upon several concerns that I have some of which have been expressed to my administration by numerous residents.

First, I must note the one problem that currently exists and that we will continue to encounter in the city is with rats. We have spent a great amount of resources combating this issue in various parts of the city and it is a continuing concern with respect to the health and well being of our residents. While there has not been any research which can definitively link the ownership of chickens to a greater risk of rats or other rodents, there is always a concern with ownership of any animals. We do know that rats and other rodents are attracted to a food source and that can include excrement. Just as there are pet owners that are responsible, there are those who are not. We see that on a daily basis with people leaving food outside or not picking up their animal's waste. I am not sure expanding to allow the ownership of chickens, while for noble purposes such as personal food consumption of the eggs, is a good policy idea at this time given the potential that any irresponsible owners may contribute to the existing rodent problem.

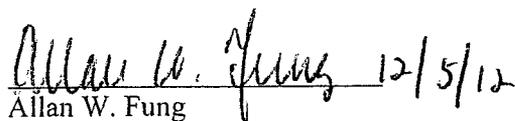
Second, I am worried about providing more of a burden to the animal control division of the city as well as the building inspections department. Many city departments, including the above mentioned, are understaffed and have taken on more work with limited resources.

Third, I must also consider the potential on home values and sales in the city. At this time, I do not have enough information or data on whether or not it could impact the home value of a neighbor or neighborhood. It could become an issue where a neighbor may have a more difficult time selling their home because people may not want to purchase a property where there are chickens being raised next door. This may be speculative on my part at this time but it is a concern that I have to worry about for all our neighbors.

I may reconsider my position in the future depending on the experience and data from other municipalities who have enacted similar ordinances. But at this time, I do have concerns for enacting it on such a broad basis across the city given the issues cited above.

For all these reasons, I am vetoing Ordinance 9-12-3.

Respectfully,

 12/5/12

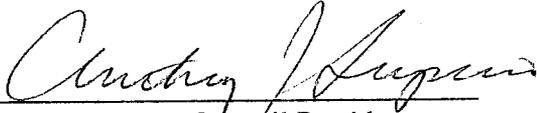
Allan W. Fung
 Mayor
 City of Cranston

THE CITY OF CRANSTON

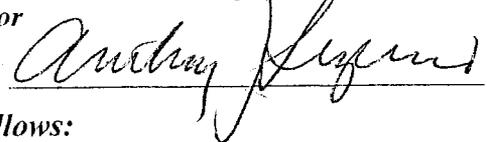
ORDINANCE OF THE CITY COUNCIL
IN AMENDMENT OF TITLE 10, CHAPTER 32 OF THE CODE OF THE CITY
OF CRANSTON, 2005, ENTITLED "MOTOR VEHICLES AND TRAFFIC"
(No Parking Weekdays Sprague Avenue)

No. 2012-36

Passed:
November 26, 2012


Anthony J. Lupino, Council President

Approved:
Repassed December 17, 2012

* See Veto Message (attached)
Allan W. Fung, Mayor


It is ordained by the City Council of the City of Cranston as follows:

Section 1. Chapter 10.32, Section .180 entitled " No Parking Weekdays" is hereby amended by adding thereto the following:

10.32.180 - No parking—Weekdays.

Between the hours of 8:00 a.m. and 6:00 p.m., weekdays, no vehicles shall remain standing for any period of time upon the following streets:

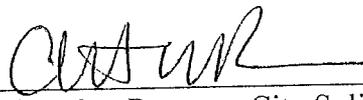
Sprague Avenue, south side, from a point on the corner of Douglas Street, easterly for forty (40) feet.

Section 2. This Ordinance shall take effect upon its final adoption.

Positive Endorsement

Negative Endorsement (attach reasons)

Christopher Rawson, City Solicitor Date

 11/28/12
Christopher Rawson, City Solicitor Date

Sponsored by: Councilman Archetto
Referred to Safety Services November 13, 2012

To: Cranston City Council
From: Mayor Allan W. Fung
Date: December 5, 2012
RE: Veto of Ordinances 10-12-1 and 10-12-2

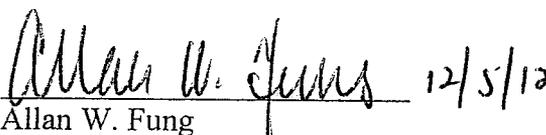
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12 DEC -5 PM 4: 12
CRANSTON
CITY CLERK

As Mayor, I am exercising my veto privilege over Ordinances 10-12-1 and 10-12-2, which have been proposed by two council members with respect to traffic enforcement within our local roadways. I am not vetoing these ordinances based upon the merits or substance of the ordinances. Rather, these two ordinances unfortunately have not met the legal requirements of Charter section 9.06, which states that "No ordinance shall be adopted by the council and no rule, regulation or order shall be made except a temporary regulation or order to cover a particular emergency, unless a report has been made previously on the matter by the bureau of traffic safety or unless it shall have been referred to the said bureau for at least sixty days without action by the bureau. (emphasis added).

In this instance, our bureau of traffic safety is still working on the report for these two ordinances as he is still within the allowed sixty day time period under the charter. To allow these ordinances to become law would violate the charter provision. Thus, our city solicitor has provided a negative endorsement.

For all these reasons, I must veto Ordinances 10-12-1 and 10-12-2.

Respectfully,


Allan W. Fung
Mayor
City of Cranston



Bureau of Traffic Safety

STAFF REPORT

Date: 12/12/12
To: City Council
From: Stephen Mulcahy, Traffic Engineer (Acting)
Ordinance Proposal No: 10-12-1
Date referred to staff: 10/23/12
CC: Wall; Zanni; Cordy; Lopez; Campisani; Giarrusso

Subject: Chapter 10.32, Section .180 entitled "No Parking Weekdays" is hereby amended by adding thereto the following:

10.32.180 – No parking-Weekdays.

Between the hours of 8:00 a.m. and 6:00 p.m., weekdays, no vehicles shall remain standing for any period of time upon the following streets:

Sprague Avenue, south side, from a point on the corner of Douglas Street, easterly for forty (40) feet.

BACKGROUND

Procedure: Pursuant to Section 9.06 of the City of Cranston Charter, the Bureau of Traffic Safety shall issue a report prior to the adoption of any rule, regulation, or order relating to traffic. Such reports may include in-house and/or field investigations to compile data relative to crash/accident incidence; roadway geometry; sight line distance; current codified ordinance; and other traffic control standards as defined in the *Manual on Uniform Traffic Control Devices*, 2009 edition, approved by the Federal Highway Administration.

Existing Condition:

- Sprague Ave: two-lane low volume, mostly residential (25MPH) roadway; total ROW width of 40' including 8' mostly paved sidewalks; existing STOP controls at its intersection with Douglas St; through trucking prohibited; unrestricted parking on either side; level grade within the subject segment; and a City of Cranston Special Services Center located at 45 Sprague Ave. with two 20' curb openings connecting to a semi-circular driveway.
- Douglas St: two-lane low volume residential and commercial (25MPH) roadway; total ROW width of 40' including 8' paved and unpaved sidewalks; existing STOP control at its intersection with Sprague Ave.; unrestricted parking on either side within subject segment; and level grade within the subject segment.
- T-intersection 90 degrees at approach with no sight line restrictions.

Staff Analysis:

- MUTCD warrant criteria not applicable for this measure.
- No accidents reported within the three year period of 11/14/09-11/14/12.
- Though no reason was given to this office for the proposed parking restriction, implementation would help facilitate safer ingress and egress for buses servicing the City of Cranston Special Services Center at 45 Sprague Ave. during operating hours by improving site distance in and around the intersection of Sprague Ave. and Douglas St., along with improving turning radii on the narrow roadway.

FISCAL IMPACT

Funds for material and perpetual maintenance of these devices shall be expended from the Division of Highway Maintenance operating budget under line item 101-1302-54103, Traffic Sign Materials.

RECOMMENDATION

While this office has given careful consideration to endorsing restrictions on the use of the public right-of-way, for reasons stated in the aforementioned analysis, staff recommends approval of this ordinance.

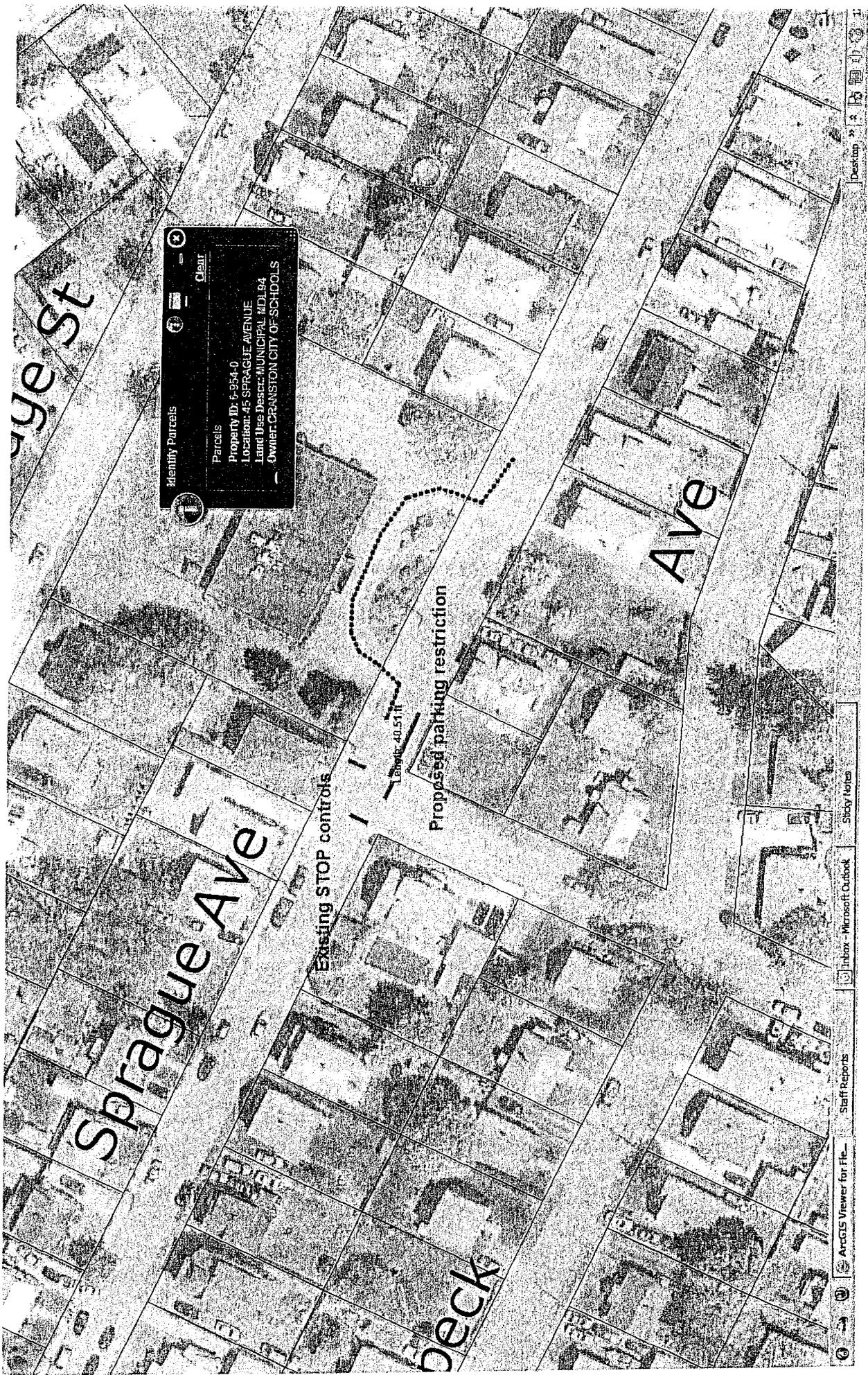
ATTACHMENTS

See annotated map.

Authorized Signature:



Date: 12/7/12



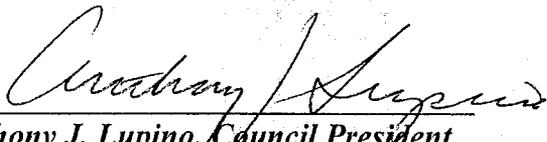
1 THE CITY OF CRANSTON

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3 **ORDINANCE OF THE CITY COUNCIL**

4 IN AMENDMENT OF TITLE 10, CHAPTER 12 OF THE CODE OF THE CITY OF
5 CRANSTON, 2005, ENTITLED "MOTOR VEHICLES AND TRAFFIC"
6 (Through Trucking- Prohibited on America Street, Back Street, Britton Street, Clemence
7 Street, State Street, and Tweed Street)

8
9 No. 2012-37

10
11 **Passed:**
12 November 26, 2012

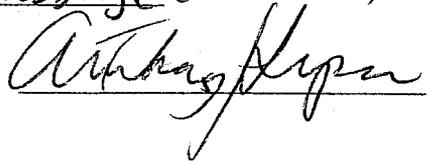
13 
14 Anthony J. Lupino, Council President

15 **Approved:**

16 * See Veto Message (attached)
17 Allan Fung, Mayor

18 Repassed: December 17, 2012

19 *It is ordained by the City Council of the City of Cranston as follows:*

20 

21 **Section 1.** Chapter 10.12, Section .210 entitled "Through trucking- Prohibited on
22 certain streets" is hereby amended by adding thereto the following:

23 **10.12.210 - Through trucking—Prohibited on certain streets.**

24
25 A. The use of motor trucks in and upon the following streets or highways at
26 any time is prohibited and the chief of police is directed to cause conspicuous
27 signs to be placed on such streets or highways giving notice of such
28 prohibition:

29 America Street

30 Back Street

31 Britton Street

32 Clemence Street

33 State Street

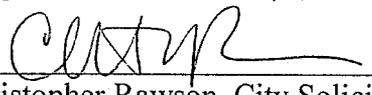
34 Tweed Street

35 **Section 2.** This Ordinance shall take effect upon its final adoption.

36
37 Positive Endorsement

Negative Endorsement (attach reasons)

38
39 _____
40 Christopher Rawson, City Solicitor Date

 11/28/12
Christopher Rawson, City Solicitor Date

Sponsored by Councilman Santamaria
Referred to Safety Services Committee November 13, 2012

U/Ordinances/Traffic Through Trucking Prohibited on Certain Streets

To: Cranston City Council
From: Mayor Allan W. Fung
Date: December 5, 2012
RE: Veto of Ordinances 10-12-1 and 10-12-2

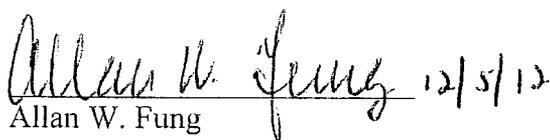
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CRANSTON
CITY CLERK

As Mayor, I am exercising my veto privilege over Ordinances 10-12-1 and 10-12-2, which have been proposed by two council members with respect to traffic enforcement within our local roadways. I am not vetoing these ordinances based upon the merits or substance of the ordinances. Rather, these two ordinances unfortunately have not met the legal requirements of Charter section 9.06, which states that "No ordinance shall be adopted by the council and no rule, regulation or order shall be made except a temporary regulation or order to cover a particular emergency, unless a report has been made previously on the matter by the bureau of traffic safety or unless it shall have been referred to the said bureau for at least sixty days without action by the bureau. (emphasis added).

In this instance, our bureau of traffic safety is still working on the report for these two ordinances as he is still within the allowed sixty day time period under the charter. To allow these ordinances to become law would violate the charter provision. Thus, our city solicitor has provided a negative endorsement.

For all these reasons, I must veto Ordinances 10-12-1 and 10-12-2.

Respectfully,


Allan W. Fung

Mayor
City of Cranston

Allan W. Fung
Mayor



Kenneth R. Mason, P.E.
Director of Public Works

Bureau of Traffic Safety

STAFF REPORT

Date: 12/12/12
To: City Council
From: Stephen Mulcahy, Traffic Engineer (Acting)
Ordinance Proposal No: 10-12-2
Date referred to staff: 10/23/12
CC: Wall; Zanni; Cordy; Lopez; Campisani; Giarrusso

Subject: Chapter 10.12, Section .210 entitled "Through trucking-Prohibited on certain street" is hereby amended by adding thereto the following:

10.32.210 – Through trucking-Prohibited on certain streets.

A. The use of motor trucks in and upon the following streets or highways at any time is prohibited and the chief of police is directed to cause conspicuous signs to be placed on such streets or highways giving notice of such prohibition:

America Street
Back Street
Britton Street
Clemence Street
State Street
Tweed Street

BACKGROUND

Procedure: Pursuant to Section 9.06 of the City of Cranston Charter, the Bureau of Traffic Safety shall issue a report prior to the adoption of any rule, regulation, or order relating to traffic. Such reports may include in-house and/or field investigations to compile data relative to crash/accident incidence; roadway geometry; sight line distance; current codified ordinance; and other traffic control standards as defined in the *Manual on Uniform Traffic Control Devices*, 2009 edition, approved by the Federal Highway Administration.

Existing Condition:

All subject streets are low volume residential (25MPH) roadways, varying ROW widths of 30-40 feet.

Staff Analysis:

- MUTCD warrant criteria not applicable for this measure.
- All residential streets.
- Other residential streets within the subject area currently have through trucking restrictions.
- Through trucking restrictions will improve overall quality of life for residents by improving safety and reducing noise levels.
- No undue burden is imposed on the surrounding commercial businesses.

FISCAL IMPACT

Funds for material and perpetual maintenance of these devices shall be expended from the Division of Highway Maintenance operating budget under line item 101-1302-54103, Traffic Sign Materials.

RECOMMENDATION

For reasons stated in the aforementioned analysis, staff recommends approval of this ordinance.

ATTACHMENTS

None.

Authorized

Signature



Date: 12/10/12

-DECEMBER 17, 2012-**MUNICIPAL COURT 2013 SESSIONS SCHEDULE** [\[click here to view\]](#)

On motion by Councilman Favicchio, seconded by Councilman Santamaria, it was voted to approve the Municipal Court 2013 Sessions Schedule. Motion passed on a vote of 8-0. The following being recorded as voting "aye": Councilwoman Luciano, Councilmen Donahue, Stycos, Archetto, Santamaria, Favicchio, Council Vice-President Navarro and Council President Lupino -8.

8S-12-1 Ordinance in Amendment of Title 13.08 of Code of the City of Cranston, 2005, entitled "Public Services" (Sewer Service System) and Title 13.12 entitled "Wastewater Disposal Services". [\[click here to view Ordinance\]](#)
[\[click here to view notice\]](#) (Awaiting conclusion of DEM's public comment period.)

Solicitor Kirshenbaum stated that a meeting is scheduled for December 21st to discuss local limits.

Council President Lupino asked that this item be continued to next month's meeting.

6-12-8 Ordinance authorizing the City to enter into an agreement with the RI Department of Education for the transfer of ownership of Cranston Area Career and Technical Center to the City of Cranston for \$3.2 million dollars. Report from Administration on status of executed agreement from the RIDE representative. (Awaiting Executed Copy)

Mr. Cordy stated that the Solicitor and he are meeting with the Attorney representing the School Committee and RI Department of Education and stated that RI Department of Education is looking to make some verbal changes with regards to Phase I Environmental.

Council President Lupino asked that this item be continued to next month's meeting.

Council President Lupino stated that the Harbor Master has submitted a letter stating that he is not seeking re-appointment. Council Vice-President Navarro thanked Paul Casey for his service.

<u>MONTH/DATE</u>	<u>DAY</u>	<u>TIME</u>
January 9	Wednesday	2 PM
January 14	Monday	9 AM
January 15	Tuesday	9 AM
January 17	Thursday	9 AM
January 17	Thursday	5 PM
January 23	Wednesday	2 PM
January 28	Monday	9 AM
January 29	Tuesday	9 AM
January 31	Thursday	9 AM
January 31	Thursday	5 PM
February 6	Wednesday	2 PM
February 11	Monday	9 AM
February 12	Tuesday	9 AM
February 14	Thursday	9 AM
February 14	Thursday	5 PM
February 18	Monday	9 AM
February 25	Monday	9 AM
February 26	Tuesday	9 AM
February 28	Thursday	9 AM
February 28	Thursday	5 PM
March 6	Wednesday	2 PM
March 11	Monday	9 AM
March 12	Tuesday	9 AM
March 14	Thursday	9 AM
March 14	Thursday	5 PM
March 20	Wednesday	2 PM
March 25	Monday	9 AM
March 26	Tuesday	9 AM
March 28	Thursday	9 AM
March 28	Thursday	5 PM
April 3	Wednesday	2 PM
April 8	Monday	9 AM
April 9	Tuesday	9 AM
April 11	Thursday	9 AM
April 11	Thursday	5 PM
April 22	Monday	9 AM
April 23	Tuesday	9 AM
April 25	Thursday	9 AM
April 25	Thursday	5 PM

<u>MONTH/DATE</u>	<u>DAY</u>	<u>TIME</u>
May 1	Wednesday	2 PM
May 6	Monday	9 AM
May 7	Tuesday	9 AM
May 9	Thursday	9 AM
May 9	Thursday	5 PM
May 15	Wednesday	2 PM
May 20	Monday	9 AM
May 21	Tuesday	9 AM
May 23	Thursday	9 AM
May 23	Thursday	5 PM
May 29	Wednesday	2 PM
June 3	Monday	9 AM
June 4	Tuesday	9 AM
June 6	Thursday	9 AM
June 6	Thursday	5 PM
June 12	Wednesday	2 PM
June 17	Monday	9 AM
June 18	Tuesday	9 AM
June 20	Thursday	9 AM
June 20	Thursday	5 PM
June 26	Wednesday	2 PM
July 10	Wednesday	2 PM
July 15	Monday	9 AM
July 16	Tuesday	9 AM
July 18	Thursday	9 AM
July 18	Thursday	5 PM
July 24	Wednesday	2 PM
July 29	Monday	9 AM
July 30	Tuesday	9 AM
August 1	Thursday	9 AM
August 1	Thursday	5 PM
August 7	Wednesday	2 PM
August 13	Tuesday	9 AM
August 15	Thursday	9 AM
August 15	Thursday	5 PM
August 21	Wednesday	2 PM
August 26	Monday	9 AM
August 27	Tuesday	9 AM
August 29	Thursday	9 AM
August 29	Thursday	5 PM

<u>MONTH/DATE</u>	<u>DAY</u>	<u>TIME</u>
September 4	Wednesday	2 PM
September 9	Monday	9 AM
September 10	Tuesday	9 AM
September 12	Thursday	9 AM
September 12	Thursday	5 PM
September 18	Wednesday	2 PM
September 23	Monday	9 AM
September 24	Tuesday	9 AM
September 26	Thursday	9 AM
September 26	Thursday	5 PM
October 2	Wednesday	2 PM
October 7	Monday	9 AM
October 8	Tuesday	9 AM
October 10	Thursday	9 AM
October 10	Thursday	5 PM
October 16	Wednesday	2 PM
October 21	Monday	9 AM
October 22	Tuesday	9 AM
October 24	Thursday	9 AM
October 24	Thursday	5 PM
October 30	Wednesday	2 PM
November 4	Monday	9 AM
November 5	Tuesday	9 AM
November 7	Thursday	9 AM
November 7	Thursday	5 PM
November 13	Wednesday	2 PM
November 18	Monday	9 AM
November 19	Tuesday	9 AM
November 21	Thursday	9 AM
November 21	Thursday	5 PM
November 27	Wednesday	2 PM
December 2	Monday	9 AM
December 3	Tuesday	9 AM
December 5	Thursday	9 AM
December 5	Thursday	5 PM
December 11	Wednesday	2 PM
December 16	Monday	9 AM
December 17	Tuesday	9 AM
December 19	Thursday	9 AM
December 19	Thursday	5 PM

-DECEMBER 17, 2012-

Council President Lupino stated that a tentative Executive Session Special Council meeting has been scheduled for December 27th at 7:00 P.M. regarding contract negotiations.

The meeting adjourned at 9:45 P.M.



Maria Medeiros Wall, JD
City Clerk



Rosalba Zanni
Assistant City Clerk/Clerk of Committees

(See Stenographic Notes of Jane Cormier, Stenotypist)