MASON, GRIFFIN & PIERSON
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton

From: Lisa M. Maddox, Esq.
Assistant Princeton Attorney

Date: April 23, 2014

Re: **Proposed Ordinance for Introduction: Chapter 1, "General Provisions"**

Attached is Chapter 1, "General Provisions," proposed for introduction at the mayor and council's April 28, 2014 meeting. This is the same version of Chapter 1 discussed at the mayor and council's April 16, 2014 meeting, except for the correction of a typographical error in footnote 1. (The citation to N.J.S.A. 40A:60-1 was corrected.)

Please do not hesitate to contact me should you have any questions or concerns.

Attach.
cc: Robert W. Bruschi, Administrator (w/attach.)
Kathy Monzo, Assistant Administrator (w/attach.)
Linda S. McDermott, Clerk (w/attach.)
Trishka W. Cecil, Esq., Attorney (w/attach.)
Edwin W. Schmierer, Esq. (w/attach.)

AN ORDINANCE BY PRINCETON CONCERNING GENERAL PROVISIONS AND AMENDING THE "CODE OF THE BOROUGH OF PRINCETON, NEW JERSEY, 1974" AND THE "CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968".

WHEREAS, the Borough of Princeton and Township of Princeton pursuant to the provisions of the New Jersey Municipal Consolidation Act, *N.J.S.A.* 40:43-66.35 consolidated as Princeton on January 1, 2013; and

WHEREAS, pursuant to *N.J.S.A.* 40:43-66.64, the Princeton Council on January 1, 2013 adopted a Resolution continuing in effect Ordinances of the former Borough of Princeton and the former Township of Princeton as a new Code for Princeton is prepared; and

WHEREAS, the Princeton Council's Code Subcommittee has reviewed and consolidated portions of Chapter 1 of the "Code of the Borough of Princeton, New Jersey, 1974" and portions of Chapter 1 of the "Code of the Township of Princeton, New Jersey, 1968" pertaining to General Provisions; and

WHEREAS, the Princeton Council wishes to adopt said Code revisions which will become a part of the new Princeton Code at a future date.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Council as follows:

Section 1. Sections 1-1 through 1-6 of the "Code of the Borough of Princeton, New Jersey, 1974" and Sections 1-1 through 1-7 of the "Code of the Township of Princeton, New Jersey, 1968" are hereby repealed.

Section 2. Revisions to Chapter 1 of the "Code of the Borough of Princeton, New Jersey, 1974" as set forth in Exhibit A attached hereto and made a part hereof are hereby adopted to set forth

the general provisions applicable to the Princeton Code and to replace the aforementioned sections of the "Code of the Borough of Princeton, New Jersey, 1974" and the "Code of the Township of Princeton, New Jersey, 1968".

Section 3. Section 1-7 of the "Code of the Borough of Princeton, New Jersey, 1974," regarding credit card convenience fees, is hereby repealed.

Section 4. An amendment to Chapter 2 of the "Code of the Borough of Princeton, New Jersey, 1974" regarding credit card convenience fees as set forth on Exhibit B attached hereto and made a part hereof is hereby adopted to set forth the requirements for credit card convenience fees and to replace the aforementioned section 1-7 of the "Code of the Borough of Princeton, New Jersey, 1974".

Section 5. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are repealed.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

Section 7. The provisions of the attached Chapter 1 and amendment to Chapter 2 shall be applicable within Princeton upon final adoption and shall become a part of the new Princeton Code once completed and adopted.

_____ _____

Linda S. McDermott, Clerk Liz Lempert, Mayor

Ordinance Introduced:
Ordinance Adopted:

EXHIBIT A

CHAPTER 1 – GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

This Chapter and the following chapters constitute and shall be designated as the "Code of Princeton, New Jersey, 2013," and may be so cited.

Sec. 1-2. Rules of construction.

In the construction of this Code and of all other Princeton ordinances, words and phrases shall be read and construed with their context and shall, unless inconsistent with the manifest intent of the governing body or unless another or different meaning is expressly indicated, be given their generally accepted meaning according to the approved usage of the language. Technical words and phrases and words and phrases having a special or accepted meaning in the law shall be construed in accordance with such technical or special and accepted meaning.

In such construction, the following words and phrases shall have the meanings herein given:

Code. The words "the Code" or "this Code" shall mean the Code of Princeton, New Jersey 2013.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given or such act is done shall not be counted in computing the time, but the day on which such proceeding is to be had shall be counted.

Council or Mayor and Council. The words "council" or "mayor and council" shall mean the council or mayor and council of Princeton.

County. The words "county," "the county" or "this county" shall mean the County of Mercer.

Gender. Words importing gender shall apply to females as well as to males, and to bodies corporate, partnerships, limited partnerships and associations, foreign and domestic, as well as to individuals.

Governing Body. Governing Body shall mean the council, unless the context requires the meaning mayor and council.

Month. The word "month" shall refer to a calendar month.

Municipality. The word "municipality" shall mean Princeton, a municipal corporation of the State of New Jersey.[1]

Number. Words used in the singular number shall include the plural, and words used in the

[1] The municipality was formed on January 1, 2013, in accordance with N.J.S.A. 40A:60-1 *et seq.*

plural number shall include the singular number.

Oath. The word "oath" shall be construed to include an affirmation where an affirmation may be substituted for an oath. In such cases the words "swear" and "sworn" shall be construed to be equivalent to the words "affirm" and "affirmed."

Officer; subordinate officer; employee. The following definitions apply only in connection with the procedures set forth in Chapter 2 of this Code which specifically address the appointment, hiring, promotion, discipline, suspension or discharge (as applicable) of subordinate officers and employees of the municipality: the word "officer" shall apply only to the mayor and council members; the term "subordinate officer" shall apply to (a) the holder of an office created or recognized by state law, including but not limited to the administrator, attorney, prosecutor, public defender, construction official, subcode officials and engineer, and (b) the holder of an office established by the council who is responsible for performing a permanent municipal function; and the word "employee" shall mean a person employed directly by Princeton.

Officer or official in title. The words "officer" or "official," and the title of an officer or official, shall be construed as if the words "of Princeton" followed them.

Owner. The word "owner" shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of a building or land.

Person. The word "person" shall include corporations, companies, clubs, societies, firms, partnerships, associations, organizations and any other group or entity acting as a unit, as well as an individual.

Preceding; following. The words "preceding" and "following" shall mean next before and next after, respectively.

Princeton. The word "Princeton" shall mean Princeton, a municipal corporation of the State of New Jersey, in Mercer County, New Jersey.

Shall; may. The word "shall" is mandatory; the word "may" is permissive.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curb line and the adjacent property line, intended for the use of pedestrians.

State. The words "state," "the state" or "this state" shall mean the State of New Jersey.

Street. The word "street" shall mean and include public highways, roads, avenues, courts, public lanes, alleys and sidewalks.

Tenant or occupant. The words "tenant" or "occupant," applied to a building or land, shall include any person who occupies the whole or part of such building or land, whether alone or with others.

Tense. Words used in the past or present tense include the future, as well as the past and present.

Week. The word "week" shall mean a calendar week.

Writing; written. The words "writing" and "written" shall include printing and any other mode of representing words, letters and figures.

Sec. 1-3. Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same in substance as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

Sec. 1-4. Catchlines of sections.

The catchlines of the several sections of this Code are intended as mere catch-words to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, neither as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

Sec. 1-5. Severability of parts of Code.

Each section of this Code is hereby declared to be a separate section, and the determination of any section or part thereof to be void shall not affect the validity of any other section or part thereof.

Sec. 1-6. General penalty; continuing violations; repeat violations; other penalties.

General Penalty. Whenever in this Code, or in any other ordinance or resolution or in any rule, regulation or order promulgated pursuant to this Code or other ordinance of the municipality, any act which is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in such Code or in such other ordinance, rule, regulation, resolution or order, the doing of any act is required or the failure to do any act is declared to be unlawful or an offense (and where no specific penalty is provided therefor), the violation of any such provision of this Code or of any other ordinance, rule, regulation, resolution or order, or of any rule, regulation or order promulgated pursuant to this Code, shall be punished by one or more of the following, unless specifically exempted from these penalties as provided in the ordinances: a fine not exceeding two thousand dollars; imprisonment for a period not to exceed ninety days; or performance of community service for a period not exceeding ninety days.

Repeat violations. Any person who is convicted of violating this Code or any other ordinance or resolution or any other rule, regulation or order promulgated pursuant to this Code or other ordinance within one year of the date of a previous violation of the same provision, and who was fined for that previous violation, shall be sentenced by the court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall be neither less than the minimum nor more than the maximum fine fixed for a violation of the provision, but shall be in addition to but calculated separately from the fine imposed for the current

violation of the provision.

Alternate penalties under certain circumstances. Whenever any provision of the New Jersey Revised Statutes limits the authority of the municipality to punish the violation of any particular provision of this Code or other ordinance, rule, regulation, resolution or order promulgated pursuant thereto to a fine of less amount than that provided in this section, imprisonment for a shorter term than that provided in this section or community service for a shorter term than that provided in this section, then the violation of such particular provision of this Code or other ordinance, rule, regulation, resolution or order shall be punished by the imposition of not more than the maximum fine, imprisonment and/or community service so authorized.

Minimum penalty. The council may prescribe in any particular ordinance that for violation of that ordinance a minimum penalty shall be imposed which shall consist of a fine fixed at an amount not exceeding $100.00.

Continuing violations. Each day any violation of this Code or any other ordinance, rule, regulation, resolution or order promulgated pursuant thereto shall continue or shall have continued shall constitute a separate offense, unless otherwise provided in the subject Code, ordinance, rule regulation, resolution or order. Any person convicted of violating this Code or any ordinance or resolution or any other rule, regulation or order promulgated pursuant to this Code or other ordinance, and who is in default of the payment of any fine imposed for the violations may, in the court's discretion, be imprisoned for a term not exceeding ninety days or be required to perform community service for a period not exceeding ninety days.

EXHIBIT B

CHAPTER 2 – ADMINISTRATION

Article VI. Miscellaneous Fees

Sec. 2-102. Credit card convenience fees.

Whenever a credit card shall be used to make payment for a municipal tax, service, fee or penalty, the municipality shall be authorized to collect a convenience fee to defray the cost of transactional fees charged or chargeable to the municipality by a bank or credit card company pursuant to a third-party merchant services agreement in connection with the processing of the credit card payment, as indicated below. Prior to processing the credit card payment, the municipality shall disclose to the credit card user the actual amount of the transactional fee to be charged.

The transactional fee to be charged to a credit card user shall be the actual fee charged or chargeable to the municipality for that transaction, as set forth in its third-party merchant services agreement, which includes the following:

(a) A fixed percentage of the amount of the transaction; and

(b) A minimum fee assessed for the transaction, if any.