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FRAMINGHAM CITY COUNCIL

ORDER NO. 2019-045-001
REQUEST OF THE APPOINTMENTS SUBCOMMITTEE

UPON THE REQUEST OF APPOINTMENTS SUBCOMMITTEE, THE CITY OF FRAMINGHAM, THROUGH THE FRAMINGHAM CITY COUNCIL, IT IS SO ORDERED:

That, after lengthy discussion, the City Council votes to override the Mayor's veto of ***Guidelines for Appointments to Boards, Committees, Commissions, Councils and Employee Positions Stipulated in Framingham's Home Rule Charter Where City Council Approval is Needed***, an Ordinance designed to clarify and streamline the appointments process. The full text of the Ordinance follows this Order.

YEAS: Cannon, Giombetti, Grove, King, Sisitsky, Steiner, Torres, Tully Stoll

NAYS: Richardson, Rossi, Shepard

ABSTAIN: None

ABSENT: All Members were present

PASSED IN COUNCIL: OCTOBER 1, 2019

A True Record, Attest:

10/2/19

Date Approved

Lisa A. Ferguson

Lisa A. Ferguson, City Clerk

**Framingham City Council
Voted on August 13, 2019**

**Guidelines for Appointments to Boards, Committees, Commissions,
Councils and Employee Positions Stipulated in Framingham's Home
Rule Charter Where City Council Approval is Needed**

1. Intent and Purpose

Whereas the Framingham Home Rule Charter passed by Framingham voters on April 4, 2017 does not provide sufficient guidance to assure that a strong and diverse group of potential candidates is encouraged to apply to serve the City of Framingham; this ordinance outlines steps to achieve that result.

Additionally, this Ordinance seeks to assure that no individual is discouraged from or denied application or appointment to any Board, Committee, Commission or Council based on race, color, national origin, religion, age, gender, sexual orientation, physical disability, mental disability, gender identity, gender expression, economic status or a non-listed protected category under the law. This ordinance establishes an appointments process with safeguards to prevent overt or inadvertent discrimination during the appointment process when people seek to serve our city. The disclosure portions of this ordinance regarding home addresses, and personal phone numbers and personal email addresses do not apply to people seeking employment with the City of Framingham.

2. Definitions

As used in this ordinance the following terms shall have the meanings indicated below.

ADMINISTRATION

The Mayor and/or staff or designee(s)

ADVERTISEMENT

A notice or announcement in a public medium or multiple mediums, publicizing board, committee, commission or council vacancies and seeking applications for the opening(s). Methods used must meet at least the minimum criteria specified in Framingham's Home Rule Charter passed on April 4, 2017 or as amended, as well as the additional methods stipulated or stated in this ordinance.

APPLICANT

Any individual who applies or attempts to apply to be a member of a board, committee or commission and council in Framingham's city government or an employee who must be approved by the City Council per Framingham's Home Rule Charter.

Ad Hoc Task Forces or Committees are not governed by the procedural rules set forth here; however, the anti-discrimination goals and objectives also apply to those appointments.

CANDIDATE

Any individual put forth by the Mayor or the City Council to fill a particular seat for a specified term or a term that may be served coterminous with an elected official.

3. Procedures

- (a) For all appointments of the Council and all appointments of the Mayor that are subject to the review by the Council under Article II, Section 10 of the Charter, a detailed description shall be prepared by the city administration or by the City Council when a position is under their direct authority stating the purpose and responsibilities of each office, board, committee, commission and council in the City of Framingham, the number of members on each and the length of terms.
- (b) Detailed descriptions of the roles and responsibilities of board, committee or commission members shall be prepared for each board, committee, commission or council. This description shall include the expected time commitment from the volunteer. If there are particular qualifications or disqualifying factors for an applicant, these should be stated with the roles and responsibilities of the position.
- (c) When a vacancy on a Board, Committee or Commission exists, advertisements as stipulated in this ordinance must be written including the information in both sections (3a) and (3b) of this ordinance as well as the term of the appointment and how many seats are available for appointment(s) and the total number of members on said board, committee, commission or council. The advertising for said position(s) shall appear within twenty one (21) days of said vacancy occurring.
- (d) For positions subject to this ordinance, expiring in the normal June 30th cycle, all advertising should begin by April 1st and continue on a biweekly basis until a hard application deadline of May 15th at 4:00 PM. All applications shall be time and date stamped when they are received.
- (e) The advertisement in section (3c) of this ordinance must be prepared in a minimum of three different languages including English, Spanish and Portuguese.
- (f) The advertisement in section (3c) of this ordinance must be distributed broadly including but not limited to press releases in the languages listed in section (3d) of this ordinance and shall be sent to all local media outlets including print, radio, online, PEG television channels and the City's social media pages as well as any other distribution method which could help yield qualified candidates representing the

demographic diversity of the people of Framingham as well as each geographic region of the city. The full descriptions cited in sections (3a), (3b) and (3c) of this ordinance should also be easy to locate on the City's website.

All openings should be announced through the city's text and email alert systems.

Where specific advertising requirements are stated in the Framingham Home Rule Charter, they shall be followed.

- (g) The advertisement shall state a deadline for applications and the appropriate method for submitting them. Unless there are extenuating circumstances the deadline shall be no later than 45 days after the advertisements are initially placed.
- (h) If the Mayor, or City Council for their own appointments, deems that the pool of candidates is not sufficient, the Mayor or City Council shall decide whether to consider the search unsuccessful or to recommend just a partial list of names. The Mayor or Council may also re-initiate an additional advertising process for applicants at their discretion. The Mayor or Council Chair or their designee shall disclose the status of the search within two business days of the deadline for applications.
- (i) Regardless of whether the search is deemed unsuccessful, all names and applications for non-employment positions shall be released to the City Council and the public within five business days of the application deadline.
- (j) The application process shall be as streamlined as possible while also collecting the necessary written information from each applicant to enable the Mayor or Mayor's designee(s) or City Council to determine the best candidates to invite for interviews or to recommend without an administrative interview.
- (k) The application for volunteer positions shall be conducted utilizing forms that are easy to complete. Supporting documentation shall be collected via, email, fax, personal delivery, U.S. Mail or a shipping or courier service. There shall be no redactions made to any documents received other than drivers' license number, Passport number or Social Security Number and email address.
- (l) The application itself shall disclose that all information submitted during the applications and appointment process becomes public information upon submission.
- (m) The application shall include name, home address, email address and phone number and a current resume, why they desire the position they are applying for and what credentials they have that would qualify them to be a good board, committee, commission or council member.

- (n) The City Council and/or its Appointments Subcommittee has the right to interview any or all candidates and to request additional information if the Subcommittee or full Council determines that information to be necessary.
- (o) If background checks are going to be used or if potential references for candidates are going to be contacted, this must be disclosed at the beginning of the application process before an applicant enters their name or submits personal or professional information to the city. Any investigative procedures, including interviews, shall be disclosed at the beginning of the application process. All applicable state and federal laws shall be adhered to in this process.
- (p) Background checks must be kept confidential and shall not be shared with anyone other than the agent conducting the check, the director of Human Resources or the Mayor. These individuals are required to determine whether or not the candidate's background is acceptable for volunteer service or employment in Charter defined positions where the City Council must vote on the applicant. The rest of the information collected in the application process including screening committee notes will be deemed public information. In the case of City Council appointments, the Chairperson of the Council will serve in the same capacity as the Mayor in this process.
- (q) When applicants are contacted regarding interviews, they shall be told who will be conducting the interviews both on the Administration side and the Council side of the government.
- (r) All applicant interviews, whether by the administration, City Council Appointments Subcommittee or the whole Council, shall be conducted in a handicap accessible location that meets the requirements of the Americans with Disabilities Act.
- (s) The Mayor or other appointing authority shall take into serious consideration the racial, ethnic, economic, disability and geographic disbursement of all appointments and shall strive to the extent practicable to seek appointees to all committees, boards, commissions and/or offices appointed by the Mayor from the entire town, reflecting both demographic and geographic diversity of membership.
- (t) After the Mayor decides on her/his candidates for appointment to boards, committees, commissions or councils the names of these individuals, their application packages and proposed appointment terms should be forwarded to the City Council Chairperson and Executive Assistant to the City Council at least 2 full business days before the press is notified. The same information for applicants who have not been recommended to be candidates shall also be provided under separate cover to the City Council Chairperson.

- (u) The City Council may only publicly discuss or take action on the candidates recommended by the Mayor; not the remaining pool of applicants. All information collected from applicants as well as the appointment decision shall also be forwarded to the City Clerk by the Mayor or City Council for their respective appointees when the particular application process is concluded. The City Clerk is mandated by this ordinance to keep all information on the appointment process on file for a rolling period of five years, to allow for random audits to assure that patterns of discrimination have not occurred.
- (v) After receiving the candidate names and information packets from the Mayor, the City Council Chair shall forward all received materials to the members of the Appointments Subcommittee and the other members of the Council within three business days. The Council Chairperson shall put the specific appointments on the next City Council Agenda for referral to the Appointments subcommittee. The Subcommittee Chairperson shall then schedule a meeting of the subcommittee to discuss processes, evaluate applications, interview candidates or proceed with another screening process determined by the Subcommittee. The Appointments Subcommittee Chair with the agreement of the Chairperson of the full Council may opt not to schedule a meeting of the Appointments Subcommittee due to the nature of the appointment(s) under consideration or due to time constraints.
- (w) The City Council Appointments Subcommittee will meet in open session to interview candidates. The interviews shall be broadcast live, or recorded for later Government Channel or on-line viewing.
- (x) The City Council Appointments Subcommittee will vote on each candidate either separately or in a group as is deemed appropriate by Subcommittee members for the purpose of making a recommendation to the full City Council. No discussion shall take place nor action be taken regarding applicants or others who did not obtain candidate status.
- (y) The Chairperson of the Appointments Subcommittee will send the subcommittee's recommendations to the Chairperson of the Council for the purposes of scheduling a full Council or placement on the agenda of a previously scheduled meeting to accept or reject the recommendation(s) of the Subcommittee.
- (z) When potential appointments with candidates are scheduled for discussion by the full City Council, the Council Chairperson shall make sure that each council member receives all of the nominee's information in accordance with the Official Rules of the Council relative to the distribution of meeting materials.
- (aa) Only the materials of the candidate(s) recommended for appointment will be posted on the City website with the meeting materials.

(bb) When candidates are scheduled to be discussed in any open forum each candidate shall be notified of such and invited to attend at least three business days before the scheduled discussion.

(cc) If an appointment involves the City Clerk; the Assistant City Clerk shall be responsible for handling all materials related to that appointment that are processed by that office.

4. Access to Rosters of Currently Serving Members

(a) The City of Framingham website shall include an easily accessible list of current board, committee, commission and council members with boards, committees, commissions and councils listed in alphabetical order.

(b) Each individual board, committee, commission or council member shall be listed in order of their term expirations with the earliest expirations at the beginning of the list.

The officer(s) of all board, committee, commission or council shall be noted on the list in (4a) above. If an officer(s) is appointed by the Mayor according to the Charter, that should be noted next to the name of the office held. All other board, committee, commission and council officers shall be elected by their own body members for one (1) year terms at the first meeting of the newly appointed group after June 30th. Efforts shall be made to synchronize term expirations for volunteer positions to June 30th by June 30, 2020.

(c) The information listed in (4a) and (4b) above shall also include home street address, email address and phone number for the member. If the member is a city employee, that information can be their city contact information.

(d) All possible efforts shall be made to provide appointees with a City of Framingham email address. This will ensure proper archiving of official correspondence for Freedom of Information requests or future litigation.

5. Term Lengths

(a) Term lengths for boards, committees, commissions and councils shall be staggered according to the City Bylaws. Unless, stipulated otherwise by the Charter, M.G.L. or a separate ordinance; terms shall end on June 30 of each year.

(b) Each year all seats with terms expiring that year shall be publicly advertised as outlined in section 3 above.

- (c) Unless a specific board, committee, commission or council is established for a period of limited duration; no board should have the majority of their members' terms expiring in the same year.

6. Resignations

- (a) When a member of a board, committee, commission or council resigns the resignation shall be in writing via hard copy, email or fax and sent to the Chair of the respective body and the body's Appointing Authority and the City Clerk. It shall be the duty of the Chair of the respective body and the Appointing Authority to confirm with the City Clerk within two business days that the notice of resignation has been received by the City Clerk.
- (b) If the Mayor or City Council Chair or someone else within City government receives notification of a resignation, they too shall confirm that resignation has been received by the City Clerk.
- (c) Once the City Clerk is notified of a resignation the Clerk shall post the position as vacant on internal bulletin boards and on the City website within 48 hours or receipt of such notification.

7. Enforcement and Remedies

- (a) If these procedures are not followed, it is the right of the City Council Appointments Subcommittee and/or the full City Council to reject all applicants without prejudice and request that another advertising process begin. If this occurs, the Mayor shall re-advertise the position(s) within five business days.
- (b) During the appointments process, if a position is not vacant, the individual currently serving, shall continue to serve at their choosing, until a replacement is approved by the City Council and duly sworn in. The exceptions to this clause would be a resignation, a death or a person removed from a seat for cause.
- (c) If at any time, the City Council or the Mayor suspects that discrimination of any individual(s) has occurred in the City's appointments process, the Mayor or Council Chairperson shall engage an outside independent specialist to conduct an appropriate investigation into the alleged discrimination. The Chief Financial Officer shall provide information on and access to sources available for funding such expenses.
- (d) If a resident or applicant believes that discrimination in any of the processes in this ordinance have occurred, a meeting with the individual, the Chairperson of the Council, and any counsel chosen by the resident or applicant to discuss the alleged discrimination shall take place within two weeks of the complaint being filed with the City Clerk's office. The Mayor, their designee, and/or a representative of the

City Solicitor's Office will be invited to attend the meeting if they wish. After this meeting, the Chairperson of the Council may, in their discretion, refer the matter to the full Council for consideration under section (7c) above for an appropriate investigation.

- (e) If the outside specialist or any member of the group listed in section (4d) of this ordinance deems that discrimination has indeed occurred or is legitimately suspected, the matter shall be forwarded to the Massachusetts Commission Against Discrimination (MCAD) for their review.

8. Severability

In case any section, paragraph or part of this ordinance is decided invalid or unconstitutional by a court of law, every other section, paragraph and part shall continue in full force and effect.

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Dr. Yvonne M. Spicer
Mayor

Thatcher W. Kezer III
Chief Operating Officer

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September 3, 2019

Framingham City Council
150 Concord Street
Framingham, MA 01702

Dear Honorable City Council,

The Appointments Ordinance recently adopted by the Council is inconsistent with and contrary to the Framingham Home Rule Charter. Accordingly, pursuant to Article III, Section 7 of the Charter, I am writing to notify the Council that I disapprove of Order # 2019-045 and hereby veto the Council's order.

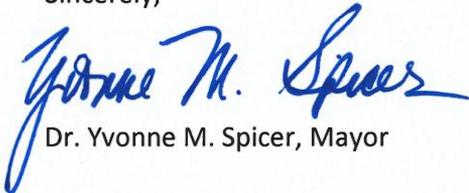
The Framingham Home Rule Charter defines the role of the Mayor and the role of the City Council for making appointments. Under Article III, Section 3 of the Charter, I am the appointing authority for a variety of municipal positions and is responsible for defining the process. Under Article II, Section 10, the Council approves certain appointments that I am authorized to make as Mayor. The Council has proposed an ordinance that would purport to govern the entire course of this process, including the process utilized by the Mayor's office to solicit, interview and recommend candidates. I share the Council's interest in making the appointments process better for all parties involved and will seriously consider adopting portions of the ordinance provisions as part of my administration's policies and practices regarding appointments. Moreover, the Council is certainly free to create an ordinance that regulates the appointments process once I submit my recommended candidates to the Council. However, too many of the provisions in the proposed ordinance improperly restrain me as Mayor from carrying out my role as Chief Executive under the Charter. These provisions conflict with the clear division of legislative and executive powers under the Charter, and until that conflict is addressed, I will not support and will decline to carry out this measure, and I am choosing under the circumstances to use my power to veto the Council's order as it has been presented.

It is my role as Framingham's Chief Executive to direct the day-to-day operations of the City, see Art. III, §2, including the solicitation of candidates for appointment. The Charter creates a form of city government with a strong Mayor and clearly prohibits the Council from directing the executive branch. The proposed appointments ordinance conflicts with the Charter by directing me to follow a particular application, posting and advertising process relative to the solicitation and review of applications by the Mayor's office before candidates are submitted to the Council. These concerns were communicated to the Council by the City Solicitor on several occasions, including in written comments submitted to the City Council on May 30, 2019, June 10, 2019, July 13, 2019, and August 9, 2019. As the City Solicitor advised in these communications, the decision of how to solicit and

recommend candidates to the Council are entrusted to the Mayor under Art. III, §§3 and 2 of the Charter. It is within my discretion as Chief Executive to determine how to conduct the Mayoral application process, including how often to advertise, when to close the application process, whether and how to track individual applications, and whether or not to disclose the names and applications of applicants aside from the candidates that are submitted to the City Council for review. The Council's order substitutes its process for the discretion and judgment of the Mayor, an office which Framingham's voters entrusted to me.

I encourage the Council to work collaboratively with the City Solicitor and my other staff as necessary to revise the proposed ordinance so that it will help both branches of the City government achieve the intent of the ordinance to the fullest extent permissible under the Charter. To that end, the City Solicitor had previously provided the Council with a redlined version of the ordinance providing specific recommended edits to the proposed ordinance to address the existing conflicts with the Charter, and I would be pleased to support an ordinance that incorporates these changes that are necessary to protect the allocation and division of powers mandated by the Charter.

Sincerely,

A handwritten signature in blue ink that reads "Yvonne M. Spicer". The signature is fluid and cursive, with the first name being the most prominent.

Dr. Yvonne M. Spicer, Mayor

Cc: Chris Petrini, City Solicitor