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2019 DEC 13 AM 11:53

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FRAMINGHAM CITY COUNCIL

ORDER NO. 2019-090-001
REQUEST OF THE ORDINANCE AND RULES SUBCOMMITTEE

UPON THE REQUEST OF THE ORDINANCE AND RULES SUBCOMMITTEE, THE CITY OF FRAMINGHAM, THROUGH THE FRAMINGHAM CITY COUNCIL, IT IS SO ORDERED:

That, in order to protect the health, safety and welfare of the residents of the City of Framingham, and as authorized by MGL Chapter 6, §172 ½, the City Council votes to establish a Civil Fingerprinting Ordinance as a new Section 9 under Article VIII: Business and Commerce Provisions. The full text of the Ordinance follows this Order.

FIRST READING:

YEAS: Cannon, Giombetti, King, Richardson, Shepard, Sisitsky, Steiner
NAYS: None
ABSTAIN: None
ABSENT: Rossi, Torres, Tully Stoll (Ms. Grove was out of the room at the time of the vote)
PASSED IN COUNCIL: NOVEMBER 19, 2019

SECOND READING:

YEAS: Cannon, Giombetti, Grove, King, Rossi, Richardson, Sisitsky, Steiner, Torres, Tully Stoll
NAYS: None
ABSTAIN: None
PASSED IN COUNCIL: DECEMBER 3, 2019

A True Record, Attest:

12/11/19
Date Approved

Lisa A. Ferguson
Lisa A. Ferguson, City Clerk

12/20/19
Date Approved

Yvonne M. Spicer
Yvonne M. Spicer, Mayor

ARTICLE VIII: Business and Commerce Provisions

Section 10. Civil Fingerprinting Ordinance.

10.1. Purpose and legislative authorization.

10.1.1. In order to protect the health, safety and welfare of the inhabitants of the City of Framingham, and as authorized by MGL c. 6, § 172B½, this Ordinance shall require:

(1) Applicants for certain specific City licenses, as enumerated in Paragraph 10.2.1, below, to submit to fingerprinting by the Framingham Police Department;

(2) The Police Department to conduct criminal record history checks based on such fingerprints; and

(3) The Police Department to consider the results of such criminal history checks in determining whether to grant or recommend the granting of such licenses.

10.1.2. The City authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS) and the Federal Bureau of Investigation (FBI), as may be applicable, to conduct on behalf of the City and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this ordinance. The City authorizes the Police Department to receive and utilize records of the State Police, the DCJIS and the FBI in connection with such background checks, consistent with this ordinance.

10.2. Applicability; notification of applicant.

10.2.1. Any applicant for a license to engage in any of the following activities within the City shall submit to fingerprinting by the Framingham Police Department for the purpose of conducting a state and national criminal history records check to determine the suitability of the applicant for such license:

(1) Transient Vendors, Hawkers and Peddlers, and Door-to-Door Salespersons.

(2) Ice Cream Truck Vendors/Operators.

(3) Taxi and Livery Vehicle Operators.

(4) Constables.

10.2.2. At the time of fingerprinting, the Police Department shall notify each applicant fingerprinted that the fingerprints will be used to check such applicant's state and FBI criminal history records.

10.3. Processing.

10.3.1. The Police Department shall transmit fingerprints it has obtained pursuant to this Ordinance to the Identification Section of the Massachusetts State Police, DCJIS and/or the FBI as may be necessary for the purpose of conducting fingerprint-based state and national criminal history records checks of the applicants.

10.3.2. The Police Department shall provide the applicant with a copy of the results of his or her fingerprint-based criminal record background check and provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in it, including the FBI identification record. The Police Department shall not render a suitability evaluation pursuant to subparagraph 10.3.5, below, based on information in the fingerprint-based criminal history records check until the applicant has been afforded a reasonable amount of time, within (14) days from the date of written notice, to correct or complete the information, or has declined to do so.

10.3.3. The Police Department shall supply the applicant with information regarding the procedures for obtaining a change, correction or updating of a criminal record, including a copy of Title 28 CFR Part 16.34 pertaining to FBI identification records.

10.3.4. The Police Department shall not disseminate state and national criminal history, including FBI criminal history, to unauthorized entities.

10.3.5. The Police Department, after completing the fingerprint-based criminal record background check and after complying with subparagraphs 10.3.2 and 10.3.3 above, shall make an evaluation of the applicant's suitability for the proposed occupational activity based upon the results of the criminal records background check and any other relevant information known to the Department. The Police Department shall provide a copy of its evaluation and proposed recommendation to the applicant. The Police Department shall only provide a suitable or not suitable

recommendation; no state or national criminal history gathered from the criminal records background check shall be provided to the licensing authority. In rendering its evaluation, the Police Department shall consider all applicable laws, regulations and City policies bearing on any applicant's suitability, and shall consider whether the applicant has been convicted of, or is under pending indictment for, a crime that bears upon his or her suitability, or any felony or misdemeanor that involved force or threat of force, controlled substances or a sex-related offense.

10.4. Reliance on Results.

The Police Department shall utilize the results of the fingerprint-based criminal history records check for the sole purpose of determining the suitability of the applicant's application for licenses sought pursuant to this Ordinance. The Police Department may recommend the denial of an application for a license (or for licenses issued by the Police Department, may deny an application for a license) on the basis of the results of a fingerprint-based criminal history records check if it determines that the results of the check render the applicant unsuitable for the proposed occupational activity. The Police Department shall consider all applicable laws, City Rules and Regulations, City Policies, and City Ordinances bearing on an applicant's suitability in making this determination.

10.5. Compliance with law, regulations and City Policy.

Implementation of this Ordinance and the conducting of fingerprint-based criminal history records checks by the Police Department shall be in accordance with all applicable laws, regulations, and City policies. The Chief of Police is authorized to promulgate regulations for the implementation of this Ordinance, but in doing so it is recommended that the Chief of Police consult with the City Solicitor and the Massachusetts Executive Office of Public Safety and Security to ensure that such regulations are consistent with state and federal requirements for access to criminal history records, and applicable state and federal laws.

10.6. Fees.

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal history records checks shall be \$30 per application and is subject to change by vote of the City Council, upon recommendation of the Chief of Police. A

portion of the fee, as specified in MGL c. 6, § 172B½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the City for costs associated with the administration of the fingerprinting system.

10.7. Penalties

Any applicant who submits false information to the Police Department in connection with the fingerprint-based criminal background check, including a false identification of an applicant or his/her authorized agent or responsible manager, may be subjected to denial of a license application, or for applicants who are licensed, suspension or revocation of rights of their license. Said denial, suspension or revocation shall be initiated by the Police Department by written notification of such intent to deny, suspend or revoke, sent to the applicant or license holder if applicable.

10.8. Appeal

An applicant/license holder may submit a written request to the Chief of Police for a hearing on (1) the Police Department's suitability determination under Section 10.3.5; or (2) the intent to deny, suspend or revoke under Section 10.7 within 10 business days of the date of the Police Department's notice. The hearing shall be commenced within 10 business days of such request and shall be conducted by the Chief of Police or their designee. The Department's determination shall be upheld if the Chief of Police or their designee finds there was substantial evidence to support the Department's determination.