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Board of Selectmen Voted to Release this Town Counsel Opinion at its Open Session of April 18, 2017

MEMORANDUM

To: Board of Selectmen

From: Christopher J. Petrini
Town Counsel

cc: Robert J. Halpin, Town Manager
Teri Banerjee, Town Moderator
Christopher L. Brown, Petrini & Associates, P.C.

Date: April 11, 2017

Re: **Town Counsel Opinion Regarding Limitation on Town Actions
Under Article X, Section 7(a) During Town-City Transition Period**

I am writing to the Board to provide my opinion on the limitation on Town actions under the newly adopted Home Rule Charter during the transition period from now until January 1, 2018, when the transition to the City government will be completed. Article X of the new charter contains various provisions regarding this transition. The focus of this opinion is on Section 7(a) of Article X, which provides as follows:

All municipal officers and employees shall continue to perform their duties in the same manner and to the same extent as they have performed the same prior to the adoption by the voters of the home rule charter, but, being mindful that on the first business day in January of the year following the year the charter has been so adopted, that the executive authority shall thereafter be vested in a mayor and the legislative authority shall be vested in a town council. As such, the board of selectmen, town manager and town meeting shall limit their respective actions during this transition period to those matters essential and necessary to the current operations of the municipality, such as the annual budget,

taking no actions contrary to or that frustrates the purpose of the adoption of this charter by the voters. Special town meetings shall be held only to address matters not admitting of delay, of which the board of selectmen shall be the sole judge. The board of selectmen shall maintain sufficient board and commission memberships from date of the charter adoption to the date of installation of the mayor and town council as necessary to assure a quorum for the conduct of business plus one member. No appointments shall be made that do not meet this criterion after the charter adoption unless necessary for matters not admitting of delay. Said board shall provide a list of vacancies on boards and commissions to the mayor-elect (emphasis added).

Home rule charters are interpreted by courts in a similar manner to statutes. The charter must be construed according to the common usage and ordinary meaning of its language in light of the objectives to be accomplished by the charter. Town Council of Agawam v. Town Manager of Agawam, 20 Mass. App. Ct. 100, 103 (1985). In this regard, there are several terms and phrases in Section 7(a) that must be considered:

1. “Essential” and “necessary.” These terms, which are interchangeable synonyms, are commonly defined as “absolutely needed,” “required,” “of the utmost importance,” “basic,” and “indispensable.”
2. “Contrary to” is defined as “opposite in nature, direction, or meaning.”
3. “Frustrate” means to “prevent (a plan or attempted action) from progressing, succeeding, or being fulfilled.”

Interpreting the language of Section 7(a) as a whole, the objective of this particular section of the charter is to restrain the Town government from action during the transition period of April 4, 2017-December 31, 2017, mindful of the approaching change in Framingham’s government structure from a Town with a Board of Selectmen, Town Manager, and representative Town Meeting to a City with a Mayor and a City Council. This provision directs the board of selectmen, town manager and town meeting to limit their actions to matters “essential and necessary to the **current** operations of the municipality” (emphasis added), suggesting any long term decisions that are not absolutely needed or required should be deferred to the future City government. This instruction is further defined by the charter’s direction that the Town government’s actions should not be “contrary to” the charter and should not “frustrate the purpose” of the charter. Accordingly, in my opinion, actions falling into the following categories must be avoided:

- a) Actions not impacting or needed for the Town’s current operations;
- b) Actions that are not essential or necessary;
- c) Actions that are expressly or implied prohibited or pre-empted by the Charter; and

- d) Actions that interfere with the Charter's objective to transition Framingham to a Mayor-City Council form of government.

Most issues the Town may face over the next several months likely will not raise the question of whether immediate action is contrary to or frustrating the purpose of the charter. If there are such questions, those would be best addressed on a case-by-case basis to Town Counsel (pursuant to the Board's Policy on Access to Town Counsel if the questions are raised by Town Meeting), as such a question would present a legal question whether a particular action contemplated would be contrary to or frustrate the purpose of the charter.

On the other hand, the determination of whether contemplated action does or does not impact current municipal operations or whether a contemplated action is essential or necessary, are largely subjective policy judgments, which should be made on a case-by-case basis in good faith by the Town officials involved, under the ultimate supervision of the Board of Selectmen. Examples of this include whether the Town Manager is deciding, in consultation with a Department Head, whether a vacant position in a Town department's staff should be filled, whether the Selectmen are determining whether to sponsor an article on an existing Town Meeting warrant or to call a Special Town Meeting, or whether Town Meeting, in considering the articles before it, is determining whether to act on the article or refer it back to the sponsor because Town Meeting believes the action sought is not essential or necessary to current municipal operations. Under Section 7(a) of the Charter, consideration of whether a contemplated action is essential or necessary falls on both the executive and legislative branches of the Town government. For the executive branch, the Board of Selectmen in my opinion should determine what is essential and necessary relative to policy level decisions, while the Town Manager, as chief administrative officer, determines what is essential and necessary from an operational perspective, in consultation with the Board of Selectmen. Since Town Meeting's role is limited to considering warrants that are before it, Town Meeting is directed by Section 7(a) of the Charter to consider independently whether individual articles placed before it are essential and necessary, although Town Meeting reasonably should consider the position taken by the executive branch in that regard. With regard to the decision whether to call a special town meeting or to include certain matters in the warrant for a special town meeting, the ultimate arbiter and decider of whether proposed actions are not only essential or necessary to the current operations of municipal government but "not admitting of delay" is the Board of Selectmen.

There are some actions that impact the Town's current and future operations at the same time, for example borrowing for existing capital projects, negotiating collective bargaining agreements, or entering into term contracts that are renewable after January 1, 2018. The necessity of these activities will need to be evaluated individually. Capital program needs, while they may primarily concern future operations, may impact current operations to an extent that the Board could in good faith determine that action prior to January 1, 2018 in some respects may be essential and necessary. For example, the replacement of the fire station in Saxonville is a matter that currently has potential impacts on public safety, and the School Department's pending process through the Massachusetts School Building

Authority to explore the renovation or replacement of Fuller Middle School is a current process that with inaction by the Town prior to January 1, 2018 could place MSBA support for the project at risk. To the extent that further action is needed from Town on either issue prior to January 1, 2018, in my opinion the Board of Selectmen and other Town officials could take action reasonably and in good faith as essential or necessary to current municipal operations, without acting contrary to or frustrating the purpose of the charter. Similarly, other proposed actions which are the continuation of existing obligations or policies of the Town could also be determined as essential or necessary to current municipal operations.

On the other hand, the issue regarding the future of the Memorial Building, given the decision process is in a more nascent stage and will require many years of work and development and substantial capital expenditures over time, reasonably should be delayed briefly for evaluation and decision by the future City government when it assumes control on January 1, 2018. Other capital issues that are in early planning stages and do not directly impact public safety or current government operations reasonably should be delayed.

CONCLUSION

The Board of Selectmen, the Town Manager, and, to a lesser extent, Town Meeting (with respect to matters before it) are each charged under the Charter with making policy judgments and determinations during the transition period of April 4, 2017-December 31, 2017 whether a particular action, project or proposal is essential and necessary for current municipal operations. The impacts or potential impacts of a brief delay in action during the transition from Town government to City government should be considered in making such determinations. These are primarily policy questions. So long as the Board of Selectmen and other Town officials act in good faith with reasonable justification whether they decide to act or to delay a particular action, in my opinion they will be complying with the express requirements and the spirit of the Home Rule Charter.

I hope this opinion is of assistance to the Board. Because of the inherently factual nature of many questions that are likely to come up during the transition period in the next several months, please do not hesitate to present future issues for my review and consideration if they are not addressed in this memorandum. Thank you.