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FRAMINGHAM CITY COUNCIL

ORDER NO. 2018-070-001

REQUEST OF THE CITY COUNCIL

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

That, having reviewed the application and all associated reports as well as any public input heard at a public hearing held on June 19, 2018, the City Council hereby affirms its unanimous denial of the application for a New License to Sell Second Hand Articles, Junk and Old Metals submitted by Conigliaro Industries, 701 Waverly Street as outlined in the attached Decision.

YEAS: Cannon, Giombetti, Grove, King, Rossi, Richardson, Shepard, Sisitsky, Steiner

NAYS: None

ABSTAIN: None

ABSENT: Torres, Tully Stoll

PASSED IN COUNCIL: JULY 10, 2018

A True Record, Attest:

8/30/18

Date Approved

Lisa A. Ferguson

Lisa A. Ferguson, City Clerk

**Framingham City Council Decision on Conigliaro Industries, Inc.'s
Application for a License to Purchase/Sell Junk, Old Metals or Second Hand Articles.**

This matter involves the City Council's review of an application for a license to purchase/sell junk, old metals, or second hand articles dated January 23, 2018 submitted by Gregory A. Conigliaro on behalf of Conigliaro Industries, Inc. (which application, along with a supplemental letter from the applicant dated April 27, 2018 and other materials submitted by the applicant and included in the record in this matter, shall be referred to collectively as the "Application"). Mr. Conigliaro serves as the President, Treasurer, Secretary and Director of Conigliaro Industries.

The City Council conducted a hearing in this matter on June 19, 2018. Despite receiving telephonic notice, in addition to notice by newspaper publication in the Metrowest Daily News on June 9, 2018, Mr. Conigliaro failed to attend the hearing, nor did any representative or any other person appear to present on his or Conigliaro Industries' behalf. Based on information presented to the City Council in writing, discussion at the hearing, and the following findings and reasons, the City Council found that Mr. Conigliaro (and, by extension, Conigliaro Industries, Inc.) is not a "suitable person" to hold a license issued under G.L. c. 140, § 54 and the City's Bylaw, Article VIII, Section 3, and voted to deny the Application:

1. The City Council finds that the salient circumstances and conditions associated with the Application are the same as those associated with Conigliaro Industries' most recent application for the same license, which application the Framingham Board of Selectmen denied in a decision dated February 3, 2015 (the "2015 Denial"). Accordingly, the City Council attaches hereto as **Exhibit A**, and incorporates by reference herein, the 2015 Denial and finds that the same reasons recited in the 2015 Denial likewise support the City Council's instant denial.

2. Although in the aforementioned April 27, 2018 supplemental letter included in the Application, Mr. Conigliaro states that “Mr. William Kuczniec, our General Manager, shall be designated as our employee in charge of overseeing the Second Hand Articles, Junk, Old Metals License day-to-day operations here are [sic] our facility,” and that Mr. Conigliaro “do[es] not plan to personally perform the hands-on weighing, buying and selling operations associated with the proposed license,” see Application, April 27th Letter, p. 1, the City Council finds that the nature of Mr. Conigliaro’s positions with and authority over Conigliaro Industries is such that he cannot reasonably be construed as excluded from the proposed day-to-day licensed operations. To the contrary, as Conigliaro Industries’ President, Treasurer, Secretary and Director, ultimately he is in charge of, legally responsible for, and inextricably intertwined with, such operations. Moreover, allowing an unsuitable proposed licensee, who has ultimate authority over the underlying proposed operations in a context such as this, to so easily disentangle himself from such operations through a self-imposed (and easily pierced) purported firewall, would create a ready loophole through which unsuitable applicants could proceed freely in contravention of the fundamental objectives, purposes and intent of G.L. c. 140, § 54 and Article VIII, Section 3 of the City’s Bylaw.
3. Because the precise origins of second hand articles often are impossible to confirm, licensed dealer operations are susceptible to being used for the exchange of stolen goods. To protect the public from this risk, licensees must, among other things, be scrupulous and diligent about documenting the items they acquire, holding such items for 30 days before selling them, and ensuring that systems are in place so that any stolen goods may be returned to their owners and thieves can be found. To this end, before issuing a

license to purchase or sell junk, old metals or second hand articles, the City Council must be satisfied that the applicant would: (a) comply with the local and statutory rules and requirements associated with the license; and (b) fully and transparently cooperate with the City Council or local enforcement officials in connection with any review or investigation of a second hand article exchange or transaction, potential criminal activity or the operations of the underlying business.

4. As is described in the 2015 Denial, at relevant times Mr. Conigliaro was an officer and director of New England Compounding Center (“NECC”), and in connection with his role at NECC has been charged with a serious federal crime that his/Conigliaro’s attorney described as an alleged “conspiracy to deny the FDA the ability to operate the way the FDA [i.e., the U.S. Food and Drug Administration] should, essentially.” See Exhibit A (2015 Denial), p. 2. In view of the Federal government’s allegation that Mr. Conigliaro conspired to impede the FDA, the City Council is not satisfied that Mr. Conigliaro could be trusted to cooperate with the City Council or other law enforcement authorities in the event of any needed investigation of a second hand transaction, potential criminal conduct or the establishment’s practices.
5. Although Constitutional protections and the existence of pending Federal criminal proceedings limit the extent to which the City Council presently can evaluate the merits of the criminal charge pending against Mr. Conigliaro, the City Council need not prove criminal conduct beyond a reasonable doubt to determine that Mr. Conigliaro is not suitable to hold the underlying license. Given the nature of the license applied for and the high degree of honesty and integrity required for the holders of such licenses, Mr. Conigliaro’s alleged conduct with respect to NECC and the existence of these criminal

charges are sufficient to support the conclusion that Mr. Conigliaro and, by extension, Conigliaro Industries, Inc., is not suitable to hold the requested license. Because of the inherent susceptibility of second hand dealing activities to criminal conduct and the resulting need to facilitate the ability of law enforcement officials to investigate such conduct, the City Council cannot tolerate the prospect that a licensee might impede enforcement officials in any respect. In making this determination, the City Council is entitled to, and in these circumstances must, consider the fact that the U.S. government has determined that an applicant has criminally impeded a Federal governmental agency.


6. The notion that Mr. Conigliaro may have impeded the FDA is especially troubling given the critical public health and safety purposes of that agency, which in general are more sensitive and greater in scope than those associated with a second hand dealer. It would be naïve not to anticipate that one who is charged with impeding a Federal agency in such a context could be prone to disregarding the underlying state and local licensing requirements. This is a risk the City Council is unwilling to foist upon the City's residents and the public in these circumstances.
7. Such risks to the public are adverse to the public interest, which this City Council endeavors to protect in exercising its licensing authority. Furthermore, assuming such risks would not be justified by any public need, particularly given that the City already is served by more than 20 licensees licensed to purchase or sell junk, old metals and second hand articles in the City.
8. As a further reason in support of this denial, the City Council finds that Conigliaro Industries' operations have resulted in numerous complaints from neighbors that Conigliaro Industries has failed to appropriately and timely address in all cases,

undermining the City Council's confidence that the applicant would consistently maintain the sort of compliance and cooperation that the City Council requires and must consider in deciding applications under G.L. c. 140, § 54 and Article VIII, Section 3 of the City's Bylaw, as noted above.

Accordingly, as discussed above, the Framingham City Council denied the Application.

FRAMINGHAM CITY COUNCIL

By:  _____ Dated: July 10, 2018
Dennis L. Giombetti, Chair

By:  _____ Dated: July 10, 2018
Charles J. Sisitsky, Vice Chair

By:  _____ Dated: July 10, 2018
Michael P. Cannon

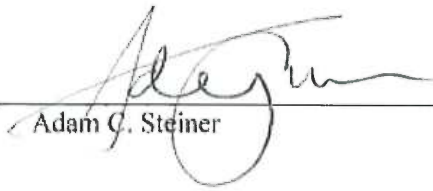
By:  _____ Dated: July 10, 2018
Judith A. Grove

By:  _____ Dated: July 10, 2018
George P. King, Jr.

By:  _____ Dated: July 10, 2018
Pam Richardson

By:  _____ Dated: July 10, 2018
Michael M. Rossi

By:  _____ Dated: July 10, 2018
Margareth B. Shepard

By: 
Adam C. Steiner

Dated: July 10, 2018

By: _____
Edgardo A. Torres

Dated: July ____, 2018

By: 
Cheryl Tully Stoll

Dated: July 10, 2018