



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

CITY CLERKS OFFICE
NEW BEDFORD, MA
2018 NOV 21 A 8:50
CITY CLERK

November 21, 2018

City Council President Linda Morad
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Re: Veto of Ordinance Relative to the Board of Park Commissioners

Dear Council President Morad and Honorable Members of the City Council:

I write to veto the proposed ordinance concerning the Board of Park Commissioners ("Park Board"), which was presented to me on November 13, 2018, and mandates that one member of the Park Board be the Commissioner of the Department of Public Infrastructure or the Commissioner's designee.

The City Solicitor's Office has carefully reviewed the proposed ordinance and has concluded that it would be preempted by state law because it contradicts and would frustrate the purpose of state law. See, e.g., St. George Greek Orthodox Cathedral of W. Mass., Inc. v. Fire Dep't of Springfield, 462 Mass. 120, 126 (2012)(local action is precluded where legislature has made an explicit indication of its intent, or the purpose of state legislation would be frustrated by a local enactment so as to warrant an inference that the Legislature intended to preempt the field), citing Wendell v. Attorney Gen., 394 Mass. 518, 524, 476 N.E.2d 585 (1985).

The controlling statutory provision is Chapter 45, section 2 of the Massachusetts General Laws, which states in relevant part that "the mayor of a city, may, with the approval of the city council, appoint a board of park commissioners for said city, consisting of five persons." The proposed ordinance contravenes G.L. c. 45, § 2 because it would eliminate the mayor's discretionary appointment authority with respect to one member of the Park Board. Because the proposed ordinance impermissibly reduces the role of the mayor as prescribed by state law in G.L. c. 45, § 2, it is preempted. See also City Council of Boston v. Mayor of Boston, 383 Mass. 716 (1981)("the power of appointment is, by its nature, an executive power").

Although I am vetoing the proposed ordinance, I understand and respect the concerns that motivated it. In response, my office has worked with the Departments of Planning, Parks, Recreation and Beaches, Public Infrastructure, Public Facilities, and Environmental Stewardship

to institute a process that requires and ensures administrative approval from all relevant departments for any physical alterations to parks and recreational facilities before the proposed alterations are brought before the Board of Park Commissioners. I believe this process fully addresses the Council's concerns, and obviates the need for a legislative remedy, and as always, I would welcome any further input from the Council on the matter.

Sincerely,



Jon Mitchell



CITY OF NEW BEDFORD

In the Year Two Thousand and Eighteen

AN ORDINANCE

RELATIVE TO THE BOARD OF PARK COMMISSIONERS

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1.

Section 18-1 of Chapter 18 of the Code of Ordinances is hereby amended by striking said section in its entirety and inserting, in place thereof, the following section:-

Sec. 18-1. Board of Park Commissioners – Establishment.

There shall be a Board of Park Commissioners consisting of 5 members, one of whom shall be the Commissioner of the Department of Public Infrastructure or the Commissioner's designee.

The Commissioner of the Department of Public Infrastructure or the Commissioner's designee shall first serve pursuant to the provisions of Sec. 18-2.

Section 2. Section 18-2 of Chapter 18 of the Code of Ordinances is hereby amended by inserting, at the end thereof, the following paragraphs:-

The Commissioner of the Department of Public Infrastructure or the Commissioner's designee shall first become a member of the Board of Park Commissioners by filling the first vacancy to occur either by resignation or by expiration of a current park commissioner's term on or after December 1, 2018.

If one or more park commissioners are serving on the Board under an expired term as a result of no replacement having been duly appointed and qualified at the time this ordinance becomes effective, the mayor shall, within 30 days, appoint the Commissioner of the Department of Public Infrastructure or the Commissioner's designee to replace the park commissioner whose term has expired and choose which park commissioner will be replaced if more than one is serving under an expired term without confirmation of the city council. The mayor however shall provide notice to the city council of the effective date of the appointment.

Section 3. This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.