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November 16, 2018

Matthew Quinones
President
Board of Representatives
City of Stamford

RE: Park Police Minimum Coverage Resolution

Dear President Quinones:

This letter is in response to your request for an opinion concerning the Parks and Recreation Commission's resolution of October 17, 2018 purporting to establish minimum staffing requirements for park police. For the reasons that follow, it is my opinion that the Commission has no authority over staffing requirements or personnel matters, and that as a consequence its resolution is not legally binding. It is my opinion that the authority over staffing and personnel rests with the executive branch, and that the Board of Representatives is also without authority to pass a legally binding resolution or ordinance requiring minimum staffing.

The City Charter vests personnel authority in the executive. Section C3-10-1 vests the executive and administrative powers of the City in the Mayor. Staffing and personnel are customarily considered to be administrative functions. The Charter further provides that in the case of the absence or disability of the Mayor, the Acting Mayor "shall not have power to appoint or remove officers or employees" until such absence or disability has continued for thirty days. Charter section C3-10-4. Therefore, the Charter expressly empowers the Mayor to appoint or remove employees.

Furthermore, the Charter vests the City's personnel function with the Director of Legal Affairs, a member of the Mayor's Cabinet who reports directly to the Mayor and serves at the pleasure of the Mayor. Charter section C5-20-1. It provides, in pertinent part, that the "Director of Legal Affairs shall be responsible for the administration, supervision and performance of legal and personnel matters on behalf of the City."

Finally, the Charter, at C5-30-5(6), vests in the Office of Operations (another arm of the executive branch) the responsibility for the park function of “organizing operating divisions with supervisors and necessary assistants within the appropriation therefor to administer and enforce City policies, rules and regulations.” Pursuant to this Charter section, the staffing function as regards the Park Police is vested in the Office of Operations.

When considered in light of the above Charter provisions, the resolution of the Parks and Recreation Commission was beyond its scope of authority and ultra vires, in that it dealt with personnel matters which are the province of the executive branch.¹ “Ultra vires” refers to acts that are in excess of powers granted. Ultra vires acts do not have binding legal effect. The resolution can also be considered to be inconsistent with the separation of powers doctrine, which has been applied by the Connecticut Supreme Court using the following standard. The Court has pronounced that “in deciding whether one branch's actions violate the constitutional mandate of the separation of powers doctrine, the court will consider if the actions constitute: (1) an assumption of power that lies exclusively under the control of another branch; or (2) a significant interference with the orderly conduct of the essential functions of another branch.” *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 552–53 (1995).

Based on the above-referenced Charter provisions, any resolution or ordinance passed by the Board of Representatives purporting to establish minimum staffing requirements would, in my opinion, be ultra vires and nonbinding, as the Board must conduct itself in accordance with the authority conferred upon it by the Charter. The Charter does not provide to the Parks and Recreation Commission or to the Board of Representatives specific authority over personnel or the management thereof. Decisions regarding how many park police to hire, where to assign them, and the length and timing of work shifts, involve budgetary and managerial decisions that are beyond the role of the Board of Representatives and the Parks and Recreation Commission.

Sincerely

KATHRYN EMMETT
CORPORATION COUNSEL

By 
Michael Toma
Ass't Corporation Counsel

¹ The resolution is also problematic for other reasons, including that it improperly seeks to affect matters that are subject to collective bargaining, and neither the Parks and Recreation Commission nor the Board of Representatives are authorized to negotiate collective bargaining agreement terms or change terms in the existing collective bargaining agreements.