STATE OF NEW JERSEY

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FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Code Enforcement
Officer (M0677A), Ocean City

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CSC Docket No. 2020-2485

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Appointment Waiver

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ISSUED: MAY 22, 2020 (BW)

Ocean City requests permission not to make an appointment from the December 23, 2019 certification for Code Enforcement Officer (M0677A), Ocean City.

The record reveals that Ocean City provisionally appointed Bryan Cottrell, pending open competitive examination procedures, to the subject title, effective February 28, 2019. An examination was announced with a closing date of August 21, 2019 that resulted in a list of nine eligibles with an expiration date of December 18, 2022. A certification containing the names of the nine eligibles was issued on December 23, 2019.

The appointing authority returned the certification indicating that a permanent appointment would not be made from the subject list because when Administration decided to put the provisional in the above title, the plan was to return him to his previously held title. Specifically, it explained that when the provisional was appointed there were two different Departments, Public Works and Code. Due to another reorganization, Code was merged into Public Works resulting in some positions being reassigned. Therefore, the City wants to keep the provisional in a different position than originally planned. It is requesting not to hire additional code enforcement officers at this time and asking for a cancelation of the current Certification list, so it can review staffing needs of the new department.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of $2,048. However, the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

It is noted that Cottrell is no longer serving as a Code Enforcement Officer (M0677A) and there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Bryan Cottrell, who is no longer serving in the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that because when Administration decided to put the provisional in the above title, the plan was to return him to his previously held title. Specifically, it explained that when the provisional was appointed there were two different Departments, Public Works and Code. Due to another reorganization, Code was merged into Public Works resulting in some positions being reassigned. Therefore, the City wants to keep the provisional in a different position than originally planned. It is requesting not to hire additional code enforcement officers at this time and asking for a cancelation of the current Certification list so it can review staffing needs of the new department. Accordingly, there is a sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the civil service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this case, the appointing authority's determination that because when Administration decided to put the provisional in the above title, the plan was

to return him to his previously held title. Specifically, it explained that when the provisional was appointed there were two different Departments, Public Works and Code. Due to another reorganization, Code was merged into Public Works resulting in some positions being reassigned. Therefore, the City wants to keep the provisional in a different position than originally planned. It is requesting not to hire additional code enforcement officers at this time and asking for a cancelation of the current Certification list so it can review staffing needs of the new department. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed $2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of $2,048 to be paid within 30 days of the issuance of this order.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON THE
20TH DAY OF MAY, 2020

Deirdre L. Webster Cobb
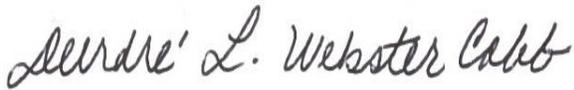
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Deirdre L. Webster Cobb
Chairperson
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