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December 20, 2012

The Honorable Mayor Michael Pavia
888 Washington Boulevard, 10th Floor
Stamford, Connecticut 06902

Re: "Holdover" Doctrine/Appointed Board and Commission Members

Dear Mayor Pavia:

This letter is in response to your request for a legal opinion concerning the legal implications of the recently amended City of Stamford Charter, Section C6-00-4. Prior to December 6, 2012, that Section read in relevant part: (a) [t]he term of each appointive Board or Commission member of relevant position shall expire on December first of the final year of the term, subject to the continuance in office until a successor has been approved by the Board of Representatives. However, on November 6, 2012, City of Stamford residents voted on and approved a proposed amendment to Section C6-00-4(a). The proposed Charter Section reads:

- (a) The term of each appointive Board or Commission member of relevant position shall expire on December first of the final year of the term, subject to the continuance in office for a period of six (6) months or until a successor has been approved by the Board of Representatives, whichever occurs first.¹

According to Connecticut General Statutes Section 7-191(f), "such proposed charter, charter amendments or home rule ordinance amendments shall become effective thirty days after such approval...." Thus, the newly amended Charter Section C6-00-4 became effective on December 6, 2012.

As of December 6, 2012, Section C6-00-4 does not allow members appointed to the City's Boards and Commissions to "holdover"² for more than six months after the expiration of

¹ The underlined language is the amended language that became effective on December 6, 2012.

² "A holdover is a person who holds office where no one is appointed as his successor." Harty v. Kirk, 46 Conn. 395, 399 (1978).

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their terms.³ Therefore, when an appointed Board or Commission member's term expires and the Board of Representatives fails to approve a successor within six months thereof, that member's position shall become vacant by operation of law. See Section C6-00-4. This is clearly the case for all Board and Commission members appointed under the newly amended Section C6-00-4.

As you know, there are several previously appointed members currently serving on the City's Boards and Commissions whose terms expired more than six months ago. Thus, the question presented by the newly amended Section C6-00-4 of the City's Charter is whether those members' positions became vacant on December 6, 2012. It is presumed, unless a contrary intent clearly appears, that legislative enactments are intended to operate prospectively. McAdams v. Barbieri, 143 Conn. 405, 414-415 (1956). Thus, the six month "holdover" period began to run on December 6, 2012. Those members' positions will become vacant by operation of law on June 6, 2013 unless their successors are appointed and approved by that date.

I trust that this satisfactorily addresses your concerns regarding the amendment to City of Stamford Charter Section C6-00-4.

Very truly yours,

Joseph J. Capalbo II
Director of Legal Affairs

BY: _____

Vikki Cooper
Deputy Corporation Counsel

Cc: Randall M. Skigen, Board of Representatives President

³ The appointive Boards and Commissions shall be: The Planning Board, The Board of Assessment Appeals, The Zoning Board, The Zoning Board of Appeals, The Police Commission, The Fire Commission, The Health Commission, The Parks & Recreation Commission, The Personnel Commission, The Golf Commission, The Water Pollution Control Authority, The Patriotic and Special Events Commission, The Municipal Building Board of Appeals, The Social Services Commission, The Historic Preservation Advisory Commission, and the Board of Ethics. Charter Section C6-00-1, as amended and effective on December 6, 2012.

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