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DATE: June 3, 2016

TO: Appointments Committee of the Board of Representatives

FROM: Michael Toma, Assistant Corporation Counsel *WST*

RE: Waiver of Fifteen Mile Residency Requirement in Section 40-71 of City Code

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The question has been raised whether the Board of Representatives may, in general, waive the application of a provision in a city ordinance. The research indicates no law which answers the question generally. The inquiry is a fact-specific one. Therefore, I confine my comments to the narrower question regarding the requirement in Section 40-71 of the City Code requiring that the Director of Emergency Management shall reside no more than fifteen miles from the emergency operations center. Under the particular circumstances surrounding the current candidacy of Thaddeus Jankowski for this position, I believe that the requirement may be waived.

I have found no clear statement in the law whether, and under what circumstances, a legislative body such as the Board of Representatives may vote to waive a provision contained in an ordinance that said body previously adopted. Although there are judicial decisions holding that waivers of ordinance provisions are unlawful when someone other than the legislative body (for example, the Mayor, or a local non-legislative commission) is waiving the provision, there is a decision which declined to overturn the vote of a town council to waive an ordinance provision, ruling that it was inappropriate for a court to do so "unless it clearly appears that taxpayers are likely to suffer unjustly." Somers v. City of Bridgeport, 60 Conn. 521 (1891). Given the lack of

definitive guidance as to the Board of Representatives' authority to waive an ordinance provision in general, the facts of this particular situation become important. The reason for the fifteen mile residency requirement is to ensure a quick response time in the event of an emergency. My understanding is that although Mr. Jankowski does not live within the fifteen mile range, the Fire Chief, who already reports to the emergency operations center during emergencies, does live within the fifteen mile range, and would be designated as a Deputy Emergency Management Director. Additional deputies may be designated as deemed necessary. Therefore, the public safety imperative which underlies the fifteen mile residency provision would be addressed by Mr. Jankowski's candidacy.

Additionally, the City Charter does permit the Board of Representatives to waive the residency requirement for every person appointed to office (C5-20-20(b)). Since the ordinance in question, Section 40-71, does not expressly prohibit waiver of the fifteen mile residency requirement, it is reasonable to conclude that the Board may invoke the Charter provision in support of a waiver in this case, should the Board determine that doing so would be in the best interest of the City.

Cc: Randall Skigen, President, Board of Representatives  
Kathryn Emmett, Director of Legal Affairs