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From: Kathryn Emmett, Director of Legal Affairs  
Amy LiVolsi, Assistant Corporation Counsel

Date: March 21, 2020

Re: OPINION CONCERNING PROCEDURES FOR CONDUCTING PUBLIC  
MEETINGS REMOTELY BY ELECTRONIC MEANS DURING THE COVID-19  
PUBLIC HEALTH EMERGENCY

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The Connecticut Freedom of Information Act (the "Act") has always permitted board members to participate in meetings electronically. The Act defines a meeting as "any hearing or other proceeding of a public agency ... whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power." (CGS §1-200(2), emphasis supplied). Consequently, the Act as originally drafted authorizes electronic participation in meetings. The Act also provides for the public's ability to access all parts of a meeting, including any portion conducted remotely/electronically, by guaranteeing the public the right to attend meetings.

The Governor recently issued Executive Order No. 7B (the Order) suspending state and local open meeting requirements and establishing procedures for conducting public meetings remotely and entirely by electronic means in order to address the COVID-19 health emergency. On March 10, 2020, the Governor issued a Declaration of Public Health and Civil Preparedness Emergencies due to the novel coronavirus (COVID-19) in the State of Connecticut and, on March 14, 2020, issued the Order "For Protection of Public Health and Safety during COVID-19 Pandemic and Response." The Order cites the public health reasons in support of holding meetings remotely: "to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention and the Connecticut Department of Health recommend implementation of community mitigation strategies to increase containment of the virus and to slow transmission of the virus, including cancellation of large gatherings and social distancing in smaller gatherings; and . . . attendance at public meetings and proceedings is likely to increase the risk of transmission of COVID-19."

The Order specifically suspends all state and local laws, rules, charters and regulations that conflict with the Order and enacts procedures under which an agency (all City boards are agencies under the Act) may hold meetings remotely by conference call, video conference or other technology. The Order encourages electronic participation in meetings and eliminates the need to provide the public in-person real time access to same. The Order specifically eliminates the requirement that an onsite meeting place be available to the public.

The Order does not permit an agency to engage in secret proceedings or to operate government business in the shadows. Rather it temporarily relaxes open meeting requirements so that agencies can perform their necessary functions without having people congregate during the existing health crisis. To this end, the Order sets forth steps that must be taken when an agency meets electronically without a public meeting location.<sup>1</sup>

In summary, the Act has always permitted electronic participation subject to certain safeguards. Today's technology allows members of a board to "convene" without being physically present in the same location.<sup>2</sup> Executive Order 7B recognizes this capability and encourages its use by state and local government agencies to protect the health and safety of the public as well as government employees, appointed and elected board members and elected and appointed officials in light of the current COVID-19 health and public safety emergency. In sum, Board members may participate remotely in meetings, be counted when establishing a quorum,<sup>3</sup> and may participate in all votes.

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<sup>1</sup> When an Agency conducts an electronic meeting, it must (1) provide the public the ability to view or listen to each meeting in real time, by telephone, video, or other technology; (2) record or transcribe each meeting and post on the agency's website within seven (7) days of the meeting, and be made available within a reasonable time in the agency's office; (3) include in its required notice and agenda for each meeting information about how the meeting will be conducted and how the public can access it; (4) receive all materials relevant to matters on the agenda at least 24 hours before the meeting, and make same available on the agency's website before, during and after the meeting, including (to the extent feasible) exhibits to be submitted by members of the public; and (5) require all speakers to clearly state their name and title, if applicable, before speaking on each occasion that they speak.

<sup>2</sup> As noted, it has never been required under the Act for a member to be physically present in the meeting location to be present at or to attend the meeting.

<sup>3</sup> If a Board member participating electronically becomes disconnected or otherwise separated from the meeting, it could eliminate the presence of a quorum. This should be handled in the same manner as it would be if a board member physically present walked off the floor.