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TO: Matthew Quinones, President, Board of Representatives

FROM: Michael S. Toma, Assistant Corporation Counsel

DATE: December 1, 2020

RE: Problems With Voting During Zoom Meetings

You have informed us that during some of your Board's meetings which are taking place on the Zoom videoconference platform, some members lose their internet connection to the meeting and are not able to respond when their names are called to vote. You have asked whether, in such circumstances, it is permissible for such members to vote by phone call, by text, or by e-mail.

To begin, the answer to your question is found in Governor Lamont's Executive Order 7B, which expressly provides that, during the Covid-19 health emergency, said order controls over any conflicting meeting requirements in the Connecticut Freedom of Information Act or in any municipal regulation (such as the Board's Rules of Order, which adopts Robert's Rules of Order).

Executive Order 7B provides, in pertinent part, that a Board may conduct remote meetings "by conference call, videoconference or other technology, provided that: 1) the public has the ability to view or listen to each meeting or proceeding in real time, by telephone, video, or other technology..." Because a "videoconference" provides both video and audio content for the public, we believe that the above requirement cannot be satisfied by making public a video alone, with any accompanying audio. Our opinion is that the foregoing requirement of Executive Order 7B can be satisfied by a Board member calling by telephone into a Zoom meeting to give their vote and being placed on speaker phone so that their vote can be heard at the meeting, as a phone call satisfies the requirement that the public be permitted to "view or listen to each meeting or proceeding in real time."

Although Executive Order 7B's requirement that the public be able to "listen" to the meeting "in real time" may arguably be satisfied when a Board member e-mails or texts a vote to the clerk of the meeting and the clerk then reads said vote into the record at the time the votes in question are being taken, we do not recommend this method, as compliance would, in our view, require that the e-mail or text be received during the time when the vote is being taken and that the e-mail or text clearly state which motion the vote refers to (which can become complicated if the vote concerns an amendment to an agenda item or concerns a procedural motion). In short, the e-mail/text method may become fraught with complications.