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September 6, 2023

To: Mayor Caroline Simmons

From: Thomas M Cassone, Corporation Counsel

Re: Charter Revision Referendum Date

You have asked for my opinion on whether or not the Board of Representatives may schedule the proposed Charter Revision referendum on the election of November 7, 2023, rather than November 5, 2024, which is the next “general election at which either the Mayor, state officials or federal officials are to be elected” per Charter Section C1-40-5. Unlike the November 5, 2024 election, the November 7, 2023 election is only a local municipal election and does not fit under the definition referenced.

The short answer is that first, I believe that the Charter and the rules of statutory construction compel the Board of Representatives to endeavor to schedule the referendum for the 2024 election, and therefore to so schedule it. Second, and perhaps more importantly, I believe that were the Board of Representatives to schedule the referendum for the 2023 election, *any result* would be susceptible to challenge in a declaratory judgment action or other appropriate judicial proceeding and so would pose an unnecessary legal risk to the process and would invite expensive and potentially protracted litigation. A November 2024 referendum would pose no such threat.

C1-40-5 reads in part “[t]o the extent permissible under applicable state law¹, the Board of Representatives shall endeavor to schedule the referendum on any proposed charter amendments or revisions to coincide with a general election at which either the Mayor, state officials or federal officials are to be elected.” Counsel to the Charter Revision Commission has opined in his September 2, 2023 memo to the Board of Representatives that “this provision does not establish a fixed requirement (“shall endeavor”); but rather establishes a preference” which the

¹ No state law prevents the Board of Representatives from scheduling the referendum for 2024. It does, however, give the Board of Representatives the option of scheduling a special election C.G.S. 7-191(e), and requires that any referendum be held within 15 months of the approval of the appointing authority, which would include November of 2024 as timely.

Board is free to ignore based on C.G.S. 7-191(e) and which authorizes the Board to schedule a referendum for a regular or special election. I respectfully disagree.

There is nothing in the public record to date that indicates that the Board of Representatives has endeavored to hold the referendum during the November, 2024 election. Indeed if they did so endeavor, they could do so since that election is more than a year away, and much more easily scheduled than a referendum to be held in just two months, i.e., on November 7, 2023. And the draft resolution (CR31.014) to be presented to the Board at its September 6, 2023 meeting evidences no such endeavor either. Rather, it ignores C1-40-5 entirely.

Charter Provisions are to be interpreted as statutes. “In construing a [municipal] charter, the rules of statutory construction generally apply.... In arriving at the intention of the framers of the charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws.” (Internal quotation marks omitted.) *Cook-Littman v. Bd. of Selectmen of Town of Fairfield*, 328 Conn. 758, 768, 184 A.3d 253, 259 (2018) [other citations omitted]. “It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions.... [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.” (Internal quotation marks omitted.) *Tilcon Connecticut, Inc. v. Commissioner of Environmental Protection*, 317 Conn. 628, 663, 119 A.3d 1158 (2015). *Studer v. Studer*, 320 Conn. 483, 495, 131 A.3d 240, 249 (2016). As such, the only way to indicate its compliance with C1-40-5 is for the Board to endeavor to schedule the referendum for 2024, just as the Charter states.

While not expressed in the September 2, 2023 memo, one could argue that the term “shall” in this instance is not mandatory but rather directory. If merely directory and not followed, it does not *necessarily* invalidate the action that follows. “The test to apply in determining whether the use of the word ‘shall’ connotes a mandatory duty, or is merely directory, is ‘whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of *substance or convenience*. ... *If it is a matter of substance, the statutory provision is mandatory*. ... If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially where the requirement is stated in affirmative terms unaccompanied by negative words. *Meadowbrook Ctr., Inc. v. Buchman*, 169 Conn. App. 527, 537, 151 A.3d 404, 410–11 (2016), *aff’d*, 328 Conn. 586, 181 A.3d 550 (2018) [other citations omitted]. And there are indeed no negative words expressed in the Charter section.

However one must keep in mind that the substantive purpose of the Stamford Charter provision is to ensure that there is maximum voter participation to determine such a fundamental and constitutional question as the revision of the City government’s foundational document. It is not merely for convenience. Rather it addresses a matter of substance; i.e., the authors of the Charter sought to invite maximum voter participation to determine the outcome. And C1-40-5 is more instructive to the Board than C.G.S. 7-191: “[I]n an area of local concern, such as local budgetary policy, general statutory provisions must yield to municipal charter provisions governing the same subject matter.” *Board of Education v. Naugatuck*, *supra*, 268 Conn. at 308–309, 843 A.2d 603. “Our constitutional home rule provision11 ... prohibits the legislature from

encroaching on the local authority to regulate matters of purely local concern, *such as the organization of local government* or local budgetary policy.” *Cook-Littman v. Bd. of Selectmen of Town of Fairfield*, 328 Conn. 758, 770, 184 A.3d 253, 260–61 (2018) [emphasis added].

The 2020 Presidential election brought out 80% of Stamford’s registered voters. In 2019, the last time a non-mayoral, non-federal and non-state election took place, only 19% of the voters participated. That is what is anticipated in November of this year. Indeed the statute that Counsel for Charter Revision cites to claim that the Board may ignore C1-40-5 and schedule a November 2023 referendum requires that the revisions carry 15% of the electors of the entire municipality if a special election is scheduled for the referendum. If the referendum is held this November, one more vote than 9.5% of the Stamford electorate could carry the vote, either way.

And moreover, should the referendum be held on November 7, 2023 as currently proposed, it will likely invite litigation by the losing side where the above question will be more thoroughly and expensively debated. The more prudent and practical thing to do is for the Board to schedule the referendum for November 5, 2024.