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October 3, 2016

To: Valerie Rosenson, Clerk
Board of Representatives

From: Burt Rosenberg
Asst. Corporation Counsel *BR*

Re: Duty to Re-Publish Amended Ordinance

I am responding to the request of the Operations Committee for clarification as to whether the Board of Representatives is obligated to re-publish Section 200-33 of the Code, entitled "Building laterals and connections", based upon modifications to that provision passed by the Operations Committee at its 9-27-16 meeting.

The City Charter in Section C2-10-12 states in pertinent part: "No ordinance shall be passed at any meeting unless it shall have been introduced at a meeting at least five days prior thereto, and published in an official newspaper at least three days prior to such meeting."

Neither the Charter nor the Code address the issue of whether the Board of Representatives is obligated to re-publish a proposed ordinance if revisions are made thereto. Connecticut courts have held that charter provisions requiring the publication of ordinances is to inform the public of the laws which govern them, and the requirement should be interpreted accordingly. *Katz v. Higson*, 113 Conn. 776 (1931) Where there is a discrepancy between the publish notice of an ordinance and amendments to the ordinance eventually adopted, the test of whether the prior publication of the ordinance is sufficient is whether the notice fairly apprised the public of the general purpose of what is contemplated by the ordinance. *McQuillan, Municipal Corporations*, Section 16:79. The test has been enunciated as whether revisions in an ordinance after public hearing are substantial. *Albini v. Stanco*, 61 Misc. 2d 813 (NY Supreme Court, Nassau 1968).

The modifications to Section 200-33 of the Code which were made by the Operations Committee at its 9-27-16 meeting were as follows: Subsection L, as originally drafted and published, imposed an obligation upon the property owner to maintain and repair a lateral sewer line from the property owner's building to the connection to the sanitary sewer, including the

lateral line segments located under the owner's property and the under City's right of way. The amendment changed this provision by eliminating the requirement that the property owner repair the lateral line under the City's right of way. Instead, it imposed the obligation upon the property owner to repair the lateral from the property owner's building to the property line. The amendment obligates the WPCA to repair the lateral from property line to the sanitary sewer, including those portions of the lateral located under the City's right of way.

This is a substantial change in the ordinance. As stated by William Brink, Executive Director of the WPCA, it changes the existing practice of the WPCA to hold the property owner liable for the repair those portions of the lateral under the City's right of way. Additionally, Mr. Brink stated that the amendment will impose added costs upon the WPCA, which will affect its sewer use rates.

I have discussed this matter with Representative Day, the Parliamentarian to the Board. Mr. Day responded as follows: "I am in agreement with Attorney Rosenberg's analysis. I would add that as Parliamentarian, my consistent position has been that any doubt regarding whether a revision is 'substantial' should generally be resolved in favor of a positive finding. Moreover, in this case, I do not believe there really is an issue. When the revision involves a shift in the burden of paying a fee or a tax, the party or parties bearing the additional burden have a right to be heard. That is what is involved here. I therefore believe the matter is clearly substantial and that, accordingly, re-publication is required."

Based upon the foregoing facts, since the amendment to Subsection L constitutes a substantial change to the ordinance, the entire ordinance must be re-published.

I will be happy to entertain any questions from members of the Operations Committee that this memorandum may raise.

C: Kathryn Emmett, Director of Legal Affairs
Representative Harry Day
Joseph Coppola, Jr., Chairman, Operations Committee
William Brink, Executive Director, WPCA