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TO: Randall Skigen, President, Board of Representatives
FROM: Michael S. Toma, Assistant Corporation Counsel *MST*
DATE: July 25, 2017
RE: Proposed Ordinance Regarding the Adjustment of Land Use Fees

You have asked whether the proposed ordinance regarding the adjustment of land use fees conflicts with C.G.S. §8-1c.

C.G.S. §8-1c provides:

Any municipality may, by ordinance, establish a schedule of reasonable fees for the processing of applications by a municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or inland wetlands commission. Such schedule shall supersede any specific fees set forth in the general statutes, or any special act or established by a planning commission under section 8-26.

In my opinion, the proposed ordinance does not conflict with C.G.S. §8-1c. If the Board of Representatives adopts the proposal, it will have approved by ordinance a framework to establish fees, which framework itself involves the Board. Regardless of the manner in which a fee increase is proposed, the Board possesses the authority to accept or reject the increase. The Mayor may propose a fee increase which is less than the cost of living change as reflected in the Consumer Price Index; the Board may reject such a proposed increase by vote if it desires. The Mayor may also propose a fee increase which is equal to or greater than the cost of living change as reflected in the Consumer Price Index; in this case, such a proposed increase shall require adoption by ordinance. Finally, the Board itself, in the absence of any proposal from the Mayor, always has the authority to set fees by ordinance. The establishment of the above framework by ordinance is not in conflict with the purpose of the statute.

In *Pollio v. Planning Commission of Town of Somers*, 232 Conn. 44 (1995), the Supreme Court concluded that the purpose of C.G.S. §8-1c was to enable municipalities to enact ordinances to collect sufficient fees to cover the costs associated with land use applications, subject only to

reasonableness. Even though the proposed ordinance authorizes fees that are not of a fixed dollar amount, an ascertainable standard is included in the proposal, namely, the Consumer Price Index, which limits the arbitrary imposition of fees. The use of the Consumer Price Index ensures the reasonableness of any fees that may be proposed by the Mayor.

Paragraph (a) of the proposal should be revised to remove the phrase “*unless the amount of the fee(s) is otherwise set by Charter or State law.*” Such a revision will account for the fact that C.G.S. §8-1c expressly states that fees set by ordinance shall supersede any specific fees set forth in the general statutes, or any special act (which is interpreted in the law to refer to Charters as well as special acts).¹

You have also asked whether §C2-10-12 requires that the proposed ordinance be contained in a separate ordinance from an ordinance increasing fees. §C2-10-12 requires that ordinances be confined to one subject. Since the subject of the proposed ordinance is the adjustment of land use fees, there would be no violation of §C2-10-12 if the proposed ordinance is placed in an ordinance which increases fees, as the subject of both ordinances is fees.

¹ The Zoning Board and the Planning Board also have authority, separate and apart from state law, to set the amount of certain application fees. See Charter §C6-30-6; §C6-40-4, §C6-40-8, and §C6-40-14.