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TO: Matthew Quinones, President, Board of Representatives

FROM: Michael Toma, Assistant Corporation Counsel *MST*

DATE: July 17, 2020

RE: Mural Painting Event Scheduled for Sunday, July 19, 2020

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We are responding to your request for a legal opinion regarding the mural painting event to be held in Stamford this weekend. It is our understanding that the organizer of the mural painting event, a local artist, applied to the City to hold the event, that the event was presented to the City as an arts project, and that the organizer pursued the necessary permit from the City for the event. Our further understanding is that the Police Department and the City's Traffic office were involved in the approval process, so any traffic concerns would presumably have been addressed.

It is debatable whether the painting of a mural on a public street would constitute a violation of the City's graffiti ordinance (leaving aside the fact that the organizer obtained the prior consent of the City), as a review of the entire ordinance could lead to the reasonable conclusion that the ordinance is not intended to reach painting on a public street – the prohibition is against painting on “the real or personal property of another, whether said property be publicly or privately owned.” There is room for interpretation whether such language is intended to apply to a public street.<sup>1</sup> But even if we assume that the arts project event would constitute a violation of the graffiti ordinance, municipalities have discretion whether or not to enforce their ordinances.<sup>2</sup> Hooks v. Pride of Connecticut Lodge, 2012 WL 6901177; see also Vretenar v. Hebron, 424 NW2d 714 (municipalities have discretion to enforce ordinances even when violations are open and notorious). By granting the organizer permission to hold the event, the City has elected not to treat the event as a violation of the graffiti ordinance, to the extent it might otherwise be a violation.

An additional consideration is that enforcement of ordinances must be balanced against First Amendment rights to engage in political, expressive and artistic speech in a public forum, such as a public street. The First Amendment protects artistic as well as political expression. Newton v. LePage, 700 F.3d 595. A public street is a public forum, where “the rights of the state to limit

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<sup>1</sup> It is a weak argument to maintain that painting a mural on a public street violates the anti-blight ordinance, as that ordinance by its terms applies to “buildings,” “structures,” “lots” and “parcels” of land.

<sup>2</sup> We do not mean to suggest that the City has discretion to enforce its ordinances in a manner that is discriminatory or that violates equal protection.

expressive activity are sharply circumscribed.” Perry v. Perry, 460 U.S. 37, 45. The City has the right to impose reasonable time, place and manner restrictions on First Amendment protected expressions which may take the form of parades, public gatherings, and events such as the one at issue herein. If the application had been denied outright, the organizer would have had a legitimate argument that the City violated the organizer’s First Amendment rights by prohibiting the event outright because painting a political message and/or engaging in artistic expression on a public street constitutes free speech in a public forum.