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Memorandum

To: Hon. Jeff Curtis, President; Hon. Megan Cottrell, Clerk of the Board; Hon. Nina Sherwood, Majority Leader; Hon. Mary Fedeli, Minority Leader; Hon. Virgil de la Cruz and Hon. Eric Morsan, Deputy Majority Leaders; and, Hon. Bradley Bewkes, Deputy Minority Leader

From: Attorneys Steven G. Mednick and Richard Roberts

Re: Outstanding Issues for the Charter

Date: 2 September 2023

Mr. President and Members of the Board of Representatives:

Both of us would like to thank all of you for your courtesies on what has been a challenging and lively Charter Revision process. The meeting on Wednesday will be the last legislative step in a process that began in February of 2022 when you created the Charter Revision Commission. Again, while we realize that there have been significant fissures and disagreements, both the Charter Revision Commission and the Board of Representatives have extended courtesies to the two of us and we will both remain grateful to all of you as we move on to other challenges in our professional lives.

Where are we in this process? Last week the Board of Representatives approved the Final Report of the Charter Revision Commission with two significant changes. First, you voted to reject the proposed language in Sec. C9-40-1 the so-called “sunrise” provision and thus, the last of the land use provisions impacted by P.A. 23-205 has been removed from the approved Charter amendments. Second, the Board voted to reject the Commission’s proposal to eliminate the suspension provisions in Sec. C5-20-20(b). The Board restored the following language: “except that in specific cases, the Board of Representatives may suspend this requirement by a majority vote of its membership.” This action restores the intention of the provision to require resident elector status for the specifically enumerated positions. In effect, this combined action of the Commission and the Board does what the Deputy Corporation Counsel requested in the 2015 opinion. In other words, the default is “resident elector” status; however, the Board of Representatives has the authority to “suspend” or waive the requirement, where necessary.

On Wednesday you will be considering two resolutions.

CR31.014.

The first resolution has multiple parts. Most significantly is the first component determining whether the charter amendments “...shall be submitted to the electors for

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approval or rejection at a **regular election or at a special election**” (see, C.G.S. §7-191(e)). The election must be held “...not later than fifteen months after...the approval by the appointing authority¹.”

Under the framework of the statute the general election choices are the municipal election of November 7, 2023² or the federal and state elections of November 5, 2024³. The law also permits a special election on the date of your choosing. Some communities choose Special Elections for the reason that the voters are permitted to focus solely on the charter question as opposed to the other ballot issues and candidates that may crowd a ballot⁴. In the Special Election cycle the charter is the issue and not an afterthought for the voter.

There is a substantive difference in the voting standards applied to the different elections that mitigates in favor of a general election cycle:

General Election

“...a majority of the electors of the municipality voting thereon...”

Special Election

“...a majority which number equals at least fifteen per cent of the electors of the municipality as determined by the last-completed active registry list of such municipality...”

The choice is within the discretion of the appointing authority/legislative body.

Component 1 Voting Standard: The setting of the date requires approval of the Board of Representatives by “a majority vote of its entire membership” (C.G.S. §7-191(e)).

The second component is one that was already voted upon last week and approved by a “majority of the entire membership” of the Board of Representatives. In the event the Board votes to approve the 2024 cycle or an alternate Special Election date the effective date would have to be changed.

¹ The Board of Representatives is the appointing authority.

² The 2023 ballot includes municipal issues: Board of Education and Special Elections for the Board of Representatives.

³ The 2024 ballot includes federal and state offices and a constitutional amendment: President; U.S. Senate; U.S. House of representatives; State Senate; State Representative; Special Elections, if any; State Constitutional Amendment for “no-excuse absentee voting.”

⁴ As has been noted Stamford’s Charter has the following unique provision that encourages placement of charter revisions on ballots in three of the four regular election cycles: “To the extent permissible under applicable state law, 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.” The provision does not establish a fixed requirement (“shall endeavor”); but, rather establishes a preference. Under the statute the choice of dates is left to the discretion of the appointing authority...the Board of Representatives.

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Component 2 Voting Standard: If the effective date is changed, we would recommend approval of the Board of Representatives by “a majority vote of its entire membership” (C.G.S. §7-191(e)).

The third component is more informational than necessary in a resolution. It simply affirms the requirement to publish the Charter “in a newspaper having general circulation in the municipality, with a notice that a complete copy of the charter is available in the Town Clerk’s office and that a copy shall be mailed to any person who requests a copy” as required by C.G.S. §7-191(d). The resolution adds the requirement that “...a copy of said charter shall be available on the website of the City of Stamford.”

Component 3 Voting Standard: There is no statutory standard. Therefore, a majority of those present and voting may approve this component.

The fourth component authorizes the Corporation Counsel and Counsel to the 19th Charter Commission to continue their review of the document for errata and non-substantive editorial revisions prior to newspaper publication.

Component 4 Voting Standard: There is no statutory standard. Therefore, a majority of those present and voting may approve this component.

The final component is one that I always recommend to municipalities: the preparation and distribution of an “**explanatory text**” under C.G.S. §9-369b(a)(1)(B)⁵. The explanatory text is a unique opportunity for the municipality to expend funds in an election cycle to “specify the intent and purpose” of each proposal or question on the ballot. The explanatory text is not an advocacy piece, it must be strictly informative: “Such explanatory text shall not advocate either the approval or disapproval of the proposal or question.” The preparation of the text is a function of the Town and City Clerk. In this resolution you are authorizing Charter counsel to draft; however, you are also reiterating the statutory requirement for the “municipal attorney;” in this case, Corporation Counsel Cassone to approve the text. Our normal protocol is to work with the Corporation Counsel during the drafting phase to assure swift completion of the project.

Component 5 Voting Standard: C.G.S. §9-369b(a)(1)(A) simply requires a “vote of its legislative body.” There is no specific voting standard. Therefore, a majority of those present and voting may approve this component.

⁵ The statute requires the municipal clerk to “... cause such question or proposal and such explanatory text to be printed in sufficient supply for public dissemination and shall also provide for the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk.” Moreover the clerk must post “(a) least three such posters...at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public. The explanatory text shall also be furnished to each absentee ballot applicant pursuant to subsection (d) of section 9-140.”

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CR31.013.

The proposed resolution includes approval of the following ballot question for the November 7, 2023 ballot: “Shall the electors of the City of Stamford approve and adopt the Charter changes as recommended by the Charter Revision Commission and as approved by the Board of Representatives?”

The Generic Question. We know some of you may be wondering how you can distill a charter revision down to such a simple question and whether it is legally permissible. The answer to both question is yes; it is legal and you may use a question that simple. On the list that was sent to you but not described you saw many variants on that question:

Shall the Charter be revised, reorganized, recodified and modified in order to clarify and facilitate the interpretation and understanding of the structure of the Town government?	“Shall the City of Bridgeport approve and adopt the Charter changes as recommended by the Charter Revision Commission and approved by the City Council, including education governance reforms?”
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Shall the electors of the City of Hartford approve and adopt the Charter changes as recommended by the Charter Revision Commission and as approved by the Court of Common Council?"	Shall the electors of the Town of Hamden approve and adopt the Charter changes as recommended by the Charter Revision Commission and as approved by the Legislative Council ⁶ ?
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Shall Charter changes as recommended by the Charter Revision Commission and adopted by the Board of Alders be approved and adopted?

The theory of the general question is that the voters will have an “explanatory text” which will explain the content to the voters. Just for the record, the Hartford and Hamden ballot questions were used in 2022 and both charters were approved. While the Hartford revision was generic, the Hamden revision included a change to the four-year term for Mayor. That was not an insignificant or minor change and, yet, the legislative body chose the simple question. The same is true of New Haven this November. They have chosen the simple question in spite of the fact that the four-year term is on the ballot as well as significant restricting of their Departments and Boards and Commissions.

A variant of the generic question is a specific question. You see them most often in a series of questions; however, occasionally, a Charter revision boils down to one issue:

Shall the Charter be revised to reorganize the structure of government to establish a balance of power comprised of a Mayor, as the chief executive, and the Legislative Council, as the legislative body, allowing for the flexibility to conserve

⁶ In 2011 Hamden used the following generic question: “Shall the Town of Hamden approve and adopt the Charter changes as recommended by the Charter Revision Commission and as approved by the Legislative Council?”

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public resources, efficiently organize the administration of government and meet the needs of the public?

Shall the Charter be revised to reorganize the structure of government to establish a balance of power comprised of a Mayor, as the chief executive, and the Common Council, as the legislative body, allowing for the flexibility to conserve public resources, efficiently organize the administration of government and meet the needs of the public?

Shall the Charter be revised to reorganize the structure of government to: establish a balance of power between the Mayor and Board of Aldermen; permit the formation and administrative regulation of city departments, boards & commissions by ordinance, subject to the right of petition referenda; & establish a Finance & Audit Review Commission for the purpose of oversight of the financial functions and reporting of the City?"

. **The Omnibus Question.** The omnibus question may stand alone or may segregate most of the charter changes from issues that may be political, politicized or, potentially polarizing. Such questions may be used where there are themes or where there are just a series of issues that should be highlighted but don't require a separate vote. The last question in the "generic" category begins to move toward the multiple part question, which provides more information to the voter; however, cannot possibly spell out all the elements of the revision. There may be separate components but only one ballot and one vote for the elector.

Shall the Charter be revised to: (A) reformat, consolidate and recodify in order to facilitate public understanding of the structure and processes of Town government; (B) clarify legal authority for the provisions of the Charter with respect to legislative and administrative responsibilities; (C) provide a framework for the operation of government and public meetings; and, (D) allow for the administrative flexibility to conserve public resources, efficiently organize the administration of government and meet the needs of the public?

Shall the Charter be revised to clarify and streamline government operations and standards, maintain a two-year mayoral and council term, expand the police and fire commissions from two to four members, establish procedures to enhance public participation in the budget process, and require charter review every ten years with an initial review in two years?

Shall the Town of Fairfield Charter be reorganized to: (A) make it easier to use and understand; (B) modernize language and references throughout; (C) update and expand definitions; and (D) make substantive changes, including but not limited to the following: (1) uniform standards of conduct, civility and operations; (2) streamlined

Shall the Charter be revised to reorganize the structure of government to (a) establish a balance of power comprised of a Mayor as chief executive (e.g., administration, budget proponent and appointment powers) and the Legislative Council as the legislative body (e.g., oversight, appointment approval, budget approval); (b) allow for

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budget and contract approval procedures; (3) allow for greater competition in Board of Education elections; (4) modify Board of Selectperson vacancy process; (5) codify the current forty-member RTM with ten districts; (6) appointment of Constables; (7) codify the positions of Town Administrator and Chief of Staff; (8) modify residency and qualification standards for certain department heads; (9) update the Board of Library Trustees responsibilities; and (10) amend the process for updating the Town Seal.

the administrative flexibility to conserve public resources, efficiently organize the administration of government and meet the needs of the public; and, (c) permit the creation and governance of Departments, Boards, Commissions by ordinance?

Shall the Charter be revised to clarify and streamline government operations and standards, maintain a two-year mayoral and council term, expand the police and fire commissions from two to four members, establish procedures to enhance public participation in the budget process, and require charter review every ten years with an initial review in two years?

The final question is the shortened version of the omnibus question that will be on the ballot this November in Norwalk. The revision in Norwalk represents the most comprehensive revision since 1913. While there are some substantive issues involved, the Council relies on the “explanatory text” to inform the voters of the changes. You will also note that it references retention of the two-year term to reassure voters that the four-year term is not on the ballot.

As previously stated, the Omnibus Question is a preferred approach where there is a common theme or where the legislative body determines that it is willing to assume responsibility for informing the voters on the content and confident that there is no component that may lead the entire revision to its doom; or, conversely, that the bulk of the package is so popular that a more controversial item may sail. Those are political and not legal judgments that the body must make.

The following omnibus language has been reviewed and will be formally proposed by the co-sponsors of the resolution on Tuesday in advance of your meeting on Wednesday.:

Shall the Charter be revised to clarify and make it easier for the public to understand, have access to and hold more accountable Stamford's government by the following: (a) create more opportunities for the public to participate in government; (b) clarify, define and make more understandable certain common terms in the charter; (c) require clear reporting and accountability for legislative, legal and fiscal matters; (d) include recognition of diversity, equity and inclusion (“DEI”) as an important goal for the City; (e) end the practice of allowing members of decision-making boards and commissions to remain in office beyond the expiration of their term; (f) clarify the requirement that certain appointed

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executive officials live in Stamford, subject to a waiver provision; (g) allow the Board of Representatives to obtain legal services, as necessary, as do other local legislative bodies in Connecticut (h) create new charter boards and commissions to promote the goals of the American with Disabilities Act/DEI, mental health, housing and harbor management; and, (i) reorganize the budget process to permit residents to voice their opinions and concerns in a pre-budget public hearing, require publication of a budget calendar and ensure compliance with state law?

Multiple Questions. Multiple questions are usually used where there are distinct and separate stand-alone concepts. In some cases you combine an omnibus question with specific items:

Example 1

- Shall the Charter be revised to reorganize the structure of government to establish a balance of power comprised of a Mayor as chief executive (e.g., administration, budget proponent and appointment powers), a Court of Common Council as legislative body (e.g., oversight, appointment confirmation, budget approval).
- Shall the Charter be revised to establish a Court of Common Council comprised of eleven (11) members consisting of one member elected from each of six (6) Council Districts and five (5) At-Large Members (no more than three of whom shall be of the same political party)?
- Shall the Charter be revised to establish a Board of Education comprised of Four (4) Members Elected At-Large (no more than three of whom shall be of the same political party) and Five (5) Members appointed by the Mayor (no more than three of whom shall be of the same political party).
- Shall the Charter be revised to allow for the administrative flexibility to conserve public resources, efficiently organize the administration of government and meet the needs of the public, including transfer of the zoning function from the Common Council to a Planning and Zoning Commission; a four year term of elected officials; the creation of Departments, Boards, Commissions by ordinance; and, the administration of regulatory processes (e.g., personnel/civil service, purchasing and contract administration) by ordinance?

Example 2

- Shall the Charter be revised by modifying Chapter VIII (Finance and Taxation) to include, among other format revisions: an automatic budget referendum (maximum of three referenda), reversion to the prior year annual budget increased by two (2%) percent in the event of a failed third referendum, establishment of a budget process timeline at the commencement of the process, a public hearing requirement for the Board of Selectmen and the Board of Education organize the structure of government to establish a balance of power comprised of a Mayor as chief executive (e.g., administration, budget

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proponent and appointment powers), a Court of Town Council as legislative body (e.g., oversight, appointment confirmation, budget approval)?

- Shall the Charter (Section 9-2) be revised to limit all employment contracts to three (3) years?
- Shall the Charter (Section 10-8(A)) be revised to increase the threshold requiring the action of the Town Meeting for appropriations not included in the Annual Budget from twenty thousand (\$20,000.00) dollars to thirty thousand (\$30,000.00) dollars?
- Shall the Charter be generally revised to: (A) reformat, consolidate and recodify in order to facilitate public understanding of the structure and processes of its local government, including, for example, the terms of office for local officials (Chapter II) and administrative responsibilities (Chapter V); (B) clarify legal authority for the provisions of the Charter; (C) provide a framework for the operation of government and public meetings (Chapter III); (D) delineate the process for the exercise of emergency powers in accordance with law (Chapter IV); (E) allow for the administrative flexibility to conserve public resources, efficiently organize the administration of government and meet the needs of the public, including, for example, the establishment of job qualifications for appointed officials and a description of the authority of the board of selectmen and the town meeting to manage the local government (Chapter VI), a description of charter-based boards and commissions as well as procedures for creating (by ordinance), appointing and operating appointive boards and commissions (Chapter VII)?

Example 3

- Shall the Charter be revised and reorganized to facilitate public understanding and access to local government by instituting: (a) clear standards of ethical conduct for local officials; (b) uniform procedures enhancing board and commission operations; (c) greater accountability and standards of compensation in the budget process; (d) nonpartisan council leader positions; and, (e) equal employment opportunities?
- Shall the Charter be revised to transfer hiring and supervision responsibilities for custodians, secretarial and cafeteria staff, tradespersons, central office staff, and other employees who do not require State Board of Education certification at Middletown Public Schools from the Mayor to the Board of Education and the Superintendent of Schools?

The last item was an example where there was a politically charged issue and the judgment was to segregate the work of the Commission from a controversial labor/management issue. Both questions passed with very little difference in the outcome.

In the event you want to approve multiple ballot questions you might take the proposed omnibus and divide it accordingly.

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Voting Standard: C.G.S. §7-191(f) The proposed charter, charter amendments or home rule ordinance amendments shall be prepared for the ballot by the appointing authority and may be submitted in the form of one or several questions. There is no specific voting standard. Therefore, a majority of those present and voting may approve the form of the questions to appear on the ballot.

We are available to answer any procedural or substantive questions in the interest of facilitating the meeting on Wednesday. In the meantime enjoy the remainder of the Labor Day Weekend.

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