

Chair Lee,

You have asked the Law Department for an opinion in your capacity as Chair of the Legislative and Rules Committee. Your specific request stated:

During our meeting, Representative McMullen stated his belief that Item LR30.108 violates Section 9.7(b) of the Code of Ordinances, on the grounds that this is an impermissible second renewal for a period beyond the 1 year authorized by the Code.

Attorney Dellaselva noted that this process went through the full approval of Board of Reps, Board of Finance, and Planning Board, whereas Section 9-7(b) contemplates only approval by two boards, Board of Reps and Board of Finance, e.g., the difference in procedure, and indeed, more thorough process, indicates that Section 9-7(b) is inapplicable.

I would like the Law Department to provide their opinion as to whether approval of LR30.108 is permissible under the ordinances, and if so, their rationale for reaching that determination (either for the reason stated above or other reasoning). I'd like this opinion before our regular June meeting.

The procedures for leases of city-owned property are set forth in Section 9-7 of the Code of Ordinances. This section contains three subsections which describe different procedures for lease approval depending on the specific circumstances of each proposed lease.

Subsection (B) of Section 9-7 pertains to preexisting leases. Based on my understanding that the previous Himes lease did not contain a renewal provision, and further, that the Himes lease has already been renewed once, Subsection (B) cannot be used to effectuate approval of the proposed Himes lease.

Subsection (A) of Section 9-7 sets forth a procedure for approval of leases that have been previously recommended by the Planning Board, Board of Finance and Board of Representatives pursuant to Section 9-4 of the Code of Ordinances. My understanding is that this subsection does not apply to the proposed Himes lease.

There is one remaining subsection of Section 9-7, (C), titled "Special leases," which provides a procedure for approval of leases. It provides, in relevant part:

Notwithstanding the process of establishing property recommendations and leasing such properties as established in Subsections A through B above, the Mayor may negotiate and execute the lease of any city-owned or city-leased property, subject to such terms and conditions as the Mayor may deem to be in the best interests of the city, provided that such lease shall be approved by the Planning Board, the Board of Finance and the Board of Representatives, in that sequence. Approval by the Board of Representatives must be by resolution.

With respect to the proposed Himes lease, the above provision was satisfied in that the lease was approved by the Planning Board and by the Board of Finance. Subsection (C) further requires that "the procedure for approval and authorization to execute such special leases shall be the same as that

provided for special sales in Section 9-6 (A) through (B) above.” Section 9-6, in turn, requires that the Planning Board, the Board of Finance, and the Board of Representatives, in that sequence, approve the lease. The Planning Board and the Board of Finance have approved the proposed Himes lease. This section further requires that a public hearing be held by the committee of the Board of Representatives to which the matter has been referred, and a public hearing was in fact held. Therefore, the procedure set out in Section 9-7, Subsection (C), “Special leases,” has been complied with, and approval of the proposed Himes lease by the Board of Representatives is permissible under the Code of Ordinances.

It should be noted that Section 7-163e of the Connecticut General Statutes also requires that a public hearing be held on the lease of municipal property. It further provides that notice of the public hearing shall be published at least twice and requires that a sign be posted on the property that is the subject of the public hearing; however, it also states that the foregoing requirements “shall not apply to renewals of leases where there is no change in use of the real property.” Since there is no change in use between the previous Himes lease and the one currently under consideration, and because the lease currently under consideration can be fairly characterized as a renewal of the previous Himes lease for purposes of this statute, it is my opinion that the requirements of C.G.S. Section 7-163e do not apply to the Himes lease currently up for consideration.