

Law Offices

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### MEMORANDUM

**TO:** Michael Wilkinson, Director of Admin. Services

**FROM:** Vianca T. Diaz

**DATE:** November 13, 2017

**RE:** October 19, 2017 Public Hearing Questions

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I was asked to answer several questions presented at the October 19, 2017 Public Hearing held by the Charter Revision Commission. Below I answer each question in turn.

#### **I. REFERENDUM PROCESS TO CHANGE IN THE CHARTER**

##### **A. Can Charter revisions be voted on as single line items?**

The Town Council<sup>1</sup> (the “Council”) can submit the amendments in the form of one or several questions.<sup>2</sup>

##### **B. Does the Council have ultimate discretion in how the question(s) are presented?**

Conn. Gen. Stat. § 7-191(f) specifically grants the Council the authority to submit the amendments to the ballot and its form. However, the statutes do not limit what the Charter Revision Commission can include in its report to the Council. All it requires is that the proposed amendments be included in its report.<sup>3</sup> Therefore, the Commission may want to recommend how the revisions are proposed on the ballot in its report to the Council.

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<sup>1</sup> Please note that the Council is the appointing authority for the Town of Tolland, as the term is used in Conn. Gen. Stat. § 7-191. *See* Conn. Gen. Stat. Ann. § 7-187(a) (West 2017).

<sup>2</sup> *See* § 7-191(f) (“The proposed . . . charter amendments . . . shall be prepared for the ballot by the appointing authority and may be submitted in the form of one or several questions.”).

<sup>3</sup> *See id.* (“The commission shall submit its draft report, *including the proposed . . . charter amendments*, to the

## II. DEFINITION OF “EMPLOYEE” WITH RESPECT TO CONTRACT SERVICES

### A. Does this mean that all contractors working for the town are considered employees, even if they work for corporations or partnerships? Or is this meant to apply to contract positions such as temporary staff (as may be provided by a temp. or professional services agency)?

The Town Charter broadly defines “employee” as “[a]n individual who is paid by the Town through a payroll system of the Town or who is paid for services under contractual or purchasing arrangements.”<sup>4</sup> This could arguably include *anyone* that is paid by the Town pursuant to a contract or purchasing arrangement. However, the definitions of “employee” in the Connecticut statutes may be useful to the Commission if it wishes to amend the Town’s definition.

The state statutes define “employee” in two distinct locations. The first is in the general provisions found in Title 1. “‘State or municipal employee’ . . . includes . . . any person, whether appointed or under contract, who provides services for a city, town or other political subdivision of the state for which a pension is provided.”<sup>5</sup>

The second definition of “employee” can be found in the Municipal Employees’ Retirement Act. In the context of collective bargaining, “employee” is defined as “any employee of a municipal employer<sup>6</sup>, whether or not in the classified service of the municipal employer, except elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week on a seasonal basis<sup>7</sup>,

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clerk of the municipality, who shall transmit such report to the appointing authority.) (emphasis added).

<sup>4</sup> TOLLAND, CONN. Charter § D-1 (2003).

<sup>5</sup> CONN. GEN. STAT. ANN. § 1-110(2) (West 2017).

<sup>6</sup> See § 7-467(1) (“‘Municipal employer’ means any political subdivision of the state, including any town, city, borough, district, district department of health, school board, housing authority or other authority established by law, a private nonprofit corporation which has a valid contract with any town, city, borough or district to extinguish fires and to protect its inhabitants from loss by fire, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees.”).

<sup>7</sup> See § 7-467(3) (“‘Seasonal basis’ means working for a period of not more than one hundred twenty calendar days in any calendar year.”).

department heads<sup>8</sup> and persons in such other positions as may be excluded from coverage under sections 7-467 to 7-477, inclusive, in accordance with subdivision (2) of section 7-471.”<sup>9</sup>

### **III. Non-Registered Voters**

#### **A. Does the CT State Statutes allow an individual registered to vote in another town (Tolland non-registered voter) who owns property in Tolland, to vote on town referenda?**

A “referendum” is defined as “(1) a question or proposal which is submitted to a vote of the electors<sup>10</sup> or voters<sup>11</sup> of a municipality at any regular or special state or municipal election, as defined in this section, (2) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters, which meeting is not an election, as defined in subsection (d) of this section, and is not a town meeting, or (3) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters pursuant to section 7-7 or pursuant to charter or special act.”<sup>12</sup>

Conn. Gen. Stat. § 7-6 contains language that mirrors the Town Charter’s definition of “non-resident voter”.<sup>13</sup> § 7-6 states as follows: “[a]t any town meeting other than a regular or special town election or at any meeting of any fire, sewer or school district or any other municipal subdivision of any town incorporated by any special act, any person who is an elector

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<sup>8</sup> See § 7-467(4) (“‘Department head’ means an employee who heads any department in a municipal organization, has substantial supervisory control of a permanent nature over other municipal employees, and is directly accountable to the board of selectmen of a town, city or borough not having a charter or special act form of government, or to the chief executive officer of any other town, city or borough.”).

<sup>9</sup> § 7-467(2).

<sup>10</sup> Elector is defined as “any person possessing the qualifications prescribed by the Constitution and duly admitted to, and entitled to exercise, the privileges of an elector in a town.” § 9-1(e). The qualifications of an elector are described in Art. VI, § 1 of the Constitution. See CONN. CONST. art. VI, § 1 (“Every citizen of the United States who has attained the age of eighteen years, who is a bona fide resident of the town in which he seeks to be admitted as an elector and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector.”).

<sup>11</sup> See § 9-1(u) (“Voter is defined as “a person qualified to vote at town and district meetings under the provisions of section 7-6.”).

<sup>12</sup> § 9-1(n).

<sup>13</sup> See TOLLAND, CONN. Charter § D-1 (2003) (“Non-registered voter” is “[a] U.S. citizen of at least eighteen years of age qualified to vote at public hearings by virtue of having property in the Town of Tolland assessed at \$1,000 or greater, and who is individually responsible for the payment of Town property taxes.”).

of such town may vote and *any citizen of the United States of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against him on an assessment of not less than one thousand dollars on the last-completed grand list of such town, district or subdivision . . . may vote*, unless restricted by the provisions of any special act relating to such town, district or subdivision.”<sup>14</sup> Pursuant to this section, a person who is not an elector (i.e. resident over the age of eighteen), who is over the age of eighteen, and has to pay over \$1,000 in property taxes to the Town, is eligible to vote in town meetings.

The question that must be answered is whether or not a referenda is considered a town meeting as discussed in § 7-6. Connecticut courts have held that “a town meeting and a referendum are entirely distinct decision-making mechanisms.”<sup>15</sup> Applying this analysis to the Town’s definition of non-registered voter, non-registered voters should not be allowed to vote on town referenda.

#### **B. Definition of “non-registered voter”**

##### *i. What is the Charter definition of “non-registered voter” supposed to define?*

As discussed previously, the Tolland Charter definition of “non-registered voter” mirrors the definition of “voter” in Conn. Gen. Stat. § 7-6 and are allowed to vote in limited circumstances, i.e. Town meetings other than elections.

##### *ii. Is there a more straightforward definition that can be used?*

The Commission should consider whether or not the Charter’s definition should be changed to directly reflect the definition of “voter” in the state statutes.

##### *iii. What is the difference between having property and owning property?*

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<sup>14</sup> CONN. GEN. STAT. ANN. § 7-6 (West 2017).

<sup>15</sup> *Arras v. Reg'l Sch. Dist. No. 14*, 319 Conn. 245, 268 (2015) (citing *Sadlowski v. Manchester*, 206 Conn. 579, 590, (1988) (“[f]or us to imply such an equivalence [between town meetings and referenda] would fly in the face of reality”).

“Having” and “owning” property are likely used interchangeably throughout the Charter. To clear up any confusion, the Charter should be changed to consistently use “owning” as legally only the owners of property are responsible for taxes on the land (i.e. are listed on the tax bills issues by the Town).

*iv. What is meant by “individually responsible for the payment of Town property taxes”?*

This is a person who legally owns the property and is therefore responsible to the Town for taxes (i.e. listed on the tax bill for the Town).

**C. Please provide clarification of how we could define “Non-resident Voters” (Charter definitions P. 6). Could a “non-resident voter” be equivalent to a “non-registered voter”?**

Yes. The Charter only mentions “nonresident voter” in the definition of public hearing.<sup>16</sup> However, in the sections that discuss public hearings, “non-registered voter” is used.<sup>17</sup> Therefore, the definition of “public hearing” should be changed for consistency.

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<sup>16</sup> “Public hearing” is defined as a “meeting of the Council, a board, commission or committee during which the residents and *nonresident voters* of the Town are given notice and opportunity to give testimony on a particular matter, and during which a nonbinding straw poll is taken to measure opinion.” TOLLAND, CONN. Charter § D-1 (2003) (emphasis added).

<sup>17</sup> See ch. IV, § C4-5 (“Public hearings for the consideration of the annual budget, supplementary or additional appropriations, ordinances and such other actions as the Council shall determine shall be held at such time and place as the Council may determine by resolution. Notice of the time, place and purpose of such public hearings shall be advertised in a daily newspaper having a general circulation within the Town at least five days prior to such public hearings. After such public hearings, a poll of the registered voters and *nonregistered voters* of the Town present may be taken on each issue and may constitute a public expression of opinion for the guidance of the Council.); see also ch. IX, § C9-7 (“The Council shall hold one or more public hearings at which any registered or nonregistered voter may have an opportunity to be heard regarding appropriations for the ensuing fiscal year.”).