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MEMORANDUM

To: The Honorable James Donnelly, Tiverton Municipal Court Judge
From: Town Solicitor's Office
Re: Justin Katz charter complaint
Date: November 15, 2017

The Town received a Charter complaint filed by Justin Katz on October 2, 2017. The complaint alleges that certain Tiverton School Committee members, and the School Committee as a body, violated the Town Charter by submitting an elector petition with an alternative budget proposal for consideration at the Financial Town Referendum (FTR). In filing the complaint, Mr. Katz had asked that two Councilmembers recuse from considering the matter based on having been signatories to the elector petition. Further, Mr. Katz requested that a third Councilmember recuse, as Mr. Katz had filed an ethics complaint against him. When the complaint was placed on the Council agenda on October 10, 2017, this office advised that all members of the Council should recuse and could not sit on the application. Accordingly, the Town Clerk has been advised to send the complaint directly to Municipal Court. The purpose of this memorandum is to address the recusal issue.

The Rhode Island Supreme Court has held that, when a board member sitting in a quasi-judicial capacity "expresse[s] an opinion publicly on a . . . matter, which ultimately [comes] before him [or her] for judgment[, it will] . . . destroy public confidence in his [or her] impartiality." See Barbara Realty Co. v. Zoning Bd. of Review, 85 R.I. 152 (1957). In such circumstances, the member should recuse from considering the matter. Id. Further, the Court has held that "[w]hen an administrative agency carries out a quasi-judicial

function, it has an obligation of impartiality on par with that of judges [and therefore] . . . must not be biased or otherwise indisposed from rendering a fair and impartial decision." See Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427 (R.I. 2010) (internal citation and quotation omitted). The Court held that an "adjudicator must not become an advocate or participant." Id.

Here, all members of the Council were intimately involved in the budget process, as advocates and participants, as the Council painstakingly developed a docket for submission to the FTR, as required by the Charter. Further, at the April 8, 2017, meeting of the Council, the Council discussed, as a body, matters that are the subject matter of Mr. Katz's complaint. Specifically, the Council discussed whether to submit an alternative budget to the Budget Committee budget. After extensive discussion, ultimately, the Council decided not to propose an alternative budget. During this discussion, Councilmembers expressed their opinions on the propriety of submitting an alternative budget proposal. The issues discussed by the Council at that meeting touched on the issue raised in Mr. Katz's complaint, as Mr. Katz's complaint focuses on whether the School Committee, and/or School Committee members, were authorized, under the Charter, to submit an alternative budget proposal. Accordingly, it is appropriate for all the members of the Council to recuse from this complaint, so as not to give the appearance of bias or undermine public confidence in decision on the same., in the recusal analysis, it is necessary to consider whether both the complainant and

The only remaining question is what the proper mechanism is for addressing this complaint now that the Council has recused. Sec. 1211(b)(2) requires at least four (4) Councilmembers to sit on a Charter complaint. Sec. 1211(a) provides that, if a majority of Councilmembers cannot sit on a Charter complaint due to the complaint being made against a majority of the Council, the complaint is referred by the Town Clerk to the Municipal

Court to fill the role of the Council. This instance is analogous to the situation contemplated in Sec. 1211(a), since a majority of the Council is unable to consider the complaint due to recusal. Accordingly, the Town Clerk has been advised to refer this matter to the Municipal Court. It should be noted, however, that this referral is not intended to remove a procedural protection from the persons and entities subject to the complaint. The procedure for a Charter complaint contemplates a two-step process, with an initial determination of whether the complaint has any merit, followed by a trial on the merits in Municipal Court. Although the complaint has been referred to the Municipal Court due to recusal, the complaint is still at the initial determination stage, with that initial determination being made by the Municipal Court, instead of the Council.