

**DRAFT**

## **GREENWICH BOARD OF ETHICS**

### **Minutes of Regular Meeting on April 12, 2023**

**Members Present:** Paul de Bary, Chair, Jennifer Paul Cohen, Secretary,  
Ken Greenberg, Rev. Stephanie Johnson

**Members Absent:** Robert Sisca

**Others Present:** Bill Drake, Chairman, Rink User Committee for Design & Planning

The in-person meeting was called to order at 5:40 P.M. by the Chair, who noted that a quorum was present and that the agenda for the meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. The Chair also noted that Robert's Rules of Order would be suspended in the interest of efficiency, subject to being reinstated in the interest of an orderly discussion.

The first item on the agenda was approval of the minutes from the February 8, 2023, regular meeting and the March 20, 2023, special meeting of the Board. The Secretary had distributed drafts of the minutes prior to the meeting. There were no further revisions requested to the minutes. The Secretary then moved for adoption of the minutes. Hearing no objection the minutes from the meetings of the Board were approved unanimously in the form attached to these minutes as Exhibit A. The Chair directed the Secretary to certify said minutes, file them with the Town Clerk, and post them in the Agenda and Minutes center on the Town website.

The next item on the agenda is the report of the Chair. The Chair indicated that the Board had received an email from a resident asking the Board to support amendments to expand the Greenwich Code of Ethics so that it would "require Town Boards and Committees to exercise judgment to avoid outcomes which could lead to corroded trust in our Town government, elections and institutions." The resident expressed concern that the RTM had voted to accept a grant to defray voting costs in the Town from a non-profit that the resident thought was "funded by out of state and Town money, by people who have no vested interest in Greenwich's issues." The Chair had provided all members of the Board with his response explaining that the Board has a policy not to recommend substantive changes to the Code of Ethics in order avoid giving the impression that it would not observe the Code as written.

Next the Chair confirmed that each of the members had received a copy of proposed revisions to the Board's approved safe-harbor conflicts of interest policy template. The revisions were intended to clarify the ability of Town Officers to avoid violations of the Code

of Ethics by disclosing the existence of a conflict, without providing details, as long as they were completely recused from the matter in question after that. In addition, the revisions provided for reviews of conflicts to be made by a group of uninterested members, rather than a formal committee, in order to allow them to proceed without formalities such as public notices and meetings, which might otherwise be required under FOIA. These revisions were an outgrowth of the dialog between the Board and a Town Commission that had recently adopted a policy approved by the Board.

The Chair asked if there was any discussion. A discussion ensued concerning the application of the policy to Town Officers subsequent to their active service, and it was decided that the time period would be changed from one year to six months. The Secretary moved to adopt the template as amended. Ken Greenberg seconded the motion. With no opposition, the template as amended was adopted unanimously.

**Resolved** that the Board approves the revised template for a Conflict of Interest Policy (for adoption by Town entities in order to establish a basis for safe harbor status) is hereby approved in the form attached as Exhibit B. This template supersedes the previous template but does not remove safe harbor status from policies adopted using the prior template.

The Chair indicated that the new policy will be posted in substitution for the prior one in the Board of Ethics pages on Town website.

The Chair indicated that a member of the Board had suggested that a discussion of recent concerns raised over a Supreme Court Justice's ethics reporting might be a productive area to discuss. A discussion ensued concerning the nature of gifts, the shared values of friends as a source of predisposition, the difficulties inherent in self-policing ethical policies, and the benefits of the Board adopting the Conflict of Interest Policy. Accordingly, the Secretary will use the template to prepare a policy for the Board and distribute it to the Board for adoption at its June meeting.

A copy of Book 8 of Aristotle's Nicomachean Ethics, which contains a discussion of friendship and ethics, was distributed for the Board's consideration.

The next item on the agenda was consideration of an advisory opinion that had been requested by a member of the Harbor Management Commission. The Board had met with the member at its last meeting and had provided the member with a draft of the opinion, who did not indicate any objection to the draft under consideration.

The Chair noted that drafts of the opinion had been circulated to all the members, that they had provided comments to the Chair individually and, seeing no basic inconsistency among the various comments, the Chair had attempted to incorporate the comments into the last draft circulated prior to the meeting. The Chair then asked each of the members if they had any further thoughts or comments on the draft circulated.

The Chair asked if there was any discussion. Hearing none, the Chair asked if there was a motion to adopt the opinion. The Secretary moved for the adoption of Advisory Opinion 23-02. Ken Greenberg seconded the motion.

**Resolved** that the Board approves Advisory Opinion 23-02 in the form attached as Exhibit C and directs the chair to deliver it to the Town Officer requesting it on behalf of the entire Board.

The next item was a review and preliminary investigation of reports concerning possible violations of the Code of Ethics. Under State law and the Board's Statement of Procedures, such considerations are required to be done confidentially until the Board makes a determination that there is probable cause to believe that a violation of the Code has occurred. Accordingly, at 6:15 PM a motion to adjourn into executive session was made and unanimously approved.

The Chair confirmed that the Secretary was keeping a list of all persons attending the executive session. The Chair noted that only matters appropriate to be considered in Executive Session will be discussed and that Secretary will keep a list of all persons present at the meeting, which will be reflected in the minutes.

At 6:38 PM the Board returned from executive session and reconvened in regular session.

Following the executive session, Chair announced that the Board had not completed its preliminary review and investigation of one reported violation it received and had determined to dismiss another reported violation because there was no probable cause to believe that a violation of the Code had actually occurred. In addition, it had determined that another reported violation did not concern any Town officer and was therefore outside the jurisdiction of the Board. Upon reaching a consensus that no probable cause was found for one reported violation (along with a waiver of confidentiality) and that the other report was outside the jurisdiction of the Board, it had been determined that there was no further basis for considering those items in executive session.

The Chair then asked the Board to conclude its consideration of the matter where there was a consensus that no probable cause had been found as a result of the Board's investigation. After discussion, he confirmed that each of the members received a copy of the draft decision that had been circulated dismissing the report as failing to find probable cause that a violation had occurred and asked if there were any comments or suggestions on the draft or further discussion of the matter.

After further discussion, the Chair asked for a motion to approve the decision dismissing the report. The motion was made by the Secretary and seconded by Ken Greenberg and was unanimously approved.

**Resolved** that the Board approves Decision 23-03 in the form attached as Exhibit D and directs the chair to deliver it to the Town Officer involved it on behalf of the entire Board.

The Chair then asked the Board to conclude its consideration of the matter where there was a consensus that the Board lacked jurisdiction. After discussion, he further confirmed that each of the members had received a copy of the draft decision that had been circulated dismissing a reported violation of the Code by a vendor because the Board determined that the vendor was not a Town Officer subject to the Code. The Chair asked if there were any comments or suggestions on the draft or further discussion of the matter.

The Chair asked for a motion to approve the decision dismissing the reported violation by a vendor. The motion was made by the Secretary and seconded by Stephanie Johnson and was unanimously approved.

**Resolved** that the Board approves Decision 23-02 in the form attached as Exhibit E and directs the Chair to deliver it to the person submitting the report.

The Secretary indicated that the minutes of the prior executive sessions evaluating the report dismissed in Decision 23-02 would be circulated to the Board for review and approval at the Board's next meeting.

There being no further business to come before the meeting, the Chair moved to adjourn the meeting at 6:49 PM, which was unanimously approved.

## EXHIBIT A to 4/12/23 Minutes

### GREENWICH BOARD OF ETHICS

#### Minutes of Regular Meeting on February 8, 2023

**Members Present:** Paul de Bary, Chair, Jennifer Paul Cohen, Secretary, Robert Sisca, Ken Greenberg and (via telephone) Rev. Stephanie Johnson

**Members Absent:**

**Others Present:** Ty Anderson, Harbor Management Commission (as shown)

The hybrid meeting was called to order at 5:57 P.M. by the Chair, who noted that a quorum was present and that the agenda for the meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. The Chair also noted that Robert's Rules of Order would be suspended in the interest of efficiency, subject to being reinstated in the interest of an orderly discussion.

The first item on the agenda was approval of the minutes from the December 7, 2022, meeting of the Board. The Secretary had distributed drafts of the minutes prior to the meeting. There were no further revisions requested to the minutes. The Secretary then moved for adoption of the minutes, Rob Sisca seconded the motion, and the minutes from the meeting of the Board were approved in the form attached to these minutes as Exhibit A.

The Chair then noted the re-appointment of Rev. Stephanie Johnson to the Board and welcomed Ken Greenberg to his first meeting as a member of the Board. The Chair discussed plans for a Board orientation meeting followed by a social gathering to honor Bob Grele's contributions to the Board. Stephanie suggested Monday, March 20, 2023, at 5:30 PM at St. Paul's Episcopal Church in Riverside.

At 6:04 P.M. Ty Anderson, a Town Officer, was joined to the telephone conference with Rev. Johnson to discuss two advisory opinions. One concerned the adoption of an advisory opinion by a commission that he was a member of and the other dealt with disclosure of financial interests. Mr. Anderson stated his concerns with a draft of the first advisory opinion that had been circulated to the members of the Board, Mr. Anderson and the person requesting the opinion. He felt that it did not reflect prior discussions about safe harbor status, his understanding of it at the time it was adopted and what he believed was the understanding of the other commissioners about it. His belief was that the opinion did not provide a full safe harbor because it did not expressly give safe harbor treatment to persons who disclosed the existence of an interest, without providing details about the nature of the interest and then successfully recused themselves from the action or transaction in question. The Chair

apologized to Mr. Anderson for any miscommunication and expressed regret and responsibility if any of the members of the Commission felt misled. The question before the Board, however, remained was what was best for the Town and the Commission.

The Chair indicated that in his prior discussions with Mr. Anderson he had agreed to a change in the policy that would not require members of the commission to disclose the nature of their interest as long as they completely recused themselves from the action or transaction in question. The Chair indicated to Mr. Anderson that he believed the Board would consider this favorably because it did not require people to disclose details if they felt that they could successfully recuse themselves without doing so. Moreover, successful recusal would avoid a violation of the Code and therefore the need for the safe harbor procedure provided for in the policy.

Discussions ensued where members of Board expressed the view that the draft advisory opinion in fact intended to indicate that the policy as a whole was considered a safe harbor policy, but that where the existence of an interest was disclosed, without providing details, and complete recusal was achieved, there was no reason for the policy to provide for safe harbor treatment, since there would be no violation of the Code as a result of the recusal. Mr. Anderson was not convinced by this, but felt that he had expressed his concerns as best he could, so he left it to the Board to continue to work on the draft opinion.

Mr. Anderson also discussed the second advisory opinion regarding the applicability of the Code to Town Officers' investment interests of a de minimum percentage of outstanding shares in publicly traded companies that may be involved in transactions with the Town. The Chair advised him that the Board expected to prepare a draft opinion for its April meeting and would share it with him in advance.

At 6:33 PM Mr. Anderson left the meeting. The Board then continued its review of the first draft Advisory Opinion that had been discussed with Mr. Anderson. In light of Mr. Anderson's expressions of concern, the Board made a number of revisions intended to clarify that the Board was not rejecting safe-harbor treatment for commissioners who disclosed the existence of an interest and completely recused themselves, rather that no safe-harbor procedure was necessary in that circumstance.

The request for an advisory opinion regarding disclosure of investment interests in publicly traded companies was also briefly discussed, and it was agreed that a draft opinion should be circulated to members of the Board in advance of its next regular meeting.

The next item was a review and preliminary investigation of reports concerning possible violations of the Code of Ethics. Under State law and the Board's Statement of Procedures, such considerations are required to be done confidentially until the Board makes a determination that there is probable cause to believe that a violation of the Code has occurred. Accordingly, at 7:25 PM a motion to adjourn into executive session was made by the Secretary, seconded by Ken Greenberg and unanimously approved.

At 7:45 PM the Board returned from executive session and reconvened in regular session.

The Secretary then moved to adopt Advisory Opinion 23-01 in the form attached to these minutes as Exhibit B. Mr. Greenberg seconded the motion which was approved unanimously by roll call. Advisory Opinion 23-01 is attached to these minutes as Exhibit B.

At 7:47 Rob Sisca left the meeting.

A Report on Board Records and a discussion on proposed changes to the Safe Harbor Policy template were tabled until the next regular meeting of the Board.

The Chair then asked if there were any further items that members of the Board wished to consider. Hearing none, the Chair moved to adjourn, the Secretary seconded the motion, and the meeting was adjourned by unanimous consent at 7:58 P.M.

Respectfully submitted,

*Jennifer Cohen*

## Exhibit A to 2/8/23 Minutes

The minutes of 12/7/22 were approved at a previous meeting and are not attached to avoid duplication.



**Advisory Opinion No. 23-01**

**Date:** February 8<sup>th</sup>, 2023

**Topics:** Financial Interests, Transactions, Disclosure, Recusal

**Code Sections:** Section 4

**Statement of Facts:**

The Chair of a Town commission (the “Commission”) requested an advisory opinion with respect to the adoption of a Conflict of Interest Policy by the Commission. The Commission had used the template approved by the Board of Ethics as an initial draft of the policy but had worked with members of the Board to implement changes that members of the Commission felt were more consistent with the operations and character of the Commission.

Modifications to the policy dealt with the scope and applicability of the policy and did not affect the procedure for review of the matter by non-interested members and the making of recommendations concerning proper management of the matter by such non-interested members, which are the fundamental provisions that the policy is based on.

**Questions Presented:**

1. Does the disclosure of an interest in a Town action or transaction and complete recusal from involvement in discussion or voting on the action transaction avoid a violation of Section 4 of the Code, which prohibits Town Officers from “exerting influence or voting on” a transaction in which a Town Officer has a substantial financial interest?
2. Where a Town Officer is a member or staff of an entity that has adopted a conflict of interest policy discloses an interest in a Town action or transaction, describes the details of such interest and follows the recommendations of independent reviewers of the transaction, will the Town Officer be entitled to safe harbor treatment by the Board of Ethics?

**Discussion and Conclusion:**

Consistent with the decision of the Connecticut Supreme Court in *Senior v. Zoning Commission*, 146 Conn. 531, 2, 153 A.2d 415 (1959), the Board has on numerous occasions indicated that Town Officers can avoid a violation of the Code of Ethics where they disclose the existence of an interest in a Town action or transaction, and take appropriate steps to avoid influencing the transaction. The steps the Board has

recommended in this regard include disclosure of the existence of the interest, avoiding voting on and discussing the issue with other persons involved in the action or transaction and avoiding continuing involvement in the matter after the approval of the action or transaction is given.

These steps have been articulated in a general sense in various advisory opinions of the Board and in many cases can be implemented without much difficulty in a way that avoids any appearance of impropriety. Therefore, they have been incorporated into the recommended template for a conflict of interest policy adopted by the Board. There are a number of circumstances, however, in which it isn't clear how these guidelines should be applied. Statements made by a Town Officer prior to becoming aware of his or her involvement in the matter may be viewed as an attempt to influence the matter unless the record is clarified. Or Town Officers may become officially involved in a matter for some time before becoming aware of the fact that they have a financial interest in it. The Town Officer may also find that, even if they avoid involvement in the initial approval of an action or transaction, they will have the potential to influence it during the period when it is being implemented. Complete non-involvement in a transaction may also seem impractical when the Town Officer has a duty to represent constituents or provide necessary expertise that is not reasonably available elsewhere.

In these circumstances, obtaining an advisory opinion from the Board of Ethics may not be feasible because of time or other constraints and the need for the Board to educate itself about the relevant operational and other issues involved before it is in the position to render a thoughtful opinion. This is why the Board has taken the position that it will allow a Town Officer to rely on the recommendations of uninterested reviewers in determining how to avoid a violation of the Code. The Board is confident that a Town Officer who reveals the details of their interest in a transaction and is willing to follow the recommendations of uninterested reviewers is not intentionally violating the Code. If a complaint is made in such circumstances, the Board will inquire into whether the interest was properly reported and reviewed and whether the recommendations to implement recusal were properly followed. If it finds that a violation of the Code did occur when these procedures were implemented in good faith, it will not find that the violation was intentional.

Whether or not a conflict of interest policy has been adopted, where an interest is reported and complete recusal is achieved, the Board will not find a violation of the Code by virtue of the successful recusal.

The Commission has adopted a conflict of interest policy that follows the Board's recommended template with respect to review and recommendation procedures following a detailed reporting of the nature of the transaction. Therefore a Commissioner who discloses an interest in a Town action or transaction, describes the details of such interest and follows the recommendations of independent reviewers of the transaction, will be entitled to safe harbor treatment by the Board of Ethics in accordance with this advisory opinion.

**See Related: A09-03, A09-04, A12-01, A14-01, A17-01, A20-01**

GREENWICH BOARD OF ETHICS  
Minutes of Special Meeting on March 20, 2023  
St Paul's Church, 200 Riverside Avenue, Riverside

Members Present: Jennifer Paul Cohen, Secretary, Rev. Stephanie Johnson, Kenneth Greenberg

Members Absent: Paul de Bary, Chair, Robert Sisca

Others Present:

The meeting was called to order at 5:50 P.M. by the Acting Chair Jennifer Cohen (Rev. Stephanie Johnson served as Secretary) who noted that a quorum was present and that a notice of the special meeting had been provided to all the members, posted online, and posted in Town Hall in accordance with the Freedom of Information Act requirements. There were no requests from the public to join the meeting. As a special meeting, the Acting Chair advised that only items on the agenda would be considered.

The purpose of the special meeting was a new member orientation.

Ms. Cohen, as Acting Chair, outlined the Town's Code of Ethics and discussed the role of the Board of Ethics including its responsibility to respond to complaints or violations of the Code, prepare advisory opinions and submit annual reports to the RTM and Board of Selectmen. Member responsibilities were reviewed as a reminder about regular meeting attendance and advanced preparation before each meeting. The complaint process was discussed as was the safe harbor provision.

The Town's ethics policy favors openness and transparency mindful of balancing FOIA and confidentiality for the complainant and town officers.

A question was raised whether Board of Ethics members are mandatory reporters. Ms. Cohen will follow-up.

The orientation portion of the meeting adjourned at 6:50 P.M. and was followed by a recognition of long-serving Board of Ethics member, Bob Grele, which concluded at approximately 8:30 PM

Respectfully submitted,

*Jennifer Cohen*

**TEMPLATE FOR USE AS A DRAFT**

**THE BOARD OF ETHICS HAS APPROVED THIS POLICY FOR SAFE HARBOR TREATMENT. PERSONS WHO FOLLOW THE REQUIREMENTS OF THIS POLICY FOR REPORTING AND REVIEW OF A DISCLOSED INTEREST IN GOOD FAITH WILL NOT BE CONSIDERED TO HAVE INTENTIONALLY VIOLATED THE CODE OF ETHICS.**

# TOWN OF GREENWICH

[Full Name of Entity]

## Conflict of Interest Policy

### STATEMENT OF POLICY

All members and staff of the [Full Name of Entity] are expected to act in an honest and ethical manner, in good faith and in the best interests of the Town of Greenwich (the "Town"). They are expected to adhere to the standard of conduct provided for in this Policy and place the interests of the community at large ahead of their own interests or the interests of any other person or organization. Members are expected to comply with all federal state and local laws, including the Town's Code of Ethics (the "Code"). The purpose of this Policy is to help identify conflicts of interest and related party transactions and provide procedures for reporting, reviewing and monitoring them. It applies to all members and staff of the [Entity] while they are in active service and for a period of six months thereafter. For purposes of this Policy, the term members and staff refers to all members and staff of the [Entity], including alternate and ex-officio members, consultants, independent contractors, volunteers and agents.

### STANDARD OF CONDUCT

Members and staff of the [Entity] are required to comply with the Code and any other laws and regulations applicable to their work with the [Entity]. The Code identifies personal financial interests as those financial interests that are financial in nature, more than nominal and not common to the other citizens of the Town. They include direct and indirect interests, such as interests of relatives, employers, subcontractors and business associates.

The Code identifies personal financial interests as those financial interests that are financial in nature, more than nominal and not common to the other citizens of the Town. They include direct and indirect interests, such as interests of relatives, employers, subcontractors, and business associates. To better identify, review and monitor personal financial interests, the [Entity] has adopted the following procedures:

1. Whenever a member or staff the [Entity], or a person who is their relative, employer, subcontractor or business associate, has a potential or

existing personal financial interest greater than \$200 in any [Entity] action or in any transaction with the Town, it is to be reported to the [Reporting Person] of the [Entity]. On terms generally applicable to all residents of the Town, the following are *not* considered a “transaction” for this purpose: (i) payment of Town taxes and routine assessments, (ii) payment of fees for ordinary Town services, (iii) payment of minor fines and penalties, (iv) obtaining routine, memberships, passes permits and licenses to participate in Town activities that are broadly available to the general public or (v) payments to utility and service providers at standard rates and charges.

2. The report should be filed promptly whenever a member or staff person becomes aware that they, or any relative or business entity they are involved with, may be considered to have a current or future personal financial interest in:

- a. a contract or other formal transaction with the Town,
- b. any action to be considered or taken by the [Entity] or
- c. any action to be considered or taken by another Town entity that the [Entity] or any staff member of the [Entity] may have a role in considering, recommending, adopting or implementing.

3. Any member or staff of the [Entity] who is aware of a personal financial interest on the part of another member or staff of the [Entity] that has not been reported within a reasonable period of time by the party or parties concerned has an obligation to make reasonable efforts to ensure that such a report is filed and for that purpose may report the interest even though it is not personal to them.

4. Each such report is to be sent to the [Responsible Person] in writing and delivered by hand, or sent by regular mail, email or other reliable form of communication. Receipt must be acknowledged by the [Responsible Person] and a copy sent to each member of the [Entity]. The written report should identify the Town transaction or action in question and state whether the [Entity] will be involved in approving or recommending it or will be otherwise affected by it. If the report is made by one or more interested members or staff prior to any consideration being given to the matter by the [Entity], the reporting person or persons may simply indicate that they will follow procedure for recusal contained in this policy. Otherwise, unless the [Entity] will not be involved in approving or recommending it or will not be otherwise affected by it, the report should: (a) make a good faith disclosure describing the financial interest of the member or staff in reasonable detail as it relates to Town transaction or action in question, (b) specify any measures that the reporting person has taken or intends to take to avoid a violation of the Code and (c) if the action or transaction has already occurred, such actions, if any, as may be

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appropriate to remediate the appearance of a conflict of interest (which, may include requesting an opinion from the Board of Ethics).

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5. Promptly after receipt of any such report, the [Responsible Person] will arrange for a review of the matter by two or more members of the [Entity] who do not have a personal interest in the matter (the "Uninterested Members"). However, where the report indicates that an opinion has been requested from the Board of Ethics, review by Uninterested Members is not required and, if more than a quorum of the members of the [Entity] have an interest in the matter, the [Responsible Person] should arrange for an independent review of the report by the Board of Ethics in lieu of a review by Uninterested Members.

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6. The review of any such report by Uninterested Members shall consider, after taking into account measures taken by the interested party or party to prevent it, the manner in which the reported interest might tend to influence or appear to influence the actions of the [Entity] or staff or the actions of, or supervision by, Town personnel or Town entities that have continuing contacts with the [Entity]. A record of the review is to be made and reflect the following:

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a. Where the interest described in a notice relates to a Town transaction or action that neither the [Entity] or any Town personnel or Town entities that have continuing contacts with the [Entity] will have any involvement in, the Uninterested Members reviewing the matter need take no further action than to obtain written confirmation that all appropriate persons have assumed responsibility for the filing of any necessary disclosure forms required by the Code.

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b. Where the interest described in the notice relates to a Town transaction that the [Entity] has or may have involvement with, or where the transaction is subject to review or supervision by Town personnel or Town entities that have continuing contacts with the [Entity], the record of review by the Uninterested Members is to disclose the existence of the interest, describe how the interest might influence or affect the persons involved and what alternatives may be available to the interested parties to avoid the appearance that the [Entity]'s proceedings are being conducted in a fair and impartial manner. The report shall recommend such actions, if any, as the Uninterested Members may deem appropriate to avoid the appearance of improper influence and to monitor the transaction to ensure compliance with the Code. This may include recommending that the individual(s) involved seek an advisory opinion from the Board of Ethics.

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c. Where the interest described in the notice relates to an interest in one or more future actions to be taken by the [Entity], the record of review by the **Uninterested Members** shall confirm that appropriate steps have been taken to avoid discussions of the matter that might improperly influence the [Entity]'s action and the participation by any interested person in any vote on the matter.

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d. Where the **Uninterested Members** reviewing the matter considers that the person having an interest in the matter also has special information or circumstances that are appropriate to be considered by the [Entity] in its deliberations on the matter, it may recommend means for such information to be provided in a manner that informs, but does not influence, the action to be taken.

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## RECUSAL

Any member or staff that becomes aware of a financial interest (whether or not it is his or her own interest) must take steps to ensure that the matter is dealt with in a transparent and impartial manner. This includes making sure that all persons needing to be aware of the conflict are informed of it and instructed not to discuss the matter with the affected person or provide information about the matter to the affected person, except as expressly provided for by this policy. Any person having a financial interest in a matter must, unless otherwise expressly approved by **the Uninterested Members reviewing the matter** refrain from: (1) any discussion of the matter with other members and staff, (2) making any recommendation related to the matter, and (3) from voting on the matter. During the period where a reported interest is under review by a **Uninterested Members**, interested persons will only be informed of a final decision and not of the ongoing status of the review, particular members' positions or how they vote. In addition, consideration should be given to disclosing relevant related party transactions in the [Entity]'s annual report to the Town.

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## FINANCIAL INTERESTS

A financial conflict of interest can arise whenever a person has, or in the future may reasonably expect to have, directly or indirectly, a financial interest in (i) a transaction, agreement or any other arrangement in which the Town or any affiliate of the Town participates or (ii) a recommendation, approval or authorization to be voted or otherwise formally acted on by the [Entity] or with respect to which the [Entity] provides advice, makes a recommendation or otherwise assists another Town entity in connection with a recommendation, approval or authorization to be voted or otherwise formally acted on by that entity. For purposes of this policy, a person's interest includes the interest a person who is their relative, employer, subcontractor or business associate. A relative includes any person that, by birth, marriage, adoption or other arrangement, an individual now or in the future may, have a reasonable expectation to receive material support from or provide

material support to, or to provide with shelter or other financial assistance. For this purpose the existence of a legal obligation should be considered to provide a reasonable expectation, whether or not it is being, or expected to be, enforced. Without suggesting that the following list is all inclusive, financial interests may include:

1. An ownership interest as a principal, general or limited partner or shareholder of an entity or business operation;
2. An interest in a business or other organization (including not-for-profit organizations), as a current, prior or expected future employee of the business or organization;
3. A interest in the success or survival of a business or other organization as a manager, officer or director, whether or not such position is compensated for;
4. A success-based compensation or bonus expectation or a reward-based relationship based on the receipt or promise of any gift or thing of value;
5. A grant, scholarship or subsidy arrangement;
6. A profit sharing, royalty arrangement or other financial compensation arrangement;
7. A arrangement, ownership position or other similar interest in or affiliation with any entity or individual that: (i) sells goods or services to the Town or purchases goods, materials or services from the Town; (ii) competes with the Town for funding or recognition or advocates policies divergent from Town interests; (iii) is applying for an approval, waiver, clearance, authorization or recommendation from the [Entity], a staff member of the [Entity] or another Town entity that is assisted by the [Entity] with regard to the matter in question, or (iv) has, or is contemplating, a business transaction or other financial arrangement with the Town;
8. A financial interest in any property or other rights in which the Town has, or is likely to have, an interest;
9. A financial interest in an opportunity related to the activities of the Town that is available to the Town, unless the Town has made a formal decision that it will not pursue that opportunity; or
10. An indebtedness to a person or entity who has an involvement with the Town.



A financial interest can also arise, when an individual has the ability to use the authority, confidential information or assets under control of the [Entity], to personal financial advantage or for an improper or illegal purpose or has been offered or accepted any gift, entertainment, or other favor where such gift might create the appearance of influence.

Members and staff should periodically review their financial and employment matters to ensure that any changes to them that creates a potential financial interest in a Town transaction or action is properly reported. In order to facilitate such review, the [Responsible Person] may circulate periodic reminders, including checklists, and may also provide such checklists to persons applying for [Entity] positions.

### RECORDS

The reports made under this policy, the minutes of any meeting of any **Uninterested Members** reviewing such report and a record of the findings and recommendations of such **Uninterested Members** shall be documented contemporaneously and reflect the name of the interested person, the nature of the conflict, and relevant details of the deliberations (such as documents reviewed, alternatives considered, comparative costs or bids, market value information and other factors considered in deliberations) and any ongoing procedures to manage any potential or perceived conflict that are approved. Where appropriate, **the Uninterested Members** shall require periodic reports to be made to the [Entity] concerning the status of any ongoing transaction that has been reviewed and copies of such reports shall be maintained as part of the documentation provided for in this policy.

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Interested persons may only be informed of the final findings and recommendations. They may not be advised of the ongoing status of the review, or of any particular member's positions or how they vote. In addition, consideration should be given to disclosing relevant related party transactions in the [Entity]'s annual report to the Town.

### COMPLIANCE

The [Responsible Person] will provide a copy of this policy to all members and staff of the [Entity] and will be responsible to provide all new members and staff of the [Entity] with a copy of this policy at the commencement of their service for the [Entity].

If the [Entity] has reasonable cause to believe that a member or staff has failed to comply with this Policy, it may make such further investigation as may be warranted in the circumstances and if it determines that there has been an intentional failure to comply with this Policy, it may submit a complaint to the Board of Ethics.

This Conflict of Interest Policy was adopted by the [Entity] on \_\_\_\_\_, 202\_. At such time, a copy of this policy was provided to all members and staff.

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**Advisory Opinion No. 23-02**

**Date:** April 12, 2023

**Topics:** Financial Disclosure Reports

**Code Sections:** Sections 2(1), 2(2), 4 and 5

**Statement of Facts:**

A member of a Town commission requested advice concerning disclosure of possible transactions between the Town and publicly traded companies whose shares were part of the commissioner's investment portfolio. In meetings with members of the Board of Ethics, the commissioner expressed concern that the range of interests that could give rise to a reportable interest under the Greenwich Code of Ethics was broad, while the amount that triggered an obligation to report was small. With an investment portfolio that contained many large public companies, the commissioner was concerned that the Town would inevitably enter into transactions with some of them during the course of any particular fiscal year.

In submitting a written request for an advisory opinion from the Board, the commissioner noted that: "As part of a broad diversified investment portfolio, I am the beneficial owner of shares in many, if not most, of the largest publicly traded corporations. I am sure the Town conducts transactions with many of these same companies." For purposes of rendering this advisory opinion, the Board has assumed that the Town does conduct such transactions (in contracting for the use of software, for example, or acquiring fleets of vehicles) and did not specifically examine a list of the companies in the commissioner's investment portfolio.

In addition to indicating that the portfolio was well diversified, the Commissioner stipulated that:

1. Regardless of the dollar amount of the ownership position, in no case is the percentage ownership of any corporation more than a *de minimis* percentage of that firm's outstanding equity securities.
2. In no case was the prospect of an investee company's business with the Town a part of any investment decision regarding that company.<sup>1</sup>

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<sup>1</sup> It is noted that the degree of control a Town Officer has over the selection of investments may be a significant factor in determining whether a Town officer intended to influence or vote on a matter in which the Town officer had an interest. For the purpose of providing an opinion with respect to the reporting of financial interests, however, the motivation or degree of control of the Town Officer in selecting investments was not considered relevant.

3. The commissioner is neither an officer, nor a director, nor employee of any investee company.

In addition to personal advice, the Commissioner requested the Advisory Opinion on behalf of other similarly situated Town Officers and noted that the question of whether the ownership of shares in an investment portfolio created a substantial financial interest was also relevant to the prohibitions of the Greenwich Code of Ethics on voting and influencing Town actions and transactions under Section 4 of the Code.

### **Questions Presented:**

1. Under what circumstances does an individual have an “interest” in a public company for purposes of Section 2(1) of the Code?
2. Under what circumstances is an interest in a public company that does business with the Town “more than nominal” for purposes of Section 2 (2)?
3. If a person has interests in multiple companies that are involved directly or indirectly in separate transactions with the Town, do the interests need to be considered in the aggregate in determining whether the person has an obligation to file a disclosure statement or is the \$200 threshold applicable to each separate transaction?

### **Discussion and Conclusion**

Section 5 of the Greenwich Code of Ethics provides that:

“Any town officer having a substantial financial interest in one (1) or more transactions with the Town totaling two hundred dollars (\$200) or more each in a fiscal year, shall file a written statement disclosing said position as a town officer, the nature of said interest in each transaction and the total amount received or expected to be received in such year.”

Therefore, in order to determine whether an individual is required to file a disclosure statement with regard to investments in public companies, one must consider: (1) what kind of investments will create a “substantial financial interest” in a public company, (2)

whether the public company is engaged in a transaction with the Town, and (3) whether the Town Officer's resulting interest in that transaction is greater than \$200.

### *Financial Interests in Public Companies*

The Code makes it clear under Section 1(1) that an interest in "any corporation" is considered an "indirect interest" for purposes of the Code. Under Section 2 (2) of the Code:

"Substantial financial interest shall mean any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the Town."

Consequently, an interest in a corporation will be a "substantial financial interest" as long as it is (a) financial in nature, (b) not common to other citizens of the Town, and (c) more than nominal.

In Decision 78-01, the Board determined that: "An investment in a business creates a financial interest in either the profits or losses of the business and can create a direct or indirect interest in transactions with the Town."

An investment portfolio represents money employed in pursuit of a share in the profits of a group of businesses. When there are multiple owners of the portfolio, as is common for pension, mutual or other investment funds, each has a share in the performance of the businesses in the group. Thus, as indicated in the commissioner's request, an individual's investment in the portfolio represents a beneficial ownership<sup>2</sup> interest in any company whose shares are contained in that portfolio. This beneficial ownership gives the investor a financial interest in any gain or loss that may be experienced as a result of a transaction between the Town and any of the companies in the portfolio.

While many Town citizens may be investors in one or another large pension, mutual or other investment fund, the Board is not aware of any investment vehicle that citizens of the Town may be said to have a common interest in generally. Consequently the Board considers interests in diversified investment portfolios to be personal to the investors in the portfolio and not common to other citizens of the Town. To the extent that the portfolio includes a company that is engaged in a transaction with the Town, a person's beneficial ownership of the company through the portfolio will create a substantial financial interest in the transaction if it is more than nominal.

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<sup>2</sup> The Board assumes that beneficial ownership may take the form of direct ownership of a corporation's shares or ownership of warrants, options or derivative securities whose financial performance is related to the performance of the corporation or any of its securities. It may also include direct or indirect ownership of these interests in any subsidiary or parent of the corporation or an interest in a trust fund, investment partnership or similar arrangement that owns any of the above interests. A financial interest may also arise as a result of a security interest in shares or indebtedness of the corporation, fiduciary or management responsibility for the financial performance of the corporation, as an officer, director or divisional leader or a financial interest in the operations of the corporation, such as commission sales or similar arrangement.

### *Determining what is more than nominal*

While a Town Officer may have a financial interest in many public companies through an investment portfolio, for it to be consequential under Section 4<sup>3</sup> or require disclosure under Section 5 of the Code, the financial interest must relate to a specific Town action or transaction with the Town. The interest must also be “more than nominal”.

By suggesting that the percentage ownership of any public company in the commissioner’s portfolio is not more than a *de minimis* percentage of that firm’s outstanding equity securities, the commissioner suggests one way in which a financial interest may be nominal. Depending on the circumstances, a number of other factors may also be considered in determining the exact point at which an interest in a Town transaction ceases to be significant enough to be “more than nominal.”

One factor is the amount of profit involved in the transaction itself. An action or transaction may be too small in and of itself to produce a profit that would influence the individual involved. A company may, for reasons other than economic advantage, provide goods or services to the Town at a price that is equal or very close to its own cost or may engage in a transaction with the Town that is merely incidental to its operations and not be essential to producing a profit.

Another factor may be the size of the transaction in relation to the company’s operations as a whole. As indicated in Decision 78-01 and Advisory Opinion 06-03, a transaction may be too small a part of a company’s entire operations to have a material effect on its profitability. So, where the purchase of a dozen vehicles could be seen as a large transaction for the Town, the benefit of that transaction to a manufacturer who sells millions of vehicles a year could be seen as nominal.

In addition, as suggested by the commissioner, an individual’s interest in even a fairly large transaction may be nominal if that interest is the result of owning only a very small fraction of its overall shares. When the impact of even a million dollar profit is spread over millions of shareholders, only the holdings of a very large shareholder would be likely to be more than nominal.

In ordinary circumstances, the interplay of these three factors make it extremely unlikely that a large public company will be involved in any action or transaction with the Town that would result in creating an investment interest that was more than nominal. Indeed, the impact of a Town transaction on such companies profits and losses would likely be imperceptible, making the interest in the transaction less than nominal and therefore not a “substantial financial interest” as defined in the Code.

Currently, the operating budget of the Town of Greenwich is somewhat less than \$500 million. Approximately three-quarters of that consists of debt service and employee salaries, benefits and pensions that could safely be assumed not to involve a transaction with a public company. Based on past history, it can also be quite safely assumed that not

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<sup>3</sup> As noted in the Commissioner’s request, Section 4 of the Code prohibits Town Officers from exerting influence or voting on matters in which they have a “substantial financial interest.” Thus, the question of whether a Town Officer has a financial interest in a public company is relevant to both Section 4, which prohibits influencing or voting on actions or transactions, and Section 5, which requires financial disclosure of interests in Town transactions.

more than \$15 million (10% of the Town's remaining revenues) would be dedicated to a contract with any single company. By comparison, the revenues of many of the largest publicly traded companies routinely exceed \$100 billion per year. For example, among vendors that might supply large ticket items to the Town, 2022 revenues were over \$513 billion for Amazon (which provides cloud based web services), \$394 billion for Apple (which provides hardware and software services), \$204 billion for Microsoft (which provides software services), \$322 billion for CVS (which provides health care products) and \$158 billion for Ford and \$156 billion for General Motors (which provide vehicles). So even a \$15 million transaction would equal less than 0.01% of the total revenues of any of these companies.

While it would only be a very extraordinary transaction with a large public company that would give rise to a reportable interest (and this type of unusual transaction would likely be well known to Town Officers), the more common transactions that the Town engages in are with local and regional suppliers. Here ownership interests tend to be concentrated among a much smaller group of persons and transactions with the Town can represent a much larger share of the firm's revenues. Owners of these companies are also much more likely to be aware of transactions between their companies and the Town than shareholders in large public companies.

#### *Aggregation of Nominal Interests*

The commissioner has suggested that the investment portfolio of an individual of substantial wealth might include nominal interests in a significant number of large public companies and expressed concern that those interests might be aggregated in such a way that they collectively trigger a reporting requirement. It is true that the Board has considered a pattern or series of interactions under a single contractual arrangement to be a single transaction for purposes of the Code. Where such a pattern or series exists, whether an interest in the transaction is nominal requires consideration of the entire pattern or series. A single transaction may also involve a large group of companies, in each of which a particular person may have an interest. In that case, nominal interests in the entire group will need to be aggregated in order to determine whether the overall interest in the transaction is nominal.

But the Code makes it clear that such aggregation is not required in the case of separate transactions with different companies. It only requires reporting when a Town Officer has a "substantial financial interest in one or more transactions with the Town totaling \$200 or more *each* in a fiscal year." Thus, for purposes of complying with the reporting requirements of Section 5 of the Code, a Town Officer need only be concerned with a more than nominal interest in the particular company or group of companies involved in a particular transaction or related series of transactions. An aggregate interest of more than \$200 resulting from investments in companies involved in unrelated transactions need not be reported if the interest in each of the individual transactions is less than \$200.

**See Related: D78-01, A06-03**

**Decision No. 23-03**

**Date:** 4/12/23

**Topics:** Exerting Influence, Indirect Interest, Employee Interest, Confidentiality

**Code Sections:** Section 4

The Board of Ethics received a complaint by mail in care of the Department of Law. The envelope was forwarded unopened to the Chair of the Board and copies were circulated confidentially to each of the members of the Board. The complaint was filed anonymously using the Board's recommended form for filing complaints. The complaint concerned a member of an advisory committee appointed by the 1<sup>st</sup> Selectman. It alleged that the Committee member had participated in discussing and voted on recommendations of the Committee concerning an RFP for Town services that the Committee member's employer had responded to. Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Greenwich Code of Ethics had occurred.

The first step in any such investigation is for the Board to evaluate whether the board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the allegations contained in the submission and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the submission makes a complaint that should be further investigated or whether the submission should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction.

**Allegations Contained in the Complaint**

The complaint was received on March 30<sup>th</sup>, 2023 and included several exhibits, including the order of the 1<sup>st</sup> Selectman establishing the Committee and describing its deliverables. The deliverables were to make recommendations for the design and planning of a Town facility, craft and support a capital improvement project request, develop a funding plan and act as a community liaison for the capital project. The exhibits also included minutes from an October, 2022 meeting of the Committee at which the only vote taken was to defer recommendations concerning the design of the project until after the results of an opinion survey were available.

Also included among the exhibits were an RFP issued by the Town in September, 2022 and returnable within a month, seeking a vendor to manage the existing Town facility. The vendor was asked to run day-to-day operations, manage staffing and programming and handle building and equipment maintenance. The minutes of the October Committee

meeting indicate that the Committee received an “update” that responses on the RFP were due within a week and that several responses were expected. No further discussion or recommendation was indicated in the minutes.

Under Section 2(3) of the Code, a Town Officer is defined to include “any...member, elected or appointed, of any...committee...of the town.” The respondent named in the Complaint was listed in the order establishing the Committee and as a member in the Committee’s minutes. The Chair of the Committee also acknowledged that the individual continued to be a member of the Committee. The Board therefore determined that the respondent was a Town Officer within the meaning of the Code.

Section 4 of the Code of Ethics prohibits Town Officers from using a Town office to “exert...influence or vote on” Town transactions or actions in which they have a substantial financial interest. In Advisory Opinion 83-01, the Board addressed the question of whether an employee of a separate division of a Company from the one that transacted business with the Town had a financial interest in those transactions:

“Since employees receive salaries, bonuses, pensions, benefits and other forms of compensation from their employers, they have a direct and substantial interest in their employer’s ability to pay their compensation.”

Similarly, in Advisory Opinion 01-02, the Board advised an executive of a non-profit organization that participation in discussions related to a parcel adjacent to land owned by the organization “would be perceived as a conflict” and encouraged refraining from such conversations. Such concerns can be considered even more pertinent with respect to a transaction in which the employer might be expected to receive payment from the Town for services that were being provided directly by the Town Officer in person. Such a transaction could be seen as a subsidy of the employer and perhaps even the Town Officer.

In its initial review of a reported violation of the Code, the Board assumes the truth of the statements made in the report. After careful review in accordance with the Board’s Statement of Procedures and Rules of Conduct, the report submitted by the complainant was determined to describe a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation. Since it was alleged that the respondent participated in and voted on a recommendation of the Committee concerning the RFP that the respondent’s employer was bidding on, the complaint was found to allege a possible violation of Section 4 of the Code. It was also found to involve issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. As a result, the Board conducted a confidential preliminary investigation to determine if there was probable cause to believe that a violation of the Code had occurred. Respondent was notified of the Board’s determination, cooperated with the Board in its investigation and waived the confidentiality provisions of CGS Section 1-82a (d).

### **Results of Investigation**

In the course of its preliminary investigation, the Board reviewed the minutes of the Committee from the date of its inception to the present, as posted on the Agenda and Minutes pages of the Town website. The minutes revealed that the Committee provided opportunities for public comment that infrequently addressed minor issues with regard to



the operation of the Town's existing facility. In addition, the Committee had received briefings from the Department of Parks and Recreation with regard to design alternatives for the new facility, which included discussions of cost implications relating to operations and discussion of the possible impact of the RFP on future costs. The preponderance of the discussions among Committee members, however, had to deal with consideration of various alternative designs for the new facility and the impact of those designs on the community and the site, particularly as it related to traffic and access, use of the adjacent ball field and other safety environmental and aesthetic issues. Other than the brief update on the RFP at one meeting, there was no evidence that it was further discussed or voted on. Except for addressing a technical issue regarding the name of the park in which the facility is located, all recommendations made by the Committee to date have been related to design and siting issues and operational issues related to the use of temporary facilities in order to accommodate construction. The Chair of the Committee also confirmed that no informal recommendations were made by the Committee concerning the RFP.

The Board also conducted confidential interviews with members of the departments of responsible for the preparation of the RFP and evaluating the proposals received. Although respondent did appear at an interview of prospective bidders that was conducted by the evaluation committee, the Board found no evidence that the respondent participated in any other way in the design or selection process. The director of the department with primary responsibility for preparing the RFP indicated that the respondent played no part in its preparation and the respondent was not a member of the committee that evaluated the proposals submitted. In its interviews with the Town Officers involved, the Board found no evidence that respondent's position as a Town Officer was used to exert any influence on the RFP or selection process in favor of the organization respondent managed.

### **Determination and Decision**

In Advisory Opinion 20-01, the Board addressed the circumstances under which a Town Officer could participate in bidding on a Town contract without violating the Code of Ethics. A Town Officer who was the majority owner of a landscape design firm had requested the opinion in order to be eligible to submit a proposal to develop a master plan for a Town park, with another Town Officer serving as a subcontractor. The opinion was requested in order to satisfy the conditions of Section 1.10 of the Town's Purchasing Ordinance.

The person requesting Advisory Opinion 20-01 stipulated that "I have had no involvement in the preparation of this RFP or any prior knowledge, involvement or activity with the town or anyone regarding this project in my capacity as a volunteer.." and confirmed that "...no member or employee of the firm or any subcontractor has had any contact with the individuals who established the specifications for the contract or with any member of the selection committee that will recommend award of the contract."

In responding to that request, the Board drew on several prior opinions. It noted that, in Advisory Opinion 83-02, the Board advised Town Officers to "avoid discussions with those in Town government involved in the purchasing decision with respect to any product

or service that the company employing the Town Officer may be seeking to provide the Town.” The Board also noted four other Advisory Opinions where Town Officers were involved transactions with the Town:

“The Board has previously indicated that Town Officers do not need to resign their positions in order to engage in Town transactions as long as appropriate steps are taken to ensure that Town actions and transactions are not influenced by the Town Officer and the Town Officer does not participate in any votes concerning the actions or transactions. See Advisory Opinion 90-01 (member of Tax Review Committee of RTM employed by Housing Authority), Advisory Opinion 98-02 (RTM member serving on Board of local non-profit), Advisory Opinion 01-02, (member of the Inlands, Wetlands and Watercourses Agency involved with non-profit applying for an approval), Advisory Opinion 02-05 (employee of custom home builder serving on Planning and Zoning Commission). These opinions indicate that the existence of the interest need not require the Town Officer to resign in order to participate in a transaction with the Town. But they also confirm that appropriate procedures should be followed to insulate the Town Officer from the opportunity to influence the transaction.”

In addition to avoiding any discussion with the persons involved in preparation and evaluation of the RFP, other procedures were noted in Advisory Opinion 20-01 as beneficial for protecting the Town Officer from influence. Included in these were early notification of supervisory personnel about the interest in the proposed transaction, notification of all appropriate persons to avoid discussions with the Town Officers about the matter in which the Town Officers had an interest, review of the situation by independent persons, and, in the event the Town Officer were to be awarded the contract, the implementation of protocols to avoid future entanglements, particularly with respect to supervisory personnel.

With regard to the possible award of a contract, Advisory Opinion 20-01 reminded the Town Officers involved of the need to file disclosure statements and of the possibility that they might need to resign their positions if, due to performance issues, the entanglements became problematic:

“The Board is confident that, should the Committee members’ firms be awarded the contract, appropriate steps will be taken to avoid inappropriate contacts and that if a situation arose where it was impossible to avoid the occurrence of inconsistent supervisory or evaluative roles, the Committee members would resign their positions rather than violate the Code or default on their contractual obligations.”

Subsequent to Advisory Opinion 20-01, the Board of Ethics approved a template for a conflict of interest policy for Town entities to adopt (<https://www.greenwichct.gov/DocumentCenter/View/19961/Town-Entity-Conflict-of-Interest-Policy-Template-as-Approved-by-Board-of-Ethics>.) Since the Board ‘s template

articulates procedures that, if followed, allow the Board to find that no intentional violation of the Code of Ethics will occur, Town Officers certifying that they are following such a policy are permitted to bid on Town contracts with getting an advance opinion from the Board of Ethics. This template has only recently been adopted, however, and the Committee on which the respondent in this case serves is not one of the few Town entities that have adopted such a policy at this time. It was therefore incumbent on the Board to inquire more deeply into the respondent's conduct in this case.

Section 4 of the Code of Ethics prohibits Town Officers from exerting influence on Town actions or transactions in which they have a financial interest. Since the organization managed by the respondent was a bidder on the Town's RFP with respect to the operation and management of a Town facility, the respondent was found to have a financial interest in the RFP. However, the Town Committee that the respondent was a member of was charged only with making recommendations concerning the design and planning of the facility, crafting and supporting a *capital improvement project* request and developing a funding plan and acting as a community liaison for the *capital improvement project*. The Committee was given no responsibility for making recommendations concerning the operation or management of the facility and there is no evidence in the Committee's minutes that it ever made any such recommendation.

The Board is aware that the organization managed by the respondent was represented by the respondent during the interviews conducted by the evaluation committee reviewing the RFP. To require a Town Officer not to participate in such an interview, when they have otherwise scrupulously avoided influencing the RFP, would put both the respondent and the Town at an unfair disadvantage. Where all bidders are given equal opportunity to provide information and answer questions concerning their proposals, the purpose of the interviews is clearly to inform, rather than influence, the evaluation committee's decision, and this purpose is clearly served by having the most responsible individual represent the bidder.

In order for a violation Section 4 of the Code to exist, the Board must be some evidence of an effort by the Town Officer to use their position as a Town Officer to exercise influence or vote on a Town action or transaction. In appearing at the interviews, the respondent was clearly acting as a representative of the bidder, not as a Town Officer. In serving as a Town Officer on the Committee, the respondent dealt only with recommendations relating to the siting, finance and design of a new facility, not the operation and management of the existing facility. All of the evidence that the Board obtained as a result of its preliminary investigation contradicted the allegation in the complaint that the respondent had participated in discussions concerning the RFP and voted on Committee recommendations that related to the RFP.

Therefore, after having diligently examined the sources available to verify the complaint, the Board concluded that the respondent had not attempted to influence the RFP by participating in discussions or votes of the Committee. Since the complaint was anonymous, there was no means of determining if the complainant could provide further information that would alter this conclusion. Consequently, the Board found no probable

cause to believe that a violation of Section 4 had occurred and has determined to dismiss the complaint for lack of probable cause.

Since it may help to avoid unfounded suspicions in the future and will certainly be useful in the event that the organization represented by the respondent is ultimately selected to manage the facility, the Board recommends that the Committee consider adopting a conflict of interest policy using the template approved by the Board.

This decision is limited to the application of the Greenwich Code of Ethics, which the Board has specific responsibility for. Accordingly, it should not be interpreted as an opinion with regard to any other local, state or federal laws, rules or policies that might be applicable to the circumstances that you describe. Town Officers are of course responsible for compliance with such laws, rules or policies as may be applicable to them, including the regulations, policies and standards of the Town of Greenwich.

**See also: A90-01, A98-02, A01-02, A02-05, A20-01,**

**Decision No. 23-02**

**Date:** 4/12/23

**Topics:** Town Officer, Agent, Vendor, Exerting Influence

**Code Sections:** Section 2(3) and Section 4

A member of the Board of Selectmen forwarded to the Board of Ethics a letter from a Town resident concerning the activities of an individual listed as an “approved” vendor on the Town’s website. Because the letter wasn’t addressed to the Board of Ethics, the Board invited the sender of the letter to meet with the Board and discuss the matter more fully. At the meeting, the sender of the letter reported that the “approved” vendor had retaliated against the resident for terminating the vendor, causing a safety issue for the Town and damage to the resident’s property.

In accordance with its Statement of Procedures and Rules of Conduct, the Board initiated an evaluation to determine if the report alleged a violation of the Greenwich Code of Ethics.

**Information Contained in the Report**

The resident submitting the report alleged that the person who retaliated for the termination of the contract was the principal owner of a firm that was listed as an “approved” vendor on the Town’s website for the purpose of making certain inspections required under Town regulations. Thus the retaliation could be considered an effort by a Town Officer to exert influence over a Town action relating to the required inspections, which the Town Officer had a financial interest in.

**Determination and Decision**

The Code of Ethics requires the Board to investigate reports of violations of the Code. However, Sections 3, 4 and 5 of the Code only provide standards that apply to a person or entity who is a “Town Officer” as defined in the Code. Therefore, in order for the Board to have jurisdiction over an “approved” vendor, it must determine that the vendor is a Town Officer.

Section 2(3) of the Code provides that:

“Town officer” shall mean and include any official, employee, agent, consultant or member, elected or appointed, of any board, department, commission, committee, legislative body or other agency of the town.”

For the Board to determine whether the vendor in question was a Town Officer within the meaning of the Code, it was necessary for the Board to understand what the relationship between the “approved” vendors and the Town was. Since no information was available on the Town website other than a listing of “approved” vendors and an FAQ briefly describing the services that the “approved” vendors could provide, the Board reached out to several additional sources on a confidential basis<sup>1</sup> in order to assist it in making such determination. In addition, the Board reviewed the regulations of the Town relating to the activities in question, which were under the supervision of a recently formed Town commission (the “Commission”).

The Town’s regulations described the required inspections, which had previously been under the sole supervision of a State official. Under the Town’s regulations, the inspections are to be made by “qualified” vendors. The qualifications for these vendors are to be established by a committee consisting of members of the Commission and, *ex officio*, the State official who was previously solely responsible for overseeing the inspections. The committee was also responsible for approving the qualifications of the vendors each year.

A vendor on the “approved” list that was not the subject of the reported violation advised the Board that it did not know how it had been placed on the list of “approved” vendors, except for the fact that its inspection reports had always been accepted by the State official. It had no contract with the Town and was not aware of any official set of qualifications or of any requirement to be formally approved each year.

The Chair of the Commission advised the Board that, during the early stages of the Commission’s operations, its limited resources were required to be devoted to a number of other priorities. So the matter of the inspections had been left primarily to the State official. Members of the Commission also confirmed that, although a committee bearing the name of the committee specified in the regulations had been informally set up, it did not have the requisite membership provided for in the regulations, had not met formally or kept records and had not established qualifications for vendors to make the required inspections.

To determine whether the vendors listed as “approved” on the Town website were agents of the Town, the Board considered it necessary to examine the following factors: 1) the extent to which the Town represents that the vendor is acting on behalf of the Town, 2) the nature of the entity’s activities, *e.g.* public safety as opposed to general welfare, 3) the degree to which the services provided by the approved vendor benefit the Town, 4) the nature and degree of oversight effectuated by the Town, and 5) the nature of the arrangement between the entity and the Town, particularly the existence of any contractual arrangements.

In this instance, the Town’s decision to maintain a list of “approved” vendors for a service that relates to the Town’s public safety pointed in favor of finding an agency

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<sup>1</sup> GCS §7-148 and 1-82a (a) and (b) require confidentiality in the preliminary stages of any investigation of a reported violation of the Code.

relationship. However, in its evaluation of the facts, the Board had found that the list of “approved” vendors that appeared on the Commission’s web pages was simply a list of the entities that had previously been approved by the State official to make the inspections.

Under the Town’s regulations, it was also clear that the Town’s role was only to establish and review the qualifications for these vendors, not to engage the vendors themselves. It was the equipment owners who had the responsibility for hiring the vendors and negotiating the prices. As confirmed by the qualifications that were ultimately adopted by the committee, there was no evidence of any formal or informal contract, arrangement or even intention whereby the vendors would be considered to be acting as Town officials (by being vested with any part of the Town’s authority) or as agents of or consultants to the Town. Consequently, the “approved” vendor named in the report the Board received was found not be a Town Officer and the Board determined that the report it received did not qualify as a complaint that should be investigated under the Code.

Prior to the Board’s decision to dismiss the reported violation of the Code as not relating to a Town Officer within the Board’s jurisdiction, it was advised by the Chair of the Commission that a committee had been established in accordance with the regulations. The Chair<sup>2</sup> of that committee further advised the Board that an official set of qualifications for vendors had been established by the committee and would be applicable to vendors for the current year. The qualifications state in pertinent part that the vendors:

“...are to be hired by and act solely on behalf of the registered owners... Neither the Town of Greenwich ... or any member or employee thereof shall have any responsibility for their actions or capabilities. Meeting the qualifications ... is not an endorsement or recommendation of the vendor by the Town of Greenwich...”

The report is therefore dismissed for a failure to meet one of the necessary elements of a complaint, namely to allege a violation by a person who the Board has jurisdiction over as a Town Officer. In dismissing this report, the Board recommends that Town departments, boards, commissions, committees and other agencies consider carefully any suggestion made to Town residents that a vendor has been “approved” by the Town. This is especially true when the use of Town facilities or public rights of way or matters of public safety are involved, such that the public might assume that the vendor is exercising Town authority or otherwise acting on behalf of the Town. In this regard, Town entities are respectfully directed to the Board of Ethics’ Report on Practices and Policies for Referrals and Recommendations, dated September 7, 2022.

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<sup>2</sup> During the course of its review, the Board learned that a member of the Commission (who had on some occasions been referred to as the Chair of the ad hoc committee) had an indirect interest in an “approved” vendor. This Commissioner had stepped down for reasons of health and was not appointed to the committee that was formally established. In addition, the Commission had a review performed by un-interested commissioners under its Conflict of Interest Policy. Consistent with the fact that matters relating to vendors had not been a priority for the Commission during that time, the review found no instances where the commissioner voted on or tried to influence matters relating to the vendor in which the indirect financial interest was a factor.

**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (1) MOTION TO ADOPT MINUTES  
FROM THE FEBRUARY 8, 2023, REGULAR MEETING AND THE  
MARCH 20, 2023, SPECIAL MEETING**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>



**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (2) MOTION TO ADOPT REVISED  
TEMPLATE FOR CONFLICT OF INTEREST POLICY**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>

**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (3) MOTION TO APPROVE ADVISORY  
OPINION 23-02**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>

**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (4) MOTION TO GO INTO EXECUTIVE  
SESSION**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>

**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (5) MOTION TO APPROVE DECISION  
23-03**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>

**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (6) MOTION TO APPROVE DECISION  
23-02**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>

**BOARD OF ETHICS OF THE TOWN OF GREENWICH  
RECORD OF VOTES BY THE BOARD**

**DATE: APRIL 12, 2023**

**MOTION/RESOLUTION: (7) MOTION TO APPROVE ADVISORY  
OPINION 23-02**

<b>Member</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
<b>Paul de Bary</b>	<b>X</b>			
<b>Jennifer Cohen</b>	<b>X</b>			
<b>Ken Greenberg</b>	<b>X</b>			
<b>Rev. Stephanie Johnson</b>	<b>X</b>			
<b>Robert Sisca</b>				<b>X</b>