Code of Conduct for Officers and Directors*

Officers and Directors of the Columbia Street Waterfront Association ("CSWA") shall:

1. Follow the duties of care, loyalty, and obedience to CSWA's purpose and mission.
2. Respect the opinions of fellow Directors, Members, guests at CSWA meetings, and the decisions of the Board on behalf of CSWA.
3. Participate actively in CSWA's governance to ensure that it is well-managed, financially sound, and operates in the best interests of the Columbia Street Waterfront community.
4. Be familiar with and follow the CSWA Bylaws.
5. Be prepared for, attend, and participate in Board meetings.
6. Take a leadership role in CSWA committees and events.
7. Act in the best interests of CSWA at all times.
8. Refrain from using one's role as a Director or Officer for improper personal or commercial gain.
9. Refrain from using CSWA relationships, mailing lists, meetings, or nonpublic information for any personal or business purpose
10. Disclose any conflicts of interest in accordance with the Conflict of Interest Policy and take all actions the policy requires.
11. Maintain confidentiality of any proceedings that take place in executive session.
12. Refrain from committing CSWA to any position on a matter of public policy, endorsement, or sponsorship of any event, or except as allowed under the Bylaws.
13. Refrain from any public statements or media comments purporting to represent CSWA, unless the President of the Board authorizes such statements. This includes statements made through email, websites, newsletters, community groups, and all social media.Only the President or a person the President names may speak for CSWA. When speaking as a private person, say so and do not imply CSWA endorsement.
14. Directors and Officers shall not engage in discriminatory, harassing, or abusive conduct toward any Director, member, volunteer, staff person, or member of the public.
15. Directors shall not accept gifts, favors, or gratuities exceeding a nominal value from any individual or entity that does or seeks to do business with CSWA.
16. CSWA shall not make any loan of money or property to any Director or Officer, consistent with NPCL §716.

*This Code of Conduct is modeled on a template code from the Park Slope Civic Council.

Conflict of Interest Policy[1]

1 Purpose

The purpose of this Conflict of Interest Policy (the "Policy") is to avoid any possible conflict between the interests of Columbia Street Waterfront Association ("CSWA") and the personal interests of Directors, other persons, or other organizations. Decisions about CSWA and its operations must be made solely in terms of benefits to CSWA and must not be influenced by any private profit or other personal benefit to the individuals participating in CSWA decisionmaking.

This Policy protects CSWA when it is contemplating a transaction or arrangement that might benefit the private interests of a Director, other specified persons, or another organization.[2] Adherence to this policy is important for CSWA and Directors to avoid actual and perceived conflicts of interests—both of which can have adverse consequences on CSWA and the individuals involved. If there is a conflict of interest,Directors should disclose and step back from discussions and decisions about that topic.

2 Defined Terms

2.1 Director

A "Director" is an individual serving on the Board of CSWA, as described in the CSWA Bylaws, inclusive of Officers.

2.2 Related Party

A "Related Party" means[3]:

(a) any Director of CSWA;

(b) any relative of a Director; or

(c) any entity in which a Director has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.

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[1] This Policy incorporates requirements contained in the New York State Not-For-Profit Law ("NPCL") and IRS statutes and regulations, as well as guidance materials such as the New York State Attorney General, Charity Bureau, Conflicts of Interest Policies Under the Not-for-Profit Corporation Law (Sept. 2018) and Lawyers' Alliance, Legal Alert: Conflict of Interest Policies (Jun. 21, 2019) . It also reflects practices from template conflict of interest policies from peer organizations to CSWA, including Cobble Hill Association and Prospect Heights Neighborhood Development Council, Inc.

[2] Note: This draft policy specifically covers Related Party Transactions, which appears to be the common practice for similar organizations and in template/guidance documents. Related Party Transactions are just one form of conflict, and CSWA could choose to have its policy address other potential conflict situations (e.g., outside of a transaction context).

[3] NPCL § 102(23).

2.3 Key Person[4]

"Key Person" means any person, other than a Director, including but not limited to employees of CSWA, who at the time of the transaction or in the prior five years:

(a) has responsibilities, or exercises powers or influence over CSWA as a whole similar to the responsibilities, powers, or influence of Directors; including individuals who formerly served as Directors in the past five years;

(b) manages CSWA or a segment of CSWA that represents a substantial portion of CSWA's activities, assets, income or expenses;

(c) alone or with others persons controls or determines a substantial portion of CSWA's capital expenditures or operating budget.

2.4 Disqualified Persons

A "Disqualified Person" is any person who is in a position to exercise substantial influence over CSWA's affairs at any time over five years prior to the Related Party Transaction, or the relative of such person. Disqualified Persons include, but are not but limited to[5]:

(a) CSWA's founders;

(b) persons who has made a substantial financial contribution to the organization (as defined by applicable IRS regulations); or

(c) a person whose income primarily derives from a function of the CSWA.

It is not necessary that the person actually exercise substantial influence, only that the person be in a position to do so.

2.5 Related Party Transaction

A "Related Party Transaction" means any transaction, agreement or any other arrangement in which both CSWA is participating and a Related Party, Key Person, or Disqualified Person (together, a "Related Party") has a financial interest.[6]

A person has a 'financial interest' if the person has, directly or indirectly, through business, investment, or family, an ownership or investment interest in, or compensation arrangement with, any entity with which CSWA has a transaction or arrangement.

The following transactions are not a Related Party Transaction[7]:

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[4] NPCL § 102(25); Treas. Reg. 53.4958-3 (b)
[5] 26 U.S. Code § 4958 (f)(1)(a) ("disqualified persons"); Treas. Reg. 53.4958-3(e)(2).
[6] NPCL § 102(24); *see also* 26 U.S. Code § 4958(c)(1) (discussing "excess benefit transactions"). Note: This definition, as written, only covers *financial* interests. CSWA could consider a broader policy, including non-financial, material interests that impairs or might impair a Director's independence or objectivity in the discharge of their duties, such as a close social or business relationships with a counterparty or a relationship with an entity competing with CSWA for a transaction.
[7] NPCL § 102(24).

(a) the transaction or the Related Party's financial interest in the transaction is de minimis;

(b) the transaction would not customarily be reviewed by the Board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms[8]; or

(c) the transaction constitutes a benefit provided to a Related Party solely as a member of a class of the beneficiaries that the CSWA intends to benefit as part of its mission which benefit is available to all similarly situated members of the same class on the same terms.[9]

3 Duties of Directors

Directors owe a duty of loyalty to CSWA.[10] This duty generally requires Directors to place the interests of CSWA above their individual interests or the interests of other entities with which they may be associated.

4 Procedures for Addressing Related Party Transactions

4.1 Duty to Disclose

A Related Party must disclose to the Board any actual or potential conflict of interest in a contemplated Related Party Transaction.

This disclosure must occur at the earliest possible time that a Related Party becomes aware of an actual or potential conflict, and at all times prior to Related Party Transaction.

4.2 Board Determination on Related Party Transaction[11]

(a) While not strictly prohibited, Related Party Transactions will be subject to additional scrutiny as detailed in this section.

(b) To proceed with a Related Party Transaction, the Board, excluding any Directors who are Related Parties, must determine that it is fair, reasonable, and in the best interests of CSWA at the time of the determination.[12]

(c) The Board, excluding any Directors who are Related Parties, will review the facts and circumstances of the Related Party Transaction.[13]

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[8] Example for NY Attorney General Guidance: “The library of a nonprofit university buys a book written by a member of the board, pursuant to a written library acquisitions policy.”
[9] Example from NY Attorney General Guidance: “A legal services program agrees to handle the eviction case of one of its board members who is eligible to be a client, and who is serving as one of the minimum number of client-eligible board members that is required by federal regulations. The decision to accept the case is made pursuant to the organization’s established case acceptance policy, without regard to the client’s status as a board member.”
[10] *See* NYS Non-Profit Corporation Law NPC § 715-a(a).
[11] NPCL § 715-a(b)(2).
[12] NPCL § 715(a).
[13] NPCL § 715(a).

(d) In making this determination, the Board may request additional information from the Related Party in writing or verbally as needed. A Related Party, including a Director, must be excused from any meeting prior to the Board's deliberations and vote on a Related Party Transaction.[14]

(e) As part of this determination, the Board shall evaluate whether it can obtain, with reasonable efforts, an equivalent or more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.[15]

(f) After deliberation, the Board will decide, by a majority vote of the Board (excluding any Director that is a Related Party) to approve the Related Party Transaction.[16]

4.3 Prohibited Conduct by Related Party

A Related Party must not:

(a) participate in any meeting or communication between the Board concerning the Related Party Transaction, except as provided in Section 4.2(d)[17]; and

(b) attempt to improperly influence the deliberation or voting on the Related Party Transaction.[18]

4.4 Documentation of Board Determination[19]

The Board shall document the following information in its records:

(a) Description of potential conflict and relevant facts and circumstances;
(b) The exclusion of the Related Party from deliberations and voting;
(c) The factors the Board considered in reaching its determination, including consideration of alternative transactions; and
(d) The Board's decision to approve or disapprove the transaction; and
(e) The minutes of any meeting in which the conflict was discussed or voted upon.

5 Required Board Actions

5.1 Directors Informed of Policy

The Board must provide a copy of this policy to each Director prior to that person initially becoming a Director and annually thereafter.

5.2 Initial and Annual Disclosures[20]

Prior to initially becoming a Director and annually thereafter, each Director must complete, sign, and submit a written Conflict of Interest Disclosure to the Secretary, in a form to be determined

[14] NPCL § 715(h); NPCL § 715-a(b)(3)
[15] NPCL § 715(b)(1).
[16] NPCL § 715(b)(2).
[17] NPCL § 715(h); NPCL § 715-a(b)(3).
[18] NPCL § 715-a(b)(4)
[19] NPCL § 715(b)(3). NPCL § 715-a(b)(5).
[20] NPCL § 715-a(c).

by the Board. In the Conflict of Interest Disclosure, each Director will identify, to the best of their knowledge:

(a) any entity for which that Director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the CSWA has a relationship; and

(b) any transaction in which the corporation is a participant and in which the Director might have a conflicting interest.

5.3 Records Maintained by the Board

The Secretary shall submit all Conflict of Interest Disclosures to the President and maintain them in the CSWA records.

6 Enforcement

The Board may take appropriate corrective action, up to and including removal from the Board in accordance with NPCL §706, after providing the individual an opportunity to be heard."

7 Relation to Applicable Law

Certain federal and state laws govern conflict of interests related to nonprofit organizations like CSWA. This Policy is designed to supplement, but not to replace or modify, the requirements of those laws. Wherever the Policy is, or appears to be, in conflict with applicable federal and state laws, those laws control.

8 Prohibition on Excess Benefit Transactions

CSWA shall not enter into any transaction that would constitute an excess benefit transaction under Section 4958 of the Internal Revenue Code. No Director, Officer, Key Person, or Disqualified Person shall receive any excess benefit, and CSWA shall take all reasonable steps to ensure compliance with IRS intermediate sanctions rules.

Each Director shall annually sign a statement confirming they have read, understand, and agree to comply with this Policy and the Code of Conduct.