

## City of Wilmington



MICHAEL S. PURZYCKI  
Mayor

### **VIA E-MAIL**

[]

RE: City of Wilmington Ethics Commission Advisory Opinion- A.O. 2021-01

Dear []:

The City of Wilmington Ethics Commission met in Executive Session on November 23, 2021 to consider your request for an Advisory Opinion regarding your grant application to Habitat for Humanity's A Brush with Kindness program ("Habitat Application"). A quorum was present and voted unanimously in support of this advisory opinion. This opinion is confidential and may be made public at your request. Pursuant to W.C.C. § 2-342(e), a public version of this opinion will be posted on the Commission's website, but redactions will be made using best efforts to not disclose your identity.

As discussed below, we opine based on the information made available to us that the proposed transaction between you and Habitat for Humanity does not violate the City's Code of Conduct or the City Charter. It is not a contract with the City. The Commission also takes this opportunity to remind you and educate the public (through the public version of this opinion), that the City Code requires City Officials to enter into these types of personal transactions on equal footing with any other person who may seek such a transaction. Further, to avoid even the appearance of impropriety, you should make your best efforts to notify your [neighbors] about the program, to help them have access to this important funding. Please note that this opinion is limited to the specific facts of the case as set forth below.

### **Facts**

The Ethics Commission gathered the following facts from communications with you and publically available information. You submitted the Habitat Application for repairs to the roof at your residence. Your property is within one of the required census tracts and areas for the program. Because you are a City employee and the City is funding the program, Habitat for Humanity asked the Real Estate and Housing Department for guidance on whether any ethics issues would arise from their consideration of your application.

The American Rescue Plan Act of 2021 (“ARPA”) provided for federal funds that could be used to support cities and states, including Wilmington. Wilmington applied for and received Coronavirus Local Fiscal Recovery Funds. City Council approved Wilmington’s application for funding and the Administration has handled allocation of those funds. ARPA permits the funds to be used to respond to the negative economic impact of COVID-19 including through assistance to households, small businesses, and nonprofits. The Administration provides monthly reports to City Council on expenditures of these funds, but City Council does not approve or disapprove those expenditures.

Earlier this year, the Administration entered into an agreement with Habitat for Humanity to fund its Brush with Kindness program. The program seeks to make owner-occupied homes safe, warm, dry, and healthy through making repairs to preserve affordable housing. The program focuses on homeowners on the Eastside of Wilmington and applicants must live in one of a few specified census tracts. The Administration set aside \$800,000 of the ARPA funding to support the program. Eligible homeowners apply through Habitat for Humanity’s website for the program. Habitat for Humanity will work with the homeowners to identify eligible projects. It will then enter into an agreement with the homeowner and work with a licensed contractor to complete the work. The City’s Department of Real Estate and Housing monitors the program.

### **Relevant City Code Provisions**

Sec. 2-340(c)(1): No elected official, appointed official or city employee shall benefit from or be interested in any contract with the city, nor solicit any contract and shall not enter into any contract with the city (other than an employment contract).

Sec. 2-340(f)(3): No elected official, appointed official or city employee shall utilize the influence of his or her office or position for personal pecuniary gain, or to unduly influence the behavior of others, or to avoid the legal consequences of his or her personal conduct.

Sec. 2-341(e): No city employee, elected official, appointed official or honorary official shall use his or her public office to secure unwarranted privileges, private advancement or gain.

Sec. 2-341(a) Each city employee, city officer and honorary city official shall endeavor to pursue a course of conduct which will not raise any justifiable suspicion among the public that he is engaging in acts which are in violation of his public trust and which course of conduct will not reflect unfavorably upon the city and its government.

Sec. 2-342(c) Upon the written request of any city employee, city officer, honorary city official or city agency, the commission may issue an advisory opinion as to the applicability of this division to any particular fact situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to

the matters covered by the advisory opinion provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.

**Findings**

Your proposed transaction with Habitat for Humanity is not in violation of the City Code or Charter<sup>1</sup> so long as you pursue it on equal footing with other members of the public. Similarly, Habitat for Humanity must treat you as they would any other member of the public. The proposed transaction, or contract, is with Habitat for Humanity, a non-profit that is a separately incorporated entity from the City of Wilmington. Further, you do not work in a Department with direct oversight of the program.

The Commission takes this opportunity to remind you and the public that City employees including elected and appointed officials may not use their position to secure unwarranted privileges. There is no indication of such happening here. Indeed, it appears you applied for this program through Habitat for Humanity's website as any other eligible member of the public could do. You may apply for the program like any other eligible member of the public. As noted above, we also encourage you to help publicize the program in your community, so that additional homeowners may become aware of the program and apply for funding.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "W. D. Johnston".

William D. Johnston, Esquire  
Chair of City of Wilmington  
Ethics Commission

cc: Robert Goff, City Solicitor (via e-mail)  
William B. Larson, Jr, Ethics Commission Counsel (via e-mail)

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<sup>1</sup> The Commission's opinion is limited to the City Code and Charter. The Commission has not considered any ARPA regulations in its analysis, because it does not have jurisdiction over the interpretation of those regulations.