The Town's Ethics Code is contained in Town Code Chapter 570. Section 570-11C provides that "no amendment initiated by the Town Board shall be adopted by the Town Board without affording the Board of Ethics at least 30 days to consider the Town Board's amendments." Section 570-11C further provides that the "Board of Ethics may make recommendations to the Town Board with respect to the amendment of this Code of Ethics."

On May 1, 2007, the Town Board referred to the Board of Ethics proposed amendments to the Town's Ethics Code. The Board of Ethics received from the Town Board an extension of the time to make its recommendation to June 11, 2007. On June 6, 2007, the Board of Ethics held an open meeting at which such proposed amendments were considered and discussed. The Board of Ethics is appreciative of the public input at that meeting.

The Board of Ethics hereby offers its recommendations, and related drafting suggestions, to the Town Board on such proposed amendments.

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Item 1:

This item proposes that the provisions of the previous Town Board proposed amendments to the Ethics Code referred to the Board of Ethics on March 28, 2007 with respect to soliciting and accepting campaign contributions be expanded to also prohibit "keeping" such contributions received in the last four years prior to the adoption of the new amendments.

The Board of Ethics believes that it is not fair for ethics rules to be applied on a retroactive basis. Research performed by the Town's Legal Dept concludes that, under the United States Constitution and the New York State Constitution, retroactive effect cannot be given criminal laws. The potentiality of criminal sanctions exists under the Ethics Code, as Section 9C authorizes the imposition of fines in certain circumstances. We also note that frequently, with respect to land use laws, "grandfathering" provisions are included with respect to existing uses and completed structures, as long as no change in the existing uses/structures is made. The Board of Ethics feels that, in the area of ethical conduct leading to the potential of criminal penalties or civil remedial actions having economic consequences such as disgorgement of funds (or, even, repayment from personal funds of previously spent funds), public officials have the right to rely on the laws as enacted at the time they take actions.

The Board of Ethics believes that the issue of whether a public official should conduct her/himself in accordance with standards higher than the statutory minimum is a fair subject for public discourse. However, with respect to applying criminal penalties or civil remedial economic actions, the Board of Ethics believes that ethics laws should not be applied on a retroactive basis, and thus the Board of Ethics does not recommend that this proposal be adopted by the Town Board.
Item 2:

Section 11 of the Ethics Code provides that the "Board of Ethics shall not be constituted of a majority of any political party in the Town." This item proposes that the party affiliation provisions of Section 11 be clarified so that the person in question must be registered in a party for at least twelve months prior to appointment.

To effect this proposal, a new second sentence could be added to Section 11B: "For purposes of determining the party affiliation, if any, of an individual as of the time of her/his appointment to the Board of Ethics, a person who shall have been registered under the laws of the State of New York as a member of a political party at any time within the previous twelve months shall be deemed to be a member of that party or parties."

Item 3:

This proposal would relieve Town Justices, the Town Clerk and the Receiver of Taxes from the generally applicable provisions of the Ethics Code relating to contributions/gifts and narrow the contributions/gift restrictions applicable to those Elected Officers to only those appearing before them or their offices.

Town Justices:

The Board of Ethics has reviewed the New York State Code of Judicial Conduct. Section 100.5(A)(5) provides that "a judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate . . . ." Under this provision, such campaign contributions may be made only during a specified time period and may not be used for the private benefit of the candidate or others.

The Board of Ethics notes that the Preamble to the Code of Judicial Conduct states that: "The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates should be governed in their judicial and personal conduct by general ethical standards." The Board of Ethics also notes that all of the financial disclosure rules and all of the restrictions on extra-judicial activities in the Code of Judicial Conduct do not apply in all instances to town justices, part-time judges (which all of the Town Justices in Greenburgh are) and/or candidates for election to town court.

In trying to balance the Town's right to establish ethical standards for its Elected Officers with the special nature and role of judicial officers (to the extent that town justices and part-time judges are regulated under the Code of Judicial Conduct), the Board of Ethics believes the standards for sitting Town Justices with respect to contributions and gifts and the standards for candidates for Town Justices, incumbent and non-incumbent, with respect to contributions and gifts should be the same as those applicable to sitting judges and candidates for elective judicial office throughout the State and should be regulated in the same way under the Code of Judicial Conduct. With that exception, the Board of Ethics believes that the Ethics Code should apply to Town Justices the same as any other Elected Officer of the Town.

Thus, the Board of Ethics suggests adding a new Section:
"15. Sitting Town Justices and Candidates for Town Justice. Nothing in Section 4A (Standard of Conduct; Gifts and Solicitations) of this Ethics Code shall apply to any sitting Town Justice who is subject to regulation under the Code of Judicial Conduct pursuant to the first sentence of Section 100.6(A) thereof. Nothing in Section 4A (Standard of Conduct; Gifts and Solicitations) or Section 7A (Prohibited Political Activities; Contributions) of this Ethics Code shall apply to (i) any incumbent judge or candidate for elective judicial office who is subject to regulation under Part 100.5(A) of the Code of Judicial Conduct ("Incumbent Judges and Others Running for Public Election to Judicial Office") with respect to activities subject to regulation thereunder or (ii) any person acting as part of a committee established under Part 100.5(A)(5) thereof with respect to activities subject to regulation thereunder."

Old Section 15, "Severability", in our May 11 submission to the Town Board would be renumbered to Section 16.

Town Clerk; Receiver of Taxes:

Based on the review of other ethics laws in the State of New York which the Board of Ethics have done in connection with this referral and the March 28, 2007 referral (about a dozen laws), we are not aware of any such laws in which non-judicial Elected Officers are exempted from the generally applicable contribution/gift provisions of the law. While we understand that not all non-judicial Elected Officials become involved in applications, contracts and other matters involving the public at large, it seems to us that it is difficult to precisely identify in a statute where to draw the line as to from whom contributions/gifts would be, or alternatively would not be, covered by an ethics law.

Respectfully Submitted,

Mike Sigal, Chair
James Robinson, Secretary
John McLaughlin, Rules and Procedures Subcommittee Chair

cc: Greenburgh Town Clerk