

**STATE OF RHODE ISLAND  
KENT, SC.**

**SUPERIOR COURT**

**SHARON L. KITCHIN,  
Plaintiff**

**VS.**

**C.A. No. KC18-**

**GAYLE CORRIGAN, in her individual  
and official capacity as Town Manager for:  
the Town of East Greenwich; the  
TOWN OF EAST GREENWICH, by and  
through LINDA DYKEMAN, in her  
capacity as Finance Director for the Town:  
of East Greenwich, THE EAST  
GREENWICH TOWN COUNCIL,  
and SUZANNE CIENKI, SEAN TODD,  
ANDREW DEUTSCH, NINO  
GRANATIERO, and MARK  
SCHWAGER, in their individual and  
official Capacities as members of the East  
Greenwich Town Council,  
Defendants**

**COMPLAINT**

**I. Introduction**

This action is brought by the Plaintiff, Sharon L. Kitchin, against Defendants seeking declaratory and injunctive relief, and other equitable relief, as well as attorney’s fees, litigation expenses, and compensatory, liquidated, and punitive damages from the Defendants for wrongful termination of her employment, failure to pay wages, and denial of employment and other rights and protections in violation of 1) the Rhode Island Open Meetings Act (“OMA”), R.I.G.L. § 42-46-1, *et seq.*; 2) the Town of East Greenwich Town Charter, and 3) violation of the Rhode Island Payment of Wages Act (“RIPWA”), R.I.G.L. § 28-12-1, *et seq.* and § 28-14-1, *et. seq.*

## II. Parties

### *Plaintiff*

1. Plaintiff Sharon L. Kitchin is a resident of the Town of Richmond, County of Washington, State of Rhode Island.

### *Defendants*

2. Defendant Gayle Corrigan is sued in her individual and official capacity as the purported Town Manager for the Town of East Greenwich.

3. Defendant Town of East Greenwich (“Town”) is a duly authorized and organized municipality existing under the laws of the State of Rhode Island and is sued by and through its Finance Director, Linda Dykeman, the official designated by state law, R.I.G.L. §45-15-5, to be named in a suit for relief against the Town.

4. Defendant Suzanne Cienki is sued in her individual and official capacity as the President and member of the East Greenwich Town Council (“Town Council”).

5. Defendant Sean Todd is sued in his individual and official capacity as a member of the Town Council.

6. Defendant Andrew Deutsch is sued in his individual and official capacity as a member of the Town Council.

7. Defendant Nino Granatiero is sued in his individual and official capacity as a member of the Town Council.

8. Defendant Mark Schwager is sued in his individual and official capacity as a member of the Town Council.

9. Defendants Cienki, Todd, Deutsch, Granatiero, and Schwager are also referred to herein collectively as “Town Council.”

### **III. Jurisdiction**

10. This Court has jurisdiction over Plaintiff's claims asserted a) under the OMA pursuant to R.I.G.L. § 42-46-8(c), b) under the RIPWA pursuant R.I. G.L. §§ 28-14-19.2 and 28-14-20; and, c) for declaratory and injunctive relief under R.I.G.L. § 8-2-13. Additionally, the monetary amount claimed herein is sufficient to establish the jurisdiction of the Superior Court pursuant to R.I.G.L. § 8-2-14.

### **IV. Venue**

11. Venue is proper in this Court pursuant to R.I.G.L. §9-4-3 insofar as the Defendant Town may be found and most of the other Defendants reside in the County of Kent, State of Rhode Island.

### **V. Material Facts**

#### **A. Employment Background**

12. On or about January 18, 2016, Plaintiff was hired as the Town Director of Human Resources.

13. Plaintiff was responsible for establishing a human resources department for the Town, including the establishment of all policies and procedures and overseeing the operation of the department.

14. During her period of employment with the Town, she was a loyal, dependable, and effective employee and always received positive feedback from her superior relative to her work performance.

#### **B. First OMA Violations—June 19, 2017 Meeting**

15. On June 19, 2017 at 8:00 a.m., the Town Council held a special meeting in closed session.

16. The Town Council voted in executive session at that meeting to 1) approve a separation agreement with its Town Manager Thomas Coyle and 2) appoint Defendant Corrigan as Acting Town Manager.

17. No public notice was provided that the Town Council intended to appoint an Acting Town Manager.

18. The appointment of Defendant Corrigan was not properly notices and should have been discussed and voted upon in a public session.

19. The hiring of personnel or appointing of replacement or acting officers are not actions which may properly be taken in executive session. *See* R.I.G.L. § 42-46-5 (listing purposes for which meetings may be held in executive session).

20. No record of any minutes of the meeting was made by the Town Council.

21. *The Town Council violated R.I.G.L § 42-46-6(b) by failing to provide adequate notice to the public of the nature of the business to be discussed at the June 19, 2017 special meeting. East Greenwich Firefighters Association v. Corrigan, et al., KC-2017-0898, dated Nov. 8, 2017 (“Dec.”) at 41.*

22. *The Town Council violated R.I.G.L § 42-46-5 by discussing and voting on the appointment of an Acting Town Manager in an executive session at the June 19, 2017 special meeting. Dec. at 43.*

23. *The Town Council violated R.I.G.L § 42-46-7 by not keeping a record of the June 19, 2017 meeting. Dec. at 43.*

24. *The Defendants’ violations of the OMA described above were willful and knowing. Dec. at 73.*

**C. First Town Charter Violations—June 19, 2017 Meeting**

**1) Section C-64 Violation**

25. Section C-64 of the Town Charter states: “[n]o official vote on any matter shall be taken at any meeting which is **not open to the public.**” Dec. at 46 (emphasis in decision).

26. *The Town Council violated § C-64 of the Town Charter when it voted in executive session, and not in an open meeting, to appoint Defendant Corrigan as Acting Town Manager at the June 19, 2017 meeting.* Dec. at 46-47.

**2) Section C-67 F Violation**

27. Section C-67 F of the Town Charter, provides that “in the event that the Town Manager resigns or is removed from office” the Town Council shall “designate an officer of the Town, other than a Town Council Member, to serve as Town Manager . . . until a successor to the Town Manager has assumed the duties of the office.”

28. Accordingly, the Town Council must designate an officer of the Town as Acting Town Manager if the Town Manager resigns or is removed from office. Dec. at 47.

29. Defendant Corrigan was not an officer of the Town at the time of her purported appointment as Town Manager and she therefore could not lawfully serve as “Acting Town Manager” according to the Town Charter. Dec. 47.

30. *The Town Council violated § C-67 F of the Town Charter insofar as Defendant Corrigan was not an officer of the Town at the time she was appointed Acting Town Manager on June 19, 2017.* Dec. 47.

**3) Section C-63 B Violation**

31. Section C-63 B of the Town Charter provides that the Town Council may call special meetings, but those meetings must be properly noticed—pursuant to the OMA—and the only

business that may be conducted during a special meeting is that which is contained in the notice.

Dec. at 48.

32. At the June 19, 2017 meeting, the Town Council appointed Defendant Corrigan as the Acting Town Manager; however, the agenda listed only one executive session item with no information pertaining to the appointment of an Acting Town Manager. Dec. at 48.

33. *The Town Council violated § C-63 B of the Town Charter by transacting business at a special meeting on June 19, 2017 without providing proper notice of the topic to the public[, specifically voting to appoint Defendant Corrigan as Acting Town Manager].* Dec. at 48.

#### **D. Res Judicata/Collateral Estoppel**

34. *As consequence of the foregoing OMA and Town Charter violations, the Town Council's vote on June 19, 2017 appointing Defendant Corrigan as Acting Town Manager is, and has been declared, null and void by the Kent County Superior Court.* Dec. at 69.

35. Based on the doctrines of *res judicata* and/or *collateral estoppel*, the Defendants are legally bound and subject to and cannot contest the determinations of the Court in *East Greenwich Firefighters Association v. Corrigan, et al.*, KC-2017-0898, dated Nov. 8, 2017 as set forth herein in the italicized paragraphs above.

#### **E. Second OMA Violations—June 26, 2017 Meeting**

36. At its meeting on June 26, 2017, the Town Council voted to go into executive session pursuant to R.I.G.L. 42-46-5 (a) (2).

37. Two different justifications were posted for convening the executive session: one was a Pawtucket Credit Union lawsuit and the other was a generalized statement pertaining to collective bargaining or litigation, specifically to discuss legal implications related to municipal collective bargaining agreement obligations and common-law/statutory obligations of the Town.

38. According to the draft minutes of the executive session meeting, there was extensive discussion regarding the “One Town” restructuring plan to combine certain administrative positions and functions of the Town and School Department.

39. This discussion included the elimination of staff positions and lay-offs of municipal employees and the consolidation of department level positions in a merged school-town administration.

40. Upon information and belief, at that meeting, the employment performance/status of the Plaintiff, as well as that of Kristen B. Benoit, Finance Director, and Pamela Aveyard, Executive Assistant to the Town Manager were discussed.

41. Upon information and belief, the Town Council also discussed replacing the Plaintiff, Ms. Benoit and Ms. Aveyard, in whole or part, by naming Linda Dykeman as the “joint” Town Finance Director and School Department Business Manager.

42. “[A]n employee’s contract is in most cases inextricably intertwined with a discussion of that employee’s job performance, character, or physical or mental health.” Opinion of Attorney General, ADV OM 04-06, 2004 WL 3557540 at \*1 (R.I. 2004).

43. The Town Council voted in executive session to approve “the Acting Town Manager’s restructuring and reorganization plan for ‘One Town’ implementation . . .”

44. According to the draft minutes of the executive session meeting, “[g]iven the nature of the topic, [the Town Council] decided to keep the vote under seal until implementation was completed.”

45. No votes or action taken in the executive session were reported in the minutes of the public session of the meeting.

46. *The Town Council violated R.I.G.L § 42-46-6(b) by failing to provide adequate notice to the public of the nature of the business to be discussed at the June 26, 2017 executive*

*session meeting, which included discussion of a major policy initiative with enormous potential impact on the public and governmental operations, the so-called "One Town Plan."*

47. *The Town Council violated R.I.G.L §§ 42-46-4 and 5 by discussing and voting at the June 26, 2017 executive session on a major policy initiative with enormous potential impact on the public and governmental operations, the so-called "One Town Plan," because the topic was not a) noticed to the public and b) a proper subject for a non-public session.*

48. *The Town Council violated R.I.G.L § 42-46-4 and 7 by not keeping a proper public record of the June 26, 2017 meeting by not reporting and including in its minutes of the public hearing the votes recorded in executive session, because the votes a) should have been made in the public session, and b) there was no vote finding that immediate disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).*

49. *Even if the subject matter was proper for an executive session to the extent it involved discussion of job performance, character, or physical or mental health of the Plaintiff or any other person under R.I.G.L §42-46-5(a)(1), the Town Council violated R.I.G.L §§ 42-46-4 and 5 by voting on such a subject at the June 26, 2017 executive session. See *In re: Health Services Council*, ADV OM 99-12 ("[u]nder § 42-46-5(a)(1) ...the public body must limit itself to "discussion' and any votes must be taken in open session.") (quoting *Graziano v. R.I. Lottery Commission*, OM 99-06).*

50. *Even if the subject matter was proper for an executive session to the extent it involved discussion of job performance, character, or physical or mental health of the Plaintiff under R.I.G.L §42-46-5(a)(1), the Town Council violated R.I.G.L §§ 42-46-4 and 5(a)(1) because the Plaintiff was never provided "notifi[cation] in advance in writing [of the June 26, 2017 meeting] and advised that [she] may require that the discussion be held at an open meeting."*



51. *The failure to provide the foregoing notice to the Plaintiff renders any action taken against the Plaintiff at the June 26, 2017 meeting null and void as a matter of law under R.I.G.L. § 42-46-5 (a) (1).*

52. The Town has exhibited a pattern of conduct surrounding the Town’s dealings with Defendant Corrigan and her appointment as Acting Town Manager and Town Manager evidencing the Town’s lack of respect for the spirit and intention of the OMA. Dec. at 62.

#### **F. Opinion of Attorney General**

53. The Plaintiff submitted an email complaint to the Rhode Island Attorney General (“Attorney General”) in July of 2017 claiming, among other things, that the Town Council violated the OMA when it a) voted to terminate her position at its June 26, 2017 executive session meeting and b) failed to provide her advance written notice that her job performance would be discussed in executive session at that meeting and of the option to have the matter heard in open session.

54. On January 12, 2018, the Attorney General issued an opinion letter finding that the Town Council discussion and vote regarding Plaintiff’s termination was not properly noticed and violated the OMA. *Kitchin v. East Greenwich Town Council*, OM 18-02, pp 5-7, 10.

55. The Attorney General further directed the Town Council to declare such previous actions null and void. *Id.* at p. 10.

#### **G. Second Town Charter Violations—June 26, 2017 Meeting**

##### ***Section C-64 Violation***

56. *The Council violated § C-64 of the Town Charter when it voted at the June 26, 2017 executive session on a major policy initiative with enormous potential impact on the public and governmental operations, the so-called “One Town Plan,” because the meeting was not open to the public.*

## **H. Termination of Plaintiff's Employment**

57. Plaintiff received a letter dated June 30, 2017 from the Town hand-delivered and signed by Defendant Corrigan as purported "Acting Town Manager."

58. That letter provided in pertinent part that the Plaintiff was being "separated effective June 30, 2017 at 1:00 p.m." due to "budget restructuring and fiscal consolidations" necessitated by the "One Town model."

### **I. Third Town Charter Violations—Plaintiff's Termination**

#### *1) Section C-85 A Violation*

59. Section C-85 A of the Town Charter provides that the Town Manager may remove a department head or officer "subject to the approval of the majority of all members of the Town Council."

60. *Accordingly, even assuming, arguendo, Defendant Corrigan was qualified to hold the position of Acting Manager **and** that she was properly appointed as such, Defendant Corrigan had no authority to terminate the Plaintiff without Town Council approval.*

61. Any purported approval of the Town Council to terminate the Plaintiff or authorization to Defendant Corrigan to terminate the Plaintiff was obtained or issued in violation of the OMA at the June 26, 2017 executive session meeting discussed at length above.

62. To the extent the Town Council intends to vote to terminate the employment of a Town employee, it has to be done at a public meeting of that public body duly called. R.I.G.L. §§ 42-46-5(a)(1) and 6(b).

63. Neither the posted agenda on June 26, 2017 nor any prior or subsequent posted agenda of the Town Council provided notice to the public that termination of the Plaintiff was going to be considered by the Town Council.

64. There are no minutes of either the June 26, 2017 public or executive session recording any votes of the Town Council approving or authorizing the termination of the Plaintiff's employment with the Town.

**2) Administrative Code, Part I, Ch. 1, § B. 1)**

65. On information and belief, the Administrative Code was promulgated by the Town's Personnel Board, approved by the Town Council, and has never been repealed.

66. Indeed, §1-9 (3) of the revised "Code of the Town of East Greenwich, Rhode Island" provides that that code shall not be "construed to repeal or affect the validity" of, *inter alia*, "any personnel regulations."

67. The Administrative Code provides, in pertinent part, that a department head "may be removed by the Town Manager with the approval of the majority of the Town Council for *misconduct or inefficiency*." Administrative Code, Part I, Ch. 1, § B. 1) (emphasis added).

68. *Since, according to the express wording of her termination letter, Plaintiff was not removed for misconduct or inefficiency, her termination was unlawful in violation of the Charter and Administrative Code.*

**3) Town Charter §C-117 F Violation**

69. Notwithstanding the applicability of the Administrative Code, Part I, Ch. 1, § B. 1), § C-117 F of the Town Charter provides that employees shall be entitled to continued employment subject only to good behavior, satisfactory job performance, the availability of related Town funds and continuation of the position.

70. Again, pursuant to the express wording of her termination letter, the Plaintiff was not terminated for unsatisfactory behavior or performance.

71. Plaintiff was terminated due to "budget restructuring and fiscal consolidation."

72. Nor was Plaintiff terminated due to lack of funding—the position was not de-funded in the most recent budget.

73. Indeed, the motion that passed at the June 8, 2017 meeting of the Town Council was to approve the FY2017 budget only, not to adopt the “One Town model” or eliminate the position of the Director of Human Resources.

74. *Accordingly, the Plaintiff’s termination was unlawful in violation of the express wording of § C-117 F of the Charter.*

#### **J. Violation of the RIPWA**

75. At the time of Plaintiff’s termination, she had accrued ten (10) hours of compensatory time earned on account of work she was required to perform for the Town outside of normal working hours.

76. The Town failed to pay Plaintiff at her hourly equivalent rate for the foregoing hours of compensatory time she earned on the next regular payday following her termination and has continued to fail or refuse to pay the same. *See* R.I.G.L. § 28-14-4 (a).

77. The RIPWA prescribes that every employee shall be paid “*all due wages* from his or her employer.” *See* R.I.G.L. § 28-14-2.2(a) (emphasis added).

78. The RIPWA broadly defines the word “wages” as “all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the amount.” *See* R.I.G.L. § 28-14-1(4).

79. The RIPWA provides expressly that none of its provisions shall in any way limit or prohibit private agreements between an employer and its employee that provide for the payment of wages or compensation in greater amounts than that which is provided for by the RIPWA. *See* R.I.G.L. § 28-14-9.

80. Nevertheless, the Town has willfully and intentionally failed or refused to compensate Plaintiff at her hourly equivalent for her foregoing earned compensatory hours as required by the RIPWA.

### **K. Motivation and Harm**

81. Defendants' wrongful and/or unlawful acts and/or omissions, including, but not limited to, those described herein, were knowing and willful and/or motivated by malice or ill will toward the Plaintiff, and Defendants otherwise acted in bad-faith and/or with reckless indifference to the statutorily protected rights of the Plaintiff.

82. As a proximate result of Defendants' wrongful and/or unlawful acts and/or omissions, including, but not limited to, those described herein, Plaintiff suffered, is now suffering, and will continue to suffer emotional and economic injury including, but not limited to, pecuniary losses, loss of income, loss of back and front pay, loss of employment benefits, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, humiliation, damage to her professional and personal reputation, and has incurred and will continue to incur expenses for legal services, and other great harm.

### **VI. Causes of Action**

83. Plaintiff realleges and incorporates each and every allegation contained in paragraphs 1 through 82 of this Complaint in each of the counts below with the same force and effect as if set forth therein.

#### **COUNT ONE**

##### ***Violation of Rhode Island Open Meetings Act – Actionable under R.I.G.L. §42-46-8***

84. Defendants, by their individual and/or concerted acts and/or omissions, including but not limited to those alleged herein, have violated the OMA, causing Plaintiff to suffer harm as aforesaid, and for which Plaintiff is entitled to relief as provided under R.I.G.L. § 42-6-8 (d).

**COUNT TWO**  
***Violation of the East Greenwich Town Charter***

85. Defendants, by their individual and/or concerted acts and/or omissions, including but not limited to those alleged herein, have violated the Town Charter, causing Plaintiff to suffer harm as aforesaid, and for which Plaintiff is entitled to relief under applicable law.

**COUNT THREE**  
***Rhode Island Payment of Wages Act,***  
***R.I.G.L. § 28-12-1, et. seq. and § 28-14-1, et seq.***

86. The Town, by its acts and/or omissions, including, but not limited to, those described herein, violated the RIPWA by failing to pay wages as provided therein, thereby causing Plaintiff to suffer damages as aforesaid, for which she is entitled to relief pursuant to R.I.G.L. § 28-14-19.2 and § 28-14-20.

**VII. Prayers for Relief**

**WHEREFORE**, Plaintiff prays that this Court grant the following relief:

1. Judgment against the Defendants;
2. A declaratory judgment declaring the acts and/or omissions of the Defendants, including, but not limited to, those complained of herein, to be in violation of the OMA;
3. A declaratory judgment declaring all action taken by the Defendants in violation of the OMA to be null and void pursuant to, *inter alia*, R.I.G.L. §§ 42-46-5 (a)(1) and 8 (d);
4. A declaratory judgment declaring the acts and/or omissions of the Town, including, but not limited to those complained of herein, to be in violation of the RIPWA.
5. An injunction or other equitable relief, including but not limited to an award of back pay as well as front pay and/or reinstatement and other compensation and/or benefits to make her whole for all earnings and benefits she would have received but for Defendants' termination of her employment.

6. An award of liquidated damages in the amount of two times the amount of wages and/or benefits owed pursuant to R.I. Gen. Laws §§ 28-14-19.2 and 28-14-20.
7. An award of compensatory damages.
8. An award of exemplary and/or punitive damages.
9. An award of reasonable attorney's fees and costs pursuant to R.I. Gen. Laws §§ 28- 14-19.2 and 28-14-20.
10. An award of reasonable attorney's fees and costs of litigation to Plaintiff pursuant to R.I.G.L. § 42-46-8(d) and/or other applicable law;
11. An award of prejudgment interest; and,
12. Such other and further relief as this Court deems just and proper.

**VIII. Demand for Jury Trial**

Plaintiff hereby demands a trial by jury on all counts so triable.

**IX. Designation of Trial Counsel**

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

Plaintiff, **Sharon L. Kitchin,**  
By her attorneys,  
**SINAPI LAW ASSOCIATES, LTD.**

**Date: February 14, 2018**

/s/ Richard A. Sinapi  
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