

Town of Shelburne Ethics Committee Rules of Procedure¹

Pursuant to the authority of Article 15(f) of the Town of Shelburne Ethics and Conflict of Interest Ordinance (the Ordinance) and in accordance with 24 V.S.A. Sections 1203 – 1209 (the Vermont Municipal Administrative Procedure Act (MAPA)), the Shelburne Ethics Committee (the Committee) hereby establishes the following Rules of Procedure.

These Rules govern the procedure for hearing complaints filed pursuant to Article 16 of the Ordinance; Section B of the rules, however, generally do not apply when the Committee is not sitting in its administrative, i.e., quasi-judicial capacity. See Rule A.2(a). Consistent with the proper scope of the rulemaking process, these Rules make no changes in substantive rights. These Rules do provide a clear process for complainants, respondents and the Ethics Committee to follow and should be construed to secure the just, speedy and inexpensive determination of every complaint filed.

If these Rules conflict with the Ordinance, the Ordinance shall control.

A. Conduct of Meetings:

- 1) **Ethics and Conflicts of Interest:** Members of the Committee are subject to the provisions of the Ordinance and shall conduct themselves in accordance with the provisions of the Ordinance when acting in their official capacity.
- 2) **Open Meetings:** Meetings of the Committee shall be conducted in accordance with the Vermont Open Meeting Law. 1 V.S.A. §§ 310-314. Such meetings are open to the public at all times, except as otherwise provided by law. See § 1 V.S.A. secs. 312(d) and 313. See also Rule A.4(b) (proceedings prior to the establishment of probable cause) and Rule B.5(f)(13) (deliberative sessions)
 - a) **Administrative Meetings:** The Committee may hold administrative meetings to conduct business related to the Committee's organization and procedures and other non-quasi judicial acts or actions.
 - b) **Quasi-Judicial Proceedings:** The Committee may hold quasi-judicial proceedings to hear and resolve complaints filed under Chapter 4, Article 16 of the Ordinance regarding public officials.
- 3) **Agenda:** There shall be an agenda for each meeting. Those who wish to be added to the agenda of an administrative meeting shall contact the Clerk of the Committee to request inclusion on the agenda. The Chair of the Committee will determine the content of a proposed agenda; the Committee will determine the content of the final agenda.

¹ These Rules were originally adopted by the Ethics Committee on August 15, 2015. The Committee adopted revisions on August 17, 2017. On December 11, 2017 the Committee revised Section B) 3) b) during a special meeting of the Committee.

- 4) **Duties of the Chair:** The Chair of the Committee, or in the Chair's absence, the Vice-Chair, shall chair all administrative meetings and quasi-judicial proceedings of the Committee. If both the Chair and the Vice-Chair are absent, a member selected by the Committee shall chair the meeting. The Chair of the meeting shall rule on all questions of order or procedure and may enforce these rules as authorized by 1 V.S.A. § 312(h).
- 5) **Participation by Members:** If a regular member of the Committee cannot participate in a particular matter, the alternate member shall fill in as set forth in the Ordinance. A combination of three regular and/or alternate members shall constitute a quorum. If for any reason a quorum is impossible, the Chair shall request the Selectboard to appoint from residents of the Town persons to serve *pro tempore* on the Committee pursuant to Article 16(g) of the Ordinance. If a quorum of the members of the Committee is not present at a meeting, the only action that may be considered by the Committee is a motion to recess or adjourn the meeting. Decisions of the Committee shall be by majority vote.
- 6) **Conflicts of Interest:** Committee member participation, disclosure of conflicts of interest, recusal and steps to take following recusal shall be governed by Chapters 3 and 4 of the Ordinance.
- 7) **Ex Parte Communications:** Disclosure of ex parte communications, Committee member participation and recusal, and steps to take following recusal shall be governed by Articles 11 and 12 of Chapter 4 of the Ordinance.
- 8) **Pre-Judgment of the Merits:** Disclosure of a public display of pre-judgment of the merits, Committee member participation and recusal, and steps to take following recusal shall be governed by Chapter 4, Article 13 of the Ordinance.

B. Quasi-Judicial Hearings before the Ethics Committee

1) Filing of a Concern

A person who believes that a public official should: (i) recuse him or herself from a matter because of a conflict of interest or the appearance of a conflict of interest, or (ii) that the Public Official should provide a disclosure statement regarding a conflict of interest or an appearance of a conflict of interest in the matter; or (iii) is otherwise engaged in conduct proscribed by the Ordinance, should first within 15 days of the person discovering the matter of concern communicate such concern to the Chair or Vice-Chair of the Selectboard who will then attempt to resolve the matter informally, as prescribed by Article 16 of the Ordinance. See Ordinance Chapter 4, Article 16.a.

2) Filing of a Complaint or a Request for Disclosure or Recusal

- a) In the alternative, a person may file a complaint or a request for disclosure or recusal directly with the Clerk of the Committee within 30 days of the person having discovered the matter of concern. The person may request disclosure

or recusal in accordance with Articles 9, 11 or 13 of Chapter 4 of the Ordinance. The person (complainant) should use the complaint affidavit form developed by the Ethics Committee, or one similar to it. The complaint and affidavit shall be confidential until a determination of probable cause by the Committee. See Ordinance Chapter 4, Article 16.b.

- b) The Clerk shall have custody of the records of the complaint proceedings. The Clerk shall date-stamp the complaint and give the case a name and file number, enter the name and case number on the case file. The Clerk shall date-stamp and place chronologically in the case file all other submissions, including any affidavits and documents, any process issued, and returns made thereon, any subsequent papers filed with the clerk, and all appearances and orders. The Clerk shall maintain a docket sheet that includes the date and nature of all submissions and the date and nature of Committee meetings and hearings, with brief entries showing the date, nature and subject matter of each paper filed. The complaint, all other submitted papers, and the docket sheet are not public records unless and until the Committee finds probable cause pursuant to Rule B.2(b). As provided in Chapter 5, Article 16(d) of the Ordinance, if the Committee finds no probable cause, the entire record of the complaint, including the docket sheet and all documents in the file, shall be closed, sealed and exempt from disclosure under Vermont's public records laws.

- c) Preliminary Probable Cause Investigation: Upon receipt of a complaint, the Clerk of the Committee shall inform the Chair of the Committee of the filing. The Chair shall convene the regular and alternate member of the Committee to undertake a confidential preliminary probable cause investigation in a closed, executive session. The preliminary investigation shall consist of a review of the complaint and any accompanying affidavit(s) and other filed materials to determine whether there is probable cause to believe that a violation has occurred and that the public official has committed it. The finding of probable cause shall be based upon substantial evidence, which may be hearsay, in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. See Ordinance Article 16.d.
 - 1) If probable cause is not found, the Chair of the Committee shall notify the complainant and shall close the file. The Clerk shall seal the file and take steps to ensure that it is not disclosed or accessed by anyone other than the public official in question. See Ordinance Article 16.d.
 - 2) If probable cause is found, the Chair of the Committee shall notify the Chair of the Selectboard and the Clerk of the Committee shall then set the matter for a public hearing before the Committee as soon as possible. See Ordinance Article 16.d.

3) Notice of the Hearing on the Complaint

- a) The Clerk shall provide personal notice of the complaint in accordance with Rule B.4 to each member and alternate of the Committee, to the complainant, and to the public official complained about (the respondent). Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law. See Ordinance Article 16.d.
- b) The Clerk shall serve a copy of the complaint, together with a notice of the hearing date, time and place, and a copy of the Ordinance and these Rules on the respondent, by delivering the documents to the respondent in person within five calendar days of the finding of probable cause. The Clerk may do so by having the documents served by a law enforcement officer or other person authorized by law to serve legal process. The Clerk shall place in the file a certification of the date of service of the documents, and a copy of the process server's return of service if the complaint was served in that manner. If the Clerk is unable to serve the respondent within five calendar days, the Clerk shall so notify the Chair who may reschedule the hearing and determine some other proper means of promptly notifying the respondent of the complaint

4) Filing of a Response

The respondent may file a response to the complaint with the Clerk prior to the hearing. The Clerk shall send a copy of the response to the complainant and to the Committee members.

5) The Hearing

- a) The regular members of the Committee shall conduct a public hearing on the matter raised by the complaint in accordance with the MAPA. The Chair of the Committee shall preside at the hearing. The complainant and respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses and to be represented by counsel.
- b) Consistent with MAPA and the Ordinance, there shall be no pre-hearing discovery.
- c) The complainant and respondent shall submit to the Clerk six copies of all documents to be considered by the Committee at least seven days prior to the hearing on the complaint. The Clerk shall date-stamp and docket the documents, place one copy in the case file and provide a copy to each member of the Committee. The complainant and respondent may submit supplemental documents at the hearing, and the Clerk shall note on them and on the case docket sheet the results of any Committee action on objections to their admissibility.

- d) Burden of Proof. The complainant has the burden of proving by a preponderance of the evidence that the respondent has violated the Ordinance.
- e) The Committee may, for good cause shown, permit the complainant, respondent and any other witnesses called by them to appear at the hearing by audio or video means. Reasonable steps shall be taken to ensure that each participant in the hearing has an opportunity to participate in, hear, and, if technically feasible, to see the entire proceeding as it is taking place. The hearing shall be audio or video recorded at Town expense, and the recording shall be a public record.
- f) 1) Testimony. All oral or written testimony of parties and their witnesses shall be taken under oath or affirmation. The complainant and then the respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses and to be represented by counsel.
- 2) Evidence. The Chair may exclude any irrelevant, immaterial, unreliable or unnecessarily repetitive evidence. The Vermont Rules of Evidence shall be followed except that when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted if it is reliable.
 - a) Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
 - b) Reliable evidence is any relevant evidence commonly relied upon by reasonably prudent people in the conduct of their affairs.
 - c) The Chair may permit any part of the testimony to be received in written form as long as the witness is available for cross-examination at the evidentiary hearing.
 - d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the Chair shall provide the complainant and respondent an opportunity to compare the copy with the original.
 - e) Sequence of the Hearing. The Chair shall conduct the hearing as follows:
 - 1) Open the hearing, stating the name of the complainant and the name of the respondent.

- 2) Ask the complainant and respondent and any witnesses to take the following oath:

Under the pains and penalties of perjury, do you solemnly swear or affirm that the evidence you give in the cause under consideration shall be the whole truth and nothing but the truth?

- 3) Each witness shall provide his or her contact information to the Clerk.
- 4) Ask the complainant and respondent if they have received copies of the Committee's Rules and if they have any questions about how the hearing will proceed.
- 5) Request Committee members to disclose any conflicts of interest, any ex parte communications and/or any public displays of a pre-judgment of the merits of the matter, and for them to make any appropriate recusal decisions.
- 6) Ask the complainant to present evidence.
- 7) Invite the respondent to cross-examine the complainant or any complainant witnesses.
- 8) Invite questions from Committee members.
- 9) Ask the respondent to present evidence in response to the information presented by the complainant.
- 10) Invite the complainant to cross-examine the respondent or any respondent witnesses.
- 11) Invite questions from Committee members.
- 12) Invite final comments from the complainant.
- 13) Invite final comments from the respondent.
- 14) Upon motion and majority approval of the Committee, either continue the hearing to a time certain or close the hearing. If the hearing is recessed to a later date in order to take additional evidence, the Chair shall set a date by which materials must be submitted, typically one week prior to the scheduled hearing. It shall be deemed sufficient to constitute proper notice of the

recessed hearing, if an announcement is made before adjournment of the hearing specifying the time, date and place of the recessed evidentiary hearing.

- f) 1 At the conclusion of the hearing the Committee shall go into deliberative session in order to consider all the evidence and render a written decision. As provided in the Vermont Open Meeting Law (Subchapter 2 of Chapter 5, Title 1, Vermont Statutes Annotated), the Committee may deliberate in a closed session.
 - 2 “Deliberative session” means a closed session of the Committee to weigh, examine, and discuss the reasons for and against an act or decision, and from which the parties and the public are excluded. There shall be neither taking of evidence nor submission of testimony in a deliberative session, nor shall a deliberative session be publicly noticed. The board may enter deliberative session by majority vote at any time, and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.
 - 3 Committee members may participate in the decision only if they have heard all testimony and reviewed all evidence submitted for the Committee’s decision.
 - 4 Committee members who have not attended every session of the hearing may participate in the decision only if they have listened to the recording of the testimony they have missed (or read transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.
- g) The Ethics Committee shall issue a written decision as to whether the public official violated the Ordinance and, if so whether the public official shall be required to (i) recuse him or herself from the matter in question due to a conflict of interest or the appearance of a conflict of interest; or (ii) provide a disclosure statement regarding a conflict of interest or the appearance of a conflict of interest; or (iii) cease and desist from conduct otherwise proscribed by the Ordinance, and shall state the reasons for the decision.

6) Enforcement

In addition to any other remedies provided by law, the Committee may place a copy of its written decision in a public file maintained by the Town Clerk and may publicly censure a public official who violates the Ordinance and may recommend that the Selectboard remove the public official from office for cause where that is permitted by law. See Ordinance Chapter 4, Article 17.

C. Amendments

These Rules may be amended by majority vote of the Committee at a meeting duly warned for that purpose.

D. Posting of these Rules of Procedure

These Rules shall be posted on the Town of Shelburne's Web site and paper copies be made available at the Town Clerk's office at no charge.

ADOPTED: Shelburne Ethics Committee

August 17, 2017

Lee Suskin, Chair

Tom Little, Vice-Chair

Gwen Webster

Michel Ashooh

William Deming

Peter Gadue - Alternate

Shelburne Ethics Committee
Complaint and Affidavit

In the Matter of _____ **(Name of Public Official)**

Complainant	Public Official's Position with the Town
Name _____	_____
Address _____	_____
_____	_____
Tel. # _____	

1. Affidavit of the Complainant

I believe that the Public Official identified above:
___ should recuse (or should have recused) him or herself from a matter because of a conflict of interest or the appearance of a conflict of interest for the reasons detailed below.
___ should provide (or should have provided) a disclosure statement regarding a conflict of interest or the appearance of a conflict of interest for the reasons detailed below.
___ has engaged in conduct prohibited by the Shelburne Ethics and Conflict of Interest Ordinance for the reasons detailed below.

Reasons (Based upon the Complainant's Personal Information)

I discovered these reasons on _____(date)

(Use additional pages, as needed)

2. Filing of a Concern

a. ___ On _____(date) I communicated my concern to the Chair of the Selectboard in accordance with Article 16 of the Ordinance and on _____(date) the Chair of the Selectboard notified me of a proposed resolution of my concern. I am not satisfied with that proposed resolution.

OR

b. _____ I have not communicated my concern to the Chair of the Selectboard. I choose to file this complaint directly with the Ethics Committee.

3. Actions Requested

Check one or more of the following.

___ I request that the Committee determine that the public official violated the Ethics and Conflict of Interest Ordinance

___ I request that the Committee require the public official to:

___ recuse him or herself from the matter due to a conflict of interest

___ provide a disclosure statement in the matter concerning a conflict of interest

___ cease and desist from violating the Ordinance

___ I request that the Committee publicly censure the Public Official (See Ordinance Chapter 5.17.b)

___ I request that the Committee recommend that the Selectboard remove the public official from office for cause as authorized by the Town Charter

___ Other: _____

Complainant
Signed under Oath

Date

State of Vermont
County of _____

The foregoing Complaint and Affidavit were subscribed and sworn to before me this _____ day of _____, 20__

Notary Public

Date

My Commission expires _____.

Shelburne Ethics Committee
Response to the Complaint

In the Matter of _____ (Name of Public Official)

Complainant
Name _____

Public Official's Position with the Town

1. Admission:

___ I admit that I have engaged in acts or actions in violation of the Ethics and Conflict of Interest Ordinance.

:

___ I engaged in conduct prohibited by the Shelburne Ethics and Conflict of Interest Ordinance as specified in the Complaint.

___ I agree to recuse myself from the matter identified in the Complaint.

___ I agree to provide a disclosure statement in the matter as requested in the Complaint.

___ I agree that the Ethics Committee should recommend that the Selectboard publicly censure me for my acts or actions.

___ I agree that the Ethics Committee should recommend that the Selectboard remove me from office with the Town.

2. Denial

___ I deny that I have engaged in actor or actions in violation of the Ethics and Conflict of Interest Ordinance and I request that the Ethics Committee set this matter for a public hearing.

Additional Statement (Voluntary)

Use additional pages as needed

Respondent Public Official

Date