

Town of Shelburne Conflict of Interest Ordinance

Article 1. Authority. Under the authority granted in 24 V.S.A. Chapter 59 and 24 V.S.A. § 2291(20), the Selectboard for the Town of Shelburne (the “Town”) hereby adopts the following Civil Ordinance concerning conflicts of interest and ethics.

Article 2. Purpose. The purpose of this Ordinance is to ensure that the business of the Town will be conducted in such a way that no public official of the Town will gain a personal or financial advantage from his or her office and that public office is not used for personal gain. It is also the intent of this Ordinance to ensure that all decisions made by public officials are based on the best interests of the Town. The Ordinance authorizes an appointed Ethics Committee to hear conflict of interest complaints.

Article 3. Application. This policy applies to all individuals elected or appointed to perform executive, administrative, legislative, or quasi-judicial functions of the Town. With the exception of the Town Manager, Town Clerk and Town Library Director, it does not apply to employees of the Town.

Article 4. Definitions. For the purposes of this Ordinance, the following definitions shall apply:

A. **“Appearance of a conflict of interest”** means the impression that a reasonable person may form, after full disclosure of the facts, that a public official may have a conflict of interest even though there may be no actual conflict of interest.

B. **“Business associate”** means:

- i) an owner, partner, officer, employer, employee or co-worker in the public official’s business or place of employment; or
- ii) a business or organization to which the public official or the public official’s business associate regularly provides services or materials, directly or indirectly, or reasonably anticipates doing so in the future.

C. **“Conflict of interest”** means any of the following:

1. A direct or indirect personal or financial interest of a public official, his or her spouse or other immediate family household member, or persons related with the third degree of consanguinity or affinity (spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or sister-in-law) or business associate, in the outcome of a particular matter, policy, cause, proceeding, application or any other matter pending before the public official or before the public body on which he or she serves or holds office. A conflict of interest does not arise in the case of an official act or action in which the public official has a personal or financial interest in the outcome no greater than that of other persons generally affected by the decision, such as adopting a bylaw or setting a tax rate.
2. A situation where a public official has displayed a prejudgment of the merits of a particular quasi-judicial proceeding.
3. A situation where a public official has not disclosed an *ex parte* communication(s) related to a quasi-judicial proceeding that is before the body of which that official is a member.

4. A situation where a public official has exhibited personal bias and prejudice related to an individual involved in a quasi-judicial proceeding.

It is not a conflict of interest for a public official to remain sitting on a matter if another public official on the same Town committee, board or commission is recused from the matter so long as the remaining public official(s) can be impartial and is able to act fairly, objectively and in the public interest in spite of the recusing member's conflict of interest.

- D. **"De minimis"** means an insignificant interest or conduct that could not raise a reasonable question as to a public official's impartiality.
- E. **"Ex parte communication"** means a more than *de minimis* direct or indirect communication between a member of a public body and any party, party's representative, party's counsel or any person interested in the outcome of a quasi-judicial proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.
- F. **"Official act or action"** means any legislative, administrative or quasi-judicial act performed by any public official while acting on behalf of the Town. This term does not apply to ministerial acts or actions wherein no discretionary judgment is exercised.
- G. **"Public body"** means any board, commission, or committee of the Town or other individual or group appointed by the Selectboard to serve in a volunteer capacity to perform duties for the Town.
- H. **"Public interest"** means an interest of the Town, conferred generally upon all residents of the Town.
- I. **"Public official"** means a person elected or statutorily-appointed to perform executive, administrative, legislative, or quasi-judicial functions for the Town. This term does not include Town employees except for the Town Manager, Town Clerk and Town Library Director.
- J. **"Quasi-judicial proceeding"** means a contested hearing as defined by the Vermont Municipal Administrative Procedures Act, 24 V.S.A. Sections 1203 – 1209, as amended, or a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, and which results in a written decision, the result of which is appealable by a party to a higher authority.

Article 5. Prohibited Conduct.

- A. A public official shall not participate in any official act or action if he or she has a conflict of interest in the matter under consideration.
- B. A public official shall not personally, or through any member of his or her household or business associate, represent, appear for, or negotiate in a private capacity on behalf of any person or organization that has an interest in an official act or action pending before the public body in which the public official holds office. In a quasi-judicial proceeding, however, the public official may, after recusal, represent, appear for, or negotiate in a personal capacity on the public official's own behalf where he or she has an interest in an official act or action pending before the official's public body.

- C. A public official shall not accept gifts or other offerings for personal gain by virtue of his or her public office that are not available to the public in general.
- D. A public official shall not request or accept any reward, gift, or favor for taking an official act or action or advocating for or against an official act or action.
- E. A public official shall not use resources unavailable to the general public including, but not limited to, Town staff time, equipment, vehicles, supplies, facilities, or confidential information for any material private gain or personal purposes.
- F. A public official who is a member of a public body shall not give the impression that he or she has the authority to make decisions or take actions on behalf of that body.
- G. A public official shall not act in violation of the Shelburne Town Charter, the Vermont Open Meetings Law, the Vermont Public Records Act or any other applicable laws.

Article 6. Disclosure. A public official who, while serving on a public body, may have a conflict of interest, or the appearance thereof, in a matter under consideration by that public body shall, prior to taking an official act or action or participating in any official act or action on the matter, publicly disclose at a public meeting or public hearing that he or she has an actual or the appearance of a conflict of interest in the matter under consideration and disclose the nature of such conflict of interest. Any person may request that a public official recuse him or herself from a matter due to a conflict of interest, whether actual or apparent. This request shall not constitute a requirement that the public official recuse him or herself from such matter.

Article 7. Consideration of Recusal. Once there has been a disclosure of an actual or the appearance of a conflict of interest, other public officials, and parties in a quasi-judicial proceeding, shall be afforded an opportunity to ask questions or make comments about the situation. If a previously unknown conflict is discovered during a meeting or hearing conducted by a public body of the Town, the public body shall take evidence pertaining to the conflict and, if appropriate, adjourn to an executive session to address the conflict.

Article 8. Recusal of Public Officials. After taking the actions listed in Articles 6 and 7, a public official shall declare whether he or she will recuse him or herself and explain the basis for that decision. If the public official has an actual conflict of interest, he or she shall recuse him- or herself from consideration of the matter. If the public official has the appearance of a conflict of interest but believes that he or she is able to act fairly, objectively, and in the public interest, in spite of the appearance, he or she shall state why he or she believes that he or she is able to act in the matter fairly, objectively, and in the public interest. Otherwise, the public official shall recuse him or herself from the matter under consideration.

Article 9. Recording. The minutes of the meeting or the written recusal or non-recusal statement of a public official shall document the actions taken in Articles 6 through 8.

Article 10. Post-Recusal Procedure.

- A. A public official who has recused himself or herself from participating in an official act or action by a public body shall not sit with the public body, deliberate with the public body, or participate in the discussions about that official act or action in any manner in his or her capacity as a public official, though in a quasi-judicial proceeding such member may still participate as an interested party or as a representative pursuant to Article 5.B.

- B. The public body may adjourn the proceedings to a time, date, and place certain if, after a recusal, the lack of a quorum makes it not possible to take action through the concurrence of a majority of the total membership of the public body. The public body may then resume the proceeding with sufficient members present.

Article 11. The Ethics Committee.

- A. An Ethics Committee of seven (7) members is established. The Selectboard shall solicit volunteers from among Town residents who are willing to serve on the Ethics Committee and appoint five (5) members and two (2) alternates to serve staggered terms of three (3) years. The list of members shall be filed with the Town Clerk. The Ethics Committee shall elect a Chair and Vice-Chair from among its members. If a member does not participate in a particular matter for any reason, one of the alternates shall be designated by the Ethics Committee's Chair to fill in. The Selectboard shall invite the Town Clerk to serve as the Clerk of the Ethics Committee. Should the Town Clerk decline or be unavailable, the Ethics Committee Chair shall appoint a person to serve as Clerk pro tempore and make the Clerk pro tempore known to the public.

- B. The Ethics Committee is authorized to:

1. Educate and inform public officials on provisions of the Ordinance and committee activity.
2. Appoint one or more of its members or other qualified persons to:
 - a. provide oral information about the Ordinance to public officials or members of the public upon request. Any such information provided pursuant to this Article 11.B.2(a) shall have no binding or precedential effect on the Ethics Committee in its consideration of complaints and all such information shall be considered confidential;
 - b. mediate a complaint or potential complaint for Ethics Committee approval, where the complainant and respondent agree to mediation;
3. Any member appointed to perform a function identified in Article 11. B. 2. (a) – (b) shall recuse him or herself from participating in any quasi-judicial proceeding involving the matter.
4. Adopt Rules of Procedure, educational materials and forms that align with the Ordinance and that strive for the simple, and inexpensive disposition of complaints.
5. Conduct hearings in accordance with Article 11.C. of this Ordinance.
6. Engage the services of the Town Attorney or, where the Town Attorney has a conflict of interest, engage the services of outside legal counsel with funds allocated to it by the Selectboard pursuant to Article 11.D, to assist the Ethics Committee in its proceedings and deliberations.
7. With the consent of the Selectboard, issue concise public statements regarding confidential proceedings when needed to provide fairness to the public official in the event of a media or related inquiry.
8. Collaborate with the Selectboard in developing a conflict of interest and ethics disclosure and compliance certificate form with the advice and consent of the Selectboard for public officials to use and file annually.

- C. Hearings before the Ethics Committee; Enforcement.

1. Any person who believes that a public official has engaged in conduct prohibited by Article 5 of this Ordinance may file a complaint directly with the Town Clerk within 60 days of the person having discovered the matter or concern. The burden of proving the date the person first discovered the matter of concern shall be on the person filing the complaint.
2. A complaint filed against a public official shall be a signed, sworn statement, based on the concerned individual's personal information using a complaint form developed by the Ethics Committee available from the Town Clerk or a form substantially similar to that. Until the determination by the Ethics Committee of a reasonable likelihood to believe that a violation has occurred, the complaint shall be confidential and not subject to disclosure under Vermont public records laws.

3. a. Upon receipt of a complaint regarding a public official, the Ethics Committee shall undertake a confidential preliminary inquiry of the complaint in a closed, deliberative session, to determine if there is a reasonable likelihood to believe that a violation has occurred. The Ethics Committee may separately interview the complainant or the respondent, or both, under oath, in the closed session.

b. If a reasonable likelihood of a violation is not found by the Ethics Committee, the Chair of the Ethics Committee shall notify the person who filed the complaint and the public official in question that a reasonable likelihood of a violation was not found and the complaint and file shall be closed, sealed and exempt from disclosure under the Title 1, Section 317(c)(1) and (7) of the Vermont Public Records Act; provided, however, that the public official in question may have access to the file.

c. Upon finding a reasonable likelihood that a violation has occurred, the Clerk shall set a date for a hearing before the Ethics Committee as soon as possible taking into consideration the scheduling and hearing preparation needs of the complainant and the respondent public official. Written notice shall be given to each member of the Ethics Committee, including the alternates, to the complainant, and to the respondent. Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law.

d. At any time, the Ethics Committee shall encourage the use of a mediator where the complainant and respondent are amenable to mediation, to attempt to resolve a complaint and to submit any mediated agreement to the Ethics Committee for approval.

4. The Ethics Committee shall consider the matter in accordance with the Vermont Municipal Administrative Procedures Act, 24 V.S.A. Sections 1203-1209 and the Ethics Committee's Rules of Procedure at a public hearing. Testimony and other evidence shall be taken under oath. 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. The hearing shall be audio or video recorded at Town expense.

5. a. At the conclusion of the hearing, the Ethics Committee shall consider all of the evidence and render a decision and may go into a closed deliberative session in doing so. The Ethics Committee shall issue a written decision, using a preponderance of the evidence as its standard of proof for whether the public official violated Articles 8-14 of the Ordinance. The Ethics Committee shall have the discretion to find that *de minimis* conduct does not rise to the level of a violation under the Ordinance.

b. The Ethics Committee may take appropriate steps to sanction a public official who has violated the Ordinance and shall state in writing the reasons for its decision. Sanctions may include:

- (i) requiring a disclosure statement concerning a conflict of interest;
- (ii) recommending ethics training focused on the Ordinance;
- (iii) issuance of a public reprimand;
- (iv) issuance of a public censure;
- (v) with the advice and consent of the Selectboard, direct the public official to cease and desist from the conduct that violated the Ordinance;
- (vi) recommend that the Selectboard remove the public official from office for cause pursuant to the Town Charter; or
- (vii) any combination of the foregoing.

6. If one or more members of the Ethics Committee is/are the subject of a complaint hereunder, and/or the other Ethics Committee members recuse themselves because of their committee association with the subject of the alleged complaint (which decision shall not be mandatory but shall rest with each individual member in his/her capacity as a public official) or for any other reason a quorum is impossible, the Selectboard may appoint from the residents of the Town persons to serve *pro tempore* on the Ethics Committee.

D. Funding. The Ethics Committee may seek funding from the Selectboard and shall expend such funds in accordance with the guidance of the Selectboard if the Selectboard votes to allocate such funds.

Article 12. Amendments to the Ordinance.

The Selectboard shall have authority to adopt amendments to this Ordinance in accordance with the Town Charter (24 V.S.A. App. Section 147.16).

Article 13. Effective Date.

This Ordinance shall take effect immediately upon adoption by the Selectboard.

ADOPTED by the Shelburne Selectboard on December 11, 2018



Jerry Storey, Chair



Mary Kehoe

Colleen Parker



Jaimesen Heins, Vice Chair



Josh Dein