

TOWN OF SHELBURNE
[PROPOSED] ETHICS AND CONFLICT OF INTEREST ORDINANCE

ARTICLE 1. Authority.

Under the authority granted in 24 V.S.A. Chapter 59 and 24 V.S.A. § 2291, the Board of Selectmen for the Town of Shelburne hereby adopts the following civil ordinance concerning conflict of interest.

ARTICLE 2. Purpose.

The proper operation of government requires that Public Officers, Public Officials, and employees be independent, impartial, and responsible to their constituents; that Town decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; that no public official of the Town will gain a personal or pecuniary advantage from his or her work for the Town; and that the public have confidence in the integrity of its Town government and public officials and employees.

ARTICLE 3. Definitions.

For the purposes of this ordinance, the following definitions shall apply:

- a. **"Business Associate"** - means any person who is a partner in a partnership or joint venture or similar association with the Public Officer, Official, or Employee, or any member of that Public Officer, Official, or Employee's immediate family or household; a shareholder or member of a corporation or limited liability company in which the Public Official or an immediate member of the Public Officer, Official, or Employee's immediate family or household is at least a 10% shareholder or member; or any person with whom the Public Officer, Official, or Employee or any member of his or her immediate family or household has a significant commercial relationship.
- b. **"Conflict of interest"** means a direct personal or pecuniary interest of a Public Officer or Public Official, employee, his or her spouse or other immediate family or household member, business associate, employer or employee, in the outcome of a particular matter, policy, cause, proceeding, application or any other matter pending before the Public Officer, Public Official, or employee, or before the public body in which he or she holds office or is employed. "Conflict of interest" does not arise in the case of votes or decisions on matters in which the Public Officer, Public Official, or employee has a personal or pecuniary 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.
- c. **"Emergency"** means an imminent threat or peril to the public health, safety or welfare.

- d. **"Employee"** -includes any person who works for compensation as well as any person who volunteers for the Town.
- e. **"Immediate Family Member or Household Member"** - includes any person with whom the Public Officer, Public Official, or Employee lives/resides, the Public Officer, Public Official, or Employee's spouse, civil union or life partner, children (including stepchildren and foster children), brother, sister, mother, father and any in-laws through such persons.
- f. **"Official act or action"** means any discretionary legislative, administrative or judicial act performed by any elected or appointed officer or employee while acting on behalf of the Town.
- g. **"Private Entity"** means a corporation, partnership, limited partnership, limited liability company, limited liability partnership, joint venture or association, whether organized for profit or not for profit.
- h. **"Public body"** means the Town and its departments, boards, councils, commissions, committees or other instrumentalities.
- i. **"Public interest"** means an interest of the community as a whole, conferred generally upon all residents of the Town.
- j. **"Public Officer" or "Public Official"** means a person elected or appointed to perform executive, administrative, legislative or quasi-judicial functions for the Town whether paid or unpaid, including members of boards, committees and commissions of the Town, as well as any individuals who are candidates for elective office as soon as such individuals file nomination papers with the Town.

Article 4. Obligations of Public Officers, Public Officials, and Employees.

It is the obligation of every Public Officer, Public Official, and employee to support the Constitution of the United States and the Constitution of the State of Vermont. No Public Officer, Public Official, or employee shall violate the provisions of the Vermont Statutes.

Article 5. Fair and Impartial Hearings.

Every citizen, where entitled to a hearing, shall receive a fair and impartial hearing on any matter coming before any Town board or commission or any employee of the Town. No Public Officer, Public Official, or employee shall make any promise or pledge to any person concerning any matter to be heard before a Public Officer, Public Official, or employee except upon fair, impartial and final hearing thereof.

Article 6. Use of Town Property.

No Public Officer, Public Official, or employee shall use or permit the unauthorized use of Town-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as Town policy

for the use of such Public Officer, Public Official, or employee in the conduct of official business, as authorized by the Board of Selectmen or its designee.

Article 7. Confidential Information.

The use of public trust for private gain is in conflict with good government. No Public Officer, Public Official, or employee shall use confidential or advance information obtained by virtue of public office, appointment, or employment for personal or financial advantage.

Article 8. Orders and Policies of Board of Selectmen.

It is the obligation of every Public Officer, Public Official, and employee to carry out the lawful orders and policies of the Selectboard. No Public Officer, Public Official, or employee shall knowingly take any action inconsistent with the lawful orders or policies established by the Selectboard. No Public Officer, Public Official, or employee shall knowingly take any action which would be detrimental to the best interests of the Town.

Article 9. Gifts, Favors, or Special Privileges.

The conduct of public business shall be free of any influence arising from gifts, favors or special privileges. It is the obligation of every Public Officer, Public Official, and employee to refuse personal gifts, favors or special privileges in every instance where such Public Officer, Public Official, or employee reasonably believes such gift, favor or special privilege would not have been extended but for the position of such Public Officer, Public Official, or employee, or where there exists a reasonable belief that the giver's interests are likely to be affected by the actions of the Public Officer, Public Official, or employee, or where the gift is or may reasonably be considered to be designed to influence the actions of the Public Officer, Public Official, or employee. No Public Officer, Public Official, or employee shall seek personal or financial advantage by means of his/her public office, appointment or employment.

Article 10. Advocacy for Private Entities.

For one year from the date of leaving public office, a former Public Officer, Public Official, or employee of the Town shall not advocate for or on behalf of any private entity on a matter pending before any board, commission, or other public body of the Town, including a proposed or potential business relationship between a private entity and the Town.

Article 11. Disqualification.

- a. A Public Officer, Public Official, or employee shall not participate in any official action if he or she has a conflict of interest in the matter under consideration.
- b. A Public Officer, Public Official, or employee shall not personally or through any member of his or her household, business associate, employer or employee represent, appear for, or negotiate in a private capacity on behalf of any person or organization in any cause, proceeding, application or other matter pending before the public body in which the Public Officer, Public Official, or employee holds office or is employed.

- c. In the case of a Public Officer or Public Official who is an appointee, the person or public body which appointed that public officer shall have the authority to order that Public Officer or Public Official to recuse him or herself from the matter.

Article 12. Disclosure.

- a. A Public Officer, Public Official, or employee who has reason to believe that he or she has or may have 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 conflict of interest shall, prior to participating in any official action on the matter, prepare a written statement describing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest.
- b. In the case of a Public Officer or Public Official who is an elected member of a board, commission or other body, the remaining members of that body shall have the authority to inquire of the Public Officer or Public Official about a possible conflict of interest and to suggest or recommend that the member recuse him or herself from the matter. If the member believes that he or she does not have a conflict of interest or believes that he or she is able to act fairly, objectively and in the public interest in spite of an existing conflict of interest, the member shall, prior to participating in the matter, prepare a written statement describing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest.
- c. The written statement required by subsections (a) and (b) above shall be signed by the Public Officer, Public Official, or employee and filed as part of the minutes of the meeting of the public body in which the Public Officer or Public Official holds office or in which the employee participates.

Article 13. Creation of an Ethics Committee.

- a. The Board of Selectmen shall solicit volunteers from among the registered voters who are willing to serve on an ethics committee for a period of one year.
- b. At a public drawing, six names shall be drawn at random from the list of volunteers. The first three of those names shall be the regular members of the Ethics Committee and the remaining three names shall be alternate members of the Ethics Committee. The alternates shall be numbered four through six, in the order that their names were drawn. The list of members and alternates (with their numbers) shall be filed with the Town Clerk along with the date they were selected and the date on which their terms shall expire.
- c. If one of the regular members cannot participate in a particular matter, the first alternate shall fill in and, if that person cannot participate, the second alternate

shall fill in, and so forth through the list of alternates until a three-member Ethics Committee is duly constituted.

- d. The members of the Ethics Committee shall serve without compensation for their services. The Ethics Committee shall not incur any expenses in the performance of its duties without the approval of the Board of Selectmen.
- e. The Town Clerk shall be invited to serve as clerk for the Ethics Committee but shall not be a voting member of the Ethics Committee. Should the Town Clerk be unavailable, then the Town shall provide a person to serve as Clerk of the Ethics Committee. If the matter under consideration involves a complaint against the Town Clerk, the Chair of the Board of Civil Authority or his/her designee shall act as Clerk for the Ethics Committee in that matter.
- f. The committee shall elect a chair and shall establish rules of procedure.

Article 14. Hearing before the Ethics Committee.

- a. Any resident of the Town who believes that a Public Officer, Public Official, or employee should recuse him or herself from a matter because of a conflict of interest or that the Public Officer, Public Official, or employee should provide a disclosure statement regarding his or her conflict of interest in the matter should first communicate such concern to the Chair of the Board of Selectmen. The Chair shall informally address the matter with the Public Officer, Public Official, or employee in question. In the event that the Chair of the Board of Selectmen is the subject of the alleged conflict of interest, then the resident should communicate such concern to the Vice-Chair of the Board of Selectmen. If a satisfactory resolution is not then forthcoming, the resident may file a complaint with the clerk of the Ethics Committee.
- b. Upon receipt of the complaint, the clerk shall set a date for a hearing by the Ethics Committee as soon as possible. Personal notice shall be given to each member of the Ethics Committee, including each alternate, to the complainant and to the person complained about. Notice of the hearing shall be posted in at least three public places within the Town and shall be published in the newspaper of record at least seven days prior to the hearing date.
- c. The Ethics Committee shall consider the matter at a public hearing. Oral testimony 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 recorded.
- d. At the conclusion of the hearing, the Ethics Committee shall go into deliberative session in order to consider all the evidence. The Ethics Committee shall issue a written decision as to whether the Public Officer, Public Official, or employee shall be required to recuse him or herself from the matter and state the reasons for that decision.

Article 15. Enforcement.

- a. Refusal to comply with the decision of the Ethics Committee shall be considered a violation of this ordinance. The Board of Selectmen or the Ethics Committee, acting on behalf of the Town, may seek injunctive relief in superior court which may include, but not be limited to, an order voiding any vote or other action taken by the Public Officer or Public Official in the matter. If the refusal to comply is by a Town employee, then the Board of Selectmen or the Ethics Committee may take appropriate action, including termination of employment.
- b. In addition to any other remedies provided by law, a public officer who violates this ordinance may be publicly censured by the ethics committee.

Article 16. Exception.

The provisions of Article 11 shall not apply if the Board of Selectmen determines that an emergency exists and that actions of the public body otherwise could not take place. In such cases, a Public Officer, Public Official, or employee who has reason to believe he or she has a conflict of interest shall disclose such conflict as provided in Article 12.

Article 17. Severability.

If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.

Article 18. Effective Date.

This Ordinance shall take effect on the day adopted.

ADOPTED this day of , 2008 , at the Town of Shelburne, Vermont.

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JAMES TALLEY, CHAIR

ROBERT ROESSLER

JANE OSBORNE McKNIGHT

WILLIAM SMITH

TIMOTHY PUDVAR