

**TOWN OF SHELBURNE  
ETHICS AND CONFLICT OF INTEREST ORDINANCE**

**THE SELECTBOARD OF THE TOWN OF SHELBURNE HEREBY ORDAIN:**

**ARTICLE 1. Authority.**

Under the authority granted in 24 V.S.A. Chapter 59 and 24 V.S.A. § 2291, the Selectboard 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 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 shall 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, 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 Official or Employee, or any member of that Public 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 Official or Employee's immediate family or household is at least a 10% shareholder or member; or any person with whom the Public 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 Official, Employee, his or her spouse or other immediate family 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 Official, 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 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 Official or Employee lives/resides, the 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 Public Official 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 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 Officials, and Employees.**

It is the obligation of every Public Official and Employee to support the Constitution of the United States and the Constitution of the State of Vermont. No Public Official or Employee shall knowingly 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 Official or Employee shall make any promise or pledge to any person concerning any matter to be heard before a Public Official or Employee except upon fair, impartial and final hearing thereof.

**ARTICLE 6. Use of Town Property.**

No 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, as provided pursuant to Town policy for the use of such Public Official or Employee in the conduct of official business, or as otherwise authorized by a written policy of the Selectboard or its designee.

**ARTICLE 7. Confidential Information.**

The use of public trust for private gain is in conflict with good government. No 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 Selectboard.**

It is the obligation of every Public Official and Employee to carry out the lawful orders and policies of the Selectboard. No Public Official or Employee shall knowingly take any action inconsistent with the lawful orders or policies established by the Selectboard. No 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 Official and Employee to refuse personal gifts, favors or special privileges in every instance where such Public Official or Employee reasonably believes such gift, favor or special privilege would not have been extended but for the position of such 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 Official or Employee, or where the gift is or may reasonably be considered to be designed to influence the actions of the Public Official or Employee. Notwithstanding the foregoing, a Public Official or Employee may, in any one fiscal year, accept a single personal gift, favor or special privilege from any one person or entity so long as the reasonable value thereof does not exceed \$25.00 and so long as all gifts, favors and privileges from all sources during that fiscal year do not exceed \$100.00 in value. No Public Official or Employee shall seek personal or financial advantage by means of his/her public office, appointment or employment.

**ARTICLE 10. Disqualification.**

- a. A 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 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 Official or Employee holds office or is employed.

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

**ARTICLE 11. Disclosure.**

- a. A Public Official or Employee who has reason to believe that he or she has or may have a conflict of interest or is acting on behalf of a private entity, 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 or make a written or oral public 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 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 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 or make a written or oral public 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. If a Public Official or Employee prepares a written statement under subsections (a) and (b) above, it shall be signed by the Public Official or Employee and filed as part of the minutes of the meeting of the public body in which the Public Official holds office or in which the employee participates.

**ARTICLE 12. Creation of an Ethics Committee.**

- a. The Selectboard shall solicit volunteers from among the registered voters who are willing to serve on an Ethics Committee for a period of one year.
- b. From those volunteers, the Selectboard shall select six qualified persons, of which three shall be appointed the regular members of the Ethics Committee and the remaining three persons shall be appointed the alternate members of the Ethics Committee. The alternates shall be ranked first, second, and third, in their order of selection by the Selectboard. The list of members and alternates (with their ranking) 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 or more 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 prior approval of the Selectboard.
- e. The Selectboard shall invite the Town Clerk to serve as Clerk for and a non-voting member of the Ethics Committee. Should the Town Clerk be unavailable, then the Selectboard shall appoint 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 Ethics Committee shall elect a chair chosen from the three regular members, and shall establish rules of procedure.
- g. Hearings conducted by the Ethics Committee shall be conducted in accordance with 24 V.S.A. §§ 1203-1209.

#### **ARTICLE 13. Hearing before the Ethics Committee.**

- a. Any resident of the Town who believes that a Public Official should: (i) recuse him or herself from a matter because of a conflict of interest; or (ii) that the Public Official should provide a disclosure statement regarding his or her conflict of interest in the matter; or (iii) is otherwise engaged in conduct proscribed by this Ordinance should first communicate such concern to the Chair of the Selectboard. The Chair shall informally address the matter with the Public Official in question. In the event that the Chair of the Selectboard is the subject of the alleged conflict of interest, then the resident should communicate such concern to the Vice-Chair of the Selectboard. If a satisfactory resolution is not then forthcoming, the resident may file a complaint with the Clerk of the Ethics Committee.
- b. Any resident of the Town who believes that a Town Employee should: (i) recuse him or herself from a matter because of a conflict of interest; or (ii) that the employee should provide a disclosure statement regarding his or her conflict of interest in the matter; or (iii) is otherwise engaged in conduct proscribed by this Ordinance should first communicate such concern to the Selectboard Chair who in turn will communicate such concern to the Town Manager. The Town Manager shall then investigate the complaint, address the matter with the Employee in question, and report to the complainant and the Selectboard Chair his findings and action taken, if any. If disciplinary action is required, the matter

will follow the procedures set forth in the Town of Shelburne Personnel Manual and/or the labor Agreement with the local bargaining unit.

- c. Upon receipt of the complaint, concerning a Public Official, the Ethics Committee shall undertake a preliminary investigation of the complaint to determine if there is probable cause to believe that a violation has occurred. If probable cause is not found by the Ethics Committee, the file shall be closed and sealed. Upon finding probable cause that a violation has occurred, the Ethics Committee shall so notify the Chair of the Selectboard and 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.
- d. The Ethics Committee shall consider the matter at a public hearing. Oral or written 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.
- e. 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 Official shall be required to (i) recuse him or herself from the matter in question due to a conflict of interest; or (ii) provide a disclosure statement concerning a conflict of interest; or (iii) cease and desist from conduct otherwise proscribed by this Ordinance, and shall state the reasons for that decision.

#### **ARTICLE 14. Enforcement.**

- a. Refusal to comply with the decision of the Ethics Committee shall be considered a violation of this ordinance. The Selectboard, 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 or Public Official in the matter.
- 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 15. Exception.**

The provisions of Article 10 shall not apply if the Selectboard determines that an emergency exists and that actions of the public body otherwise could not take place. In such cases, a 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 11.

**ARTICLE 16. 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.

**ADOPTED** this 28th day of April, 2009, at the Town of Shelburne, Vermont.

\_\_\_\_\_  
Robert Roesler, Chair

\_\_\_\_\_  
William Smith

\_\_\_\_\_  
Timothy D. Pudvar

\_\_\_\_\_  
Gary von Stange

\_\_\_\_\_  
Albert Gobeilla