

Town of Shelburne Ethics Committee Rules of Procedure¹

Pursuant to the authority of Article 11.B.4 of the Town of Shelburne Conflicts of Interest Ordinance (Ordinance), as revised by the Selectboard on December 11, 2018 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 and adopts the following Rules of Procedure. Consistent with the proper scope of the rulemaking process, these Rules make no changes in substantive rights. If these Rules conflict with the Ordinance, the Ordinance shall control.

A. Conduct of Meetings

Section A of these Rules governs the procedure in all meetings of the Committee, both quasi-judicial and non-quasi-judicial.

- 1) **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. By law, (Articles 11. C. 2 and 3 of the Ordinance), a complaint remains confidential until a determination has been made that there is a reasonable likelihood that a violation has occurred; by law (Article 11.C.5.a of the Ordinance), the Committee may go into deliberative session to consider evidence and to render a decision.

a) Administrative Meetings:

- 1) 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.
- 2) At administrative meetings, members of the public shall be afforded reasonable opportunity to express opinions about matters considered by the Committee, other than pending quasi-judicial proceedings, so long as order and mutual respect are maintained according to these Rules.

b) Quasi-Judicial Proceedings:

- 1) **Quasi-Judicial Proceedings:** The Committee may hold quasi-judicial proceedings to hear and resolve complaints filed under Article 11.C of the Ordinance regarding public officials.

¹ These Rules were adopted by the Ethics Committee on January 30, 2019 following public hearings held on December 27, 2018 and January 30, 2019. They revise the Rules originally adopted by the Committee on August 15, 2015 and revised on August 17, 2017.

- 2) At a hearing on a complaint, the person who filed the complaint (the complainant) and the person against whom the complaint was filed (the respondent), and witnesses called by them may testify under oath at the hearing. Other members of the public may not express opinions nor ask questions at the hearing.
- 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.
- 4) **Election of the Chair and Vice-Chair:** Pursuant to Article 11.A of the Ordinance, the Committee shall hold an organizational meeting and elect a Chair and Vice-Chair in May of each year.
- 5) **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).
- 6) **Participation by Members:** If a regular member of the Committee cannot participate in a particular matter, an alternate member designated by the Chair shall fill in as set forth in Article 11.A of the Ordinance and, in the case of a quasi-judicial proceeding, shall continue to participate until the proceeding has concluded. 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 11.C.6 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.
- 7) **Conflicts of Interest:** Committee member participation, disclosure of conflicts of interest, recusal and steps to take following recusal shall be governed by Articles 6, 7, 8 and 10 of the Ordinance.

B. Quasi-Judicial Hearings before the Ethics Committee

Section B of these Rules applies solely to quasi-judicial proceedings involving complaints filed pursuant to Article 11.C.1 of the Ordinance. Section B provides a clear process for complainants, respondents, the Clerk and the Ethics Committee to follow and should be construed to secure the just, speedy and inexpensive determination of every complaint filed.

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

- a) Pursuant to Article 11.C.1 of the Ordinance, a person who believes that a public official has engaged in conduct prohibited by Article 5 of the Ordinance may file a complaint with the Clerk of the Committee within 60 days of the person having discovered the matter of concern. The complaint may request sanctions authorized by Article 11.C.5 of the Ordinance and/or

disclosure or recusal in accordance with Articles 6 or 8 of the Ordinance. Pursuant to Article 11.C.2 of the Ordinance, the complainant should use the complaint affidavit form attached to these Rules, or one substantially similar to it, to file a signed, sworn statement based on the complainant's personal information. The complaint and affidavit shall be confidential until a determination by the Committee of a reasonable likelihood to believe that a violation has occurred under Article 11.C.3 of the Ordinance.

- 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 a reasonable likelihood pursuant to Article 11.C.2 of the Ordinance. As provided in Article 11.C.3.b of the Ordinance, if the Committee finds no reasonable likelihood, 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 Reasonable Likelihood Investigation: Upon receipt of a complaint, the Clerk of the Committee shall inform the Chair of the Committee of the filing and send confidential copies of the complaint to the Committee Members. The Chair shall as expeditiously as possible, but no later than 15 days from the filing of the complaint, convene the regular and alternate members of the Committee to undertake a confidential preliminary investigation in a closed, deliberative session. Pursuant to Article 11.C.3.a of the Ordinance, 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 a reasonable likelihood to believe that a violation has occurred, and that the public official has committed it. As provided in Article 11.C.3.a of the Ordinance, the preliminary investigation may include interviews with the complainant, the respondent, or both, under oath, in the closed session. If the Committee chooses to interview the respondent, the Committee shall provide the respondent with a copy of the complaint and affidavit sufficiently in advance of the interview to enable the respondent to prepare for the interview. See Ordinance Article 11.C.3.a.

- 1) The Committee may meet in closed, deliberative sessions in person, telephonically, and/or electronically from time to time after its investigation without public notice.²
- 2) Pursuant to Article 11.C.3.b of the Ordinance, if a reasonable likelihood is not found, the Chair of the Committee shall notify the complainant and the respondent 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 respondent. The Chair shall inform the respondent that a reasonable likelihood of a violation was not found, and that the complaint may be viewed in the Clerk's office.
- 3) Pursuant to Article 11.C.3.c of the Ordinance, if a reasonable likelihood is found, the Committee will issue a written decision, which will be effective upon the prompt delivery of a copy of the decision to the complainant and the respondent, at which time the Clerk of the Committee shall:
 - a. Promptly post the written decision on the Town website; and
 - b. Set the matter for a public hearing before the Committee as soon as possible but, except for good cause, in no event later than 30 days from the finding of a reasonable likelihood.

2) Notice of the Hearing on the Complaint

- a) The Clerk shall provide personal notice of the hearing in accordance with Article 11.C.3.c of the Ordinance to each member and alternate of the Committee, to the complainant, and to the respondent. Notice of the hearing be posted in accordance with Vermont's Open Meeting Law.
- b) The Clerk shall provide the copy of the complaint and a copy of the Ordinance and these Rules to the respondent by delivering the documents to the respondent in person. 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

² See 1 VSA Section 312(e). The Open Meeting Law does not extend to deliberations of any public body in connection with a quasi-judicial proceeding.

3) 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 and alternate members.

4) Mediation

As authorized by Article 11.B.2.b of the Ordinance, the Committee may encourage the use of a mediator where the complainant and respondent are amenable to mediation and may appoint one of its members or other qualified person to mediate the complaint for Committee approval, where the complainant and respondent agree. In accordance with Article 11.b.3 of the Ordinance, a Committee member who mediates a complaint or a potential complaint shall recuse him or herself from any hearing related to the complaint.

5) The Hearing

a) In accordance with Article 11.C.4 of the Ordinance, the regular members of the Committee shall conduct a public hearing on the matter raised by the complaint in accordance with the MAPA and these Rules of Procedure. The Chair of the Committee shall preside at the hearing. If the Chair is unavailable, the Vice-Chair shall preside. 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 the 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. Each shall likewise send copies of the same to each other. 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. Pursuant to Article 11.C.5.a of the Ordinance, 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) Testimony. Pursuant to Article 11.C.4 of the Ordinance, 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. The Chair may examine witnesses with the objective of laying out the evidence pertaining to the complaint reasonably available to both parties. The Chair may invite other members of the Committee to ask questions and may invite the parties or their attorneys to supplement their testimony, subject to the Chair's authority to protect witnesses against unfair imposition and to avoid needless repetition.

g) Evidence.

1) The Chair may exclude any irrelevant, immaterial, unreliable or unnecessarily repetitive evidence. Evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Vermont Rules of Evidence are inapplicable except for the rules related to privilege.

2) 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 hearing.

3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available.

h) 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 to identify any witnesses whom the complainant or respondent intends to call.

3) Ask the complainant and respondent, and any identified 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?

4) Each witness shall provide his or her contact information to the Clerk.

5) 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.

6) 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.

7) Conduct an examination of the parties and witnesses in accordance with the other provisions of this Rule 5.

8) Invite final comments from the complainant.

9) Invite final comments from the respondent.

10) 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.

11) Close the hearing and announce that the Committee will begin to deliberate in private and will issue a written decision within 15 days.

i) Deliberative Session

1) Pursuant to Article 11.C.5.a of the Ordinance, at the conclusion of the hearing, the Committee members who participated in the hearing, including any alternates who were designated by the Chair to participate in the hearing, but no more than a total of five members and alternate members of the Committee, may meet in closed, deliberative sessions in person, telephonically, and/or electronically from time to time in order to consider all the evidence and render a written decision.³

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 Committee 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 See 1 VSA Section 312(e). The Open Meeting Law does not extend to deliberations of any public body in connection with a quasi-judicial proceeding.

- 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) The Chair may permit Committee members who have not attended every session of the hearing to participate in the decision only if they have watched and listened to the video recording of the hearing they did not attend (or read transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.
- 5) The Committee shall issue a written decision which will be effective upon the prompt delivery of a copy of the decision to the complainant and the respondent, at which time the Clerk of the Committee shall promptly post the written decision on the Town website.
- 6) If the Committee finds a violation, the Committee shall decide whether to sanction the public official as authorized by Article 11.C.5.b of the Ordinance and include the sanction in the decision.

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 website and paper copies be made available at the Town Clerk’s office at no charge.

ADOPTED: Shelburne Ethics Committee

January 30, 2019

Lee Suskin, Chair

Tom Little, Vice-Chair

Gwen Webster

Michel Ashooh

William Deming

Peter Gadue - Alternate

Complaint and Affidavit Form

Respondent: _____
(Name of Public Official against whom the complaint is filed)

Respondent's (Public Official's) Position with the Town: _____

Complainant (Person filing the complaint)

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 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. Actions Requested

Check one or more of the following.

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

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

Rules of Procedure – As Revised Effective January 30, 2019

- 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
- attend ethics training focused on the Ordinance

- I request that the Committee:
- publicly reprimand the Public Official
 - publicly censure the Public Official

- I request that the Committee:
- with the advice of the Selectboard, direct the public official to cease and desist from the conduct that violated the Ordinance;
 - 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

Complaint #: _____

Respondent's Name _____
(Name of Public Official whom the complaint was filed against)

Respondent's (Public Official's) Position with the Town

Complainant's Name: _____

1. Admission:

___ I admit that I engaged in conduct prohibited by the Shelburne 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 to attend ethics training focused on the Ordinance.

___ I agree to cease and desist from the conduct that violated the Ordinance.

___ 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 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