

Shelburne Ethics Committee

**Overview of New Ethics and Conflict of Interest Ordinance
April 13, 2015**

Note: This overviews just that – a condensed commentary of the ordinance. It is no substitute for careful review and study of the Shelburne Ethics and Conflict of Interest Ordinance.

1. Background; Purpose.

The Ethics Committee was created in 2009 and replaced by a substantially revised Ethics and Conflict of Interest Ordinance adopted at Town Meeting in 2015. A copy of the new ordinance is attached to this overview. The new ordinance establishes standards of ethical conduct for town officials.

The purpose of the ordinance is to establish standards of conduct and guidance so that all decisions made by public officials are based on the best interest of the Town, and not in the personal or financial interests of public officials.

2. Definitions. Here are some key definitions from the ordinance:

“Conflict of interest” means 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 fourth degree of consanguinity or affinity, business associate, employer or employee, in the outcome of any matter pending before the public official or before the public body on which he or she holds office. “Conflict of interest” does not arise in the case of votes or decisions on matters in which the public official has a personal or pecuniary interest in the outcome no greater than that of other persons generally affected by the decision.

“Appearance of a conflict of interest” means the impression that a reasonable person might have, after full disclosure of the facts, that a public official’s judgment might be significantly influenced by outside interests, even though there is no actual conflict of interest.

“Quasi-Judicial proceeding” means a contested hearing in which the legal rights of one or more persons are adjudicated. Examples of quasi-judicial hearings are hearings conducted by the Development Review Board, the Board of Civil Authority, and some hearings conducted by the Selectboard.

3. Standards of Conduct.

In general, the ordinance’s standards of conduct make it a violation to

- Use town property for personal convenience or profit, unless authorized to do so;
- With some exceptions, accept a gift where the gift may reasonably be considered to be given to influence official actions;
- In quasi-judicial proceedings, with no exceptions, accept a gift where the gift may reasonably be considered to be given to influence official actions;

4. Disclosure and Participation in Proceedings which are not Quasi-Judicial (Article 9).

In non-quasi-judicial proceedings, a public official may participate in a meeting in spite of a conflict of interest or its appearance if prior to participating, the public official makes a public statement, included in the minutes, describing the conflict and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Then, the other members of a board or commission may suggest or recommend that the member recuse him or herself from the matter.

5. Disqualification and Recusal in Proceedings which are not Quasi-Judicial (Article 10).

A public official who is disqualified from participating in any non-quasi-judicial matter because of a conflict of interest must recuse him or herself and take the following steps:

- 1) Make a simple, brief statement of the underlying facts supporting recusal.
- 2) Refrain from attempting to influence others' decision or actions.
- 3) Leave the table and leave the room while the matter is being discussed and voted upon.
- 4) At any time prior to the adjournment of the meeting, the public official may submit a written public statement to the public body which shall be included in the minutes of the meeting. Otherwise, the public official may participate in the hearing or proceeding only through a representative (not withstanding anything to the contrary in subsection (b) of this Article) or when requested by the public body.
- 5) Refrain, him or herself or through a representative from advocating for a position or discussing the matter with any other public official or employee outside of a public hearing except when requested by the public body.

6. Required Disclosures in Quasi-Judicial Proceedings (Articles 11 and 12).

Immediately prior to taking up each matter on the agenda of a quasi-judicial proceeding, the Chair must direct all members of the board or commission (including the chair) to disclose all conflicts of interest, appearances of conflicts of interest and any ex parte communications and permit any person to request such disclosure.

7. Required Disqualification and Recusal in Quasi-Judicial Proceedings (Article 13).

These rules are more stringent than those for non-quasi-judicial proceedings. Where there is a conflict of interest, the member has no option to decide that he or she can rise above the conflict and hear and decide the matter.

8. Participation in Quasi-Judicial Proceedings Despite the Appearance of a Conflict

A public official may participate in a meeting in spite of an appearance of a conflict if prior to participating, the public official makes a public statement, included in the minutes, describing the conflict and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Then, the other members of a board or commission may suggest or recommend that the member recuse him or herself from the matter

A public official may not participate in a quasi-judicial proceeding if he or she has publicly displayed a prejudgment of the merits of a particular matter pending before the public body unless prior to participating in a hearing on the matter, her or she makes a written or oral public statement for inclusion in the minutes describing why he or she is able to act in the matter fairly, objectively and in the public interest.

A public official who recuses him or herself must take the same steps following his or her recusal that are described in Paragraph 5 above.

9. The Complaint Process

- Prior to Filing a Complaint - Any person 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 a conflict of interest or the appearance of a conflict of interest in the matter; or (iii) is otherwise engaged in conduct proscribed by this ordinance should first communicate the concern to the Chair of the Selectboard (or Vice-Chair, if the complaint is against the Chair..
- The Chair must then informally address the matter with the Public Official in question and in particular discuss with the person why the person believes that the public official's action is a conflict of interest or the appearance of a conflict of interest. If the matter is not resolved to the concerned person's satisfaction as the result of these discussions, the person resident may file a complaint with the Clerk of the Ethics Committee;
- A person may file a complaint with the Clerk of the Ethics Committee directly at any time within 60 days of discovering the matter of concern.
- Once a complaint is filed, the Ethics Committee must conduct a confidential preliminary investigation to determine if there is probable cause to believe that a violation has occurred.
- If probable cause is not found, the Chair notifies the person who filed the complaint that probable cause was not found. Then the complaint and file, to the extent they contain information designated confidential by law, personal documents about a public official, or information relating to the evaluation or discipline of a public official, shall be closed, and sealed and exempt from disclosure under the Title 1, Section 317(c)(1) and (7) of the Vermont public records laws, provided, however, that the public official in question may have access to the file.
- Upon finding probable cause, the Chair of the Ethics Committee matter must be set for hearing as soon as possible.. The Ethics Committee must then issue a written decision as soon as possible.

10. Additional Provisions.

Enforcement. Refusal to comply with the decision of the Ethics Committee is a violation of the ordinance enabling the Selectboard to seek a court order voiding any vote or other action taken by the public official in the matter. In addition, the Ethics Committee publicly censure a public official found to have violated the ordinance.

Exception – Emergencies. Certain provisions of the ordinance do not apply if the Selectboard determines that a public emergency (as defined by the ordinance) exists and that actions of the public official or body otherwise could not take place. His could apply where conflicted members of a board or commission are needed in the emergency to make a quorum.