



## **REPORT OF THE VERMONT STATE ETHICS COMMISSION: A PROPOSED MUNICIPAL ETHICS FRAMEWORK for VERMONT**

January 15, 2024

### **Executive Summary**

This report, mandated by the legislature in 2023, presents the State Ethics Commission's recommendations for a municipal ethics framework in Vermont. In the preparation of the report, the Commission researched the municipal laws and policies employed by other states, conducted outreach, and received valuable input from a variety of municipal ethics stakeholders in Vermont.

Based on this research, input, and the Commission's analysis, the Commission recommends the following for immediate action by the legislature:

1. The General Assembly should enact a uniform code of ethics applicable to all elected and appointed municipal officials.
2. For consistency and interpretative purposes, the terms and definitions of such a uniform code should closely adhere to the State Code of Ethics, which has been vetted and tested in the Vermont context, with some adjustments to accommodate unique situations faced by municipalities.
3. To assist municipalities in complying with a municipal code of ethics, particularly municipalities with limited resources, ethics training should be required for all municipal officials subject to the code. The Ethics Commission should be designated as an approved training provider for the code of ethics.
4. To further assist municipalities in complying with any municipal code of ethics, the jurisdiction of the State Ethics Commission should be expanded to allow it to provide confidential ethics guidance, advice, and complaint services to municipalities.
5. Whistleblower protections, which already exist at the State level, should be expanded to protect those who raise ethics issues at the municipal level.

6. Each municipality should appoint an “ethics liaison” to coordinate with the Ethics Commission with respect to training and administration of the ethics code in the municipality. Municipal liaisons will expedite and enhance the ability of the Commission to provide education, training and advice to the appropriate officials in each municipality.

The Commission looks forward to working with the legislature, and other stakeholders, toward achieving the above goals.

## Introduction

In 2023 the General Assembly enacted, and the Governor signed, Act 53, “an act relating to boards and commissions.” Section 139a of the act requires the State Ethics Commission to prepare a report on a proposed municipal ethics framework for Vermont.

The authorizing language states:

*On or before January 15, 2024, the State Ethics Commission shall report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations with its recommendations for creating a framework for municipal ethics in Vermont. The report shall include a summary of the issues related to creating a framework for municipal ethics in Vermont and a summary of any relevant input received by the Commission in drafting the report. The report shall include specific recommendations on how to best provide cities and towns with informational resources about basic ethics practices. In drafting the report, the Commission may consult with any person it deems necessary to conduct a full and complete analysis of the issue of municipal ethics, including the Vermont League of Cities and Towns and the Office of the Secretary of State.*

## Background

### Current Status of Municipal Ethics in Vermont

#### A. Vermont Law

Vermont currently lacks a comprehensive statewide municipal ethics framework. While most municipalities have adopted conflict of interest policies, the definitions of “conflict of interest,” and the persons to whom the policies apply, vary significantly across the state’s municipalities. Thus, there is little consistency among the towns and cities as to what constitutes a “conflict”, how conflicts are addressed, and enforcement options when it is determined that a conflict exists.<sup>1</sup>

Additionally, no single entity is authorized to provide uniform ethics advice or education to all individuals who seek such services.

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<sup>1</sup> In 2017, the General Assembly, took this further, and passed S. 8 (Act 79), which amended 24 V.S.A. § 1984 to require that each municipality adopt a conflict of interest policy by July 1, 2019.<sup>1</sup> The mandate requires municipalities to adopt a “conflict of interest prohibition.” However, municipalities may adopt their own definitions of “conflict of interest” and may decide which elected or appointed officials are covered by the policy. Each municipality is also authorized to create a “method of enforcement” for its chosen policy. There is no statutory penalty for failure to develop a conflict of interest policy.

The state also lacks a uniform avenue of recourse for citizens who submit complaints regarding municipal ethics, including violations of conflicts of interest policies. At present, if a municipal official refuses to abide by a local ethics rule, a citizen's sole remedy is to file a lawsuit (if the citizen's rights or property have been affected) or, if the official is an elected officer, wait until the next election.

However, there is Vermont precedent when it comes to enacting uniform "good government" laws, applicable to municipalities, at the state level. For example, in addition to the requirement that all municipalities adopt a conflict of interest policy, the state's open meeting laws and public records laws are applied uniformly to all municipalities. Similarly, the state's campaign finance laws are universally applicable to municipalities.

In addition to the above-mentioned laws, other Vermont statutes that relate to ethics at the municipal level include:

**i. Conflicts of Interest – Incompatible Offices.**

Certain municipal officials are prohibited from simultaneously holding specific other municipal offices, largely due to inherent conflicts of interest. 17 V.S.A. § 2647.<sup>2</sup> For example, a "selectboard member or school director shall not be first constable, collector of taxes, town treasurer, assistant town treasurer, auditor, or town agent."<sup>3</sup>

**ii. Financial Controls.**

- a. Municipalities must conduct annual financial audits. 24 V.S.A. §§ 1681 et seq.
- b. Municipal treasurers are required to annually submit a financial controls checklist to their respective select boards. 32 V.S.A. § 163 (11); 16 V.S.A. § 11 (23); 24 V.S.A. § 1571. The checklist form, developed by the State Auditor, provides a variety of questions on how accounts are kept and used by the treasurers and superintendents. Other statutory provisions give specific duties to specific municipal officers regarding financial controls.<sup>4</sup>
- c. Superintendents of schools are also required to complete the State Auditor's checklist and submit it annually to the supervisory union board and to all member district boards. 16 V.S.A. § 242a(a).

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<sup>2</sup> The statute relating to incompatible offices does not apply to municipalities with 25 or fewer voters. 17 V.S.A. § 2648.

<sup>3</sup> See also, 24 V.S.A. § 1622 (assistant clerk of selectboard prohibited from holding certain other offices under certain conditions).

<sup>4</sup> For example, municipal tax collectors must settle accounts with municipal treasurer(s) annually, or they become ineligible for re-election. 24 V.S.A. § 1532. Similarly, all town officers – upon request – must submit books for audit or may be personally penalized \$100 per day, as well as being ineligible to run for re-election. 24 V.S.A. § 1686 (c).

### iii. **Special Rules for Specific Municipal Offices.**

- a. *School Boards.* Municipal school boards are subject to several ethics provisions not applicable to other offices. School boards are required to adopt a conflict of interest policy. 16 V.S.A. § 563 (20). School board members are subject to specific gift prohibitions. 16 V.S.A. 557. School boards are required to put out to bid all purchases over \$115,000. 16 V.S.A. 559.
- b. *Appropriate Municipal Panels.* “Appropriate municipal panels,” such as municipal development review boards and boards of adjustment, are required to adopt “rules of ethics with respect to conflict of interests.” 24 V.S.A. § 4461. There is currently no statutory penalty for the failure to do so.
- c. *Advisory Commissions and Committees.* Members of advisory committees and commissions “shall comply with ethics policies and ordinances adopted by the town.” 24 V.S.A. § 4433 (2) (D).
- d. *Quasi-Judicial Functions.* When a municipal body is executing a quasi-judicial function – such as zoning boards, planning commissions, boards of civil authority, and selectboards when they act in a quasi-judicial capacity – such body is subject to the conflict of interest provision under 12 V.S.A. § 61<sup>5</sup>; 24 V.S.A. § 1203.

The above all demonstrate the legislature’s willingness to identify areas where ethics and accountability are necessary at the municipal level, and to take specific action as each situation arose. However, the growing number of laws addressing specific municipal issues underscores the need for a uniform policy that can extend to all municipal officials.

### B. Municipal Ethics Stakeholders

#### i. Secretary of State

The Vermont Secretary of State plays a role in the administration of certain municipal functions. Although municipal elections are administered at the local level, the Secretary of State “works closely with Town, City and County clerks across Vermont to ensure the smooth administration of Vermont's local, state, and federal elections.”<sup>6</sup> The Secretary of State is responsible for the administration of campaign finance laws at the municipal level. All candidates for office,

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<sup>5</sup> This provision provides that a person “shall not act in a judicial capacity in or as trier of a cause or matter in which he or she . . . is interested in the event of such cause or matter, or is related to either party, if a natural person, within the fourth degree of consanguinity or affinity, or if a corporation, to any officer, director, trustee, or agent thereof within such degree . . . but he or she shall not be disqualified from so acting in a cause or matter in which a railroad corporation is a party by reason of being a taxpayer in a town which owns stock in such railroad corporation.”

<sup>6</sup> See, e.g., Secretary of State website (<https://sos.vermont.gov/elections/about>).

including those at the municipal level, must file campaign finance disclosure reports with the Secretary of State. In addition, the Secretary of State provides a 2008 guide for municipal ethics, along with a model conflict of interest policy, which is available on its website.<sup>7</sup> However, the Secretary of State has no authority to enforce campaign finance law at the local level and refers such matters to the Attorney General.<sup>8</sup>

The Office of the Secretary of State has in the past noted the importance of addressing municipal ethics at the state level. In 2017, when the legislature was considering establishing the Ethics Commission, then Secretary of State Jim Condos came out strongly in favor of giving the Commission jurisdiction over municipalities along with state jurisdiction.<sup>9</sup> He noted the vast majority of ethics inquiries and complaints received by the Secretary were about municipal officials.

The ethics laws passed in 2017 tasked the Secretary with receiving municipal ethics complaints for data collection purposes, but did not provide the Secretary, or any other entity, with the authority to investigate ethics complaints, provide ethics advice, enforce local ethics ordinances, or do anything else of substance regarding complaints about municipal officials. Although the Secretary of State's Office has no substantive authority to address ethics violations at the local level, the Secretary of State has received over three hundred municipal ethics complaints over the past five years.

#### ii. Vermont League of Cities and Towns

The Vermont League of Cities and Towns ("VLCT") is a non-governmental, nonprofit, nonpartisan organization that provides education, support, expertise, and other services to municipal governments in Vermont, including on the issue of governmental ethics. According to VLCT, all 247 cities and towns in Vermont are members. VLCT, in 2018, developed a Model Policy Regarding Conflicts of Interest and Ethical Conduct, which is available to all VLCT members.

The Vermont Ethics Commission solicited and received input from VLCT regarding a proposed municipal ethics framework for Vermont.<sup>10</sup>

#### iii. Municipal Residents

In the fall and early winter of 2023, the Commission conducted "listening sessions" and solicited public comment from Vermont residents on the issue of municipal ethics. This outreach

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<sup>7</sup> See [https://outside.vermont.gov/dept/sos/Municipal%20Division/drawing\\_clear\\_lines.pdf](https://outside.vermont.gov/dept/sos/Municipal%20Division/drawing_clear_lines.pdf)

<sup>8</sup> Id.

<sup>9</sup> See, e.g., [testimony of Secretary Condos on legislative priorities for 2017](#); see also, January 22, 2017 [Op-Ed by Jim Condos in VTDigger.](#)

<sup>10</sup> See VLCT Letter of December 8, 2023 (attached hereto).

received a wide geographical response.<sup>11</sup> Among the feedback received, there was strong support for a municipal code of ethics code, as well for an independent enforcement authority.

Comments and input from citizens most frequently fell into three categories:

a. Conflicts of Interest

There was significant concern that municipal officials frequently participate in decision-making even though they may have an interest in the matter. Multiple participants complained that, even when a conflict of interest was known (or brought to the attention of the official), the official refused to recuse from the matter. The most frequently mentioned officials were those on either select boards, or on development review boards.

b. Lack of Disclosure

There was concern expressed that certain officials were not disclosing when a member had a conflict of interest.<sup>12</sup> Again, the most frequently cited situations were those involving select boards or development review boards.

c. Retaliation

Many commenters expressed concern that, when they raised issues relating to perceived conflicts of interest, they were retaliated against by municipal officials. This has led to a “chilling effect” where residents were afraid to raise such matters at the local level. Members of the public expressed a need for protection from such retaliation, and the need for an impartial arbiter of ethics issues outside of local government.

d. Lack of Enforcement of Existing Rules

Several members of the public noted the lack of enforcement of existing rules and laws as a concern, particularly the Open Meeting Law.

In addition to the categorized described above, members of the public expressed a range of concerns related to municipal ethics including nepotism, cronyism, sexism, bullying, discouragement of public involvement, a lack of accountability, lack of training for municipal officials, and a lack of recourse to address these issues – particularly in smaller municipalities with fewer resources.

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<sup>11</sup> Although some participants did not disclose their localities, the Commission received oral or written comments from current or former residents of the following towns and cities: Brandon, Burlington, Charlotte, Chittenden, Colchester, Middlebury, Essex, Essex Junction, Hartford, Irasburg, Milton, Orange, Plymouth, Richmond, Royalton, Rutland, Shelburne, South Burlington, Waterbury Center, Waterford, Westfield, Weston, Westford, and Westmore.

<sup>12</sup> There was also significant concern that disclosure was lacking with respect to general information about decision-making. However, the Commission recognizes – and made clear – that such non-disclosure related to the state’s public records and open meetings laws, which are not subject to the Commission’s jurisdiction.

Many of the comments received reported multiple ethical concerns and suggested that these issues are connected – for example instances of nepotism or cronyism may go hand-in-hand with discouraging public engagement, and that a lack of public recourse furthers a lack of accountability. Some of these accounts included members of the public who have chosen to step down from service, or refused to run again, after experiencing one or more of these concerns.

- “There doesn't appear to be a resource for elected officials to get advice and guidance on their particular issues, unless they go to their municipal attorney, which costs money and means their board and potentially the public will find out about it. There are no whistleblower protections for elected officials who point out potential ethical violations in a community, especially a small one...And the price for challenging a decision, a fellow board member, or a staff member can be very high.”
- “Looking back, I am surprised at the number of times something like this has happened in our small town in just two years...repeated nepotism and favoritism with regards to commission/committee appointments, resulting in applicants with relevant experience being passed over for those with no experience but ties to Selectboard members”
- “With so few women serving on local boards (only about a third of selectboard members are women), they are often the newest member of a board, and as such are regarded as newcomers and troublemakers when they dare question someone or some action.”
- “I can speak for the majority of my neighbors to say that residents are intimidated to risk speaking directly to a Selectboard when the atmosphere created is one of bullying, badmouthing, and usurping accountability.”
- “Open meeting rules are used to encumber communication in some cases and flouted in others.”
- “I think there should be more oversight when comes to government official conflict of interest. I see too many officials who get friendly with developers...”
- “Generally, I do believe elected officials act ethically and understand the importance of doing so. But the small amount of people who are willing to abuse their office paints all electeds with their questionable ethics.”
- “I am more concerned about state level ethical violations than municipal.”
- Improvement is needed, but not just in a specific category of "ethics codes." I believe that Vermont's public records and Public Right To Know laws are weak and seem designed to protect state/municipal bodies. If a member of the public has an issue with the failure of



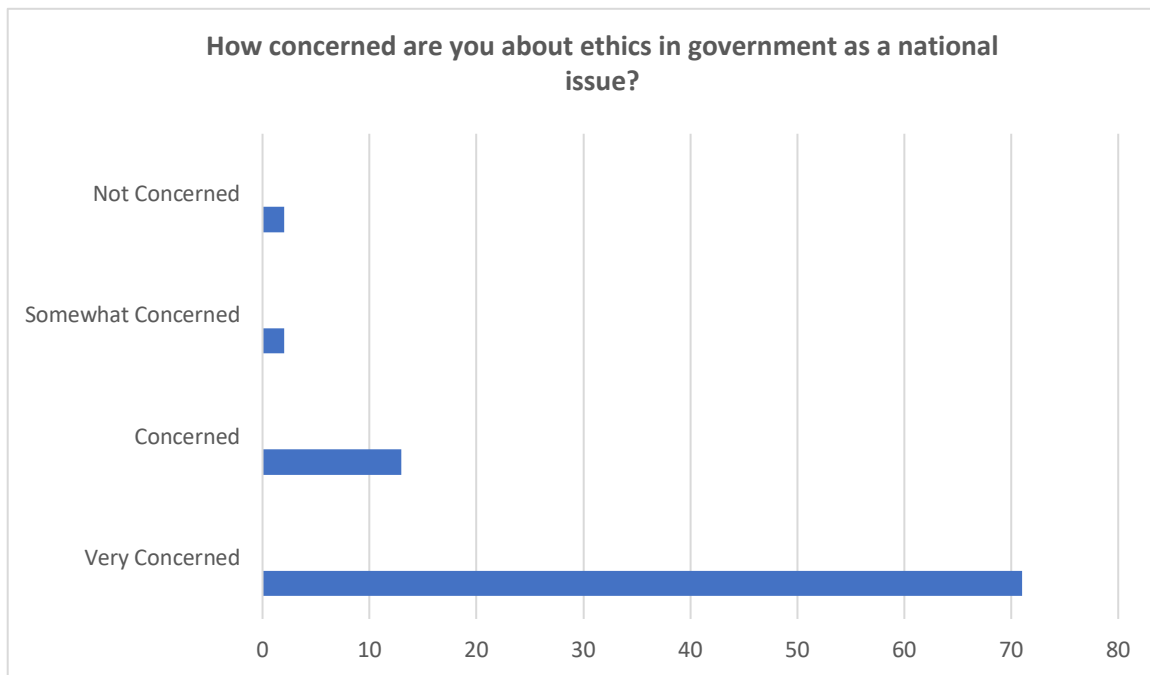
a town Selectboard, for instance, to fully disclose something under the Open Meeting law, the citizen must bear the cost of litigation.

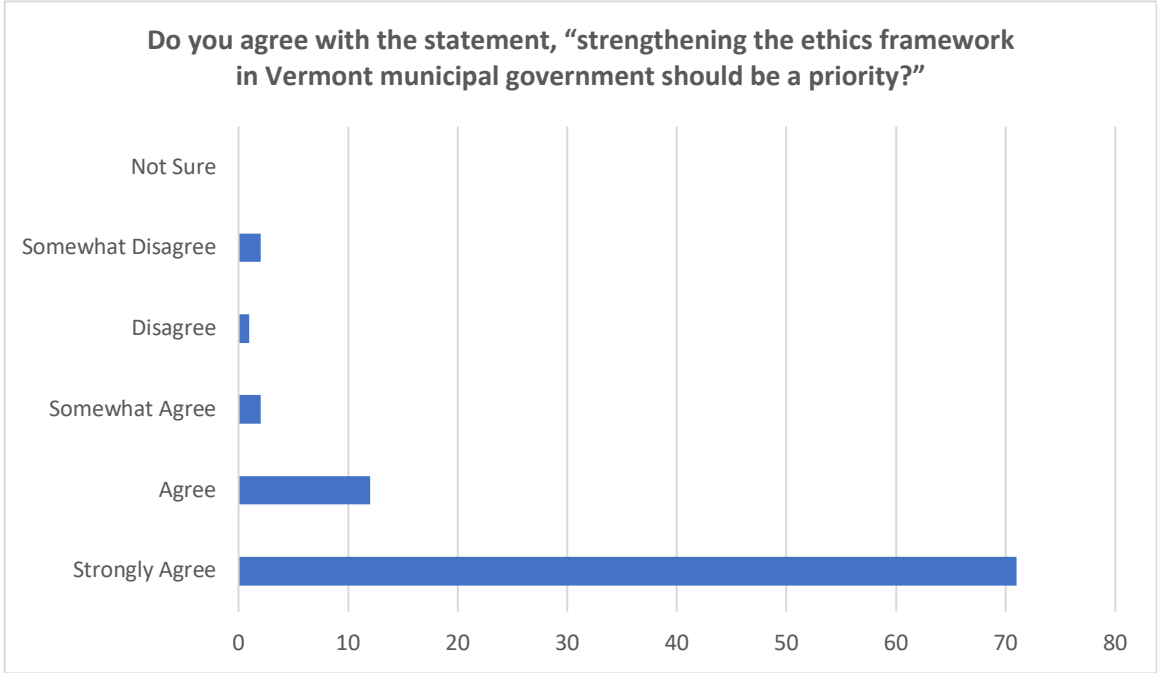
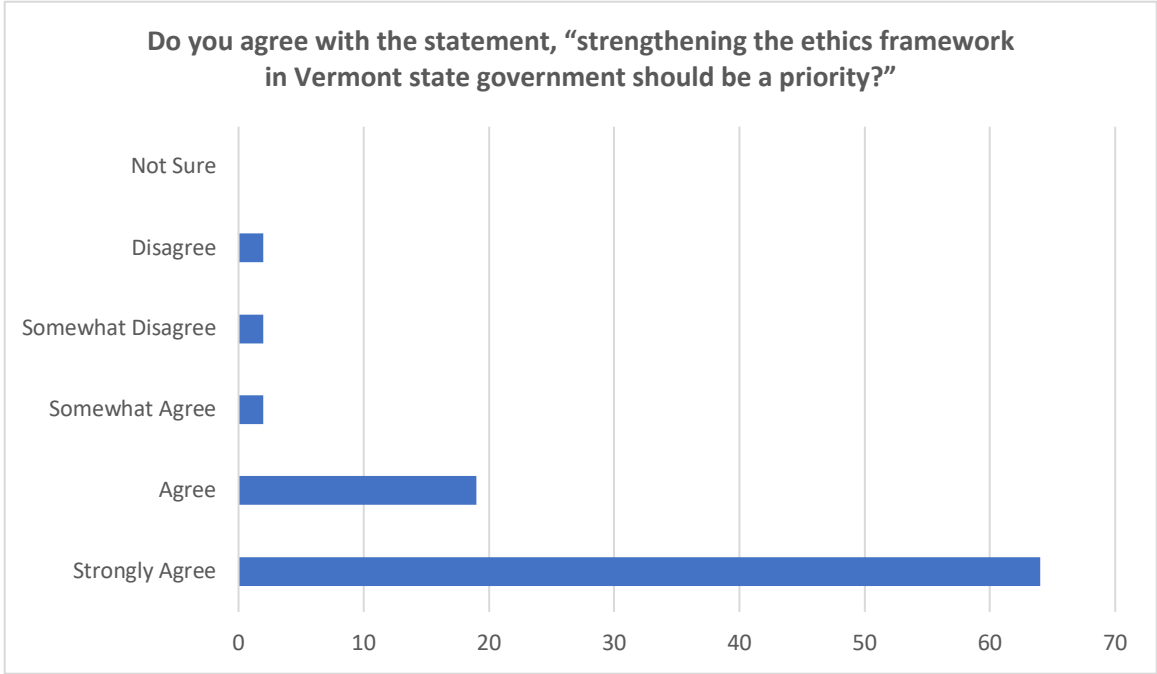
- “Conflicts of interest abound in boards and committees. For example, a building designer who works on public and private projects in our municipality is the chair of our local Development Review Board.”
- “Many towns do not have the capacity to create a framework. The Commission should provide training, a suggested framework, and guidance relating to investigations and enforcement. The Commission's role should be advisory only. It should not investigate complaints.”
- “I have been involved in several different communities, and what I’ve personally witnessed in regards to conflict of interest issues and bullying is so common, it’s the norm, not the exception.”
- “There is no external oversight over municipal ethics. This is a critical gap. Research indicates that most ethics issues happen at the municipal level and Vermont has no system for addressing them.”
- “The Ethics Commission has no enforcement authority—the Legislature should require Attorney General to investigate complaints and prosecute violators.”
- “Rarely will residents have the funds or the time, much less the perseverance and emotional capacity, to step into a legal arena on these issues. This means that many deeply invested residents stop attending municipal meetings, feel unwelcome to participate in public process, and watch in disgust and dismay as violation after violation continues in local government without any check or balance.”
- “Someone needs to be the enforcer of a Code of Ethics, and actually do it. Unlike what tends to happen currently with State Statutes. You can have all the Statutes and Codes you want but if no one enforces them they are useless.”
- I think one qualified, 'disinterested' third party (or parties) should be appointed (and paid) to provide guidance and investigate complaints, not the State. This party/board should be organized regionally, by county.”
- “Flagrant Open Meeting Law violations are common, almost a constant.”
- “We need an independent body to investigate all complaints”
- “The state must take leadership and create a framework to help local municipalities and provide training in how to use it.”

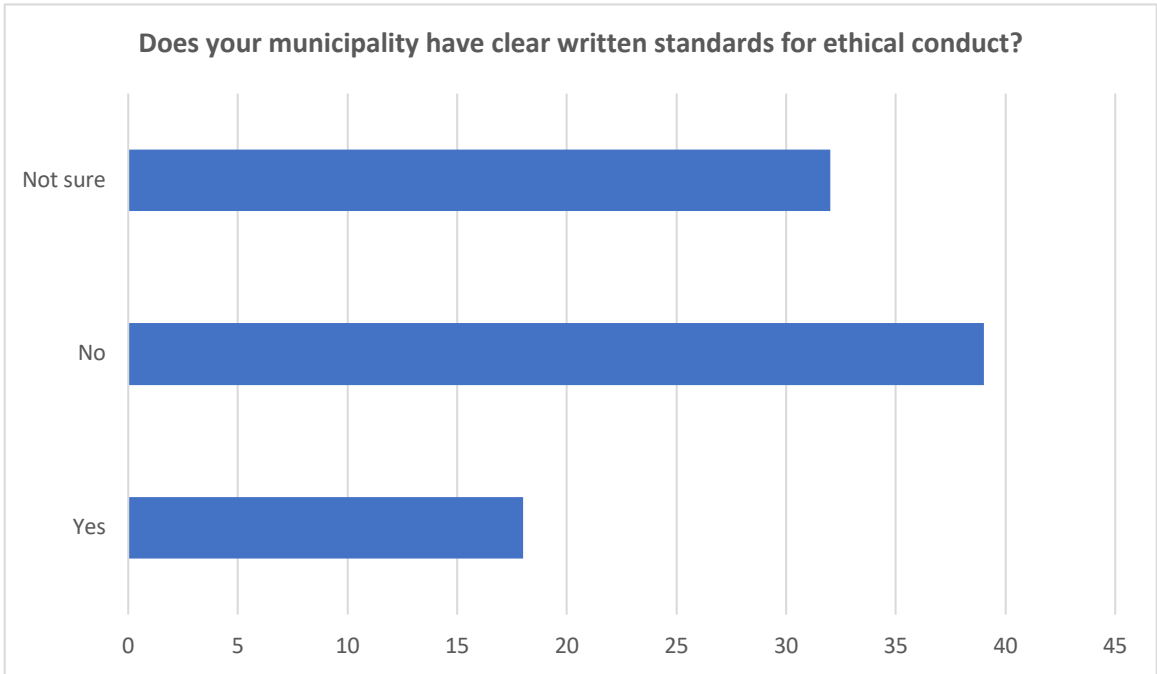
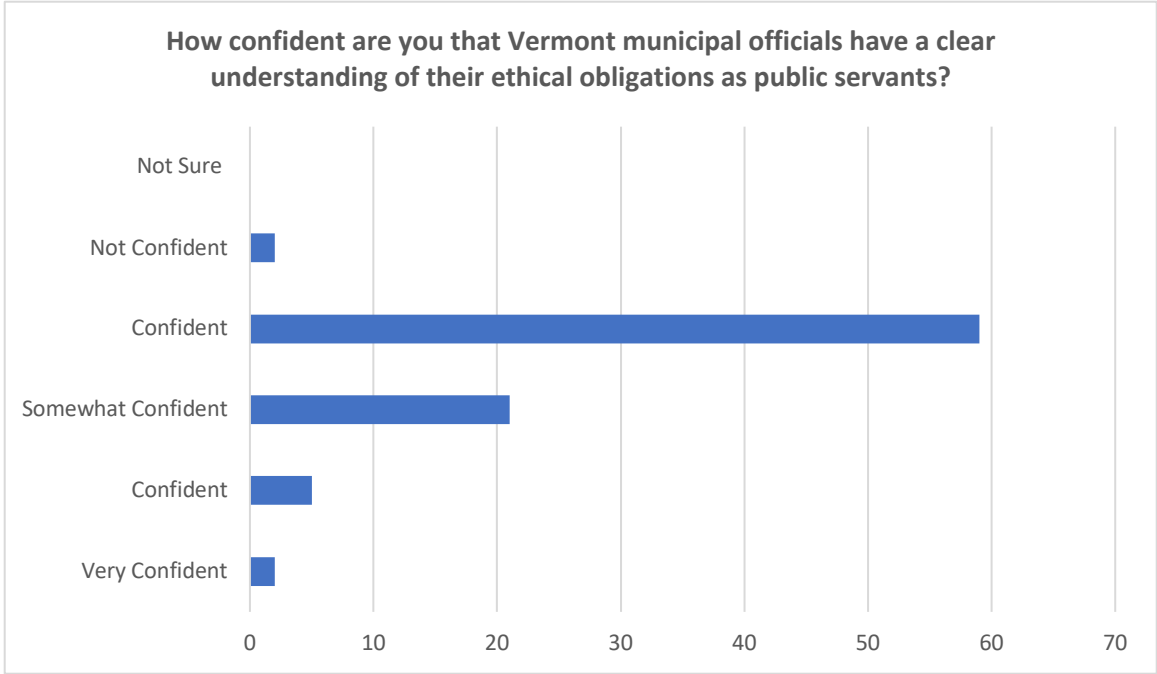
- “We recently discovered that the Selectboard adopted an updated Code of Ethics a few months ago which redefines the Code such that many of the actions that I described earlier are no longer considered unethical by the Town.”
- “We witnessed Board members failing to recuse themselves when they had a conflict of interest. We also witnessed many examples of Board members claiming to recuse themselves, yet continuing to engage in the meeting in some capacity. In one example a Board member moderated a meeting while recused. In another example a Board member sat next to a client they were representing while recused.”
- “Given the multiple crises of our time, and the medium term negative prognosis for our climate, economy, and polity, it is more important than ever that people feel they have an effective and responsive government that can address their needs and fears.”
- “Unfortunately, for residents like myself wishing to hold our elected officials accountable, risking retaliation is our only option since in the state of Vermont there are no other pathways for us to pursue resolution for grievances of ethical concerns, open meeting law violations, or violations of other municipal policies.”
- “We, municipal leaders and residents, need to know exactly what constitutes a conflict of interest. Things like cronyism and nepotism need to be clearly spelled out. A handbook describing a variety of ethical issues and examples is essential as is regular training for city leaders and employees. Also, people need a way to follow up with suspicions of breaches.”
- “Serving on a town board should be rewarding, interesting, and a pleasure to engage with the community. Instead, it is often the exact opposite: it becomes an unappreciated, thankless job, where “no good deed goes unpunished”. This is almost entirely due to ethical issues within town government. And don't underestimate how this also effects employee retention: I have seen Town employees put in untenable situations due to improper board member behavior.”
- “Investigating complaints, hearing complaints, hearing appeals, providing advice and guidance to municipal officials, are definite. Without guidance our little towns don't know what to do or where to start and just let time pass until it is forgotten and then repeated. Enforcement from outside the little town is definitely needed. Our town is great at covering up or not making available information which should be public. They cannot police their own actions.”
- “In our town, the use of executive sessions at public meetings is frequently abused. Public meetings should be public first and foremost.”

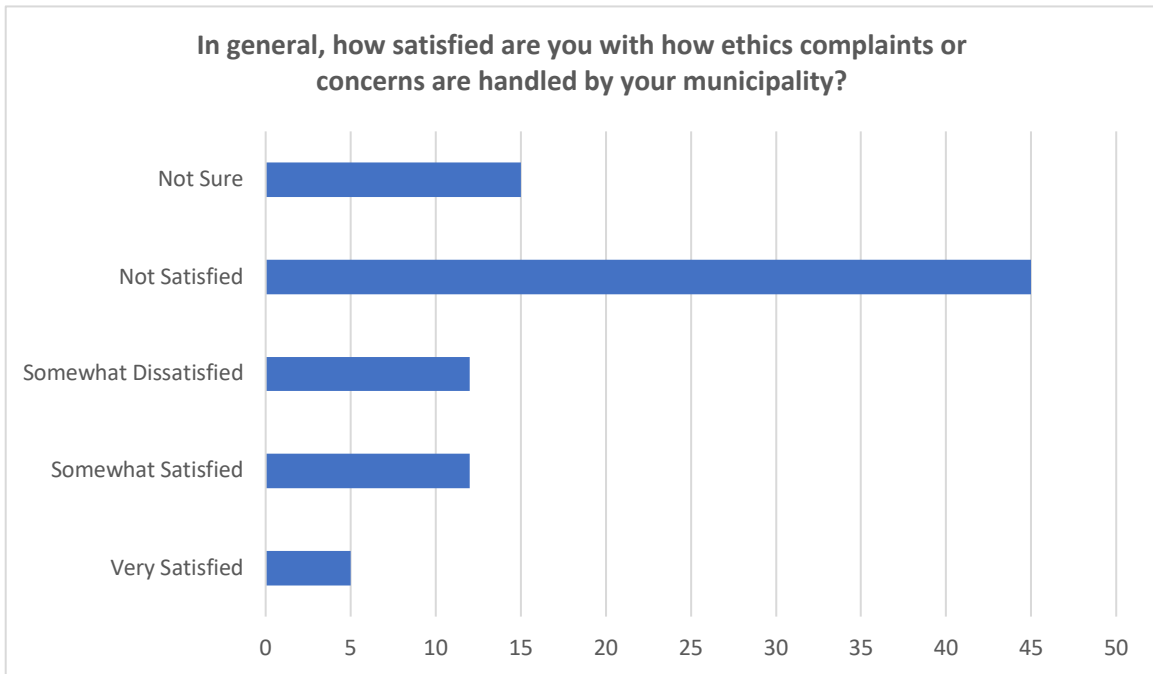
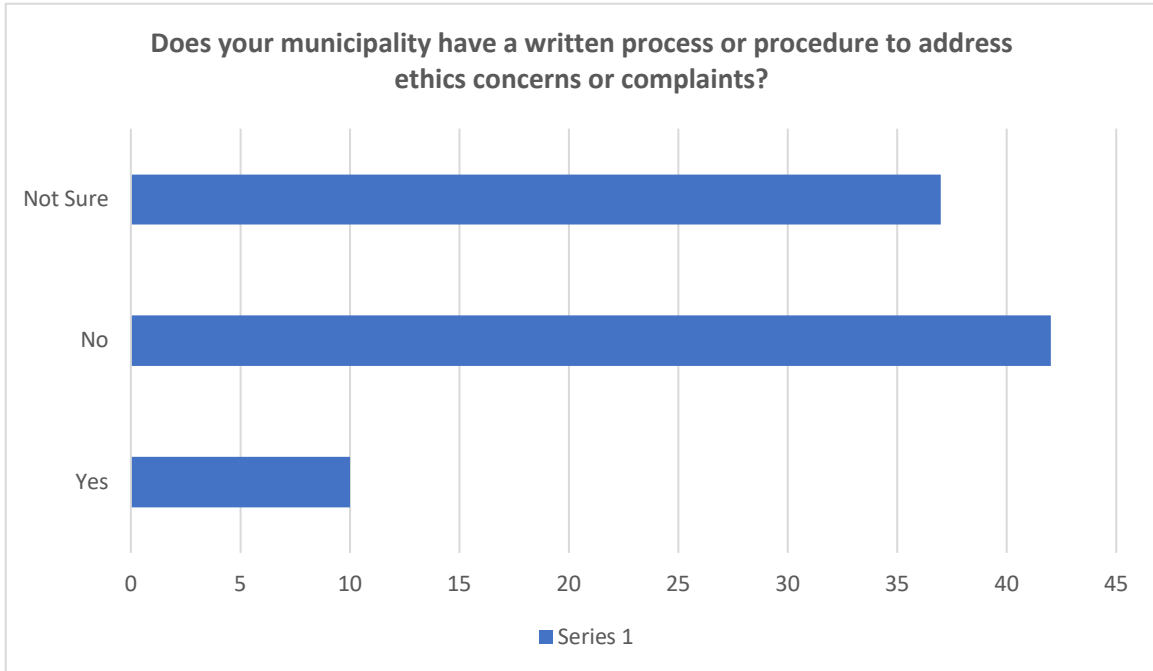
- “Open meeting rules are used to encumber communication in some cases and flouted in others.”
- “State agencies like the Secretary of State, Board of E-911 Authority, etc. should be empowered to act when informed of violations of law being perpetrated by local selectboard members and/or their Town officials.”

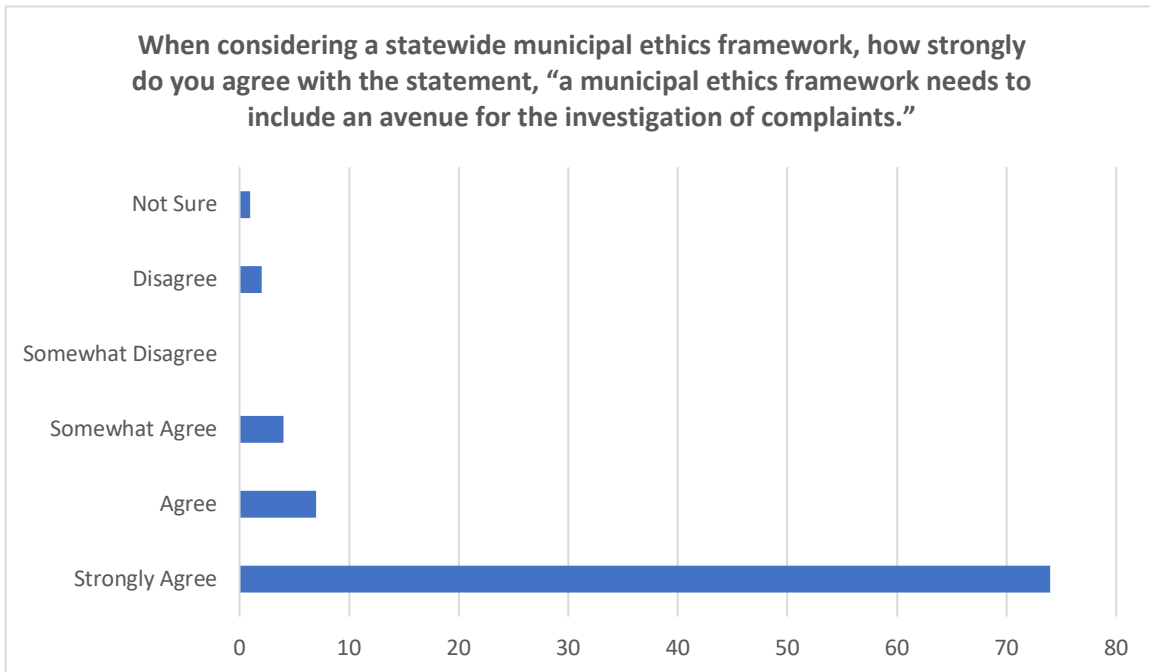
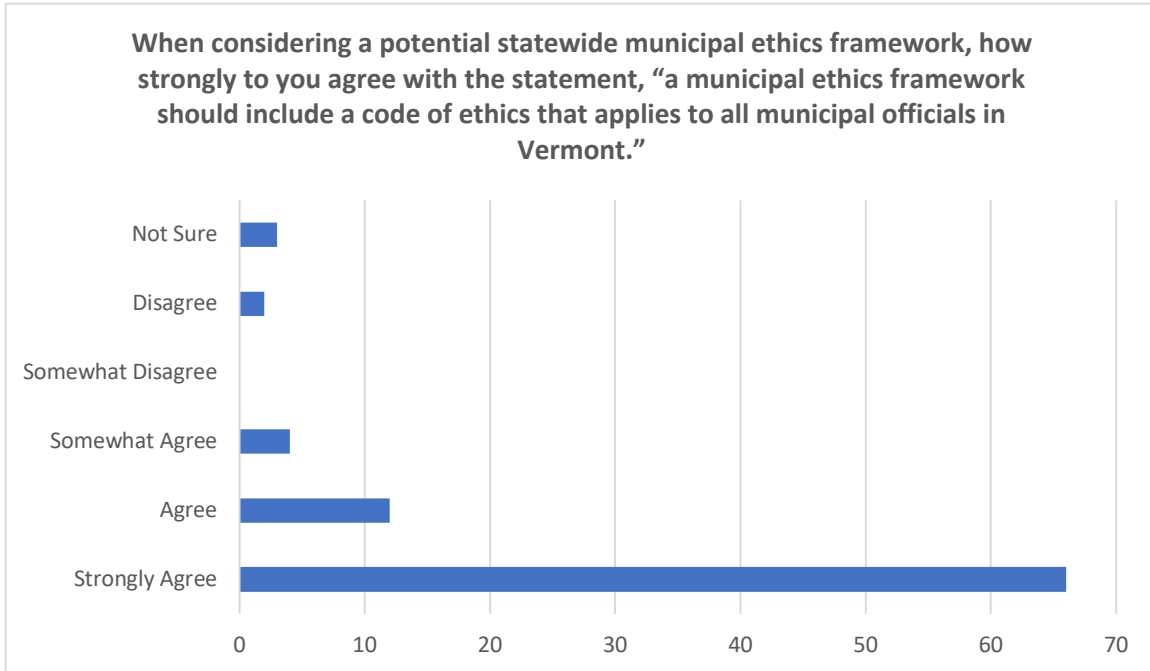
In association with the municipal ethics listening sessions, the Ethics Commission posted a survey on its website in November and December 2023, asking for members of the public to share their feelings about municipal ethics, and received 89 responses. The results found:











## 2. Best Practices: Municipal Ethics in Other States

### A. Research by the Ethics Commission

To better understand how other states address municipal ethics, the Ethics Commission undertook a comprehensive analysis of the municipal ethics frameworks of sixteen states with

governmental, demographic and/or and geographic similarities to Vermont.<sup>13</sup> In addition to geographically proximate states (the other New England states), an analysis was performed on states that met the following criteria:

- 1) The state has an established ethics regime (demonstrated by either the existence of a statewide ethics body and/or an established body of statutory law with respect to municipal ethics);
- 2) The state has similar geographic attributes to Vermont with respect to size, population, and the number and/or size of municipalities; and,
- 3) The state (like Vermont) is predominantly a “Dillon’s Rule” state, where municipalities have only the powers that are given to them by state government.

The majority of the states analyzed have one or more of the following common attributes with respect to their municipal ethics frameworks:

1. Municipal ethics are governed either exclusively, or predominantly, by state statute (either as the de jure code, or as a set of minimum standards for municipal codes);
2. In a plurality of the analyzed states, the statewide ethics body retains an ongoing role in enforcing and interpreting the municipal codes of ethics. In the plurality of states, the state ethics entity maintains jurisdiction over interpretation and enforcement of the state’s code with respect to municipalities; <sup>14</sup>
3. Municipal <u>elected officials</u> are subject to the code of ethics (irrespective of whether it is a state-imposed, or local-imposed code of ethics). All the states with meaningful municipal ethics regulation include elected officials among those who should be subject to an ethics code; <sup>15</sup>
4. Municipal <u>appointed officials</u> are subject to the code of ethics (irrespective of whether it is a state-imposed, or local-imposed code of ethics). Most of the states (12 of 16) have provisions in the code that equally apply to most or all appointed government officials at the municipal level. <sup>16</sup>

<sup>13</sup> The states are: Arkansas, Connecticut, Delaware, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Rhode Island, South Carolina, Virginia, and Wyoming.

<sup>14</sup> In these states, the state ethics body also has regulation or rule making authority with respect to the code of ethics. Among these states are: Massachusetts, Mississippi, Nebraska, Nevada, Rhode Island, and South Carolina.

<sup>15</sup> Based on the minimal rules for municipal employees, neither Connecticut nor New Hampshire are considered to have meaningful municipal ethics regulation.

<sup>16</sup> Rhode Island’s statute, for example, includes “any individuals serving in any appointed state or municipal position.” The rules typically cover appointments irrespective of who the appointing authority is, or what the specific appointed position is. None of the states make a distinction between paid appointees and volunteer appointees.



5. Municipal employees are subject to the code of ethics (irrespective of whether it is a state-imposed, or local-imposed code of ethics). Of the 16 states analyzed, 11 expressly include most or all of municipal employees within the scope of most or all of the ethics rules.<sup>17</sup>

In conducting the analysis, a pattern emerged in which 1) “Dillon’s Rule” states, with a 2) strong state ethics regime, were most likely to regulate municipal ethics on the state level.<sup>18</sup>

## Case Studies

### Massachusetts

Massachusetts is consistently ranked in the 85<sup>th</sup> to 95<sup>th</sup> percentile of the 50 states in matters of government ethics. Massachusetts is an example of a state that fully sets forth a state statute that provides the law for municipal ethics.<sup>19</sup> The state ethics statute has numerous provisions that apply to all levels of government: municipal, county, and state. In addition, the statute contains multiple, specific provisions relating to specifically to the conduct of municipal employees and officials.<sup>20</sup>

Under the law, the Massachusetts State Ethics Commission maintains authority to issue advisory opinions to all state and municipal officials and has statutory authority to promulgate regulations that have universal applicability.

The primary benefits presented by the Massachusetts structure (and those like it) are uniformity of law, and consistency in application. This also provides efficiencies for municipalities: because all municipalities are subject to the same code and interpretations, many questions of law are settled in advance of an issue arising at the municipal level.

### Rhode Island

Rhode Island consistently ranks among the top states in the realm of governmental ethics. In Rhode Island, a uniform code of ethics applies to state and municipal officials. At the municipal level, the code applies to elected and appointed officials, as well as employees of “local government, of boards, Commissions, and agencies.”<sup>21</sup>

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<sup>17</sup> Rhode Island, for example, applies its Code to “any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation.”

<sup>18</sup> Vermont is a “strong” Dillon’s Rule state. All authority stems from the state government and is (most frequently) meted out to municipalities via land grant charters. Land grant charters, in turn, are strictly construed by the courts. See, e.g., *City of Montpelier v. Barnett*, 191 Vt. 441 (2012).

<sup>19</sup> See Mass. Gen. Laws at Ch. 268A

<sup>20</sup> See Id. at §§ 17 to 26

<sup>21</sup> RI Gen. Laws § 36-14-4

The code is administered and enforced at the state level by the Rhode Island Ethics Commission. The Commission has authority to provide advice to all persons subject to the code. All financial disclosure forms, including those from local officials, are filed with the state Ethics Commission.

In addition to the state code, municipalities are authorized to enact their own local rules on ethics and conflicts of interest.<sup>22</sup> These local rules do not displace the state rules. If a violation of a local ethics rule is also a violation of the state code, the municipality must report the violation to the state commission, which may take enforcement action.

Similar to Massachusetts, the advantages of the Rhode Island structure are that it provides uniformity and consistency for all officials. In addition, all state and municipal officials can solicit advice from the Commission. All state and municipal officials and employees receive training from the Commission.

### Delaware

Delaware presents an example of a state code that sets minimum standards for municipal ethics. The Delaware Ethics Code, by its terms, relates to only state employees and officials.<sup>23</sup> However, the statute also provides that municipalities are each required to adopt a code of ethics that includes – at a minimum – the provisions in the state code. And, until a municipality has adopted a code, and that code has been approved by the state’s Public Integrity Commission, the municipality will be subject to the provisions of the state statute and be subject to the jurisdiction of the state Commission.<sup>24</sup> Once a municipality has an approved and adopted code of ethics, the municipality would take over as the interpreter and enforcer of its code.

The Delaware system risks less uniformity in interpretation, because municipalities (if they adopt their own codes) may have differing interpretations of similar provisions. However, because the state code sets minimum standards, the Commission’s interpretations of the minimum standards would likely have applicability to the municipalities. Because the statute requires that municipal codes be approved by the Commission, the Commission may be able to take steps to ensure that municipal codes include terms that may be subject to similar interpretations by courts.

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<sup>22</sup> Every city and town shall have the power . . . to adopt a charter, amend its charter, enact and amend local laws relating to its . . . government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly. R.I. Const. art. XIII, § 2.

<sup>23</sup> See Del. Code Ch. 29, § 5801 et seq. (“The standards apply to all local governments unless they adopt their own code of conduct which this Commission must approve as being at least as stringent as the State law.”)

<sup>24</sup> See Id. at § 5802 (“This subchapter shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of this subchapter unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote thereof to be at least as stringent as this subchapter. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from this subchapter.”)

Another negative of the Delaware structure is that the state code may not be adept at capturing matters that are highly fact-specific to the municipalities. For example, the state Commission is called upon to address land-use issues, which are not typically found at the state level.

If it chooses to adopt its own code, a municipality would have to incur whatever costs are associated with the implementation and enforcement of its own code.

To date in Delaware, only one county and eight municipalities (including 6 out of 9 of the largest municipalities) had adopted an approved code. The remaining 48 counties and municipalities continue to be subject to the state code and the Commission's jurisdiction.<sup>25</sup>

## **Analysis**

### **1. The Benefits of a Uniform Municipal Ethics Framework**

The need for a comprehensive municipal ethics framework has long been apparent to the Ethics Commission. Since its inception in 2017, despite a lack of jurisdiction over municipal ethics, the Ethics Commission has routinely heard from members of the public and municipal officials seeking ethics advice and an avenue of recourse of municipal ethics complaints. Complaints and complaint inquiries related to municipal conduct have historically made up a large percentage of the complaints received by the Ethics Commission (see below chart).

The legislature has also recognized municipal ethics as an area of concern. Section 17 of [Act 79](#), the statute that established the Ethics Commission, required the Secretary of State to accept written complaints regarding municipal governmental ethical conduct through December 15, 2020; forward those complaints to the relevant municipality; and, submit an annual report on municipal ethics complaints to the Ethics Commission. The Secretary of State's office has continued to track municipal ethics complaints beyond 2020 and reported that it received 75 municipal complaints in 2021, 61 in 2022 and 77 in 2023.<sup>26</sup>

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<sup>25</sup> See [2022 Annual Report of the Public Integrity Commission](#) (available on the PIC web site)

<sup>26</sup> In reporting complaint numbers, the Secretary of State's office noted numbers are likely a low estimate, as many other types of inquiries also touch on ethics issues but may not be categorized primarily as ethics complaints.



The need for municipal ethics is further underscored by the overwhelming consensus among the Vermont residents from whom the Commission heard. The anecdotal experiences of the vast majority of these citizens suggest that (1) despite the enactment of 24 V.S.A. § 1984, conflicts of interest continue to exist at the municipal level; (2) many of these conflicts go without disclosure or recusal; and (3) citizens who attempt to address these issues at the local level fear retaliation, creating a chilling effect on local attempts at enforcement of existing conflict of interest policies.

## 2. Two Options for a Code of Municipal Ethics

The Commission has identified two related options for the implementation of ethics at the municipal level. Each of the two have benefits and downsides.

### A. Option One – Municipal Officials Subject to the Existing State Code of Ethics

The legislature could decide that municipal officials be subject to the existing State Code of Ethics. As such, the existing code would be applied equally across state and municipal government. The Commission would be available to provide training and guidance. Complaints would be received from municipal resident and forwarded on to the Attorney General or other enforcement authority.

The benefits of such a structure would be that there would be uniformity and consistency in the interpretation and administration of the code. The same training could be provided to all officials, allowing for economies of scale. There would be no need to create a special training program for municipalities. Municipal officials could rely on previous interpretations of the

code made by the Commission. Municipalities would be spared the costs of setting up an enforcement regime. Municipalities, however, would remain free to adopt more stringent policies than those in the state code, which would be administered and interpreted entirely at the local level.

Application of the current code to municipalities is not without downsides. As a threshold matter, municipal government can be different from state government in a variety of ways. For example, it is very difficult for officials to navigate all conflicts of interest in a small town, where land ownership and familial relations play a more prevalent part for officials, than it is at the state level. Similarly, the issues that are deliberated with frequency at the local level are not the same as those addressed by state officials.

#### B. Option Two – A Standalone Municipal Code of Ethics

Based on input and research, the Commission has drafted a proposed municipal code of ethics specifically for municipalities. It has also identified a potential list of local officials who would be subject to it. The Commission would then extend its current advisory and complaint review and referral services to municipalities. A major benefit of this plan is that while the municipal code of ethics contains many of the provisions found in the State Code of Ethics, it is more tailored to municipal needs.

Because a new municipal code would have provisions that are not in the State Code of Ethics, a training program for municipalities would need to be established and administered. For uniformity, the Commission recommends that it play a role in future training for municipalities. VLCT has expertise in assisting towns and cities, and the Commission would seek to partner with VLCT on training development and administration.

#### C. Additional Recommendations

Irrespective of the path taken by the legislature, the Commission recommends that the legislature consider adopting the following to address other issues that became apparent in the Commission's research:

##### i. Whistleblower Protection

During the listening sessions conducted by the Commission, a substantial number of citizens stated they had been the victim of retaliation when they raised ethics complaints at the local level. Currently there is no whistleblower protection for Vermonters who raise such ethical issues.

The Commission recommends that the legislature consider enacting protection for citizens who voice concerns over ethics violations – both under current town conflict of interest policies and under any uniform code passed by the legislature. Protection for those who raise bona fide

ethics concerns should not be subject to punishment at the municipal level for doing so. The Commission has drafted proposed language.

#### ii. Enforcement

Comments received by the Ethics Commission during its listening sessions consistently demonstrated the desire for an independent authority to receive, investigate, hear, and adjudicate municipal complaints, including an independent authority to hear appeals. The commenters stated that current town ethics codes were not being enforced at the local level. Options for independent enforcement of statewide municipal ethics laws include the empowering the Ethics Commission with investigatory and enforcement authority; the establishment of a separate state-level municipal ethics complaint board; or the establishment of regional complaint boards. There are pros and cons for all these options, including issues related to cost and uniformity in statewide ethics rules interpretation or enforcement. However, the Ethics Commission recommends that any municipal ethics enforcement body provide a path for investigation and enforcement be separate and independent from the municipality where the complaint originates.

#### iii. Municipal Ethics Liaisons

The Commission recommends that, as part of any uniform municipal ethics code, municipalities should appoint a liaison to interface with the Commission on matters of ethics. The liaison would serve municipal officials by coordinating training and education, keeping track of changes and updates to ethics laws, and generally facilitating communication between the Commission and the municipality for which they serve. This model has been used with success in other states.<sup>27</sup>

#### iv. Mediation

The Commission also recommends that as part of a comprehensive municipal ethics framework, the legislature consider a pathway to offer voluntary pre or post complaint mediation services to municipalities, either through the Ethics Commission or another relevant entity.

### **Conclusion**

The Commission recommends that the General Assembly pass a municipal ethics bill this legislative session. The bill should either amend the current state Code of Ethics to include

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<sup>27</sup> See, e.g., Massachusetts Gen. L. Ch. 268A § 29: "Each municipality, acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities."

municipal officials or establish a standalone municipal ethics code. If the legislature opts for the latter approach, for uniformity, the Commission recommends that the terms and definitions of the municipal code be closely tied to the State Code of Ethics.

Under either scenario, the Commission is committed to facilitating the implementation of municipal ethics, and is prepared to provide support, training, and education to municipalities. To efficiently provide such training. The Commission recommends that each municipality be charged with appointing an ethics liaison to communicate with the Commission.

Finally, irrespective of the approach taken by the legislature, the Commission recommends the adoption of a whistleblower protection provision to prevent retaliation against those who have good faith concerns about municipal ethics violations.

Respectfully submitted,

Christina Sivret, Executive Director

[Vermont State Ethics Commission](#)

6 Baldwin St.

Montpelier, VT 05633-7950

802-828-7187

[ethicscommission@vermont.gov](mailto:ethicscommission@vermont.gov)



December 8, 2023

Ms. Christina Sivret  
Executive Director  
Vermont State Ethics Commission  
6 Baldwin Street  
Montpelier, VT 05633-7950

Dear Ms. Sivret:

As the Vermont State Ethics Commission completes its work to develop a proposed municipal ethics framework as called for in Act 53 of 2023, the Vermont League of Cities and Towns asks that the framework center ethics accountability at the municipal level, utilize VLCT's technical assistance and training capabilities to educate municipal officials about ethics, and avoid creating a parallel enforcement mechanism outside of the judicial system to enforce ethics standards.

The Vermont League of Cities and Towns exists to serve and strengthen Vermont municipalities. All 247 cities and towns in Vermont are members of VLCT. We offer dozens of trainings a year, touching thousands of municipal officials. We answer more than 4,000 legal inquiries a year from elected and appointed local officials. We provide toolkits, model policies, guidance and FAQs on a variety of municipal topics, including ethics and conflict of interest policies. We provide this assistance with the help of a team of four lawyers with municipal expertise, a research assistant, a communications team, and several subject matter experts. In addition, VLCT provides property, casualty, liability, workers compensation, and unemployment insurance to nearly every Vermont municipality. These experiences give VLCT an unmatched understanding of municipal needs, and we offer the following recommendations.

**Municipal ethics expectations and accountability should be centered at the municipal level.** The fundamental core of any framework should recommend that municipalities adopt a code of ethics and be given the authority to enforce it. In 2019, all municipalities became legally-required to adopt a conflict of interest prohibition. The state codified the criteria required in the conflict of interest prohibition and municipal bodies then debated and adopted policies that, at the minimum, met these requirements. This process gave municipal boards buy-in, required purposeful conversations, and respected local control. The Commission may wish to recommend expanding the conflict of interest prohibition in 24 V.S.A. § 1984 to include additional criteria, potentially including those found in the state's code of ethics. VLCT does not support legislative action that simply makes municipalities automatically covered by the existing state code of ethics, as it does not afford local legislative bodies deliberative process.

Municipal officials should be held accountable to any such code at the municipal level. Elected officials should be accountable to the people who elected them. If an elected leader acts unethically, voters





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should determine their fate. Unfortunately, Vermont law does not currently allow for most municipalities to hold recall elections, so accountability often needs to wait until the end of an elected leader's term. The Legislature has granted about a dozen communities recall authority through individual municipal charters. Most Vermont communities do not have charters. The Commission may wish to suggest the Legislature allow municipalities to adopt the ability to have recall elections, as it has for these dozen or so communities. Such a vote would occur at a Town Meeting, enabling citizens to implement this type of accountability.

**The State should invest in VLCT's educational capabilities to inform municipal officials about ethical conduct.** VLCT is considered the go-to resource by elected and appointed municipal officials for how to legally and effectively run a local government. We publish guidance on municipal ethics, have issued a model conflict of interest policy that has served as the foundation of dozens of municipal conflict of interest policies, and maintain additional ethics resources on our webpage. These include a Conflicts in Land Use FAQ, a Chart of Incompatible Offices, and several related model policies, such as social media, purchasing, finance, personnel, and rules of procedures. We offer regular conflict of interest and ethics trainings to our municipalities, and offer an on-demand webinar on the topic as part of the essential VLCT Transparency Series offered at our annual Selectboard Institute. Since March of 2023, VLCT's lawyers have helped 47 municipal officials answer ethics-related questions. We have nearly 400 other historical legal inquiries in our system.

The most effective way to train municipal officials on ethics is to use our proven delivery system. The Commission may wish to suggest the Legislature fund VLCT to deliver additional ethics trainings, produce specific ethics-related materials, and formally counsel municipalities on ethics related-issues. VLCT has successfully partnered with the Vermont Department of Taxes Division of Property Valuation and Review for years to provide training to selectboard members and other Board of Civil Authority officials about the reappraisal and appeals process.

**VLCT discourages the creation of a parallel system to hear and investigate municipal ethics concerns outside of municipal government or the existing judicial system.** The judicial system is the best place to hear complaints, investigate and enforce the law. The Vermont State Ethics Commission does not have the resources to enforce the state code of ethics on state officials, and should not be charged with expanding its authority to the thousands of elected and appointed municipal officials in the state (our database has more than 5,000 active municipal contacts in it). VLCT is also concerned that the work being undertaken by the Commission may conflate enforcement of existing laws with the enforcement of a new code of ethics. Many of the complaints about municipal ethics voiced at one Commission listening session I attended this fall focused on violations of existing law. Most notably, violations of open meeting law and the Public Records Act. The judicial system already has authority over such infractions of the law.



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We appreciate the Commission's attention to strengthening local democracy. Recognizing that the Commission has historically not been an authority on municipal issues, we'd welcome the opportunity to provide feedback on any draft report you produce before it is submitted to the Legislature. Like you, we agree that setting ethical standards and holding municipal officials accountable to those standards is important. Should you have any questions about our recommendations, or to share a draft copy of your report, please feel free to contact me directly at [tbrady@vlct.org](mailto:tbrady@vlct.org).

Sincerely,

A handwritten signature in grey ink that reads "Ted Brady".

Ted Brady  
Executive Director