

Town of Shaftsbury
ETHICAL CONDUCT AND CONFLICT OF INTEREST POLICY
As adopted by Selectboard - April 15, 2013

ARTICLE 1. Purpose. The purpose of this policy is to promote public accountability, preserve public trust, and ensure that public officials carry out the Town business in pursuit of the Town's needs and interests rather than for personal gain.

ARTICLE 2. Authority. Under the authority granted in 24 V.S.A. §§ 1984 and 2291, the Town of Shaftsbury hereby adopts the following policy concerning conflicts of interest.

ARTICLE 3. Applicability. This Policy applies to the Shaftsbury Selectboard, but does not apply to any other elected Town official. This Policy applies to all Town officials, including paid and unpaid staff, who are hired or appointed by the Selectboard. This Policy also applies to all Town advisory committees, sub-committees, boards, and commissions, and the individuals serving on said bodies.

ARTICLE 4. Definitions. For the purposes of this Policy, the following definitions shall apply:

a. "Conflict of interest" means a Town official, or his or her relative, household member, business associate, employer or employee, has a direct or indirect personal or financial interest in the outcome of a cause, proceeding, application or matter pending before the Town official or Town body on which he or she holds office. The term "Conflict of Interest" includes the following:

i. A direct financial interest exists when an official votes on a matter benefitting the official's own property or affording the official a direct financial gain;

ii. An indirect financial interest exists when an official votes on a matter that financially benefits one closely associated with the official, such as a family member or employer;

iii. A direct personal interest exists when an official votes on a matter that benefits or affects the non-financial interests of a family member, business associate, colleague, or close friend; and

iv. An indirect personal interest exists when an official votes on a matter for which the official's objectivity may be compromised by the official's relationship with an individual or group, or the official's membership in an organization that is significantly affected by the official's vote.

v. A situation where a public official has publicly displayed a prejudgment of the merits of a particular proceeding before the Public body of which the officer is a member.

vi. A situation where a public official has not disclosed ex parte communications with a party in a proceeding before the Public body of which the officer is a member.

A conflict of interest does not arise when an official votes or makes a decision on a matter that has no greater effect on the official than it does on the general public. For example, a Town official does not have a conflict of interest when voting to raise tax rates, as the increase in the tax rate affects all persons owning property in the Town. For another example, if a Town official's daughter submits a bid to sell goods and services to the Town, the Town official has a conflict of interest and should not participate in any stage of the decision-making process for the award of the contract.

b. "Appearance of a conflict of interest" means: What a reasonable person, having a knowledge of all the relevant facts, might consider a conflict of interest.

c. "Interested party" means:

i. a person or entity who has a matter under consideration for action by a Town official or Town body; and

ii. a person or entity who will be directly and materially affected by an act or decision of a Town official or Town body.

d. "Emergency" means an imminent threat or peril to the public health, safety or welfare.

e. "Ex Parte Communication" means direct or indirect communication with any party, party's representative, party's counsel or any person interested in the outcome of a proceeding on any matter before the public body of which the officer is a member.

f. "Official act or action" means any discretionary legislative, administrative or judicial act performed by a Town official or employee while acting on behalf of the Town. Such actions include, but are not limited to: voting on a matter, participating in deliberative session, entering into a contract, authorizing the issuance of a permit, conducting an inquiry, investigation or hearing, or taking any formal action in a quasi-judicial capacity in the course of a Town official's performing the duties and responsibilities of his/her office.

g. "Public body" means the Town and its departments, boards, councils, commissions, committees and other instrumentalities.

h. "Public interest" means an interest of the community as a whole, conferred generally upon all residents of the municipality.

i. "Public officer" or "public official" means a person elected or appointed to perform executive, administrative, legislative or quasi-judicial functions for a public body.

j. "Recuse" means to remove oneself from a particular board proceeding because of a real or appearance of a conflict of interest.

k. "Relative" means a person within the fourth degree of kinship or affinity, and also refers to an official's spouse or civil union partner, as well as to said spouse's or civil union partner's parent, child, brother, sister, grandparent, and grandchild.

ARTICLE 5. Recusal/Disqualification from Official Action

a. A public officer shall not participate in any official action if he or she has a conflict of interest in the matter under consideration.

b. A public officer shall not participate in any official action when there is the appearance of a conflict of interest in the matter under consideration.

c. Unless approved by the Selectboard for good cause, a public officer 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 officer holds office or is employed.

d. **Procedure – Select Board Members:** When it appears that a member of the Select Board has a conflict of interest, the Chair of the Select Board shall describe the conflict of interest and ask the member whether the member will recuse himself/herself from the matter. If the member chooses not to recuse himself/herself, another member of the Select Board or any interested party to the matter under consideration may ask the Chair of the Board to conduct a vote on whether the member in question should be disqualified on the basis of a conflict of interest. The Chair shall conduct a vote on the disqualification motion, which may be stated as follows: "Should _____ be disqualified from participating in the matter now under consideration due to a conflict of interest or the appearance of a conflict of interest?" All members of the Select Board present at the meeting may discuss and vote on the question of disqualification, including the member under consideration. A simple majority of the members present and voting shall be sufficient to pass a motion for disqualification. If the disqualification motion passes, the disqualified member shall not participate in the matter, including the Select Board's debate of the matter and the Select Board's vote(s) on the matter.

A member's recusal or disqualification from a matter shall remain in effect throughout all proceedings on the matter. A member subject to recusal or disqualification from a matter may address the Select Board as a member of the public when public comment is taken on the matter.

e. **Procedure – Public Officers Not Serving on Boards, Commissions & Committees:** When it appears that a public officer who does not serve on a board, commission or committee has a conflict of interest, the Select Board shall have the authority to disqualify the public officer from acting on the matter in which the public officer has a conflict of interest. At a duly noticed meeting of the Select Board, the Chair of the Select Board shall describe the conflict of interest and ask the public officer whether the public officer will recuse himself/herself from the matter. If the public officer chooses not to recuse himself/herself, a member of the Select Board or any interested party to the matter may ask the Chair of the Board to conduct a vote on whether the public officer in question should be disqualified on the basis of a conflict of interest. The Chair shall conduct a vote on the disqualification motion, which may be stated as follows: “Should _____ be disqualified from participating in the matter now under consideration due to a conflict of interest or the appearance of a conflict of interest?” The vote shall be conducted in the same manner as all other votes of the Select Board. A simple majority of the members present and voting shall be sufficient to pass a motion for disqualification. If the disqualification motion passes, the disqualified public officer shall not participate in the matter. The public officer's recusal or disqualification from a matter shall remain in effect throughout all proceedings on the matter. A public officer subject to recusal or disqualification may address any public body on the matter requiring disqualification as a member of the public when public comment is taken on the matter.

f. **Procedure – Public Officers Serving on a Board, Commission or Committee:** When it appears that a public officer, who has been appointed to serve on a board, commission or committee, has a conflict of interest, the public body on which the public officer serves shall have the authority to disqualify the public officer from acting on the matter giving rise to the conflict of interest. At a duly noticed meeting of the board, commission or committee, the Chair of the board, commission or committee shall describe the conflict of interest and ask the public officer whether the public officer will recuse himself/herself from the matter. If the public officer chooses not to recuse himself/herself, another member of the board, commission or committee, or any interested party to the matter under consideration may ask the Chair to conduct a vote on whether the public officer in question should be disqualified on the basis of a conflict of interest. The Chair shall conduct a vote on the disqualification motion, which may be stated as follows: “Should _____ be disqualified from participating in the matter now under consideration due to a conflict of interest or the appearance of a conflict of interest?” All members of the board, commission or committee present at the meeting may vote on the question of disqualification, including the public officer under consideration. A simple majority of the members present and voting shall be sufficient to pass a motion for disqualification. If the disqualification motion passes, the disqualified public officer shall not participate in the

matter, including the board's, commission's or committee's debate and vote on the matter. A public officer's recusal or disqualification from a matter shall remain in effect throughout all proceedings on the matter. A public officer subject to recusal or disqualification may address any public body on the matter requiring disqualification as a member of the public when public comment is taken on the matter.

g. **Appeals of Decisions by a Board, Commission or Committee:** The disqualification decision of a board, commission or committee, other than that of the Select Board, may be appealed to the Select Board by the public officer subject to disqualification, a member of the board, commission or committee making a disqualification decision, and any interested party in the matter under consideration. The appeal must be filed in writing with the Town Administrator within seven (7) days of the board's, commission's or committee's disqualification decision. The Select Board shall consider the appeal at its next scheduled meeting. The Chair shall conduct a vote on the appeal consistent with the procedures described in Subparagraph (e) above.

h. **Appointments of Acting Public Officers:** The Select Board may appoint an acting public officer to carry out the duties of a public officer disqualified from acting on a matter due to a conflict of interest, but the authority of the acting public officer shall be limited to the matter giving rise to the conflict of interest.

i. **Responsibility of Chair:** The chair of the public body hearing a matter is responsible for assuring that conflicts of interests are heard and determined fairly and openly. Should it appear that the chair of the public body may have a conflict of interest, then the vice-chair shall act in the chair's place regarding the alleged conflict of interest. If it appears that both the chair and the vice-chair may have a conflict of interest, then another member of the public body shall be appointed acting chair by the members who do not appear to have a conflict of interest.

j. **Prohibition Against Offering Services to Applicants:** Public officers shall not offer their individual personal and/or professional services to applicants after an application is filed.

ARTICLE 6. Disclosure & Inquiry:

a. A public officer who has reason to believe that he or she has a conflict of interest shall recuse himself/herself. A public officer who has reason to believe that there is a real or apparent conflict of interest shall, prior to any discussion or taking of any official action on the matter, disclose to the public body and the interested parties the nature of the real or apparent conflict of interest. The public officer shall make his/her disclosure during the official public meeting of the public body. The public officer's disclosure shall include a description of the action required by the public body and the nature of the conflict of interest at issue.

b. In the event a public officer personally (or through any member of the household, business associate, employer or employee) represents, appears for, or negotiates 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 officer holds office, the public officer shall disclose his/her relationship to that public body. In such cases, the public officer shall not sit with the remaining members of the public body and shall not be included in any deliberations other than to the extent that all applicants and/or members of the public are included.

c. Violation of this policy may be grounds for removal from public office, except if such removal is prohibited by law.

d. Members of public bodies shall have the authority to inquire of a public officer about a possible conflict of interest and to suggest or recommend that the public officer recuse himself/herself from a matter.

ARTICLE 7. Exception. The provisions of sections 4 and 5 shall not apply if the Select Board determines that an emergency exists and that actions of the public body otherwise could not take place. In such cases, a public officer who has reason to believe he or she has a conflict of interest shall disclose such conflict as provided in Article 6.

ARTICLE 8. Severability. If a court determines that any section of this ordinance is invalid, such finding shall not invalidate the other parts of this ordinance.

ARTICLE 9. Effective Date. This ordinance shall become effective 60 days after its adoption by the Shaftsbury Select Board. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the effective date of this ordinance.

Signatures: Selectboard

Date Adopted: April 15, 2013