

TOWN OF WATERBURY

CONFLICT OF INTEREST POLICY

[For adoption by legislative body as a policy; applies to all public officers and employees]

Article 1. Authority. Under the authority granted in 24 VSA § 1999, the Waterbury Selectboard hereby adopts the following policy concerning conflicts of interest.

Article 2. Purpose. The purpose of this policy is to ensure that the business of this municipality will be conducted in such a way that no public official of the municipality will gain a personal or financial advantage from their work for the municipality and so that the public trust in municipal officials will be preserved. It is also the intent of this policy to ensure that all decisions made by municipal officials are based on the best interest of the community at large.

Article 3. Definitions. For the purposes of this policy, the following definitions shall apply:

- A. **Advisory Body** means a public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.
- B. **Candidate** and **Candidate's committee** have the same meanings as in 17 V.S.A. § 2901.
- C. **Commission** means the State Ethics Commission established under 3 V.S.A. chapter 31, subchapter 3.
- D. **Confidential information** means information that is exempt from public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise designated by law as confidential.
- E. **Conflict of interest** means any of the following:
 - 1. A direct or indirect interest of a municipal officer or such an interest, known to the officer, of a member of the officer's immediate family or household, of their spouse, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister-in-law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the officer or before the public body in which they hold office or are employed. "Conflict of interest" does not arise in the case of votes or decisions on matters in which the public officer has a personal or financial interest in the outcome no greater than that of persons generally affected by the decision, such as adopting a bylaw or setting a tax rate.
 - 2. A situation where a public officer has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding or otherwise displayed bias in connection with such a proceeding. This shall not apply to a member's particular political views or general opinion on a given issue; and
 - 3. A situation where a public officer has not disclosed ex parte communications with a party in a quasi-judicial proceeding.
 - 4. A situation where a disinterested third party, who is a member of the public, could reasonably perceive that a conflict of interest exists under Items A.1, A.2 or A.3, above, even in the absence of an actual conflict of interest thereunder (i.e., the appearance of a conflict of interest).
- F. **Department head** means any authority in charge of an agency, department, or office of a municipality.
- G. **Designated complaint recipient** means:
 - 1. The designated complaint recipient shall be the municipal manager and Selectboard chair, who shall have a duty to inform the selectboard of any alleged violations of this policy. In the event the municipal manager or Selectboard Chair is the subject of the complaint, the designated complaint recipient shall be the Vice Chair of the Selectboard.

- H. **Domestic partner** means an individual in an enduring domestic relationship of a spousal nature with the municipal officer, provided the individual and municipal officer:
1. have shared a residence for at least six consecutive months;
 2. are at least 18 years of age;
 3. are not married to or considered a domestic partner of another individual;
 4. are not related by blood closer than would bar marriage under State law; and
 5. have agreed between themselves to be responsible for each other's welfare.
- I. **Emergency** means an imminent threat or peril to the public health, safety or welfare.
- J. **Immediate family** means an individual's spouse, domestic partner, or civil union partner; child or foster child; sibling; parent; or such relations by marriage or by civil union or domestic partnership; or an individual claimed as a dependent for federal income tax purposes.
- K. **Legislative body** means the selectboard in the case of a town, the mayor, alderpersons, and city council members in the case of a city, the president and trustees in the case of an incorporated village, the members of the prudential committee in the case of a fire district, and the supervisor in the case of an unorganized town or gore.
- L. **Municipal officer or officer** means:
1. any member of a legislative body of a municipality;
 2. any member of a quasi-judicial body of a municipality;
 3. a person elected, or appointed by the Selectboard, to perform executive, administrative, legislative or quasi-judicial functions for the municipality; or
 4. any individual who holds the position of, or exercises the function of, any of the following positions in or on behalf of any municipality:
 - a. auditor;
 - b. cemetery commissioner;
 - c. chief administrative officer;
 - d. clerk;
 - e. collector of delinquent taxes;
 - f. department heads;
 - g. first constable;
 - h. lister or assessor;
 - i. moderator;
 - j. planning commission member;
 - k. road commissioner;
 - l. town or city manager;
 - m. treasurer;
 - n. village or town trustee;
 - o. trustee of public funds; or
 - p. water commissioner.
- M. **Municipality** means any town, village, or city.
- N. **Official act or action** means any legislative, administrative or quasi-judicial act performed by any elected or appointed officer while acting on behalf of the municipality.
- O. **Protected employee** means an individual employed on a permanent or limited status basis by a municipality.
- P. **Public body** has the same meaning as in 1 V.S.A. § 310.
- Q. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.

- R. **Quasi-judicial proceeding** means a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority.

Article 4. Disqualification.

- A. A public officer shall not participate in any official action if they have a conflict of interest (including the appearance of a conflict of interest) in the matter under consideration.
- B. A public officer shall not personally, or through any member of their household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in a cause, proceeding, application or other matter pending before the public body in which the officer holds office or is employed.
- C. In the case of a public officer who is an appointee, the public body that appointed that public officer shall have the authority to order that officer to recuse themselves from acting in an official capacity in any matter in which the public body believes that the public officer has a conflict of interest or the appearance of a conflict of interest.
- D. Public officers shall not accept gifts or other offerings, valued in excess of \$25.00 for personal gain by virtue of their public office that are not available to the public in general.
- E. Public officers shall not use resources not available to the general public, including but not limited to town staff time, equipment, supplies, or facilities for private gain or personal purposes unless the aggregate value of the resources used shall be less than \$25 in a calendar year.

Article 5. Disclosure.

- A. A public officer who has reason to believe they have or may have a conflict of interest but believes they are able to act fairly, objectively and in the public interest in spite of the potential conflict of interest shall, prior to participating in any official action on the matter, disclose to the public at an opening meeting or public hearing involving the matter in which the conflict or potential conflict has arisen, the nature of the potential conflict of interest and why they believe they are able to act in the matter fairly, objectively and in the public interest despite the conflict or potential conflict.
- B. In the event there is doubt related to a conflict or potential conflict, all municipal officers covered by this policy shall, as a matter of best practice, err on the side of caution and disclose the potential conflict

Article 6. Recusal.

- A. If a municipal officer is confronted with a conflict of interest or the appearance of one, the officer shall immediately recuse themselves from the matter, except as otherwise provided in subdivisions (2) and (5) of this subsection, and not take further action on the matter or participate in any way or act to influence a decision regarding the matter. After recusal, an officer may still take action on the matter if the officer is a party, as defined by 24 VSA §1201, in a contested hearing or litigation and acts only in the officer's capacity as a member of the public. The officer shall make a public statement explaining the officer's recusal.
- B. Notwithstanding subdivision (A),
 - 1. an officer may continue to act in a matter involving the officer's conflict of interest or appearance of a conflict of interest if the officer first:
 - a. determines there is good cause for the officer to proceed, meaning:
 - i. the conflict is amorphous, intangible, or otherwise speculative;
 - ii. the officer cannot legally or practically delegate the matter; or
 - iii. the action to be taken by the officer is purely ministerial and does not involve substantive decision-making; and
 - b. the officer submits a written nonrecusal statement to the legislative body of the

municipality regarding the nature of the conflict that shall:

- i. include a description of the matter requiring action;
 - ii. include a description of the nature of the potential conflict or actual conflict of interest;
 - iii. include an explanation of why good cause exists so that the municipal officer can take action in the matter fairly, objectively, and in the public interest;
 - iv. be written in plain language and with sufficient detail so that the matter may be understood by the public; and
 - v. be signed by the municipal officer.
 2. Notwithstanding the above, a municipal officer that would benefit from any contract entered into by the municipality and the officer, the officer's immediate family, or an associated business of the officer or the officer's immediate family, and whose official duties include execution of that contract, shall recuse themselves from any decision-making process involved in the awarding of that contract.
 3. Notwithstanding the above, a municipal officer shall not continue to act in a matter involving the officer's conflict of interest or appearance of a conflict of interest if authority granted to another official or public body elsewhere under law is exercised to preclude the municipal officer from continuing to act in the matter.
- C. If an officer's conflict of interest or the appearance of a conflict of interest concerns an official act or actions that take place outside a public meeting, the officer's nonrecusal statement shall be filed with the clerk of the municipality and be available to the public for the duration of the officer's service plus a minimum of five years.
- D. If an officer's conflict of interest is related to an official municipal act or actions considered at a public meeting, the officer's nonrecusal statement shall be filed as part of the minutes of the meeting of the public body in which the municipal officer serves.
- E. If, at a meeting of a public body, an officer becomes aware of a conflict of interest or the appearance of a conflict of interest for the officer and the officer determines there is good cause to proceed, the officer may proceed with the matter after announcing and fully stating the conflict on the record. The officer shall submit a written nonrecusal statement within five business days after the meeting. The meeting minutes shall be subsequently amended to reflect the submitted written nonrecusal statement.
- F. Authority to inquire about conflicts of interest. If a municipal officer is a member of a public body, the other members of that body shall have the authority to inquire of the officer about any possible conflict of interest or any appearance of a conflict of interest and to recommend that the member recuse themselves from the matter.
- G. Confidential information. Nothing in this section shall require a municipal officer to disclose confidential information or information that is otherwise privileged under law.

Article 7. Enforcement; Progressive Consequences for Failure to Follow the Conflict of Interest Procedures. In cases where the conflict of interest procedures in Articles 5 and 6 have not been followed, the Selectboard may take progressive action to discipline an offending public officer. In the discipline of a public officer, the Selectboard shall follow these steps in order:

- A. The Chair (or Vice-Chair, if the conflict or potential conflict involves the Chair) shall meet informally, in private, with the public officer to discuss possible conflict of interest violation(s).
- B. The Selectboard may meet to discuss the conduct of the public officer. Executive session may be used for such discussion, in accordance with 1 V.S.A. § 313(4). The public officer may request that this meeting occur in public. If appropriate, the Selectboard may admonish the offending public officer in private.

- C. If the Selectboard decides that further action is warranted, the Selectboard may admonish the offending public officer at an open meeting and reflect this action in the minutes of the meeting. The public officer shall be given a reasonable opportunity to respond to the admonishment.
- D. Upon majority vote, the Selectboard may request that the offending public officer resign their position. If the public officer fails or refuses to resign, the Selectboard may take such action as is authorized by statute, ordinance, regulation or policy to remove the public officer from office.
- E. In addition to any other remedies provided by law, the Selectboard may seek injunctive relief in superior court, which may include, but not be limited to, an order to negate any vote or other action taken by the officer in connection with any matter in which a conflict of interest exists.

Article 8. Prohibited Conduct.

- A. Directing unethical conduct. A municipal officer shall not direct any individual to act in a manner that would:
 - 1. benefit a municipal officer in a manner related to the officer's conflict of interest;
 - 2. create a conflict of interest or the appearance of a conflict of interest for the officer or for the directed individual; or
 - 3. otherwise violate the Municipal Code of Ethics as described in this chapter.
- B. Preferential treatment. A municipal officer shall act impartially and not unduly favor or prejudice any person in the course of conducting official business. An officer shall not give, or represent an ability to give, undue preference or special treatment to any person because of the person's wealth, position, or status or because of a person's personal relationship with the officer, unless otherwise permitted or required by State or federal law.
- C. Misuse of position. A municipal officer shall not use the officer's official position for the personal or financial gain of the officer, a member of the officer's immediate family or household, or the officer's business associate.
- D. Misuse of information. A municipal officer shall not use nonpublic or confidential information acquired during the course of official business for personal or financial gain of the officer or for the personal or financial gain of a member of the officer's immediate family or household or of an officer's business associate.
- E. Misuse of government resources. A municipal officer shall not make use of a town's, city's, or village's materials, funds, property, personnel, facilities, or equipment, or permit another person to do so, for any purpose other than for official business unless the use is expressly permitted or required by State law; ordinance; or a written agency, departmental, or institutional policy or rule. An officer shall not engage in or direct another person to engage in work other than the performance of official duties during working hours, except as permitted or required by law or a written agency, departmental, or institutional policy or rule.
- F. Gifts.
 - 1. No person shall offer or give to a municipal officer or candidate, or the officer's or candidate's immediate family, anything of value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the municipal officer or candidate would be, or had been, influenced thereby.
 - 2. A municipal officer or candidate shall not solicit or accept anything of value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the municipal officer or candidate would be or had been influenced thereby.
 - 3. Nothing in subdivision (1) or (2) of this subsection shall be construed to apply to any campaign contribution that is lawfully made to a candidate or candidate's committee pursuant to 17 V.S.A. chapter 61 or to permit any activity otherwise prohibited by 13 V.S.A. chapter 21.

- G. Unauthorized commitments. A municipal officer shall not make unauthorized commitments or promises of any kind purporting to bind the municipality unless otherwise permitted by law.
- H. Benefit from contracts. A municipal officer shall not benefit from any contract entered into by the municipality and the officer, the officer's immediate family, or an associated business of the officer or the officer's immediate family, unless:
1. the benefit is not greater than that of other individuals generally affected by the contract;
 2. the contract is a contract for employment with the municipality;
 3. the contract was awarded through an open and public process of competitive bidding; or
 4. the total value of the contract is less than \$2,000.00.

Article 9. Exception. The recusal provisions of Article 6 shall not apply if the legislative body of the municipality 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 they have a conflict of interest shall disclose such conflict as provided in Article 5 prior to taking official action.

Article 10. Effective Date. This policy shall become effective immediately upon its adoption by the Waterbury Select Board.

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Conflict of Interest Policy approved at a Select Board meeting on March 31st, 2025.