

## EAST MONTPELIER CONFLICT OF INTEREST POLICY

**I Authority.** The authority to adopt this policy is granted in 24 V.S.A. §2291(20).

**II 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 his or her 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 insure that all decisions made by municipal officials are based on the best interest of the community at large.

**III Persons Covered by this Policy.** This policy applies to all public officers, appointed and elected, and public employees.

**IV Definitions.** For the purposes of this policy, the following definitions shall apply:

A. **Conflict of interest** means any of the following:

1. A direct personal or financial interest of a public official, or the official's spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the agency or public body in which the official holds office or is employed. "Conflict of interest" does not arise in the case of votes or decisions on matters in which the public official has a personal or financial interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision. (24 V.S.A. §1984 (b))

2. A situation where a public officer has publicly displayed a prejudgment of the merits of a particular quasi-judicial 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.

B. **Emergency** means an imminent threat or peril to the public health, safety or welfare.

C. **Ex parte communication** refers to a situation in which only one party (and not the adversary) interacts with a judge or quasi-judicial body.

D. **Official act or action** means any legislative, administrative or judicial act performed by any elected or appointed officer or employee while acting on behalf of the municipality.

E. **Public body** means any board, council, commission or committee of the municipality.

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

G. **Public officer or public official** means a person elected or appointed to perform executive, administrative, legislative or quasi-judicial functions for the municipality.

H. **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 may be appealed by a party to a higher authority.

- I. **Recusal** is a situation in which an official acting as judge is removed or steps down from deciding an issue.

**V Disqualification.**

- 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. Public officers shall not accept gifts or other offerings for personal gain by virtue of their public office that are not available to the public in general.
- C. 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.

**VI Disclosure.**

- A. A public officer may believe that despite a real or perceived conflict of interest she/he is able to act fairly, objectively and in the public interest. The officer shall, prior to participating in any official action on the matter disclose to the public body at a public hearing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest.
- 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 her/his relationship to that public body. In such cases, the officer shall not sit with the remaining members of the public body nor be included in any deliberations other than to the extent that all applicants/members of the public are included.

**VII Recusal.** A public officer shall recuse him/herself from any matter in which he or she has a conflict of interest, pursuant to the following:

- A. Any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him/herself;
1. Nevertheless, the person or public body which appointed that public officer retains the authority to order that officer to recuse him or herself from the matter, subject to applicable law.
  2. In the absence of a conflict of interest ordinance, elected officers may not be forced to recuse themselves for a situation in which a conflict appears to exist. 24 V.S.A. §1984.
- B. A public officer who has recused him or herself from a proceeding shall not sit with the public body, deliberate with the public body, or participate in that proceeding as a member of the public body member in any capacity;
- C. If a previously unknown conflict is discovered, the public body may take evidence pertaining to the conflict and, if appropriate, adjourn to a short deliberative session to address the conflict; and

D. The public body may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the public body. The public body may then resume the proceeding with sufficient members present.

**VIII Enforcement; Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.** In cases where the conflict of interest procedures in sections VI and VII have not been followed, the public body may take progressive action to discipline an offending public officer. In the discipline of a public officer, the public body shall follow these steps in order:

- A. The chair shall meet informally, in private, with the public officer to discuss possible conflict of interest violation.
- B. The public body 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 (a)(4). The public officer may request that this meeting occur in public. If appropriate, the public body may admonish the offending public officer in private.
- C. If the public body decides that further action is warranted, the public body 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 the opportunity to respond to the admonishment.
- D. Upon majority vote, the public body may request that the offending public officer resign from the public body.

**IX Exception.** The recusal provisions of section VII 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 he or she has a conflict of interest shall disclose such conflict as provided in section VI.

**X Effective Date.** This policy shall become effective immediately upon its adoption by the East Montpelier selectboard.

Signatures:

Robert Chickerling  
Donald B. Welch  
Gregory G. G. G.  
Tracy M. B.

Date:

9/21/2009