

East Montpelier Conflict of Interest Ordinance

Draft November 22, 2013

Presented to E.M. Selectboard from E.M. Charter Committee

Article 1. Authority. Under the authority granted in 24 V.S.A. §1984, the Town of East Montpelier hereby adopts the following ordinance concerning conflicts of interest.

Article 2. Purpose. The purpose of this ordinance 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 ordinance to insure 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 ordinance, the following definitions shall apply:

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

1. A direct or indirect personal or financial interest of a public officer, his or her spouse, household member, 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 he or she holds office or is employed;
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; or
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. **Necessary action** means administrative functions that cannot reasonably be delayed until a proper quorum is achieved.

C. **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.

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

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

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

G. **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 he or she has a conflict of interest in the matter under consideration.
- B. 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 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 which appointed that public officer shall have the authority to order that officer to recuse him- or herself from the matter.
- D. 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.
- 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.

Article 5. Disclosure. A public officer who has reason to believe that he or she has or may have a conflict of interest but believes that he or she is able to act fairly, objectively and in the public interest in spite of the conflict of interest 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. 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.

Article 6. Recusal.

- A. A public officer shall recuse him- or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
 - 1. 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- or herself;
 - 2. A public officer who has recused him- or herself from a proceeding shall not sit with the board, deliberate with the board, or participate in that proceeding as a board member in any capacity;
 - 3. If a previously unknown conflict is discovered, the board may take evidence pertaining to the conflict and, if appropriate, adjourn to a short deliberative session to address the conflict; and
 - 4. The board 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 board. The board may then resume the proceeding with sufficient members present.

In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him- or herself from the matter, subject to applicable law.

Article 7. Enforcement

If a question of a member's disqualification is brought to the attention of any board, commission or committee by any party or person or by another board, commission or committee member, and the member does not disqualify him- or herself, the board, commission or committee shall consider the factual basis for the question and shall decide the matter by majority vote, the challenged member abstaining, before any other business is conducted. A formal vote shall be taken on every question of a conflict. A full report of the issue and discussion shall be made in the minutes of the meeting. Upon majority vote, the board may further request that the offending public officer resign from the board.

Article 8. Exception. The recusal provisions of Article 6 shall not apply if the legislative body of the municipality determines that an emergency exists or necessary action has to be taken 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 5.

Article 9. Appointment of alternate officers

The selectboard may appoint an alternate town officer to serve in place of a disqualified town officer during the period of disqualification or unavailability.

Article 10. Effective Date. This ordinance shall become effective immediately upon its adoption by the voters of East Montpelier.