

TOWN of SHELBURNE
ETHICS COMMITTEE REGULAR MEETING
July 26, 2018 - 8:30 AM
SHELBURNE TOWN OFFICES
Meeting Room 1
AGENDA

1. Call to Order
2. Review and Approve the Agenda for July 26, 2018
3. Approve Minutes from June 28, 2018
4. Opportunity to Disclose Conflicts of Interest
5. Public Participation and Comments
6. Committee Discussion of Suggested Revisions to the 6/28/18 Ethics Ordinance – Lee Suskin
7. Committee Discussion of Revised Committee Rules of Procedure
8. Other Business
9. Adjournment

Please call Diana Vachon at 264-5075 or email at dvachon@shelburnevt.org if you are unable to attend.

Reasonable accommodations shall be provided upon request to ensure that this meeting is accessible to all individuals regardless of disability.

Town of Shelburne
Conflicts of Interest Ordinance
June 28, 2018 Draft
July 21 Draft Revision

Article 1. Authority. Under the authority granted in 24 V.S.A. Chapter 59 and 24 V.S.A. § 2291(20), the Selectboard for the Town of Shelburne hereby adopts the following civil ordinance concerning conflicts of interest and ethics. The ordinance applies to all Town public officials as defined in the ordinance.

Article 2. Purpose. The purpose of this ordinance is to ensure that the business of the Town will be conducted in such a way that no public official of the Town will gain a personal or financial advantage from his or her office and so that the public trust in its public officials will be preserved. It is also the intent of this ordinance to ensure that all decisions made by public officials are based on the best interests of the Town. The ordinance authorizes an appointed Ethics Committee to hear conflict of interest complaints.

Article 3. Application. This policy applies to all individuals elected or appointed to perform executive, administrative, legislative, or quasi-judicial functions of the Town of Shelburne. With the exception of the Town Manager, Town Clerk and Town Library Director, it does not apply to employees of the Town.

Article 4. Definitions. For the purposes of this ordinance, the following definitions shall apply:

A. “**Appearance of a conflict of interest**” means the impression that a reasonable person might have, after full disclosure of the facts, that a public official’s judgment might be significantly influenced by outside interests, even though there may be no actual conflict of interest.

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

1. A direct or indirect personal or financial interest of a public official, his or her spouse or other immediate family household member, or persons related with the third degree of consanguinity or affinity (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 particular matter, policy, cause, proceeding, application or any other matter pending before the public official or before the public body on which he or she serves or holds office. “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 no greater than that of other persons generally affected by the decision, such as adopting a bylaw or setting a tax rate.

A conflict of interest does not exist solely because two public officials are members of the same Town Board, Commission or Committee.

~~2. When a public official is serving in a quasi-judicial capacity, a conflict of interest includes:~~

~~a. A situation where a public official has displayed a prejudgment of the merits of a particular quasi-judicial the proceeding.~~

~~b.~~

~~3. A situation where a public official has not disclosed engaged in more than a de minimis - an ex parte communication(s) related to a quasi-judicial the proceeding that is before the body of which that official is a member.~~

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~~c. 4.~~ A situation where a public official has exhibited personal bias and prejudice related to an individual involved in ~~a quasi-judicial~~ proceeding.

~~d. A situation where a public official has had or is likely to have more than a de minimis business affiliation or relationship with an individual involved in the proceeding.~~

A conflict of interest does not arise in the case of an official act or action 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.

~~C. De minimis denotes an insignificant interest or action that could not raise reasonable questions as to a public official's impartiality.~~

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~~D. Emergency means an imminent threat or peril to the public health, safety, or welfare.~~

~~ED. Employee includes all individuals covered by Section 1.4 of the Shelburne Personnel Policy, as amended from time to time, including all volunteer fire and rescue personnel who are paid a salary or stipend.~~

~~EE. Ex Parte Communication means direct or indirect communication between a member of a public body and any party, party's representative, party's counsel or any person interested in the outcome of a quasi-judicial proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.~~

~~EF. Official act or action means any legislative, administrative or quasi-judicial act performed by any public official while acting on behalf of the Town. This term does not apply to ministerial acts or actions wherein no discretionary judgment is exercised.~~

~~EG. Probable Cause means credible facts and circumstances sufficient for a prudent person to form a reasonable belief about a public official's conduct in the context of reviewing a complaint filed under this ordinance.~~

~~EH. Public body means any board, commission, or committee of the Town or other individual or group appointed by the Selectboard to serve in a volunteer capacity to perform duties for the Town.~~

~~EJ. Public interest means an interest of the Town, conferred generally upon all residents of the Town.~~

~~EK. Public official means a person elected or statutorily-appointed to perform executive, administrative, legislative, or quasi-judicial functions for the Town. This term does not include Town employees except for the Town Manager, Town Clerk and Town Library Director.~~

~~EL. Quasi-judicial proceeding means a contested hearing as defined by the Vermont Municipal Administrative Procedures Act, 24 V.S.A. Sections 1203 – 1209, as amended, or 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, and which results in a written decision, the result of which is appealable by a party to a higher authority.~~

Article 5. Prohibited Conduct - Conduct that Violates the Ordinance and is Subject to a Complaint

- A. A public official shall not participate in any official act or action if he or she has a conflict of interest in the matter under consideration.
- B. A public official 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 that has an interest in an official act or action pending before the public body in which the public official holds office. The public official may, after recusal, represent, appear for, or negotiate in a private capacity on behalf of the public official where he or she has an interest in an official act or action pending before the official’s public body
- C. A public official shall not accept gifts or other offerings for personal gain by virtue of his or her public office that are not available to the public in general.
- D. A public official will not request or accept any reward, gift, or favor for taking an official act or action or advocating for or against an official act or action.
- E. A public official shall not use resources unavailable to the general public – including but not limited to town staff time, equipment, vehicles, supplies, facilities, or confidential information – for any material private gain or personal purposes.
- F. A public official who is a member of a public body shall not give the impression that he or she has the authority to make decisions or take actions on behalf of that body.
- G. A public official shall not act in violation of the Shelburne Town Charter, the Vermont Open Meetings Law or the Vermont Public Records Law.

Article 6. Disclosure. A public official who, while serving on a public body, may have a conflict of interest, or the appearance thereof, in a matter under consideration by that public body shall, prior to taking an official act or action or participating in any official act or action on the matter, publicly disclose at a public meeting or public hearing that he or she has an actual or the appearance of a conflict of interest in the matter under consideration and disclose the nature of the actual or appearance of a conflict of interest. Alternatively, a public official may request that another public official recuse him or herself from a matter due to a conflict of interest, whether real or perceived.

Article 7. Consideration of Recusal. Once there has been a disclosure of an actual or the appearance of a conflict of interest, other public officials shall be afforded an opportunity to ask questions or make comments about the situation. If a previously unknown conflict is discovered during a meeting or hearing conducted by a public body of the town, the public body shall take evidence pertaining to the conflict and, if appropriate, adjourn to an executive session to address the conflict.

Article 8. Recusal of Public Officials. After taking the actions listed in Articles 6 and 7, a public official shall declare whether he or she will recuse him or herself and explain the basis for that decision. If the public official has the appearance of 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 appearance, he or she shall state why he or she believes that he or she is able to act in the matter fairly, objectively, and in the public interest. Otherwise, the public official shall recuse him or herself from the matter under consideration. A public official who recuses him or herself may explain the basis for that decision. A public body may vote to require a member to recuse.

Article 9. Recording. The minutes of the meeting or the written recusal or non-recusal statement of a public official shall document the actions taken in Articles 6 through 8.

Article 10. Post-Recusal Procedure.

- A. A public official who has recused himself or herself from participating in an official act or action by a public body shall not sit with the public body, deliberate with the public body, or participate in the discussions about that official act or action in any manner in his or her capacity as a public official, though in a quasi-judicial proceeding such member may still participate as an interested party or as a representative pursuant to Article 5.B.
- B. The public body may adjourn the proceedings to a time, date, and place certain if, after a recusal, the lack of a quorum makes it not possible to take action through the concurrence of a majority of the total membership of the public body. The public body may then resume the proceeding with sufficient members present.

Article 11. The Ethics Committee

- A. An Ethics Committee of seven members is established. The Selectboard shall solicit volunteers from among Town residents who are willing to serve on the Ethics Committee and appoint five members and two alternates to serve staggered terms of three years. The list of members shall be filed with the Town Clerk. The Committee shall elect a Chair and Vice-Chair from among its members. If a member does not participate in a particular matter for any reason, one of the alternates shall be designated by the Committee's Chair to fill in. The Selectboard shall invite the Town Clerk to serve as the Clerk of the Committee. Should the Town Clerk decline or be unavailable, the Committee Chair shall appoint a person to serve as Clerk pro tempore and make the Clerk pro tempore known to the public.
- B. The Ethics Committee is authorized to:
 - 1. Educate and inform public officials on provisions of the ordinance and committee activity.
 - 2. Appoint one or more of its members or other qualified persons to:
 - a. issue an advisory opinion if requested by a public official or on its own as a means of educating public officials and residents of the Town as to matters covered by this ordinance; a public official cannot later be found to have violated the ordinance if the public official acts in a manner consistent with the advisory opinion
 - b. assist persons as a neutral, impartial resource to draft and/or respond to complaints;
 - c. mediate a complaint or potential complaint for Ethics Committee approval, where the complainant and respondent are agreeable to mediation;
 - 3. Any member appointed to perform a function identified in Article 11. B. 2. (a) – (c) shall recuse him or herself from participating in any quasi-judicial proceeding involving the matter.
 - 4. Determine materials to be posted on the Ethics Committee section of the Town website.
 - 5. Adopt Rules of Procedure, educational materials and forms that align with the ordinance and that strive for the simple, and inexpensive disposition of complaints.
 - 6. Issue concise public statements regarding confidential proceedings when needed to provide fairness to the public official.
 - 7. Conduct hearings in accordance with Article 11.C. of this ordinance.
 - 8. Engage the services of the Town Attorney or, where the Town Attorney has a conflict of interest or is otherwise not available, engage the services of legal counsel, to assist the Committee in its proceedings and deliberations.
 - 9. Collaborate with the Selectboard in developing a conflict of interest and ethics disclosure and compliance certificate form for public officials to use and file annually.

C. Hearings before the Ethics Committee.

1. Any person who believes that a public official has engaged in conduct prohibited by Article 5 of this ordinance may file a complaint directly with the Town Clerk within 60 days of the person having discovered the matter or concern. The burden of proving the date the person first discovered the matter of concern shall be on the person filing the complaint.

2. A complaint filed against a public official shall be a signed, sworn statement, based on the concerned individual's personal information using a complaint form developed by the Ethics Committee available from the Town Clerk or a form substantially similar to that. Until the determination of probable cause, the complaint shall be confidential and not subject to disclosure under Vermont public records laws.

3. a. Upon receipt of a complaint regarding a public official, the Committee shall undertake a confidential preliminary investigation of the complaint in a closed, deliberative session, to determine if there is probable cause to believe that a violation has occurred. The Committee may separately interview the complainant or the respondent, or both, under oath, in the closed session.

b. If probable cause is not found by the Committee, the Chair of the Committee shall notify the person who filed the complaint and the public official in question that probable cause was not found and the complaint and file shall be closed, sealed and exempt from disclosure under the Title 1, Section 317(c)(1) and (7) of the Vermont public records laws; provided, however, that the public official in question may have access to the file.

c. Upon finding probable cause that a violation has occurred, the Clerk shall set a date for a hearing before the Committee as soon as possible taking into consideration the scheduling and hearing preparation needs of the complainant and the respondent public official. Personal notice shall be given to each member of the Committee, including the alternates, to the complainant, and to the respondent. Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law.

d. At any time, the Committee may appoint a mediator where the complainant and respondent are amenable to mediation, to attempt to resolve a complaint and to submit any mediated agreement to the Committee for approval.

4. The Committee shall consider the matter in accordance with the Vermont Municipal Administrative Procedures Act, 24 V.S.A. Sections 1203-1209 and the Committee's Rules of Procedure at a public hearing. Testimony and other evidence shall be taken under oath. The complainant and respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses and to be represented by counsel. The hearing shall be audio or video recorded at Town expense.

5. a. At the conclusion of the hearing, the Committee shall consider all of the evidence and render a decision and may go into a closed deliberative session in doing so. The Committee shall issue a written decision, using a preponderance of the evidence as its standard of proof on whether the public official's actions were greater than de minimis violations of violated Articles 8-14 of the ordinance.

b. the Committee may take appropriate steps to sanction a public official who has violated the ordinance and shall state in writing the reasons for its decision. Sanctions may include:

(i) For all public officials:

(a) require recusal from the matter in question due to a conflict of interest;

(b) require a disclosure statement concerning a conflict of interest;

(c) recommend private or public training, issue a private or public warning, issue a private or public reprimand, and/or issue a public censure;

(d) direct the public official to cease and desist from the conduct that violated the ordinance; or

(e.) any combination of the foregoing.

(ii) For appointed officials: recommend that the Selectboard consider removing the public official from the public body pursuant to the Town Charter.

D. Funding. The Ethics Committee may spend funds allocated to it by the Selectboard. The Committee may spend additional funds as approved by the Town Manager or the Selectboard.

Article 12. Amendments to the Ordinance

The Selectboard shall have authority to adopt amendments to this ordinance in accordance with the Town Charter (24 V.S.A. App Section 147.16).

Article 13. Effective Date

This ordinance shall take effect immediately upon adoption by the Selectboard.

**Town of Shelburne
Ethics Committee
Draft Rules of Procedure**

Pursuant to the authority of Article 15(f) of the Town of Shelburne Ethics and Conflict of Interest Ordinance (the Ordinance) and in accordance with 24 V.S.A. Sections 1203 – 1209 (the Vermont Municipal Administrative Procedure Act (MAPA)), the Shelburne Ethics Committee (the Committee) hereby establishes the following Rules of Procedure.

These rules govern the procedure for hearing complaints filed pursuant to Article 16 of the Ordinance. Consistent with the proper scope of the rulemaking process, these Rules make no changes in substantive rights. These Rules do provide a clear process for complainants, respondents and the Ethics Committee to follow and should be construed to secure the just, speedy and inexpensive determination of every complaint filed.

A. Conduct of Meetings:

- 1) **Ethics and Conflicts of Interest:** Members of the Committee are subject to the provisions of the Ordinance and shall conduct themselves in accordance with the provisions of the Ordinance when acting in their official capacity.
- 2) **Open Meetings:** Meetings of the Committee shall be conducted in accordance with the Vermont Open Meeting Law, 1 V.S.A. §§ 310-314. Such meetings are open to the public at all times, except as otherwise provided by law. See § 1 V.S.A. secs. 312(d) and 313.
 - a) **Administrative Meetings:** The Committee may hold administrative meetings to conduct business related to the Committee's organization and procedures and other non-quasi-judicial acts or actions.
 - b) **Quasi-Judicial Proceedings:** The Committee may hold quasi-judicial proceedings to hear and resolve complaints filed under Article 11.C. of the Ordinance regarding public officials.
- 3) **Agenda:** There shall be an agenda for each meeting. Those who wish to be added to the agenda of an administrative meeting shall contact the Clerk of the Committee to request inclusion on the agenda. The Chair of the Committee will determine the content of a proposed agenda; the Committee will determine the content of the final agenda.
- 4) **Duties of the Chair:** The Chair of the Committee, or in the Chair's absence, the Vice-Chair, shall chair all administrative meetings and quasi-judicial proceedings of the Committee. If both the Chair and the Vice-Chair are absent, a member selected by the Committee shall chair the meeting. The Chair of the meeting shall rule on all questions of order or procedure and may enforce these rules as authorized by 1 V.S.A. § 312(h).

- 5) **Participation by Members:** If a regular member of the Committee cannot participate in a particular matter, the alternate member shall fill in as set forth in the Ordinance. A combination of three regular and/or alternate members shall constitute a quorum. If for any reason a quorum is impossible, the Chair shall request the Selectboard to appoint from residents of the Town persons to serve *pro tempore* on the Committee pursuant to Article 16(g) of the Ordinance. If a quorum of the members of the Committee is not present at a meeting, the only action that may be considered by the Committee is a motion to recess or adjourn the meeting. Decisions of the Committee shall be by majority vote.
- 6) **Conflicts of Interest:** Committee member participation, disclosure of conflicts of interest, recusal and steps to take following recusal shall be governed by Article 6 – 10 of the Ordinance.
- 7) **Ex Parte Communications:** Committee member participation, disclosure of ex parte communications, recusal and steps to take following recusal shall be governed by Articles 4.B. and Articles 6 – 10 of the Ordinance.
- 8) **Pre-Judgment of the Merits:** Committee member participation, disclosure of a public display of pre-judgment of the merits, recusal and steps to take following recusal shall be governed by Articles 4.B. and Articles 6 – 10 of the Ordinance.

B. Quasi-Judicial Hearings before the Ethics Committee

Rule 1. Filing of a Concern

A person who believes that a public official should: (i) recuse him or herself from a matter because of a conflict of interest or the appearance of a conflict of interest, or (ii) that the Public Official should provide a disclosure statement regarding a conflict of interest or an appearance of a conflict of interest in the matter; or (iii) is otherwise engaged in conduct prohibited by Article 5 of the Ordinance, ~~should first within 15 days of the person discovering the matter of concern communicate such concern to the Chair or Vice Chair of the Selectboard who will then attempt to resolve the matter informally, as prescribed by Article 16 of the Ordinance. See Ordinance Article 16.a.~~

Rule 2. ~~Filing of a Complaint or a Request for Disclosure or Recusal~~

~~In the alternative, a person may file a complaint or a request for disclosure or recusal may file a complaint directly with the Town Clerk of the Committee within 6030 days of the person having discovered the matter of concern. The person may request disclosure or recusal in accordance with Articles 9, 11 or 13 of the Ordinance that the Committee take appropriate steps to sanction the public official as authorized by Article 11.C.5 of the Ordinance. The person (Complainant) should use the complaint affidavit form developed by the Ethics Committee, or one substantially similar to it to file a signed, sworn statement based on the complainant's personal information. ~~The complaint and affidavit~~~~

shall be confidential until a determination of probable cause by the Committee.
See Ordinance Article ~~16.b~~11.C.3.c.

- a) Preliminary Probable Cause Investigation: Upon receipt of a complaint, the Clerk of the Committee shall date-stamp the complaint and shall inform the Chair of the Committee of the filing. The Chair shall convene the regular and alternate members of the Committee to undertake a confidential preliminary ~~probable cause~~ investigation in a closed, ~~executive-deliberative~~ session to determine whether probable cause exists that a violation has occurred and that the public official has committed it. ~~–~~The preliminary investigation shall consist of a review of the complaint and any accompanying affidavit(s) and may be based upon interviews that the Committee separately conducts of the complainant or the respondent, or both, under oath and in a closed session, to determine whether there is probable cause to believe that a violation has occurred and that the public official has committed it. ~~–~~The finding of probable cause shall be based upon substantial evidence, which may be hearsay, in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. See Ordinance Article 16.d. whether the Committee finds credible facts and circumstances sufficient for a prudent person to form a reasonable belief about a public official's conduct. See Article 4.G.
- 1) If probable cause is not found, the Chair of the Committee shall notify the person who filed the complaint and the public official in question ~~complainant~~ and the Clerk shall close the file. The Clerk shall seal the file and take steps to ensure that it is not disclosed or accessed by anyone other than the public official in question. See Ordinance Article ~~16.d.11.C.3.b.~~
- 2) If probable cause is found, the ~~Chair of the Committee shall notify the Chair of the Selectboard and the Clerk of the Committee~~ shall then set the matter for a public hearing before the Committee as soon as possible. See Ordinance Article ~~16.d.11.C.3.c.~~

Rule 3. Notice of the Hearing on the Complaint

- a) The Clerk shall provide personal notice of the complaint ~~in accordance with Rule 4~~ to each member and alternate of the Committee, to the Complainant, and to the public official complained about (the Respondent). Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law. See Ordinance Article ~~16.d.11.C.3.c.~~
- b) The Clerk shall provide personal service by personally delivering or by sending ~~serve a copy of~~ the complaint, ~~together with~~ a notice of the hearing date, time and place, and a copy of the Ordinance and these Rules ~~to the on the Respondent~~ by first class mail at the address provided by in the Complaint. If the respondent does not file an answer with the Clerk within 15 days, by delivering the documents to the Respondent in person within five days of the filing of the

Comment [1s1]: Do we need to amend the ordinance to spell out service requirements?

~~complaint the.~~ The Clerk may have the documents served by a law enforcement officer or other person authorized by law to serve legal process. The Clerk shall place in the file a certification of the date of service of the documents, and a copy of the process server's return of service if the complaint was served in that manner. The Clerk is unable to serve the Respondent within ~~15~~ five days, the Clerk shall so notify the Chair who may reschedule the hearing and determine some other proper means of promptly notifying the Respondent of the complaint

Rule 4. Filing of a Response

The Respondent may file a response to the complaint with the Clerk prior to the hearing. The Clerk shall send a copy of the response to the Complainant and to the Committee members.

Rule 5. Mediation

At any time, the Committee may appoint a mediator where the complainant and the respondent are amenable to mediation, in an attempt to resolve a complaint and to submit a mediated agreement to the Committee for approval.

Rule 6. The Hearing

a) The regular members of the Committee shall conduct a public hearing on the matter raised by the complaint in accordance with the MAPA ~~and these Rules of Procedure at a public hearing.~~ The Chair of the Committee shall ~~preside~~ shall serve as the Presiding Officer at the hearing. If the Chair is not available, the Vice-Chair shall ~~preside~~ serve as the Presiding Officer. The complainant and respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses and to be represented by counsel. ~~The hearing shall be audio or video recorded at Town expense.~~

~~a)~~

b) Burden of Proof. The Complainant has the burden of proving by a preponderance of the evidence that the Respondent has violated the Ordinance.

c) ~~The Committee will conduct the hearing in a summary manner.~~ The Committee may permit the Complainant, Respondent and any other witnesses to appear at the hearing by audio or video means. Reasonable steps shall be taken to ensure that each participant in the hearing has an opportunity to

Comment [Is2]: Do we need to amend the ordinance to address what happens if the public official fails to respond?

Comment [Is3]: Nothing in the ordinance requires a response nor authorizes a default judgment nor authorizes the committee to hold a hearing without the respondent being present.

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participate in, hear, and, if technically feasible, to see the entire proceeding as it is taking place. The hearing shall be audio or video recorded at Town expense, and the recording shall be a public record. An audio or video copy of the hearing shall be made upon request and upon payment of the reasonable costs of copying by the person making the request.

~~d) 1) Testimony. All witnesses will testify under oath and will be examined by the Presiding Officer with the objective of laying out the evidence pertaining to the complaint reasonably available to the parties. The other members of the Committee, the parties or their attorneys may supplement the Presiding Officer's examination subject to the Presiding Officer's authority to protect witnesses against unfair imposition and to avoid needless repetition. oral or written testimony of parties and witnesses shall be taken under oath or affirmation. The Complainant and then the Respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses and to be represented by counsel.~~

~~d)~~

2) Evidence. The Chair may exclude any irrelevant, immaterial, unreliable or unnecessarily repetitive evidence. The Vermont Rules of Evidence shall be followed apply. Evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege. except that when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted if it is reliable.

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~~e) Representation. Any party is entitled, but not required, to be represented by an attorney.~~

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~~a) Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.~~

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~~b) Reliable evidence is any relevant evidence commonly relied upon by reasonably prudent people in the conduct of their affairs.~~

~~e) The Chair may permit any part of the testimony to be received in written form as long as the witness is available for cross-examination at the evidentiary hearing.~~

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d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the Chair shall provide the Complainant and Respondent an opportunity to compare the copy with the original.

fe) Sequence of the Hearing. The Chair shall conduct the hearing as follows:

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1. Open the hearing, stating the name of the Complainant and the name of the Respondent.

2. Ask the Complainant and Respondent and any witnesses to take the following oath:

Under the pains and penalties of perjury, do you solemnly swear or affirm that the evidence you give in the cause under consideration shall be the whole truth and nothing but the truth?

3. Ask the Complainant and Respondent if they have received copies of the Committee's Rules and if they have any questions about how the hearing will proceed.

4. Request Committee members to disclose any conflicts of interest, any ex parte communications and/or any public displays of a pre-judgment of the merits of the matter.

~~5. Ask the Complainant to present evidence.~~ Conduct an examination of the parties and witnesses in accordance with Rule 6.d. and e.

~~6. Invite the Respondent to cross-examine the Complainant or any witnesses.~~

~~7. Invite questions from Committee members.~~

~~8. Ask the Respondent to present evidence in response to the information presented by the Complainant.~~

~~9. Invite the Complainant to cross-examine the Respondent or any witnesses.~~

~~10. Invite questions from Committee members.~~

~~11.~~ 6. Invite final comments from the Complainant.

7+2. Invite final comments from the Respondent.

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13. Close the hearing and explain that the Committee will enter ~~closed~~ deliberative session and will issue a written decision. If the hearing recessed to a later date, it shall be deemed sufficient to constitute notice of the recessed hearing, if an announcement is made before adjournment of the hearing specifying the time, date and place of recessed hearing.

f) At the conclusion of the hearing the Committee shall go into ~~closed~~ deliberative session in order to consider all the evidence and render a written decision. ~~As provided in the Vermont Open Meeting Law (Subchapter 2 of Chapter 5, Title 1, Vermont Statutes Annotated), the Committee may deliberate in a closed session.~~

1) Committee members may participate in the decision only if they have heard all testimony and reviewed all evidence submitted for the Committee's decision.

2) Committee members who have not attended every session of the hearing may participate in the decision only if they have listened to the recording of the testimony they have missed (or read transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.

g) The ~~Ethics~~ Committee shall issue a written decision as to whether ~~the~~ public official violated the Ordinance and, if so:

~~(i) whether the public official shall be required to~~
~~(a) recuse him or herself from the matter in question due to a conflict of interest or the appearance of a conflict of interest; or~~
~~(b) or (ii) provide a disclosure statement regarding a conflict of interest or the appearance of a conflict of interest;~~

~~(ii) whether to recommend private or public training, issue a public warning, issue a private or public reprimand, and/or issue a public censure;~~

~~(iii) whether to direct the public official to cease and desist from the conduct that violated the ordinance; or~~

~~(iv) whether to recommend that the Selectboard consider removing the public official from the public body pursuant to the Town Charter, or~~

~~(iv) any combination of the foregoing. See Article 11.C.5 or (iii) cease and desist from conduct otherwise proscribed by the Ordinance, and shall state the reasons for the decision.~~

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Rule 6- Enforcement

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~~In addition to any other remedies provided by law, the Committee may place a copy of its written decision in a public file maintained by the Town Clerk and may publicly censure a public official who violates the Ordinance and may recommend that the Selectboard remove the public official from office for cause where that is permitted by law. See Ordinance Article 17.~~

C. Amendments

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These Rules may be amended by majority vote of the Committee at a meeting duly warned for that purpose.

D. Posting of these Rules of Procedure

These Rules shall be posted on the Town of Shelburne's Web site and paper copies be made available at the Town Clerk's office at no charge.

ADOPTED: Shelburne Ethics Committee

Date

Lee Suskin, Chair

Tom Little, Vice-Chair

Gwen Webster

Michel Ashooh

William Deming

Peter Gadue - Alternate

Complaint Form, Affidavit and Response Form Will Need to be Added