Town of Shelburne
Ethics Committee
Rules of Procedure

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

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 16 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 Chapters 3 and 4 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 11 and 12 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 Article 13 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: (i) should recuse him or herself from a matter because of a conflict of interest or the appearance of a conflict of interest, or (ii) 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 proscribed by 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.

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

a) A person may file a complaint or a request for disclosure or recusal directly with the Clerk of the Committee within 30 days of the person having discovered the matter of concern. The person (Complainant) should use the complaint affidavit form developed by the Ethics Committee, or one similar to it. The complaint and affidavit shall be confidential until a determination of probable cause by the Committee.

b) Preliminary 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 investigation in a closed, executive session. The preliminary investigation shall consist of a review of the complaint and affidavit(s) 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. The Committee may choose to examine the Complainant under oath.

1) If probable cause is not found, the Chair of the Committee shall notify the complainant and shall close the file, seal it and take steps to ensure that it is not disclosed or accessed by anyone other than the public official in question.

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.

Rule 3. Hearing on the Complaint

Personal notice shall be given in accordance with Rule 4 to each member and alternate of the Committee, to the Complainant, and to the Respondent, the public official complained about. Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law.

Rule 4. Service of the Complaint

The Clerk shall serve on the Respondent a copy of the complaint and affidavit(s) and a form for responding to the complaint by delivering the documents to the Respondent in person. The Clerk shall place in the file a certification of the date of service of the documents. If the Clerk is unable to serve the Respondent within five days, the Clerk shall provide the documents to a Shelburne Police Officer for service on the Respondent of a copy of the complaint and affidavit(s) and a form for responding to the complaint. Service shall be at the expense of the Town. The Shelburne Police Officer shall file with the Clerk a certification of the date of service of the documents.

Rule 5. Filing of an Answer

The Respondent has two weeks from the date of service of the complaint to file a response with the Clerk. The Clerk shall send a copy of the response to the Complainant.

Rule 6. Default by the Public Official

If the Respondent fails to file a timely response with the Clerk, the Committee may enter a default judgment of a violation of the Ordinance and may then go into deliberative session to issue a decision, based on the complaint and affidavit(s), as to whether the public official shall be required to (i) recuse him or herself from the matter in question due to a conflict of interest; or (ii) provide a disclosure statement regarding a conflict of interest; or (iii) cease and desist from conduct otherwise proscribed by the Ordinance. In addition, the Committee may publicly censure the public official.

Rule 7. The Hearing

a) If the Respondent files a timely response denying the allegations of the complaint, the regular members of the Committee shall conduct a public hearing on the matter raised by the complaint in accordance with the Vermont Municipal Procedures Act, Title 24, Sections 1205-1209 of the Vermont Statutes Annotated. The Chair of the Committee shall preside at the hearing. If the Chair is not available, the Vice-Chair shall preside.

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

c) For good cause, the Committee may permit the Complainant, Respondent and/or the witness to appear at the hearing by telephone or other electronic means. Reasonable steps shall be taken to ensure that each participant in the hearing has an opportunity to 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.

d) All 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.

(e) The Chair may exclude any irrelevant, immaterial, unreliable or unnecessarily repetitive evidence. The Vermont Rules of Evidence shall be followed 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.

1) 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.

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

(f) 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.

(g) 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

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

1) Open the hearing, stating the name of the Complainant and the name of the public official (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.

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

7) Invite questions from Committee members.

8) Ask the public official 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) Invite final comments from the Complainant.

12) Invite final comments from the Respondent.

13) Close the hearing and explain that the Committee will enter deliberative session and will issue a written decision.

i) If a hearing is to reconvene at a later date, it shall be deemed sufficient to constitute proper notice of that later session, if an announcement is made before adjournment of the previous session of the hearing specifying the time, date and place of that later session.

j) At the conclusion of the hearing the Committee shall go into deliberative session in order to consider all the evidence.

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.

k) The Ethics Committee shall issue a written decision as to whether the public official violated the Ordinance and, if so whether the public official shall be required to (i) recuse him or herself from the matter in question due to a conflict of interest or the appearance of a conflict of interest; or (ii) provide a disclosure statement regarding a conflict of interest or the appearance of a conflict of interest; or (iii) cease and desist from conduct otherwise proscribed by the Ordinance, and shall state the reasons for the decision.

Rule 8. Enforcement

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.

C. Amendments

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

These Rules of Procedure were duly adopted by the Shelburne Ethics Committee at meeting thereof held August 11, 2015.

_____

Lee Suskin, Chair

Shelburne Ethics Committee
Complaint and Affidavit

In the Matter of _____ (Name of Public Official)

Complainant
Name _____
Address _____
_____
Tel. # _____

Public Official's Position with the Town
_____
_____
_____

1. Affidavit of the Complainant

I believe that the Public Official identified above:
___ should recuse (or should have recused) him or herself from a matter because of a conflict of interest or the appearance of a conflict of interest for the reasons detailed below.
___ should provide (or should have provided) a disclosure statement regarding a conflict of interest or the appearance of a conflict of interest for the reasons detailed below.
___ has engaged in conduct prohibited by the Shelburne Ethics and Conflict of Interest Ordinance for the reasons detailed below.

Reasons (Based upon the Complainant's Personal Information)

I discovered these reasons on _____(date)

(Use additional pages, as needed)

2. Filing of a Concern

a. ___ On _____(date) I communicated my concern to the Chair of the Selectboard in accordance with Article 16 of the Ordinance and on _____(date) the Chair of the Selectboard notified me of a proposed resolution of my concern. I am not satisfied with that proposed resolution.

b. _____ I have not communicated my concern to the Chair of the Selectboard. I choose to file this complaint directly with the Ethics Committee.

3. Actions Requested

___ I request that the Committee determine that the public official violated the Ethics and Conflict of Interest Ordinance

___ I request that the Committee require the public official:

- ___ to recuse him or herself from the matter
- ___ to provide a disclosure statement in the matter
- ___ cease and desist from violating the Ordinance

___ I request that the Committee publicly censure the public official

___ I request that the Committee recommend that the Selectboard remove the public official from office

___ Other: _____

_____ _____

Complainant **Date**

Signed under Oath

Subscribed and sworn to before me this _____ day of _____, 20__

_____ _____

Notary **Date**

Shelburne Ethics Committee
Response to the Complaint

In the Matter of _____ (Name of Public Official)

Complainant Name _____ **Public Official's Position with the Town** _____

1. Admission:

___ I admit that I have engaged in acts or actions in violation of the Ethics and Conflict of Interest Ordinance.
:
___ I engaged in conduct prohibited by the Shelburne Ethics and Conflict of Interest Ordinance as specified in the Complaint.
___ I agree to recuse myself from the matter identified in the Complaint.
___ I agree to provide a disclosure statement in the matter as requested in the Complaint..
___ I agree to be publicly censured for my acts or actions.
___ I agree that the Ethics Committee should recommend that the Selectboard remove me from office with the Town.

2. Denial

___ I deny that I have engaged in actor or actions in violation of the Ethics and Conflict of Interest Ordinance and I request that the Ethics Committee set this matter for a public hearing.

Additional Statement (Voluntary)
Use additional pages as needed

_____ _____
Respondent Public Official **Date**