

## **Town of Shelburne Ethics Committee Rules of Procedure<sup>1</sup>**

Pursuant to the authority of Article 11(b)(4) of the Town of Shelburne Conflicts of Interest Ordinance (Ordinance), as revised by the Selectboard on December 11, 2018 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. Consistent with the proper scope of the rulemaking process, these Rules make no changes in substantive rights. If these Rules conflict with the Ordinance, the Ordinance shall control.

### **A. Conduct of Meetings**

Section A of these Rules governs the procedure in all meetings of the Committee, both quasi-judicial and non-quasi-judicial.

- 1) **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. By law, (Articles 11. C. 2. and 3 of the Ordinance), a complaint remains confidential until a determination has been made that there is a reasonable likelihood that a violation has occurred; by law, (Article 11.C.5.a.) the Committee may go into deliberative session to consider evidence and to render a decision.
  - 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

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<sup>1</sup> These Rules were adopted by the Ethics Committee on \_\_\_\_\_, 20\_\_ following a public hearing held \_\_\_\_\_, 20\_\_. They revise the Rules originally adopted by the Committee on August 15, 2015 and revised on August 17, 2017.

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, an alternate member designated by the Chair 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 11(C)(6) 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 Articles 6, 7, 8 and 10 of the Ordinance.

#### **B. Quasi-Judicial Hearings before the Ethics Committee**

Section B of these Rules applies solely to quasi-judicial proceedings involving complaints filed pursuant to Article 11(C)(1) of the Ordinance. Section B provides a clear process for complainants, respondents, the Clerk and the Ethics Committee to follow and should be construed to secure the just, speedy and inexpensive determination of every complaint filed.

##### **1) Filing of a Complaint or a Request for Disclosure or Recusal**

- a) A person who believes that a public official has engaged in conduct prohibited by Article 5 of the Ordinance may file a complaint with the Clerk of the Committee within 60 days of the person having discovered the matter of concern. The complaint may request sanctions authorized by Article 11.C. 5 of the Ordinance and/or disclosure or recusal in accordance with Articles 6 or 8 of the Ordinance. The filer of the complaint (the “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 by the Committee of a reasonable likelihood to believe that a violation has occurred by the committee under Article 11(C)(3) of the Ordinance.
- b) The Clerk shall have custody of the records of the complaint proceedings. The Clerk shall date-stamp the complaint and give the case a name and file number, enter the name and case number on the case file. The Clerk shall date-stamp and place chronologically in the case file all other submissions, including any affidavits and documents, any process issued, and returns made thereon, any subsequent papers filed with the clerk, and all appearances and orders. The Clerk shall maintain a docket sheet that includes the date and nature of all submissions and the date and nature of Committee meetings and

hearings, with brief entries showing the date, nature and subject matter of each paper filed. The complaint, all other submitted papers, and the docket sheet are not public records unless and until the Committee finds a reasonable likelihood pursuant to Article 11(C)(2). As provided in Article 11(C)(3)(b) of the Ordinance, if the Committee finds no reasonable likelihood, the entire record of the complaint, including the docket sheet and all documents in the file, shall be closed, sealed and exempt from disclosure under Vermont's public records laws.

- c) Preliminary Reasonable Likelihood Investigation: Upon receipt of a complaint, the Clerk of the Committee shall inform the Chair of the Committee of the filing. The Chair shall as expeditiously as possible but in no event later than 15 days from the filing of the complaint convene the regular and alternate members of the Committee to undertake a confidential preliminary investigation in a closed, deliberative session. The preliminary investigation shall consist of a review of the complaint and any accompanying affidavit(s) and other filed materials to determine whether there is a reasonable likelihood to believe that a violation has occurred, and that the public official has committed it. As provided in Article 11(C)(3) of the Ordinance, the preliminary investigation may include interviews with the complainant, the respondent, or both, under oath, in the closed session. If the Committee chooses to interview the respondent, the Committee may provide the respondent with a copy of the complaint and affidavits prior to the interview. See Ordinance Article 11(C)(3)(a).
  - 1) The Committee may deliberate its decision privately in person, telephonically and/or electronically at any time after its investigation without warning.<sup>2</sup>
  - 2) If a reasonable likelihood is not found, the Chair of the Committee shall notify the complainant and the respondent and 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 11(C)(3)(b). The Chair shall inform the respondent that a reasonable likelihood of a violation was not found and that the complaint may be viewed in the Clerk's Office.
  - 3) If a reasonable likelihood is found, the Clerk of the Committee shall:
    - a. Inform the respondent and the complainant that a reasonable likelihood of a violation was found and within five days of making its finding post the complaint and decision on the Town website, and notify the respondent and complainant that the complaint and decision can be found on the website and that they may be viewed in the Clerk's Office; and

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<sup>2</sup> See 1 VSA Section 312(e). The Open Meeting Law does not extend to deliberations of any public body in connection with a quasi-judicial proceeding.

- b. Set the matter for a public hearing before the Committee as soon as possible but in no event later than 30 days from the finding of a reasonable likelihood and give the notices required in Article 11, B(2)(a). See Ordinance Article 11(C)(3)(c).

## **2) Notice of the Hearing on the Complaint**

- a) The Clerk shall provide personal notice and a copy of the complaint in accordance with Article 11(C)(3)(c), to each member and alternate of the Committee, to the complainant, and to the respondent. Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law.
- b) The Clerk shall provide the copy of the complaint and a copy of the Ordinance and these Rules to the respondent by delivering the documents to the respondent in person. The Clerk may do so by having 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. If the Clerk is unable to serve the respondent within five calendar 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

## **3) 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 and alternate members.

## **4) Mediation**

The Ethics Committee shall encourage the use of a mediator where the complainant and respondent are amenable to mediation and may appoint one of its members or other qualified person [on a volunteer basis] to mediate the complaint for Ethics Committee approval, where the complainant and respondent agree.

## **5) 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. The Chair of the Committee shall preside at the hearing. If the Chair is unavailable, the Vice-Chair shall serve preside. 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.

- b) Consistent with MAPA and the Ordinance, there shall be no pre-hearing discovery.
  
- c) The complainant and respondent shall submit to the Clerk six copies of all documents to be considered by the Committee at least seven days prior to the hearing on the complaint. Each shall likewise send copies of the same to each other. The Clerk shall date-stamp and docket the documents, place one copy in the case file and provide a copy to each member of the Committee. The complainant and respondent may submit supplemental documents at the hearing, and the Clerk shall note on them and on the case docket sheet the results of any Committee action on objections to their admissibility.
  
- d) Burden of Proof. The complainant has the burden of proving by a preponderance of the evidence that the respondent has violated the Ordinance.
  
- e) The Committee may, for good cause shown, permit the complainant, respondent and any other witnesses called by them 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 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.
  
- f) Testimony. All oral or written testimony of parties and their 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. The Chair may examine witnesses with the objective of laying out the evidence pertaining to the complaint reasonably available to both parties. The Chair may invite other members of the Committee to ask questions and may invite the parties or their attorneys to supplement their testimony, subject to the Chair's authority to protect witnesses against unfair imposition and to avoid needless repetition.
  
- g) Evidence.
  - (1) The Chair may exclude any irrelevant, immaterial, unreliable or unnecessarily repetitive evidence. Evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Vermont Rules of Evidence are inapplicable except for the rules related to privilege.
  - (2) 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 hearing.
  - (3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available.
  
- 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 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) Each witness shall provide his or her contact information to the Clerk.
- 4) 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.
- 5) 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, and for them to make any appropriate recusal decisions.
- 6) Conduct an examination of the parties and witnesses in accordance with the other provisions of Rule 5.
- 7) Invite final comments from the complainant.
- 8) Invite final comments from the respondent.
- 9) Upon motion and majority approval of the Committee, either continue the hearing to a time certain or close the hearing. If the hearing is recessed to a later date in order to take additional evidence, the Chair shall set a date by which materials must be submitted, typically one week prior to the scheduled hearing. It shall be deemed sufficient to constitute proper notice of the recessed hearing, if an announcement is made before adjournment of the hearing specifying the time, date and place of the recessed evidentiary hearing.
- 10) Close the hearing and announce that the Committee will begin to deliberate in private and will issue a written decision within 15 days.

i) Deliberative Session

- 1) At the conclusion of the hearing the Committee shall go into 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.
- 2) "Deliberative session" means a closed session of the Committee to weigh, examine, and discuss the reasons for and against an act or decision, and from which the parties and the public are excluded. There shall be neither taking of evidence nor submission of testimony in a deliberative session, nor shall a deliberative session be publicly noticed. The board may enter deliberative session by majority vote at any time and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.

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

4) 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.

j) Decision.

1) The Ethics Committee shall issue a written decision within 15 days of closing the hearing as to whether the public official violated the Ordinance.

2) If the Committee finds a violation, the Committee shall decide whether to sanction the public official as authorized by Article 11.C.5.b. of the Ordinance.

### **C. Amendments**

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 website and paper copies be made available at the Town Clerk's office at no charge.

**ADOPTED:** Shelburne Ethics Committee

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Lee Suskin, Chair

\_\_\_\_\_  
Tom Little, Vice-Chair

\_\_\_\_\_  
Gwen Webster

\_\_\_\_\_  
Michel Ashooh

\_\_\_\_\_  
William Deming

\_\_\_\_\_  
Peter Gadue - Alternate



**Shelburne Ethics Committee**  
**Complaint and Affidavit**

**In the Matter of** \_\_\_\_\_ **(Name of Public Official)**

<b>Complainant</b> <b>Name</b> _____ <b>Address</b> _____ _____ <b>Tel. #</b> _____	<b>Public Official's Position with the Town</b> _____ _____ _____
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**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. Actions Requested**

Check one or more of the following.

\_\_\_ 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 due to a conflict of interest  
\_\_\_ provide a disclosure statement in the matter concerning a conflict of interest

\_\_\_ attend ethics training focused on the Ordinance

\_\_\_ I request that the Committee:

\_\_\_ publicly reprimand the Public Official

\_\_\_ publicly censure the Public Official

\_\_\_ I request that the Committee:

\_\_\_ with the advice of the Selectboard, direct the public official to cease and desist from the conduct that violated the Ordinance;

\_\_\_ recommend that the Selectboard remove the public official from office for cause as authorized by the Town Charter

\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_  
Complainant  
Signed under Oath

\_\_\_\_\_  
Date

State of Vermont  
County of \_\_\_\_\_

The foregoing Complaint and Affidavit were subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

My Commission expires \_\_\_\_\_.

## **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 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 attend Ethics training focused on the Ordinance.

\_\_\_ I agree to cease and desist from the conduct that violated the Ordinance.

\_\_\_ I agree that the Ethics Committee should recommend that the Selectboard publicly censure me 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**