

**TOWN OF ESSEX  
CONFLICT OF INTEREST POLICY**

**Article 1. Authority.**

Under the authority granted in 24 V.S.A. § 2291 (20) and the Town of Essex Charter, 24 Appendix V.S.A. § 103 (a), the Town of Essex Selectboard hereby adopts the following policy concerning conflicts of interest.

**Article 2. Purpose.**

The purpose of this policy is to ensure that the business of the Town of Essex will be conducted in such a way that no public official will gain a personal or financial advantage from the official's work for the Town; that decisions made by municipal officials are based solely on the best interests of the community; and that the public trust in municipal officials will be preserved.

**Article 3. Application.** This policy applies to all public officers as that term is defined below.

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

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

1. A real or perceived, direct or indirect, personal or financial interest of a public officer, including but not limited to the officer's spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, in-law, business associate, or 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 the public officer holds office;
2. A situation where a public officer has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding. This section 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.

A "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.

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

C. ***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.

- D. **Official act or action** means any legislative, administrative or quasi-judicial act performed by any elected or appointed officer 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** means a person elected, or appointed by the Selectboard, to perform executive, administrative, legislative, or quasi-judicial functions for the municipality.
- H. **Quasi-judicial proceeding** (e.g., vicious dog complaint) 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 5. Prohibited Conduct.**

- A. A public officer shall not participate in any official action if the officer has a conflict of interest in the matter under consideration, unless the officer can act fairly, objectively, and in the public interest, per Article 8.
- B. A public officer shall not personally, or through any member of the officer's 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.
- C. 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.
- D. Public officers shall not use resources unavailable to the general public, including but not limited to Town staff time, equipment, supplies, or facilities, for private gain or personal purposes.

#### **Article 6. Disclosure.**

Public officers who have reason to believe that they have or may have a conflict of interest but believe that they are able to act fairly, objectively, and in the public interest in spite of the potential conflict of interest shall, prior to participating in any official action

on the matter, disclose to the public body at a public meeting or hearing the matter under consideration, the nature of the potential conflict of interest, and why they believe that they are able to act in the matter fairly, objectively, and in the public interest.

Alternatively, any person may request, but not require, a public officer to recuse oneself from a matter due to a conflict of interest.

#### **Article 7. Consideration of Recusal.**

Once there has been a disclosure of an actual or perceived conflict of interest, other public officers 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 municipality, 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.**

- A. **Recusal of Appointed and Elected Officers.** After taking the actions listed in Articles 6 and 7, public officers, whether appointed or elected, shall declare whether they will recuse themselves and explain the basis for that decision. If public officers have an actual or perceived conflict of interest but believe they can act fairly, objectively, and in the public interest in spite of the conflict, officers shall state why they believe that they are able to act in the matter fairly, objectively, and in the public interest.

Otherwise, public officers shall recuse themselves from the matter under consideration.

- B. **Recusal of Appointed Officers.** The failure of an appointed public officer to recuse oneself in spite of a conflict of interest may be grounds for discipline or removal from office.

#### **Article 9. Recording.**

The minutes of the meeting or the written decision from the hearing shall document the actions taken in Articles 6 through 8.

#### **Article 10. Post-Recusal Procedure.**

- A. A public officer who has recused oneself from a proceeding shall not sit with the board, deliberate with the board, participate in that proceeding as a board member in any capacity, nor remain physically present in the room. Board members participating remotely shall leave the meeting during the item for which they have recused themselves.
- B. 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.

## **Article 11. Enforcement.**

**A. Enforcement Against Elected Officers; Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.** In cases where an elected public officer has engaged in any of the prohibited conduct listed in Article 5, or has not followed the conflict of interest procedures in Articles 6 through 10, the Selectboard may take progressive action to discipline an offending public officer by following the steps listed below:

1. The Chair shall meet informally, in private, with the public officer to discuss the possible conflict of interest violation. If the Chair is potentially in violation of the conflict of interest policy, the Vice Chair shall meet with the Chair to discuss the possible conflict.
2. The board 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 board may admonish the offending public officer in executive session.
3. If the board decides that further action is warranted, the board may admonish the offending public officer at an open meeting and have this action recorded in the minutes of the meeting. The public officer shall be given the opportunity to respond to the admonishment.
4. Upon majority vote in an open meeting, the board may request that the offending public officer resign from the board. The Selectboard cannot order a member to resign, as members of the Selectboard are elected directly by the people and no recall provisions exist in State law or the Town charter.

**B. Enforcement Against Appointed Officers.** A board may choose to follow any of the steps articulated in Article 11A. In addition to or in lieu of any of those steps, the Selectboard may choose to remove an appointed officer from office, subject to state law.

## **Article 12. Exception.**

The recusal provisions of Article 8 shall not apply if the Selectboard determines that an emergency exists and that actions of the public body otherwise could not take place. In such cases, public officers who have reason to believe they have a conflict of interest shall disclose such conflict as provided in Article 6.

## **Article 13. Effective Date.**

This policy shall become effective immediately upon its adoption by the Town of Essex Selectboard.

Town of Essex Selectboard

*Andrew J Watts*

Andrew J Watts (Apr 24, 2021 08:13 EDT)

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Andrew J. Watts, Chair

*Tracey A Delphia*

Tracey A Delphia (Apr 16, 2021 13:36 EDT)

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Tracey Delphia, Clerk

*Dawn Hill-fleury*

Dawn Hill-fleury (Apr 16, 2021 17:02 EDT)

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Dawn Hill-Fleury

Dated: April 5, 2021

*Patrick Murray*

Patrick Murray (Apr 24, 2021 13:51 EDT)

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Patrick Murray, Vice Chair

*Vince Franco*

Vince Franco (Apr 23, 2021 13:42 EDT)

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Vince Franco

Adopted 06/04/12. Signed 06/18/12; 04/20/15; Amended 04/18/2016; 10/2/17; 4/2/18; 4/5/21.