

TOWN OF POMFRET, VERMONT

Conflict of Interest Policy

**ADOPTED OCTOBER 4, 2017
BY THE
POMFRET SELECTBOARD**

Town of Pomfret

Draft Conflict of Interest Policy

Article 1. Authority. Under the authority granted in 24 V.S.A. § 2291(20), the selectboard of Pomfret hereby adopts the following policy concerning conflict of interest.

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

- A. **Conflict of interest** may mean any of the following, however this list shall not serve to restrict or limit the definition of what constitutes a Conflict of Interest. Such a Conflict of Interest may be ‘actual’ (i.e. ‘existing in fact’) or ‘perceived’ (i.e. regarded as such by an outside party):
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, 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 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.
 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 judicial act performed by any elected or appointed officer or employee 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 statutorily-appointed to perform executive, administrative, legislative, or quasi-judicial functions for the municipality. This term does not include any municipal employee.
- H. **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. List of Officials Governed by this Policy. All public officials of the municipality and all municipal employees appointed or elected, and any public body whole or in part, shall be subject to the requirements of this policy. This includes, but is not limited to, all town employees (full or part-time), public officers, commissions, committees, boards and other entities of the municipality.

Article 5. Procedure for Determining if a Conflict of Interest Exists. When reviewing or considering the potential outcome of a cause, proceeding, application or any other matter pending before the public official or before the public body in which he or she holds office or is employed, said public official shall consider if there is a Conflict of Interest, as defined in Article 3(A) of this policy.

Article 6. Prohibited Conduct

- 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. A public officer 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 officer 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 7. Disclosure. A public officer who has determined that he or she has or may have a conflict of interest in a particular matter shall, prior to participating in any official action on the matter, publicly disclose at a public meeting or public hearing that he or she has an actual or perceived conflict of interest in the matter under consideration and disclose the nature of the actual or perceived conflict of interest. Alternatively, a public officer may request that another public officer recuse him or herself from a matter due to a conflict of interest.

Article 8. Public Assertion. There may occur instances where a member of the public asserts that a public officer has Conflict of Interest, real or perceived, in a particular matter. In such an instance the member of the public shall make their assertion known to the Pomfret Selectboard and the public officer in question at a public meeting. The public officer in question shall then follow the Procedure for Determining if a Conflict of Interest Exists, as outlined in Article 5 above.

Article 9. 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 10. Recusal.

A. Recusal of Appointed and Elected Officers. After taking the actions listed in Articles 7, 8, and 9, a public officer, whether appointed or elected, shall declare whether he or she will recuse him or herself and explain the basis for that decision. If the public officer has an actual or perceived 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, 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 officer shall recuse him or herself from the matter under consideration. A public officer that recuses him or herself may, but not must, explain the basis for that decision.

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

Article 11. Recording. The minutes of the meeting or the written decision from the hearing shall document the actions taken in Articles 7 through 10.

Article 12. Post-Recusal Procedure.

A. A public officer who has recused himself or herself from serving on a public body in a particular proceeding shall not sit with the public body, deliberate with the public body, or participate in that proceeding as a member of the public body in any capacity, though such member may still participate as a member of the public.

B. The public body 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 total membership of the public body. The public body may then resume the proceeding with sufficient members present.

Article 13. 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 6, or has not followed the conflict of interest procedures in Articles 6 through 10, the Pomfret Selectboard may take progressive action to discipline such elected officer as follows:

1. The chair of the Pomfret Selectboard and another member of the Selectboard together may meet informally with the public officer to discuss the possible conflict of interest violation. This shall not take place in situations where the chair, selectboard member, and the public officer in question together constitute a quorum of a public body.
2. In the event of an Enforcement Action against another Selectboard member, another member of the Pomfret Selectboard, may, along with a member of another Pomfret board or commission, meet informally with the public officer to discuss the possible conflict of interest violation. This shall not take place in situations where the chair, board or commission member, and the public officer in question together constitute a quorum of a public body.
2. The Pomfret Selectboard 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 [name of municipal legislative body] may admonish the offending public officer in private.
3. If the Pomfret Selectboard decides that further action is warranted, the Pomfret Selectboard may admonish the offending public officer at an open meeting and reflect this action 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 Pomfret Selectboard may request (but not order) that the offending public officer who is not a Selectboard appointee resign from his or her office.
5. Upon majority vote in an open meeting, the Pomfret Selectboard may direct a public officer who is a Selectboard appointee to resign from his or her office.

B. Enforcement Against Appointed Officers. The Pomfret Selectboard may choose to follow any of the steps articulated in Article 13A. In addition to or in lieu of any of those steps, the Pomfret Selectboard may choose to remove an appointed officer from office, subject to state law.

Article 14. Exception. The recusal provisions of Article 10 shall not apply if the Pomfret Selectboard determines that an emergency exists and that actions of the public body otherwise could not take place. In such a case, a public officer who has reason to believe he or she has a conflict of interest shall disclose such conflict as provided in Article 7.

Article 15. Effective Date. This policy shall become effective immediately upon its adoption by the Pomfret Selectboard.

Signatures:

Frank Perron

Emily Grube

Michael Reese

Scott Woodward

John Peters

