

CONFLICT OF INTEREST POLICY

Town of Brandon

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

Article 2. Purpose. The proper operation of government requires that Public Officials and Employees be independent, impartial, and responsible to their constituents; that decisions and policy be made in proper channels of the government structure; that public office not be used for personal gain; that no public official of the Town shall gain a personal or pecuniary advantage from his or her work for the Town; and that the public have confidence in the integrity of its Town government, public officials, and employees.

Article 3. Application. Except as provided herein, this policy applies with regard to any official act or action taken by any public official of the Town of Brandon. This policy shall not apply in the following situations:

1. Any quasi-judicial proceeding covered by the Vermont Municipal Procedures Act, or by other specified rules of procedure, shall be governed by the conflict of interest rules and ethical standards of that Act or procedure.
2. Any employee who is part of any collective bargaining unit and covered by any collective bargaining agreement shall be governed by the provisions of such agreement. Notwithstanding, to the extent the provisions of this policy are not inconsistent with any applicable collective bargaining agreement, the provisions of this policy shall also apply.
3. Performance of ministerial duties. Public officials may act in situations involving the performance of a non-discretionary or ministerial duty.
4. Matters involving public safety. Public officials may act appropriately in matters requiring prompt action involving public safety, health, or welfare.

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 direct personal and/or financial interest of a public official, his or her immediate family or household member or business associate in the outcome of a cause, policy, particular matter, proceeding, application or any other matter pending before the official or before the public body in which he or she holds office or is employed;
2. A situation where a public official has publicly displayed a prejudgment of the merits of a quasi-judicial proceeding, application, or proposed action involving the adjudication of competing interests. ~~This shall not apply to a member's general political views or opinions on matters of general applicability; and~~
3. Conflict of interest does not arise in the case of votes or decisions on matters in which the public official or employee has a personal or pecuniary interest in the outcome no greater than that of other persons generally affected by the decision, such as adopting a bylaw, policy, or setting a tax rate.

- B. **Emergency** means an urgent or imminent threat or peril to the public health, safety or welfare.
- C. **Official act or action** means any legislative, administrative, or judicial act performed by any elected or appointed official or employee while acting on behalf of the municipality.
- D. **Public body** means any board, council, commission or committee of the municipality.
- E. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.
- F. **Public official** means a person elected, appointed, or employed by the Town of Brandon.
- G. **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 question witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority.
- H. **Business associate** means any person who is a partner in a partnership or joint venture or similar association with the public official or employee, or any member of that public official or employee's immediate family or household; a shareholder or member of a corporation or limited liability company in which the public official or an immediate member of the public official or employee's immediate family or household is at least a 10% shareholder or member; or any person with whom the public official or employee or any member of his or her immediate family or household has a significant commercial relationship.
- I. **Immediate family member or household member** means any person with whom the public official lives/resides, the public official or employee's spouse, civil union or life partner, children (including stepchildren and foster children), brother, sister, mother father, and any in-laws.

Article 5. Disqualification.

- A. A public official shall not participate in any official act or action if he or she has a conflict of interest concerning the matter under consideration. It is the responsibility of each public official to recuse him or herself from any matter in which he or she has a conflict of interest as soon as any conflict of interest becomes apparent. A public official who has recused him or herself from a proceeding shall not sit with the public body, deliberate with the public body, or participate in that matter as a member of the public body in any capacity. An appointed public official or employee shall notify his or her supervisor or the chair of the applicable public body, as the case may be, of his or her inability to act on the matter.
1. If a previously unknown conflict is disclosed or discovered, the public body may recess to appropriately address the conflict. The public body may continue 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 body. The public board may then resume the proceeding with sufficient members present.
- B. In a quasi-judicial proceeding, a public official shall not initiate any ex parte communication with a party to that proceeding concerning the matter under

consideration. In the case where a public official is in receipt of any ex parte communication, such communication shall be fully disclosed to all other parties to the proceeding and to all other members of the public body.

C. 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 in a cause, proceeding, application or other matter pending before the public body in which the official holds office or is employed.

D. Public officials 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.

E. Public officials shall not use resources not available 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 of de minimus or uncertain conflicts. A public official who believes that he or she has or may have a conflict of interest as defined herein but believes that the conflict is so remote, de minimus, or uncertain that he or she is able to act fairly, objectively, and in the public interest in spite of the potential conflict shall, prior to participating in any official act or action on the matter, disclose to the chair of the public body or to his or her supervisor the nature of the conflict. In such case, the official's supervisor or the public body which appointed that public official may take such action as is appropriate, which may include a direction or order that the official recuse him or herself from the matter, subject to applicable law.

Article 7. Implementation and Enforcement Procedures.

A. Any person may request that a public official recuse him or herself from a particular act or proceeding due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.

1. Such request must be made in writing and submitted to the chairperson of the public body, or the official's supervisor, as the case may be. The request shall include a statement detailing how the public official's participation meets the definition of conflict of interest, and must be signed by the person making the request. The chairperson/supervisor will then speak with the official to review the request. If the chairperson of any public body is uncertain whether a conflict of interest exists, the public body may investigate the matter and decide by majority vote. In any case where the official's supervisor is uncertain, the matter shall be decided by the Town Manager.

2. The chairperson of any public body or Town Manager may also refer any question regarding a conflict of interest to the Selectboard, whose decision shall be final.

3. Any conflict of interest that may involve the chair of any public body shall be brought to the vice chair.

B. If it is determined, following the procedures of Article 7(A), that the public official does have a conflict of interest as defined herein, the public official shall be expected to disqualify him or herself as provided by Article 5 (A).

C. In cases where the public official has not recused her/himself after the procedures set forth in Article 7(A) and (B) have been followed, the Selectboard may take progressive action in the following order:

1. The chair shall meet informally, in private, with the public official to discuss possible conflict of interest violation.
2. The board may meet to discuss the conduct of the public official. Executive session may be used for such discussion, in accordance with 1 V.S.A. § 313(4). The public official may request that this meeting occur in public. If appropriate, the board may admonish the public official in private.
3. If the board decides that further action is warranted, the board may admonish the public official at an open meeting and reflect this action in the minutes of the meeting. The public official shall be given the opportunity to respond to the admonishment.
4. The board may take such other and further action as is warranted under the circumstances.
 - a. In the case of an official appointed by the Selectboard, the board may order that the official recuse him/herself from the matter, may request that the public official resign, or may remove such official, subject to applicable law.
 - b. In cases involving an employee, the board may request that the Town Manager take specific disciplinary action, subject to the requirements of any collective bargaining agreement, if applicable.
5. Upon majority vote the Selectboard may request that the public official resign.

D. Any person making a request pursuant to Article 7 (A) shall be notified of the proceedings and any actions taken thereon; provided, however, that (1) in the case of the action of any public body, the published warnings and minutes of such body shall constitute sufficient notice; and (2) in the case of an employee subject to any collective bargaining agreement, the terms of such agreement shall govern.

Article 8. Exception. The recusal provisions of this Policy shall not apply if the Selectboard determines that an emergency exists and that actions of the public body or official are necessary and otherwise could not take place. In such cases, any public official who has reason to believe he or she has a conflict of interest shall fully and completely disclose such conflict to his or her supervisor, or to the chair of the public body as the case may be.

Article 9. Effective Date. This policy shall become effective immediately upon its adoption by the Town of Brandon selectboard.

Signatures: _____

Adopted by the Town of Brandon Selectboard at its regular meeting on May 10, 2010.

MLP rev #4-B (5/9/10) to KM Draft #3

A true record made this 3rd day of June, A.D. 2010

Attest: William A. Dick