

**TOWN OF UNDERHILL  
CONFLICT OF INTEREST POLICY**

**Article 1. Authority**

Under the authority granted in 24 V.S.A. § 2291(20), the selectboard of the Town of Underhill hereby adopts the following policy concerning conflicts 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 or employee 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 insure that all decisions made by municipal officials and employees are based on the best interest of the community at large and that all activities are conducted openly, honestly and impartially.

**Article 3. Definitions**

For the purposes of this policy, the following definitions shall apply:

- A. **“Public body”** means any board, council, commission or committee of the municipality.
- B. **“Public officer or Municipal Employee”** means a person, paid or unpaid. Holding a position by election, appointment or employment in the service of the Town of Underhill, including members of any board, committee, commission, or council thereof.
- C. **“Official Act or Action”** means any legislative, administrative, or judicial act performed by any elected or appointed officer or employee of any municipality department, board, committee, commission, or council while acting on behalf of the municipality.
- D. **“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.
- E. **“Public interest”** means an interest of the community as a whole, conferred generally upon all residents of the municipality.
- F. **“Recusal”** means stepping aside from public office or duty during discussions and vote because of a real or perceived conflict of interest. It is required, or in the case of public meetings recommended, that the recused person leaves the room where the discussion and vote are taking place.
- G. **“Conflict of interest”** means any of the following:
  - a. **Personal Interest:** A direct or indirect personal interest of a public officer or municipal employee, his or her spouse or domestic partner, household member, child, stepchild, parent, stepparent, parent-in-law, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, 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.

- b. **Financial Interest:** A direct or indirect financial interest of a public officer or municipal employee, his or her spouse or domestic partner, household member, child, stepchild parent, stepparent, parent-in-law, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, 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.
- c. **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 on a written decision, the result of which is appealable by a party to a higher authority.
- d. **Ex parte communications:** Communications that occur in the absence of other parties to a matter and without notice and opportunity for all parties to participate in the communication. People often refer to these communications as “one-sided”, “off-the-record”, or private communications between an official or employee and any person concerning a matter that is pending or impending before a board or committee. Communications include face-to-face conversations, phone calls, written correspondence, e-mails, instant messaging, and the next level of technology that presents itself. By their very nature, site visits communicate evidentiary information and should be noticed if an adjudicative proceeding is pending or anticipated. Ex parte communication is strictly prohibited. If any final decision is based on or significantly influenced by matter obtained off the record, the action may be invalidated.

#### **Article 4. Disqualification**

- A. A public officer or municipal employee 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 or municipal employee 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. In the case of a public officer or municipal employee who is an appointee, the public body which appointed that public officer or municipal employee shall have the authority to order that officer to recuse him or herself from the matter.
- D. Public officers or municipal employee 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. This position shall not apply to:
  - a. Attendance of an employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of Town business or

where official attendance by the employee as a staff representative is appropriate.

- b. An award publicly presented in recognition of public service.
  - c. Seasonal gifts of nominal value.
- E. Public officers or municipal employees 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 5. Disclosure**

If a matter comes before a public body as to whether a public officer or municipal employee is required to make a disclosure, the affected member shall make such a disclosure, at an open meeting, prior to any consideration of the matter.

A public officer or municipal employee who has reason to believe that he or she has or may have a 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 of interest shall, prior to participating in any official action on the matter disclose to the public body at a public hearing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Nevertheless, the person or public body which appointed that public officer retains the authority to order that officer to recuse him or herself from the matter, subject to applicable law.

#### **Article 6. Recusal**

- A. A public officer or municipal employee shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
- a. Any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself;
  - b. A public officer or municipal employee who has recused him or herself from a proceeding shall not sit with the board; deliberate with the board, including in executive session; or participate in the proceeding as a board member in any capacity;
  - c. If a previously unknown conflict is discovered, the board may take evidence pertaining to the conflict and, if appropriate, adjourn to a short deliberative session to address the conflict; and
  - d. 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.

In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him or herself from the matter, subject to applicable law.

The foregoing shall not be construed as prohibiting the public officer or employee from testifying as to factual matters at a hearing of the public body, if requested or allowed by said public body. Further, this section shall not be construed to limit the right of an individual to represent a personal interest or express an opinion so long as the public officer or municipal employee identifies himself or herself as a private citizen with a personal interest in the matter, who is speaking in that limited capacity.

#### **Article 7. Incompatibility of Office**

In accord with 17 V.S.A. § 2647, it shall be found to be a conflict of duty if a public official or municipal employee holds or exercises more than one of the following offices or positions at the same time:

- A. Any public official, elected or appointed, shall not be hired as an employee or consultant during the public official's term of office without the approval of the selectboard.
- B. A public official or employee, or any member of the official or employee's immediate family, shall not perform the duties of auditor or attorney for the Town.
- C. A member of the selectboard shall not hold or exercise the office of Town Clerk/Treasurer or Tax Assessor, or service on any Public Body that may be established by the Town, with the exception of the Civil Board of Authority.
- D. A Planning commissioner shall not hold or exercise the office of Town Planner or Zoning Administrator or be a member of the Development Review Board.
- E. A Development Review Board member shall not hold or exercise the office of Town Planner or Zoning Administrator or be a member of the Planning Commission.

#### **Article 8. Enforcement; Procedure on Complaint**

- A. Any person who believes that a violation of any portion of this Policy has occurred as a result of a public official or municipal employee's act or action may send or deliver a signed, written complaint to the Chair of the Select Board or the Town Attorney. The complaint shall include the name of the person alleged to have committed the violation and the specific act or acts which constitute the violation.
- B. Upon receipt of a properly filed complaint, the Chair of the Select Board will schedule a meeting date as early as possible to commence review. The Chair may confer with the Town Attorney.
- C. The board will conduct its meetings according to the Roberts Rules of Order.
- D. The board is required to comply with the Vermont Open Meeting Law, 1 V.S.A. § 312, et seq.
- E. Any hearings shall include the following:
  - a. Oral evidence shall be taken under oath;
  - b. The complainant and the respondent shall have the right to:
    - i. Be represented by legal counsel;
    - ii. Present evidence; and
    - iii. Examine and cross-examine witnesses

- F. At the conclusion of any request for fact finding or complaint review, the board shall determine the validity of any violation of the Conflict of Interest Policy and make their recommendations as to the resolution or disposition of the case. Recommendations for disciplinary action shall reference relevant statutory law, regulations, or policy.
- G. In the event the board or any of its members become a party to any legal procedure, the Town will be responsible to represent the board or any member and hold them harmless.

**Article 9. Effective Date**

This policy shall become effective immediately upon its adoption by the Town of Underhill Selectboard. This policy shall not apply retroactively.

**Article 10. Distribution of Conflict of Interest Policy**

The Town of Underhill shall distribute a copy of this policy to every official and employee of the Town within thirty (30) days after the effective date. Each official and employee, elected or appointed thereafter, shall be furnished a copy before entering upon the duties of the office or employment. Each official or employee shall sign a statement indicating they have read and understand this policy. Annually, each official and employee shall sign a Conflict of Interest statement.

Signatures:

Three handwritten signatures are written on three horizontal lines. The top signature is in black ink, the middle one is in black ink, and the bottom one is in blue ink.

Date:

10.11.12

TOWN OF UNDERHILL  
CONFLICT OF INTEREST POLICY  
ACKNOWLEDGEMENT FORM

I certify that I am an official or employee working for or on behalf of the Town of Underhill and that I have been given a copy of, and have had the opportunity to read and discuss the Town of Underhill Conflict of Interest Policy and understand my obligations and duties as described therein.

I understand that this policy was approved by the Selectboard of the Town of Underhill and these obligations and duties are not specific to any department, committee, or individual, but are applicable to all Town officials and employees.

I understand that failure to observe and abide by these obligations may result in disciplinary action which may include dismissal.

I also understand that in some cases, failure to observe and abide by these obligations may result in criminal or other legal actions.

If an official or employee refuses to sign this acknowledgement form, the selectboard chair should note that the policy and form were reviewed with the official or employee. The selectboard chair should note the refusal of signature on the form, date and sign the form and forward to the Human Resource Manager to place it in the employee's personnel file or in the case of non-employees, in a separate file. Refusal to sign the policy does not exempt the official or employee from adhering to the policy.

PRINT NAME: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_