

## Town of Pomfret Conflict of Interest Policy

Originally adopted October 4, 2017, Amended October 7, 2020

Current Revisions adopted February 17, 2021

**Article 1. Authority.** Under the authority granted in 24 V.S.A. § 2291(20), the Pomfret Selectboard 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 employees, public officers, or agents 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. **Agent** means a person authorized by the Town to act for or on in place of it; one instructed with carrying out the Town's business.

B. **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 an employee, public officer, or agent, 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 employee, public officer, or agent or before the public body in which he or she holds office or is employed.
2. A situation where an employee, public officer, or agent 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 an employee, public officer, or agent 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 employee, public officer, or agent 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, similarly situated persons affected by the decision.

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

D. **Employee** means a person employed by the Town pursuant to Vermont state law criteria for determination of employment.

E. **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.

F. **Official act or action** means any legislative, administrative or judicial act performed by any employee, public officer or agent while acting on behalf of the municipality.

G. **Public body** means any board, council, commission or committee of the municipality.

H. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.

I. **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.

J. **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 employees, public officers, or agents of the municipality, and any public body whole or in part, shall be subject to the requirements of this policy. This includes, but is not limited to, 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 employee, public officer, or agent, or before the public body in which he or she holds office or is employed, said employee, public officer, or agent shall consider if there is a Conflict of Interest, as defined in Article 3(B) of this policy.

#### **Article 6. Prohibited Conduct**

A. Employees, public officers, or agents shall not participate in any official action if he or she has a conflict of interest in the matter under consideration.

B. Employees, public officers, or agents 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 employee, public officer or agent holds office or is employed.

C. Employees, public officers, or agents 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. Employees, public officers, or agents 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.** An employee, public officer or agent 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, employees, public officers, or agents may request that other employees, public officers, or agents recuse themselves from a matter due to a conflict of interest.<sup>1</sup>

**Article 8. Public Assertion.** There may occur instances where a member of the public asserts that an employee, public officer, or agent has Conflict of Interest, real or perceived, in a particular matter. In such an instance the member of the public shall make that assertion known to the Pomfret Selectboard and the employee, public officer, or agent in question at a public meeting. The employee, public officer, or agent 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 or assertion of an actual or perceived conflict of interest, other public officers of the public body 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 Employees, Public Officers and Agents.** After taking the actions listed in Articles 7, 8, and 9, an employee, public officer, or agent shall declare whether he or she will recuse him or herself and explain the basis for that decision.<sup>2</sup> An employee, public officer, or agent that recuses him or herself must explain the basis for that decision.

**B. Recusal of Appointed Officials.** The failure of an appointed public officer to recuse himself or herself in spite of a conflict of interest is grounds for discipline or removal from office.<sup>3</sup>

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<sup>1</sup> Such request shall not be considered an order for the officer to recuse him or herself.

<sup>2</sup> Each member of an elected public body is independently elected and answers only to the voters. Therefore, unless there is a local ordinance or charter provision that states otherwise, the remaining members of the body may not force recusal. They may only express their opinion about the subject and/or privately or publicly admonish a fellow member who fails to handle conflicts appropriately.

<sup>3</sup> Certain appointed public officers such as a Zoning Administrator and members of the Zoning Board of Adjustment or Development Review Board may only be removed for cause and after being afforded with procedural

**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. An employee, public officer, or agent 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 Public Officers; 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 7 through 10, the Pomfret Selectboard may, in its discretion, take any of the following disciplinary actions against such elected officer as it deems appropriate:

1. Less than a quorum of the Pomfret Selectboard may meet informally with the elected public officer to discuss the possible conflict of interest violation.
2. The Pomfret Selectboard may meet to discuss the conduct of the elected public officer. Executive session may be used for such discussion in accordance with 1 V.S.A. § 313(a)(4). The elected public officer may request that this meeting occur in public. If appropriate, the Pomfret Selectboard may admonish the offending elected public officer in private.
3. If the Pomfret Selectboard decides that further action is warranted, the Pomfret Selectboard may admonish the offending elected public officer at an open meeting and reflect this action in the minutes of the meeting. The elected 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 may not order) that an offending elected public officer resign from his or her office.

**B. Enforcement Against Employees, Appointed Public Officers and Agents.** The Pomfret Selectboard must follow any applicable steps articulated in Article 13(A). In lieu of the action described in Article 13(A)(4):

1. The Pomfret Selectboard may remove an offending employee, appointed public officer or agent who has been hired or appointed by the Pomfret Selectboard, subject to applicable

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due process protections including notice and a reasonable opportunity to be heard.

requirements of state law.

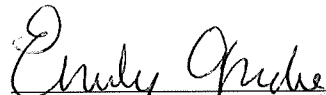
2. The Pomfret Selectboard may request (but may not order) that an offending employee, appointed public officer or agent who has not been hired or appointed by the Pomfret Selectboard be removed from his or her office.

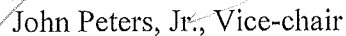
**Article 14. Exception.** The recusal provisions of Article 10 shall not apply if the Pomfret Selectboard determines that an emergency exists and that actions of the public body otherwise could not take place. In such a case, an employee, public officer, or agent who has reason to believe he or she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

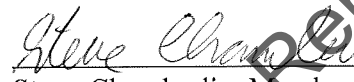
**Article 15. Legal Counsel.** The Pomfret Selectboard in its sole discretion may retain and utilize legal counsel for the purpose of administering this policy.

**Article 16. Effective Date.** This policy shall become effective immediately upon its adoption by the Pomfret Selectboard.

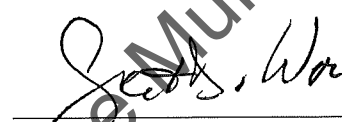
Adopted this 17th day of February, 2021

  
Emily Grube, Chair

  
John Peters, Jr., Vice-chair

  
Steve Chamberlin, Member

  
Chuck Gundersen, Member

  
Scott Woodward, Member