

**TOWN  
OF  
COLCHESTER**

**CODE OF ETHICS**

**Approved on October 27, 2009**

## INDEX

I.	Policy Statement	Page 1
II.	Definitions	Page 1
III.	Conflict of Interest	Page 2
IV.	Unilateral Communications – Public Body	Page 3
V.	Disclosure Procedure – Public Body	Page 4
VI.	Incompatibility of Office	Page 5
VII.	Standards of Conduct	Page 5
VIII.	Code Violation	Page 6
IX.	Board of Ethics	Page 7
X.	Board of Ethics – Procedure on Complaint	Page 7
XI.	Remedies	Page 8
XII.	Applicability of Code	Page 8
XIII.	Severability	Page 8
XIV.	Effective Date after Passage	Page 8
XV.	Distribution of Code of Ethics	Page 9

## CODE OF ETHICS

### § I. POLICY STATEMENT

Public service is public trust. The affairs of government must be conducted openly, honestly and impartially, so that the public's confidence in the integrity of its municipal affairs shall be maintained. The purposes of this Code are to set forth standards of ethical conduct; to assist Public Officials, Municipal Employees and Public Members in establishing policy for their conduct; and to develop and maintain a tradition of responsible and effective public service.

### § II. DEFINITIONS

As used in this section, the following words, unless a different meaning is required by the content or is specifically prescribed, shall have the following meanings:

- A. All references to "Town", unless otherwise specified, refer to the Municipality.
- B. Public Official, Municipal Employee or Public Member (hereinafter "Official, Employee, or Member") means any person, other than a Justice of the Peace, paid or unpaid, holding a position by election, appointment or employment in the service of the Town of Colchester, including members of any board, committee, commission, or council thereof.
- C. "Public Body" means all boards, committees, commissions, councils and any other such group elected or appointed.
- D. "Official Act or Action" means any legislative, administrative, appointive or discretionary act of an Official, Employee, or Member of the Town or any municipal department, board, committee, commission, or council thereof.
- E. "Conflict of Interest" means a significant direct, personal, or pecuniary interest of an Official, Employee, or Member or such an interest, known to the Official, Employee, or Member, of a member of his or her immediate family (as defined below) or of a business associate or of a close personal friend (as defined below) in the outcome of any particular matter pending before the Official, Employee, or Member or his or her Public Body. "Conflict of Interest" does not include a pecuniary interest which is no greater than that of other persons generally affected by the outcome of the matter.
- F. "Independence" means actual independence or the appearance thereof.
- G. "Immediate Family" means spouses, Civil Union partners, children, stepchildren, parents, step-parents, brothers, sisters, grandparents, nephews, nieces, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers and sisters-in-law and any dependent or other persons living in one's household.
- H. "Close Personal Friend" means anyone beyond an Official, Employee, or Member's immediate family with whom the Official, Employee, or Member has or had a strong

friendship, primarily outside of municipal business, such that the involvement of the Official, Employee, or Member in any issue involving the friend's interests would create the appearance of a "conflict of interest" to a reasonable observer.

- I. "Recusal" means stepping aside from public office or duty during discussions and vote when a conflict of interest or lack of independence has been declared. 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.

### **§ III. CONFLICT OF INTEREST**

An Official, Employee, or Member shall not engage in any act which is in conflict with, or creates an appearance of conflict with, the performance of official duties. An Official, Employee, or Member is deemed to have a conflict of interest, if she/he takes part in any of the following acts or actions:

#### A. Acceptance of Gifts and Favors

An Official, Employee, or Member shall not accept, receive, take, seek, or solicit, directly or indirectly, any gift or favor if it could be reasonably expected that the gift or favor would influence the action or judgment of the Official, Employee, or Member, or be considered as part of a reward for action or inaction. This provision shall not apply to:

1. 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.
2. An award publicly presented in recognition of public service.
3. Seasonal gifts of nominal value.

#### B. Appointment of Immediate Family Members or Close Personal Friends

An Official, Employee, or Member shall not participate in the appointment, vote for appointment or discussion of any appointment of an immediate family member or close personal friend to any office of employment with the Town.

#### C. Supervision of Immediate Family Members

An Official, Employee, or Member shall not supervise, appoint, evaluate or discipline the work or employment status of an immediate family member or the affairs of the organizational unit in which the immediate family member is employed.

#### D. Influence over Subordinates

An Official, Employee, or Member shall not use his or her position, directly or indirectly, to affect the employment status of an immediate family member.

#### E. Prior Knowledge of Town Actions

An Official, Employee, or Member shall not receive or have any financial interest in any sale to the Town of any service or property when such financial interest was received with prior knowledge that the Town intended to purchase such property or obtain such service.

#### F. Other Potential Financial Interests and Agreements

An Official, Employee, or Member shall not influence the Town's selection of, or its conduct of business with a person, organization or business having business with the Town, if the Official, Employee, or Member or an immediate family member, business associate or close personal friend has a financial interest in or with the person, organization or business. The Official, Employee, or Member shall not participate in the discussion, negotiation, or vote on contracts or other business arrangements falling under this section. In all instances disclosure of the conflict and recusal is required.

#### G. Private Employment

An Official, Employee, or Member shall not engage in, solicit, negotiate for, accept private employment from, or render services for a private interest when such employment or service is incompatible with the proper discharge of official duties or could impair independence of judgment or action in the performance of official duties.

#### H. Use of Confidential Information

An Official, Employee, or Member shall not disclose or use, without legal authorization, confidential information acquired in the course of official duties to engage, directly or indirectly, in any transactions to further his or her or another person's personal interest or to use such information to the detriment of any person or entity.

#### I. Conflict with Official Duties

An Official, Employee, or Member who holds an interest or position in any organization who is or may be entering into a financial, business, commercial, or private transaction/arrangement with the Town which creates a conflict with their official duties, shall disclose the conflict. In addition, recusal is required prior to any consideration of the matter.

### **§ IV. UNILATERAL COMMUNICATIONS – PUBLIC BODY**

In any matter before a Public Body, a member should not communicate with or accept a communication from a person the Public Body has reasonable grounds for believing is a party to the matter outside of a public hearing. The presiding officer of the Public Body may engage in such communications, if and only if there is notice and opportunity to participate given to all parties in accord with 24 V.S.A. § 1207(a). A member should disclose any such communication at an open meeting of the Public Body prior to any consideration on the matter, and the member should recuse himself or herself, if appropriate.

A “party” as used in this paragraph means a person who:

- A. Holds an interest or has an agreement to acquire an interest in a business entity or the property of a business entity which desires to enter into any agreement with the Town, where the Town's entering into the agreement depends upon the official action of the Public Body.
- B. Is associated with or has an agreement to associate with such a business entity, whether as employee, director, officer, broker, agent, contractor, subcontractor, purchaser or

seller, or in any other capacity where the Town's agreement with such business entity depends upon the official action of the Public Body.

- C. Holds an interest in any property, real or personal, which is the subject of any preceding or proposed action pending before the Public Body, or any agreement or understanding to acquire such an interest.
- D. Qualifies as a "party" under 24 V.S.A. § 1201(4).

Officials, Employees and Members are forbidden from communicating with others about a pending matter, but communications to a Public Body member by citizens who are not parties to the matter are not subject to disclosure requirements.

## **§ V. DISCLOSURE PROCEDURE - PUBLIC BODY**

If a matter comes before a Public Body as to whether an Official, Employee, or Member is required to make disclosure, the affected member shall make such a disclosure, at an open meeting, prior to any consideration of the matter.

### A. Participation after Disclosure

Upon the Official, Employee, or Member's disclosure of an interest, agreement, association, employment or other arrangement, the Official, Employee, or Member shall recuse himself or herself from the matter, and more specifically:

1. Such Official, Employee, or Member shall not, during any part of the Public Body meeting pertaining to the matter requiring such disclosure, represent, advocate on behalf, or otherwise act as the agent of the person or business entity in or with which the member has such interest or relationship, and
2. Such Official, Employee, or Member is recommended to leave the room during any public hearing of the issue, and he or she shall not participate in any consideration of, or vote on the matter before the Public Body. Such Official, Employee, or Member shall not attend or participate in any non-public executive sessions, deliberations, discussions, or votes on the matter.
3. If the Official, Employee, or Member should have an interest in a matter under consideration by any Public Body that may be established by the Town, such Official, Employee, or Member shall not, during any part of a meeting pertaining to the matter, represent, advocate on behalf of, or otherwise act as the agent of the person or business entity in or with which the Official, Employee, or Member has such an interest or relationship.

The foregoing shall not be construed as prohibiting the Official, Employee, or Member 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 Official, Employee, or Member

identifies himself or herself as a private citizen with a personal interest in the matter, who is speaking in that limited capacity.

#### B. Effect of Violation

If a Public Body takes an official action and an Official, Employee, or Member who is required to disclose, fails to do so; or after disclosing, participates in consideration of the matter or vote; and if such official action would not have been taken without the vote of that Official, Employee, or Member, then such official action shall be voidable by the Public Body. In such instance the matter shall, if possible, be properly reconsidered in a timely manner pursuant to this Code and the applicable statutes. The presiding officer or vice-presiding officer shall immediately refer the member who failed to disclose or recuse to the Board of Ethics for appropriate action.

### **§ VI. 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 that Public Official's term of office without the approval of the Select Board.
- B. An Official, Employee, or Member, or any member of the Official, Employee, or Member's immediate family, shall not perform the duties of auditor or attorney for the Town.
- C. The Town Manager shall not hold or exercise the office of Town Clerk/Treasurer or Tax Assessor.
- D. A member of the Select Board shall not hold or exercise the office of Town Clerk/Treasurer or Tax Assessor, or serve on any Public Body that may be established by the Town, with the exception of the Civil Board of Authority.
- E. 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.
- F. 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.

### **§ VII. STANDARDS OF CONDUCT**

Every Public Official or Municipal Employee of the Town of Colchester shall be subject to and abide by the following standards of conduct:

A. Public Property

An Official, Employee, or Member shall not request or permit the unauthorized use of Town-owned vehicles, equipment, materials, or property for personal convenience or gain.

B. Disclosure of Interest in Legislation

An Official, Employee, or Member who has a financial or material interest in any legislation coming before a Public Body shall publicly disclose on the official record of the Public Body the nature and extent of any financial or material interest the Official, Employee, or Member has in such legislation.

C. Representation Before One's Own Municipal Department

An Official, Employee, or Member shall not receive, or enter into any agreement for, expressed or implied, compensation for services to be rendered in relation to any matter before the Town or of any municipal department over which the employee has jurisdiction or to which the employee has the power to appoint any member, officer or employee.

D. Representation Before Any Municipal Department for a Fee

An Official, Employee, or Member shall not receive, or enter into any agreement, expressed or implied, for compensation for services to be rendered in relation to any matter before any department of the municipality, whereby compensation is to be dependent or contingent upon any action by such municipal department with respect to such matter.

E. Advocacy/Political Activity

An Official, Employee, or Member shall not orally, by letter, or otherwise, solicit or be in any matter concerned in soliciting any assessment, subscription, or contribution to any political party, nor be a party to such solicitation by others while representing the Town. An Official, Employee, or Member shall not promise an appointment to any municipal position as reward for any advocacy/political activity.

**§ VIII. CODE VIOLATION**

Any person who believes that a violation of any portion of this Code has occurred as a result of an Official, Employee, or Member's act or action may send or deliver a signed, written complaint to the Town Manager, Chair of the Select Board or Town Attorney, whichever is appropriate. 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.

- A. if the complaint alleges a violation by a Municipal Employee it shall be delivered to the Town Manager and the Chair of the Select Board.
- B. if the complaint alleges a violation by the Town Manager it shall be delivered to the Chair of the Select Board.
- C. if the complaint alleges a violation of a Public Member it shall be delivered to the Chair of the Select Board.



- D. if the complaint alleges a violation of a Public Official it shall be delivered to the office of the Town's Attorney.

**§ IX. BOARD OF ETHICS ESTABLISHED**

- A. The Select Board shall establish a Board of Ethics (the Board). The Board shall consist of not more than five members.
- B. The Board shall have the power to interpret the provisions of this Code and other applicable state law; investigate and report to the Select Board on any alleged violation(s) as provided below; summon witnesses and schedule hearings in connection with any matter under investigation or inquiry; recommend sanctions, suspension or removal.
- C. The members shall initially serve staggered terms (one to three years) and thereafter three year terms. They shall serve at the pleasure of the Select Board. Appointments shall be in accordance with these Code criteria. The Town Manager may be an ex-officio member of the Board.
- D. A majority of the Board shall constitute a quorum. The Board shall elect a chairperson annually. The Board shall meet as frequently as it deems necessary.
- E. If a complaint is received by the Town Attorney, Select Board or Town Manager, it shall be reviewed with the Board.
- F. Members serving on the Board shall serve without compensation, except the Town Attorney who shall act in an ex-officio capacity and provide guidance when requested by the Board.
- G. The Board has the authority to:
  - 1. Review complaints.
  - 2. Conduct hearings and fact finding at the request of the Select Board or the Town Manager.
  - 3. Render opinions on the application of this Code.
  - 4. Report its findings and recommendations to the full Select Board or the Town Manager depending on how the complaint/request originated.
  - 5. At no time shall any requests to the Board be contrary to the jurisdiction and authority provided to the Select Board or the Town Manager by the Town Charter and as stipulated in Section VIII above.

**§ X. BOARD OF ETHICS – PROCEDURE ON COMPLAINT**

- A. Upon receipt of a fact finding request, or in the case of an elected official, a properly filed complaint, the Board will set a meeting date as early as possible to commence the review.
- B. The Board shall elect a chairperson, if applicable, and conduct its meetings according to Roberts Rules of Order.

- C. The Board is required to comply with the Vermont Open Meeting Law, 1 V.S.A. § 312, et seq.
- D. Any hearings shall be conducted under the Board's rules and regulations, which shall include the following:
  - 1. oral evidence shall be taken under oath;
  - 2. the complainant and the respondent shall have the right to:
    - a. be represented by legal counsel;
    - b. present evidence; and
    - c. examine and cross-examine witnesses
- E. At the conclusion of any request for fact finding or complaint review, the Board shall determine the validity of any violation of the Code and make their recommendations as to the resolution or disposition of the case to the full Select Board or the Town Manager, whichever was the source of the request or per Section VIII above.
- F. 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.

## **§ XI. REMEDIES**

As part of any decision, the Board of Ethics shall make a recommendation of disciplinary action based on its findings and any relevant statutory law, regulations, or policy. All decisions of the Board of Ethics shall be advisory to the Select Board. The Select Board is not obligated to accept the decisions and recommendations of the Board of Ethics.

## **§ XII. APPLICABILITY OF CODE**

This code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or policy provision. Should a conflict with present and/or future personnel rules and regulations occur, the more stringent shall prevail.

## **§ XIII. SEVERABILITY**

If any section, clause, provision, or portion of the Code of Ethics shall be held to be invalid or unconstitutional by any court, such holding shall not affect or impair any other section, clause, provision, or portion of the Code.

## **§ XIV. EFFECTIVE DATE AFTER PASSAGE**

This Code shall take effect on October 27, 2009. This Code, and all amendments, shall not apply retroactively.

**§ XV. DISTRIBUTION OF CODE OF ETHICS**

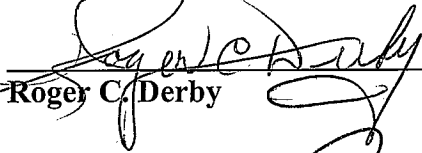
The Town of Colchester shall distribute a copy of this code to every Official, Employee, or Member of the Town within thirty (30) days after the effective date of this code. Each Official, Employee, or Member elected or appointed thereafter shall be furnished a copy before entering upon the duties of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

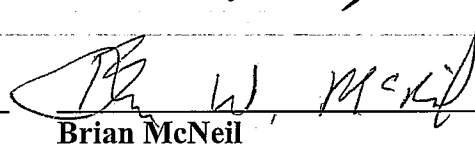
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Approved by the Colchester Select Board this 27<sup>th</sup> day of October, 2009

  
L. Richard Paquette

  
Marc Landry

  
Roger C. Derby

  
Brian McNeil

  
Myron Palmer