

Town of Moultonborough

Code of Conduct for Town Officers and Employees

In Town Meeting – 2014 Regular Session

Article 5

Ordinance #21

SECTION 1: Title, Purpose & Intent

This Ordinance shall be known by its title of Code of Conduct for Town Officers and Employees. The purpose of the ordinance is to provide guidance for all town officers and employees as to what will constitute a violation of the ethical standards all are expected to practice in the performance of their duties, create a framework for action in the case of such a violation and insure the public actions taken in the performance of duties is taken with respect only to what constitutes the best interests of the general public.

SECTION 2: Authority

This Ordinance is adopted under the authority of NH RSA 31:39-a entitled “Conflict of Interest Ordinances”.

SECTION 3: Definitions

“Board” shall mean the Board of Selectmen.

“Conflict” means a situation or circumstance which has the potential to interfere with the exercise of a public duty with the sole consideration being the best interests of the public at large.

“Employee” means any person performing services for the Town, in exchange for compensation, whether on a full, regular, part-time, intermittent, seasonal or call basis.

“Family” means any person who is related to an employee or officer as a spouse, parent, grandparent, child, grandchild or sibling. The definition also includes all persons who are members of the same household as the employee or officer regardless of whether they are related by blood, law or marriage.

“Favor” means the good will, approval, support or status which most likely would not have otherwise been enjoyed.

“Gift” shall mean any money, item, discount, service, or thing of value in excess of \$50 as an individual item or in excess of \$100 in the aggregate, from a single source, in the course of a calendar year. “Gift” shall not include a commercially reasonable loan made in the ordinary course of business, free admission to attend charitable or political events, if the purpose of such gift or admission is a courtesy customarily extended all person of a similar class of town employee or officer, to the office; gifts that are purely private and personal in nature; gifts from relatives by

blood or marriage, or a member of the same household; campaign contributions when made in accord with state and federal law; nor items of nominal value which are part of the natural process of relationship between friends and colleagues. "Gift" shall not include, if properly disclosed, nominal with a value /less than \$50.00, travel, honoraria, or discounted registration fees when granted to an employee or officer in connection with their official duties.

"Officer" means any person elected to a position by a ballot vote of the electorate or appointed to a position to serve on a board, committee, subcommittee or commission of the Town or such a similar multi entity body to which the Town has the right to make such an appointment

"Participate" means to engage in the investigation in, discussion, deliberations, or voting upon a recommendation or approval or disapproval or the individual rendering of a decision, in a matter either personally or substantially. Participate shall not mean the casting of a ballot or otherwise voting as an individual in a general election or as a member of the legislative body.

"Reasonable Person" means an individual of average intelligence who makes prudence a guide to their conduct and acts appropriately in view of the circumstances and the requirements set forth in this Ordinance.

SECTION 4: Requirement for Ethical Conduct

Employees and officers should treat their positions as a public trust, only using the powers and resources of their positions to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good. They should employ independent objective judgment in performing their duties, deciding all matters on the merits free from both real and apparent conflict. They shall act within and abiding by applicable New Hampshire laws, and all written administrative rules, policies, and procedures established by the Town's Board of Selectmen or such equivalent policy or rule making body or entity. Employees and officers shall demonstrate the highest standards of ethical conduct, truthfulness, honesty, and dedication in all public actions and activities in order to inspire public confidence in their actual and perceived motives when viewed by a reasonable person.

In order to avoid any such conflict with the intent of this Ordinance, no employee or officer shall:

- a.) Participate in a matter in which they or a member of their family, directly or indirectly, has a financial interest, aside from his/her salary as such office or employee, greater than any other citizen or taxpayer, nor shall they have any financial or other private interest, directly or indirectly, which is in conflict with the proper discharge of their official duties.
- b.) Accept any gift which is intended or could be perceived as being intended to secure favor with the employee or officer.

- c.) Accept private employment or render or sell services or goods for private interests when such employment or service is incompatible with the proper discharge of their official duties.
- d.) Represent or appear on behalf of private interests before any board, commission, or committee upon which it sits or for whom it is the appointing authority unless such representation or appearance is without compensation on behalf of constituents or in the performance of official duties.
- e.) Disclose any information, document, report, record, or material, in any forum in which it has been obtained or format in which it is maintained if it is not otherwise available to the general public under the NH Right to Know Laws.
- f.) Use one's office or position to gain favorable treatment by others.
- g.) Solicit, negotiate for or promise to accept employment by any person, firm or corporation with which they are or their agency is engaged on behalf of the Town in the transaction of business or which is or may be affected by employment with the Town for one calendar year after leaving office.

Employees and officers shall recuse or otherwise absent themselves from participating in any matter in which their participation would place them in conflict with the intent of this Ordinance.

SECTION 5: Disclosure

All employees and officers shall disclose the receipt of any gift of nominal value, but a value greater than \$10.00, travel, honoraria, or discounted registration fees to the Board of Selectmen.

SECTION 6: Exemptions

Officers and employees who are in office or employed at the time the ordinance becomes effective shall be exempt from the provisions hereof for a period of 90 days. It shall not be a violation of this Ordinance, and they shall be exempt from the imposition of any negative findings or penalties, if an officer or employee shall have:

- (a) Advised the Board of the nature and circumstances of the particular matter to make full disclosure of such conflict and receives in advance a written determination that the conflict is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from the employee or officer;
- (b) Secured a determination from the Board that the particular matter involves a determination of general policy and that the interests of the employee or officer is shared with a substantial segment of the population of the municipality.

SECTION 7: Administrative Rules

The Board is authorized to make such guidance for compliance, rules of procedure, and forms for disclosure as it shall deem necessary and advisable to effectively administer the requirements of this ordinance within sixty (60) days of adoption and to distribute the same. Such rules may be amended from time to time upon a public hearing of no less than 14 days notice

SECTION 8: Distribution and Education

A copy of this ordinance shall be distributed to all employee's and officers within said sixty (60) days of adoption and to all new employers and officers upon the time of their employ or swearing in. An educational seminar shall be provided for all employees and officers within ninety (90) days of adoption and repeated annually thereafter.

SECTION 9: Enforcement & Penalty

This ordinance shall be enforced by the Board. With respect to employees, this ordinance shall be enforced in accord with the procedures established in the Town's Personnel Policy or any relevant Collective Bargaining Agreement. With respect to officers, upon investigation and review having decided there is cause for a hearing, the Board shall give notice to the officer the subject of a complaint of the same and an opportunity for hearing, and shall thereon decide appropriate action of (a) a notice of finding of no concern, (b) a private notice of censure, (c) a public notice of censure, or (d) the instituting of removal proceedings before the Superior Court, as provided in RSA 31:39-a. With respect to members of the Board, the complaint shall be referred to Town Counsel for the appointment of an independent counsel. Said independent counsel shall, upon investigation and review, give notice to the member the subject of a complaint of the same and an opportunity for hearing, and shall thereon recommend an appropriate level of action and complete the preparation of a report which, upon submission to the Board, may not be modified in any manner but must be accepted or rejected in its entirety.

Hearings hereunder shall be conducted in non-public session, in accordance with RSA 91-A:3 II (c). If the employee or the officer who is the subject of the hearing requests that proceedings be conducted in public session, that request will be honored to the extent permissible by law.

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March 15, 2014

SECTION 10: Severability

If any section, paragraph, term or provision of this Ordinance is determined to be illegal, invalid or unconstitutional by any Court of competent jurisdiction such determination shall have no effect on any other section, paragraph, term or provision hereof, all of which shall remain in full force and effect.

This Ordinance shall become effective on July 1, 2014.

Adopted this 15th day of March, 2014 by vote of the Town Meeting under Article 5.

A True Copy, attest,

Barbara Wakefield,

Town Clerk

This 28th day of May, 2014

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March 15, 2014

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Administrative Rules

Section 1: Authority

These administrative Rules are adopted by the Board of Selectmen (the Board) under Section 7 of Ordinance #21. Terms used herein shall have the same meaning as terms in the underlying ordinance, unless otherwise defined herein, and “days” shall mean calendar days.

Section 2: Purpose and Intent

The purpose of these rules is to give guidance to those covered by the ordinance as to how to conduct themselves, seek advice on the applicability of the ordinance, and see rulings as set forth and for the filing of complaints and the processing of the same.

Section 3: Educational Seminars & Advice

The Town Administrator and Town Counsel shall arrange at least two seminars within thirty (30) days of the adoption of these rules and then annually thereafter within ninety (90) days following the annual election of Town Officers. Seeking advice is the responsibility of the individual. To avoid this counsel does not excuse the individual for having a conflict of interest or otherwise acting in violation of this code.

Section 4: Acknowledgement

Each covered employee and officer must sign an acknowledgement of their receipt of these rules upon being presented with the same.

Section 5: Informal & Formal Advice & Rulings

Any employee or officer may seek informal advice from the Town Administrator, who may consult with Town Counsel to the extent deemed necessary, as to the applicability of a section of the ordinance to their situation. The advice shall be reduced to writing and provided to the employee within 21 days of it being sought with such time extended by the same number of days as it took the employee or officer to provide any supplemental information that was requested of them. Such advice shall be considered part of the personnel file of the employee or officer but may be released by said employee or officer at their discretion. In the event a complaint is filed against the employee or officer that they have violated the ordinance over a matter upon which they sought advice, and the facts prove to be the same as presented in seeking the advice, reliance upon the advice given to them shall be a *prima facie* evidence of no-violation.

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If the advice given is that the employee or officer needs to seek a formal ruling from the board, it shall be the sole decision of the employee or officer as to whether or not to submit such a formal request.

Section 6: Participation and the Appearance of Conflict

One shall recuse themselves from participating in matters of actual conflict. Recusal means to immediately remove themselves from discussion and voting. Recusal shall also mean the officer or employee is required to physically vacate his or her seat. During a non-public session, the officer or employee shall remove himself or herself from the meeting room. In the case of a non-public session, an announcement of any such removal and/or filing of a disclosure statement shall be made at the next public meeting.

While the employees and officers retain certain freedom of speech rights under the ordinance they are encouraged to remove themselves from the room over any matter in which they may not participate and to return only upon the completion of the discussion and deliberations. Likewise, they are encouraged to have an agent speak on their behalf when they have matters pending before a board in which they may not participate.

Section 7: Written Disclosures, Exemption Requests, & Filing of Forms

7.1 Form #1 - Appearance of Conflict

An employee or officer may report activities which may appear to be a conflict with their official duties or for which they are seeking a finding of the Board that they may act upon without affecting the integrity of the service they would otherwise be expected to provide to the Town. (Reference Ordinance Section 4. A. and 6. A.) From time to time a matter may arise for which one has not had an opportunity to file a prior disclosure statement. In this instance, the matter should be disclosed on the official record, the nature and extent of such conflict, and file the disclosure statement at the first opportunity. In the case of a non-public session, the disclosure should be made at the next public meeting of the determination and/or filing of a disclosure.

7.2 Form #2 - Gifts

Gifts of nominal value may be accepted, but in certain cases (more than \$10 but less than \$50 or less than \$100 in the aggregate from a single source over the course of a calendar year), must be reported to the Board. This must be done within seven (7) days of their receipt on Form #1. Gifts, loans and contracts which are not subject to reporting, but if known to the public might give an appearance of a conflict, may voluntarily be reported on the same form at the discretion of the employee or officer. (Reference Ordinance Section 4.1)

7.3 Form #3 - Substantial Segment of the Population Sharing Benefit

Employees and officers may accept a gift, participate in an event, or otherwise act whenever the Board has determined that your interests are "...shared with a substantial segment of the population of the municipality." (Reference Section 6.a) A request shall be filed to seek the

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Board's determination on Form #3. It shall be placed on the agenda of the next business meeting. The findings shall be published on the minutes and upon the form to be maintained in the public files.

Section 8: Public Disclosures

All Section 7 forms filed shall be maintained in the offices of the Board for public inspection and arranged by date of entry.

Section 9: Rule of Necessity

From time to time, it may occur that a board may find that majority of its members are in conflict and thus should not act (e.g. all Board members are being paid their stipend and technically cannot sign the manifest). The Board therefore declares that, in such instances, any multi member board, committee or commission may, as a body and by majority vote, publicly declare the use of the rule of necessity to allow it to act on a ministerial matter before it and such declaration shall be made a part of the official record.

Section 10: Filing & Processing the Complaint

10.1 A complaint must be filed within one year of the alleged violation of the ordinance.

10.2 A complaint shall be presented in person or in writing and shall name the specific person or persons alleged to have violated the ordinance and the specific facts of the alleged violation.

10.3 A complaint shall be filed with the Town Administrator or, if the complaint shall involve the Town Administrator, the Town Counsel. The receiving party shall advise the Board of the receipt of such a complaint and the manner in which it will be processed.

10.4 The receiving party shall forthwith contact the subject of the complaint to discuss the allegations and make such other inquiries as deemed appropriate.

10.5 It is the intent of the Board that a preliminary review of the matter be completed within twenty-one (21) days of the filing of the complaint to determine if the complaint is:

- a. Without basis, frivolous, scurrilous, or retaliatory in nature or alleges facts that constitute constitutionally-protected or legally-protected conduct;
- b. Sound of facts that, if true, would constitute a violation of the ordinance; or
- c. Founded in a potentially criminal action in which case (a) the matter shall forthwith be referred to the Chief of Police for investigation by the most appropriate impartial law enforcement agency and (b) the receiving party shall take no further action on the complaint until notified of the conclusion of any criminal investigation or criminal proceeding.

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- 10.6 Complaints which appear to have validity and involve employees shall be dealt with through the normal process for employee discipline.
- 10.7 Complaints which appear to have validity and involve officers shall be referred to the Board for a formal hearing.
- 10.8 Regardless of the finding of the receiving party the complainant and the person against whom the complaint is made shall be informed as to the end results in writing. All such notifications shall be in accord with statute as to the protection afforded personnel matters.

Section 11: Board Hearings & Findings

- 11.1 If the Board determines to hold a hearing on a matter involving an officer it shall hold such hearings in non-public session, in accordance with RSA 91-A:3 II (c). If the employee or the officer who is the subject of the hearing requests that proceedings be conducted in public session, that request will be honored to the extent permissible by law.
- 11.2 The Board shall appoint a counsel to advise it and shall:
 - a.) Provide notice of the hearing in accord with statute including the specifics of the charges to be heard;
 - b.) Holding the hearing within twenty-eight (28) days of the date of the notice but in no less than ten (10) days;
 - c.) Provide an opportunity for the receiving party to present an opening statement followed by an opening statement by the subject of the complaint;
 - d.) Provide an opportunity for the receiving party to present the facts found during the investigation including but not limited to the presentation of any witnesses or documents and an opportunity for the subject of the complaint to question the same with the right to present a defense and the corresponding right of the receiving party to question that defense; and
 - e.) Provide an opportunity for the subject of the complaint to present a closing statement followed by a closing statement by the receiving party.
- 11.3 The Board shall, following deliberation but in no event more than seven (7) days after the conclusion of the hearing, determine if it shall:
 - a.) Find that by a preponderance of the evidence presented, there is no violation and it shall issue a notice of finding of no concern;
 - b.) The subject of the complaint should be given a private or public notice of censure;

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c.) Find that it should institute removal proceedings in accord with statute.

Section 12: Severability

If any section, paragraph, term or provision of this policy is determined to be illegal, invalid or unconstitutional by any Court of competent jurisdiction such determination shall have no effect on any other section, paragraph, term or provision hereof, all of which shall remain in full force and effect.

These administrative rules are adopted this 5th day of June 2014 and shall be effective on the 6th day of June 2014.

Jonathan W. Tolman, Chairman
Joel R. Mudgett, Selectman
Paul T. Punturieri, Selectman
Christopher P. Shipp, Selectman
Russell C. Wakefield, Selectman
BOARD OF SELECTMEN