



## GUIDANCE DOCUMENT

### For the VLCT Model Policy Regarding Conflicts of Interest and Ethical Conduct

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Every municipality in Vermont is required to adopt a conflict of interest prohibition by July 1, 2019. Such prohibition must contain at least the following elements, which are found in 24 V.S.A. § 1984:

- a definition of "conflict of interest";
- a list of the elected and appointed officials covered by such prohibition;
- a method to determine whether a conflict of interest exists;
- actions that must be taken if a conflict of interest is determined to exist; and
- a method of enforcement against individuals violating such prohibition.

In general terms, a conflict of interest is an incompatibility between the private and public interests of a public official. It is up to each municipality to specifically articulate the types of conduct that constitute a conflict of interest. A municipality may also set certain behavioral standards for its public officials by broadening a conflict of interest prohibition to address ethical behavior. 24 V.S.A. § 2291(20).

This Model Policy Regarding Conflicts of Interest and Ethical Conduct was issued in 2018 by the VLCT Municipal Assistance Center (MAC) to help municipalities comply with the conflict of interest mandate in 24 V.S.A. § 1984 and take advantage of the authority granted in 24 V.S.A. § 2291 to regulate ethical conduct by public officials. It is up to each municipal legislative body to modify and adopt this model policy to suit local preferences. This model must be customized by replacing the *italicized text*.

#### **Why is it important to address conflicts of interest?**

In addition to the statutory requirements mentioned above, there are also political, legal, and reputational interests at stake. Failure to manage ethical dilemmas appropriately can significantly damage the reputation of a local official, an entire public body, or the municipality as a whole. Within the context of local government, a perceived conflict of interest can be just as problematic as a real conflict. Fortunately, the Vermont Legislature has provided broad enabling authority to create and adopt conflict of interest provisions for resolving local conflicts of interest. It is therefore up to every individual municipality to articulate standards for identifying and managing conflicts of interest.

The structure of Vermont local government, the breadth of local government's responsibilities, and the often-contentious nature of local issues increase the likelihood that allegations of conflicts of interest will be leveled against even the most conscientious municipal official. A municipal conflict of interest policy can help guide elected and appointed officials through situations that present actual or perceived conflicts of interest. The adoption of a conflict of interest policy sets shared expectations about how conflicts and perceived conflicts will be handled by municipal officials.

#### **How is a conflict of interest policy adopted and to whom does it apply?**

A conflict of interest policy is adopted by vote of the legislative body within the context of a duly-warned public meeting and is effective as soon as it is adopted or at any later

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date specified by the legislative body. Such a policy will apply to all elected and appointed municipal officials. 24 V.S.A. § 2291(20). However, a conflict of interest policy is not meant to govern the behavior of employees which should be addressed separately in the context of a personnel policy and/or purchasing policy.

The adoption of a conflict of interest policy by the legislative body does not preclude any other public body in the municipality from adopting its own conflict of interest policy (especially an appropriate municipal panel such as a development review board, which is required by 24 V.S.A. § 4461 to adopt rules governing conflicts of interest). However, doing so will mean that the members of that public body will have to abide by both policies.

### **What should be done when a conflict is identified?**

Conflicts of interest inevitably arise in the workings of small town government, and they should be avoided whenever possible. However, the presence of a conflict does not necessarily mean that a municipal official may not continue to act in a particular situation. The deciding factor should be whether the official is able to act *impartially* despite the presence of a conflict.

**One important caveat to the above:** A higher conflict of interest standard applies in the context of quasi-judicial decision-making. Quasi-judicial decisions are rendered in situations where the rights of a particular individual are at stake (e.g., tax appeals, vicious dog hearings, land use decisions). In those situations the affected individual has the right to receive constitutional due process protections, which include the right to an impartial decision maker. If a municipal official with a conflict of interest participates in a quasi-judicial process, a court may determine that the official was not an impartial decision maker and may vacate the decision and order the matter be reconsidered without the participation of the conflicted member. *See e.g. Appeal of Janet Cote, 257-11-02 Vtec (2003)*. Therefore, municipal officials should be more inclined to recuse themselves when they are participating in a quasi-judicial process.

If an actual or perceived conflict arises or is identified, and the individual is a member of a public body (such as a board, committee, or commission) MAC recommends taking the following steps, which have been incorporated into this model policy:

1. The actual or perceived conflict shall be *disclosed* at an open meeting or hearing.
2. The public body shall *discuss* the situation at that meeting or hearing.
3. The individual with the actual or perceived conflict shall *consider* recusal.
4. The individual with the actual or perceived conflict shall *decide* whether to recuse him or herself and *explain* why.
5. The minutes of the meeting or the written decision from the hearing shall *document* the above process.

### **What if a municipal official has a conflict but does not recuse himself or herself?**

Unless there is a local ordinance or charter provision that states otherwise, an elected official may not be forced to recuse himself or herself or to resign if requested, even if a clear conflict of interest has been identified. Other individuals may express their opinions about the subject, and may privately or publicly admonish the elected official who fails to handle a conflict appropriately, but such is the extent of their power over the situation. Each elected official within a municipality is independent from the other elected officials and answers only to the voters. The situation is different for an appointed official who

may be instructed to recuse himself or herself or may be removed from office by the official or public body that appointed him or her.<sup>1</sup>

**This model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy or any express or implied guarantee of legal enforceability or legal compliance. VLCT also does not represent that any policy is appropriate for any particular municipality. Please seek legal counsel to review any proposed policy before adoption.**

**If you have specific questions about this policy please contact the VLCT Municipal Assistance Center at (800) 649-7915 or [info@vlct.org](mailto:info@vlct.org).**

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<sup>1</sup> Certain appointed officials 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 due process protections including notice and a reasonable opportunity to be heard.