

# WINDHAM MUNICIPAL CODE OF ETHICS

## **Declaration of Policy**

The proper operation of the Town of Windham requires that all Town officials with executive decision-making authority, whether elected or appointed, be impartial, equitable and responsive to the needs of the people and each other in the performance of their respective functions and duties; that proper conduct by Town officials will promote public confidence in the integrity of government and will be maintained by all Town officials; that public office not be used for personal or financial gain or advantage; that the structure of Town government be used properly in decision and policy making. In recognition of these goals and the importance of protecting public interest and Town officials, a Code of Ethics is hereby established for all.

## **Definitions**

**BUSINESS** - any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal recognized entity organized for the purposes of making a profit.

**CENSURE** - a judgment or resolution condemning a person for misconduct.

**EXECUTIVE BOARDS** - Town Council, Board of Assessment Review, Planning Board and Zoning Board of Appeals.

**FINANCIAL INTEREST** - a direct or indirect interest having monetary or pecuniary value, including, but not limited to, the ownership of shares of stock.

**IMMEDIATE FAMILY** - spouse, and the following when living in the household of a Council member, board member or commission member: children, parents, brothers and sisters.

**SPECIAL INTEREST** - any interest which will allow some form of personal gain, usually of pecuniary nature.

**TOWN OFFICIAL** - any individual who is a member of an executive board.

## **Standards of Conduct**

The purpose of this Code is to establish ethical standards of conduct for the Town's officials by setting forth those acts or actions that may be in conflict or incompatible, or that create the appearance of impropriety, with the best interests of the Town of Windham.

## **Statutory Standards**

There are certain provisions of the general statutes of the State of Maine which should, while not set forth herein, be considered an integral part of this Ordinance. Accordingly, the provisions of the following sections of the general statutes of the State of Maine, as may be amended, are hereby incorporated by

reference and made a part of this Code of Ethics, and shall apply to all Town officials of the Town of Windham whenever applicable as if more fully set forth therein, to wit:

17 MRSA SS 3104	Conflicts of Interest; Purchases by the State
17-A MRSA SS 456	Tampering with Public Records of Information
17-A MRSA SS 602	Bribery in Official and Political Matters
17-A MRSA SS 603	Improper Influence
17-A MRSA SS 604	Improper Compensation for Past Action
17-A MRSA SS 605	Improper Gifts to Public Servants
17-A MRSA SS 606	Improper Compensation for Services
17-A MRSA SS 607	Purchase of Public Office
17-A MRSA SS 608	Official Oppression
17-A MRSA SS 609	Misuse of Information
17-A MRSA SS 903	Misuse of Entrusted Property
21 MRSA SS 533	Persons Ineligible to Serve as Election Officials
30-A MRSA SS 2605	Conflicts of Interest
30-A MRSA SS 5122	Interest of Public Officials, Trustees or Employees

### **Disclosure of Confidential Information**

No Town official shall, to the detriment of the Town, disclose confidential information concerning the property, government or affairs of the Town; nor shall he/she use such information to advance the financial or private interest of him/herself or others. For purposes of this subsection, the term "confidential information" shall mean any information, oral or written, which comes to the attention of, or is available to, such Town municipal official only because of his or her position with the Town, and is not a matter of public record. Information received and discussed during an executive session of the Windham Town Council called pursuant to 1 MRSA SS 405 et seq. shall be considered within the constraints of this section, and shall not be disclosed to any third party unless permitted by affirmative vote of such body.

### **Contracts, Purchases and Employment**

No Town official shall participate directly by means of deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the Town, and the award of any contracts with the Town, where to his/her knowledge there is a financial interest, or special interest other than that possessed by the public generally, in such purchase or award, held by:

- A. him/herself or a member of his/her immediate family;

- B. a business in which he/she or a member of his/her immediate family serves as an officer, director, trustee, partner or employee in a supervisory or management position; or
- C. any other person or business with whom he/she or a member of his/her immediate family are in business, or are negotiating or have an arrangement concerning future employment.

No Town official shall participate by means of deliberation, approval or disapproval, or recommendation, in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for employment or employee, as the case may be, or vote for appointed positions, where said applicant or employee is:

- A. a member of his/her immediate family; or
- B. a person with whom either he/she or a member of his/her immediate family are in business.

### **Incompatible Employment**

No Town official shall engage in or 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 his/her official duties.

### **Solicitation of Future Employment**

A Town official shall not solicit future employment with any person who has a substantial matter pending before the Council, Board or Committee in which the official was a member. A matter is "substantial" if it involves a financial value of one thousand (\$1,000) dollars or more or involves a question of policy of comparable significance.

An individual who has served as an official shall not, within one (1) year after termination of his/her service, assist any person, other than the Town, in any matter that was pending before the Council, Board or Committee in which he/she was a member or appear before the Council, Board, or Committee in which he/she was a member or assist any other person to make such an appearance.

### **Gifts and Favors**

No Town official, shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person and/or business which to his/her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the Town; nor shall any elected or appointed municipal official: accept any gift, favor or thing of value that tends to influence or could reasonably be expected to influence him/her in the performance of official duties or was intended as a reward for any official action. This does not prohibit:

- A. gifts or social courtesies related to a family relationship or friendship between the elected or appointed official and the donor, which are not designed to influence the proper judgment or action of the officer or employee in a matter within his authority;
- B. public, government-sponsored or informational events, generally accepted as a condition of office, where refreshments may be served, which are not designed to influence the

proper judgment or action of the elected or appointed official in a matter within his/her authority;

- C. political contributions received in compliance with law;
- D. loans obtained according to commercial practice at the prevailing rate of interest;
- E. customary performance, merit awards or honorariums, consistent with municipal practices.

### **Use of Town Property and Facilities**

No Town official shall use or authorize others to use Town-owned property, including but not limited to, motor vehicles, equipment and buildings except for the following:

- A. for Town business;
- B. for purposes and on terms generally available to other persons;
- C. according to a contract of employment with the Town in which use of such property is part of the compensation or a term of employment.

### **Representing Third Party Interests Before Town Agencies**

No Town official shall either appear on behalf of any third party interest before any Town agency, or represent a third party interest in any action, proceeding, or litigation in which the Town or one of its agencies is a party. Nothing herein shall prohibit a Town official, on behalf of a constituent in the course of his or her duties as a representative of the electorate, or any Town official, on behalf of his or her personal interest, from appearing before a Town agency. No Town official shall appear on behalf of any third party interest before a Town agency of which he or she is a current member. Nothing herein shall prohibit a Town official, on behalf of his or her personal interest, from appearing before any Town agency including that of which he or she is a current member. An official who is employed or under retainer by a person having a matter pending before the agency of which the official is a member shall disclose that fact and shall abstain from participation in the matter. Participation includes but is not limited to discussion and/or voting on the matter.

### **Conflicts of Interest**

No Town official shall, in such capacity, participate in the deliberation or vote, or otherwise take part in the decision-making process, on any agenda item before his/her collective body in which he/she or a member of his/her immediate family has a financial or special interest of a pecuniary nature, other than an interest held by the public generally.

### **Disclosure of Conflict**

Any Town official who believes that he/she or a member of his/her immediate family has a financial or special interest, other than an interest held by the public generally, in any agenda item before his or her collective body, shall disclose the nature and possible extent of such interest. The collective body will vote to determine if there is a conflict.

Any Town official who believes that any fellow Town official, or a member of his/her immediate family has a financial or special interest, other than an interest held by the public generally, in any item before his/her collective body, shall disclose the possibility of such interest, and the Town Clerk or his/her designee shall make a record of such disclosure, with a copy forwarded to the Chair of the Appropriate Executive Board.

### **Determination of Conflict**

Once the issue of conflict has been initiated relative to an individual Town official, and disclosure has been made as provided above, such individual's fellow Town officials shall vote on whether or not such individual shall be excused from participating in the deliberation or vote.

### **Avoidance of Appearance of Conflict**

To avoid the appearance of a violation of this section, once any individual Town official is determined to have a conflict of interest in respect to any agenda item, said individual shall immediately remove him/herself from the meeting room or to the area of the room occupied by the general public. He/she shall not return to his/her regular seat as a member of the body until deliberation and action on the item is completed. Nothing herein shall require an individual Town official to remove him/herself for any item contained on a "Consent Agenda" on which there is no deliberation, the individual's conflict has been determined by the other members, and the right to abstain from voting on the item has been granted.

### **Personal Interest**

Nothing herein shall be construed to prohibit any Town official from representing his/her own personal interest by appearing before his/her collective body on any such agenda item.

### **Disclosure Statement by Town Elected and Appointed Municipal Official**

Within fifteen (15) days after each annual municipal election, every elected official shall file a completed disclosure form with the Town Clerk with a copy forwarded to the Chair of the appropriate Executive Board and to the chair of the Town Council. Within thirty (30) days after his/her appointment, every appointed official shall file a completed disclosure form with the Town Clerk, with a copy forwarded to the Chair of the appropriate Executive Board. Each executive body is responsible for ensuring that members comply with the filing of a disclosure statement. An extension beyond the stated time frame for filing a disclosure statement may be approved with a majority vote of the appropriate executive body. Each executive body will review the financial reports of its members. Should a conflict be discovered, a majority vote of the executive body can refer the matter to the Ethics Board for an opinion. Such disclosure forms shall be under oath and shall contain the following information to the best of the disclosing party's knowledge and belief:

- A. the name of each person or entity, whether incorporated or not, doing business with the Town in an amount in excess of \$1,000 during the preceding calendar year from which such disclosing party or member of his/her immediate family has received money or other thing of value in an amount in excess of \$1,000 during the preceding calendar year, including, but not limited to, campaign contributions where applicable;
- B. the name of each entity, whether incorporated or not, doing business with the Town in an amount in excess of \$1,000 for preceding calendar year in which such disclosing party or member of his/her immediate family has a financial interest in an amount in excess of \$1,000, including, but not limited to, the ownership of shares of stock;

- C. the name of each nonprofit and/or for profit entity, whether incorporated or not, for which such disclosing party or member of his/her immediate family holds a position of officer or member of any board. For each such entity, such disclosing party shall provide the following information:
- a) a brief description of the purpose of each board and/or office;
  - b) a short summary of such disclosing party's or family member's duties relative to any such board and/or office;
  - c) the term of service on each such board and/or office;
  - d) whether or not such disclosing party or family member receives compensation for service on such board and/or office and the extent to which such compensation exceeds \$100 in the aggregate annually.

For purposes of this subsection "compensation" shall include, but not be limited to, monetary compensation, gifts, gratuities, perks, fringe benefits, services, and any other thing of value.

- D. Every Town official shall annually amend his/her disclosure statement as may be required to ensure the continued accuracy thereof. Each such amendment shall be made within fifteen (15) days following the occurrence which requires the amendment.
- E. The Town Clerk shall deliver a copy of each completed disclosure statement to every fellow member of each disclosing party within thirty (30) days after the expiration of the filing period.
- F. For purposes of this Code, a list prepared by the Finance Director of those persons or entities doing business with the Town in an amount in excess of \$1,000 for the preceding year shall be determinative for purposes of reporting under this section. Income from, and financial investments in, policies of insurance, and deposits in accounts from commercial or savings banks, savings and loan associations, or credit unions and the ownership of less than 5% of the outstanding shares of stock in a publicly held corporation shall not be considered to be a financial interest within the meaning of this section.

### **Political Standards of Conduct**

- A. No Town official shall participate in any political activity which would be in conflict or incompatible with the performance of his or her official functions and duties for the Town. In conjunction therewith:
- B. No Town official may use his/her official authority or position for the purposes of influencing or interfering with or affecting the results of any election, nor shall he/she solicit funds or contributions or accept or receive funds or contributions from Town employees for political purposes. No Town official may distribute pamphlets/handbills while he or she is performing their official functions and duties with the Town. Nothing herein shall be construed to prohibit any Town official from participating in the political process in their capacity as private citizens. Acceptable conduct would allow

endorsements of a candidate, without the use of an official title. "I, John Doe, support Jim Smith for Council", not "as John Doe, Board member, I support Jim Smith for Council". Except for official functions and duties, political pins can be worn. During Council or Board meetings, view of such pins would not be appropriate.

### **Incompatible Employment of Office**

No Town official shall occupy any other office, elected or appointed, in any other governmental entity, where the duties of such office are incompatible with the proper discharge of his or her official duties with the Town. For purposes of this Code, the occupancy of any office, elected or appointed, with any other governmental entity by any municipal official is hereby prohibited in any one of the following circumstances:

- A. where the duties of the other office make it a physical impossibility to discharge the duties of the Town position; or
- B. where one office is subordinate of the other; or
- C. where one office carries the power of removal of the other; or
- D. where the occupancy of both offices is otherwise prohibited by law.

### **Board of Ethics**

**BOARD OF ETHICS ESTABLISHED** - There is hereby created and established a Board of Ethics consisting of three (3) members who will be sworn in on appointment by the Town Council.

**TERMS** - All members shall be appointed for terms of three (3) years each. Each member shall serve until May 15<sup>th</sup> of the final year on term, subject to continuance in office for a period not to exceed six (6) months until a successor is appointed. All members must be residents of the Town of Windham. No member shall serve more than two (2) complete consecutive terms.

**OTHER OFFICES PROHIBITED** - No member of the Board shall hold any other Town office or position or be the member of any Town Council appointed committees. A rare exception can be made by majority vote of the Town Council, if so warranted.

**PROCEDURES AND RECORDS** - The Board shall establish such rules as it may determine to be necessary to govern its procedures. In addition, the Board shall at all times maintain in the office of the Town Clerk appropriate records of its opinions and proceedings subject to the State's "Right to Know" Law.

**DUTIES** - The Board shall render advisory opinions to any of the executive boards when there is doubt as to the applicability of any provisions of this Code to any particular situation. In the performance of its duties, the Board shall limit its review and fact finding only to those issues referred to it by the respective executive board. The Board shall also perform such other duties as may be prescribed from time to time by the Town Council.

**PROCEDURE** - Any Town official seeking advice as to whether a particular situation constitutes a violation of this Code shall first submit a written statement describing the nature of the matter to the chairperson of the appropriate executive board as well as the Chair of the Town Council. If the chairman of the executive board feels that an advisory opinion is necessary, or if three (3) or more members of the

executive board feel that an advisory opinion is necessary, they may refer the matter in a written statement to the Ethics Board. The Council may seek legal guidance of its own will or the will of the Board. If the Ethics Board finds any matter referred to it to have been based upon allegations it determines to have been frivolous, unfounded or with malice, they shall so advise the appropriate executive board. It is the purpose and intent of this Code to provide a mechanism by which all such matters shall be investigated by the Ethics Board and reported to the appropriate executive body as a whole within thirty (30) days if its findings warrant further action. The orderly and impartial fashion of this process will protect the best interest of the citizens of the Town of Windham and the personal and private interest of its Town officials. Upon written request to the appropriate executive board (due to extenuating circumstances) an extension can be obtained.

**ORIENTATION OF EXECUTIVE BOARD MEMBERS AND MUNICIPAL OFFICIALS** - All executive Board members are requested to attend an annual orientation meeting to be scheduled during the month of January of each calendar year or as can be scheduled.

All municipal officials are encouraged to attend an annual presentation given by the Board.

**DUTIES OF THE BOARD OF ETHICS** - The Board shall meet at least quarterly and, prior to December 31 of each calendar year, shall prepare and submit to the Town Council an annual report outlining its doings during the preceding 12 month period.

**PUBLIC RELEASE OF FINDINGS OF INNOCENCE OF WRONGDOING** - In cases where the respective executive board finds the person accused not guilty of wrongdoing, he/she will be publicly cleared, at the next regular meeting of the executive board.

**PENALTIES** - In addition to any other penalties or remedies as may be provided by law, violation of this Code shall constitute cause for censure, after notice and hearing conducted by the Town Council. A majority of the Windham Town Council shall conduct such proceedings.

**SEPARABILITY** - If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such validity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of the Code.

Adopted: May 28, 1991

Amended: February 25, 1992

March 9, 1993

January 11, 2011 (Order 11-005. Changed board member term end date from December 31 to May 15.)

August 24, 2011 (Order 11-142. Cleaned up document formatting, added ability of three or more members of a board to seek advisory opinions.)