

ARTICLE IX CONDUCT OF OFFICIALS / CODE OF ETHICS

9-1 PREAMBLE

It is the policy of the Town of Merrimack to uphold, promote and demand the highest standards of ethics and conduct from all of its employees and officials, whether elected, appointed or hired. The Town Council, all Town employees and all members of Town boards, commissions, and committees shall maintain the highest standards of personal integrity, truthfulness, honesty and fairness in discharging their public duties, and never abuse their positions or powers for improper or personal gain.

9-2 PURPOSE

The purpose of this code is to establish guidelines for the ethical standards of conduct for Town officials, board members and employees. We expect our public servants and volunteers to act in the best interest of the Town. We expect Town officials, board members and employees to disclose any personal, financial or other interests in matters affecting the Town that come before them for action. We expect Town officials, board members and employees to remove themselves from decision making if they have a conflict of interest. We expect Town officials, board members and employees to be independent, impartial, and responsible to their fellow townspeople in their actions. We expect that the Town's official decisions and policies be made through the proper channels of government.

We expect that public office or a volunteer position in our Town not be used for personal gain. It is important that the public has confidence in the integrity of its government and that Town officials, board members, volunteers and employees have an opportunity to protect their personal reputation. This code establishes a process by which one may obtain guidance regarding potential ethical issues and it establishes a course of action for resolving disputes in a manner that is fair to all of the parties involved.

9-3 EXPLANATION OF CODE PROVISIONS

A. No Conflicts of Interest

Officials, board members and employees of the Town of Merrimack shall avoid conflicts of interest. As a Town official, board member or employee, you shall not participate in any matter in which you, or a member of your family, have a personal interest that may directly or indirectly affect or influence the performance of your duties. In such instances, you shall recuse yourself from discussion and decision-making. Recusal means to remove yourself completely from all further participation in the matter in question. Officials, board members or employees who have been recused shall immediately leave the room or shall seat themselves with the other members of the public who are present. When recused, you shall not participate in further discussions, unless you clearly state for the record that you are doing so only as a general member of the public. As a recused person, you shall not deliberate or vote on the matter in question.

B. A Duty to Recuse in Quasi-Judicial Actions

A "quasi-judicial action" is any action where the board or committee you are a member of is acting like a judge or a jury. For example, when your board or committee has a duty to notify the potential parties, hear the parties, and can only decide on the matter after weighing and

considering such evidence and arguments as the parties choose to lay before you, you are involved in a quasi-judicial action. The work of the planning and zoning boards is largely quasi-judicial. Not only do officials, board members and employees of the Town of Merrimack have a duty to recuse themselves as outlined in the Section above, you must recuse yourself in a quasi-judicial action if you would not be qualified to sit as a juror in that case. For example, jurors are not qualified to sit in a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial. As a representative of the Town of Merrimack, you are expected to hold yourself to this same standard.

C. A Duty to Disclose

As an official, board member or employee of the Town of Merrimack, you shall not participate in the conduct of business on behalf of the Town or enter into discussion or deliberation of any matter without first, publicly and on the record, stating all possible conflicts that may exist between you and your family, and the principals or the issue under consideration.

D. No Unfair Personal Use of Town Property

No official, board member or employee of the Town of Merrimack shall use Town property, services, or labor personally, or make the same available to others unless such use is available to other residents upon request on equal terms.

E. No Misuse of Confidential Information

No official, board member or employee of the Town of Merrimack shall use any confidential information acquired by virtue of that individual's official position for personal benefit, or for the benefit of any other person or business. This does not apply to information, which is readily available to the general public.

In addition, no official, board member or employee of the Town of Merrimack shall violate the privacy of others by publicizing, gossiping, or discussing information confidentially acquired in the course of official duties without a legitimate reason to do so.

F. No Improper Gifts

No official, board member or employee of the Town of Merrimack shall accept a gift (or allow acceptance of such gift by a family member) from any individual, group, or corporation that has or is likely to have a matter pending before the board, committee, or commission on which the official or employee serves. This provision of the code is not meant to apply to gifts traditionally exchanged between family members at holidays or birthdays, for example.

G. A Duty to Cooperate

All officials, board members and employees of the Town of Merrimack shall cooperate with the Ethics Committee regarding any complaint or inquiry alleging violation of this Code of Ethics.

H. Fair and Equal Treatment

Acting in their official capacity, all officials, board members and employees of Town government shall give each and every person fair and equal treatment. No official, board member or employee shall in the course of their official duties give or deny any person special consideration, advantage, or treatment as a result of the person's public status, position, sex, race, religion, creed, sexual orientation, or national origin.

9-4 DEFINITIONS OF TERMS

As used in this Article, the following terms shall have the meanings indicated:

A. Board: Any board, committee or commission, permanent or special, established by the Town Council under New Hampshire State Law or this Charter.

B. Complainant: A resident of the Town of Merrimack who has submitted a petition to the Ethics Committee requesting an inquiry or alleging a violation of the Code of Ethics.

C. Conflict of Interest: A situation, circumstance, or financial interest that has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty.

(Amended 04/10/07 Town Meeting - #5)

D. Employee: A person who is paid by the Town of Merrimack for his/her services, but who is not an independent contractor.

E. Ethics Committee: The committee established by Article VI of this Charter.

F. Family: Any person who is related to the official, board member or employee in one of the following ways: spouse, parent, grandparent, child, grandchild, sibling, or similar relation to the individual's spouse. This includes all persons who are members of the same household as the official, board member or employee in question, regardless of whether they are related by blood or marriage.

G. Interest: Any legal or equitable right, share, or claim, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, including but without limitation, a right, share or claim to land.

H. Official: Any elected or appointed officer, board member, or agent of the Town of Merrimack.

I. Principals: Those people who are the subject of the action or application that is before the board.

J. Public Servant: A person who serves the Town of Merrimack in an official capacity, whether elected or appointed, paid or unpaid, any Town official, board member or employee.

K. Respondent: Board member or employee named in a petition submitted to the Ethics Committee as an inquiry or alleging a violation of the Code of Ethics.

L. Resident: A resident of the Town of Merrimack.

M. Quasi-judicial Action: Any action where the board or committee has a duty to notify the potential parties, hear the parties, and can only decide after weighing and considering such evidence and arguments as the parties choose to lay before them.

N. Town: The Town of Merrimack, including all of its departments, boards, commissions, and committees.

9-5 EXCLUSIONS

The provisions of this Code of Ethics shall not be interpreted so as to bar:

- A.** Any official, board member or employee who is a resident of the Town of Merrimack from fully participating in any public proceeding conducted by the Town;
- B.** Acceptance of donations for the expressed purpose of financing a political campaign, provided such contributions are reported in accordance with all local, state and federal laws that pertain to such donations;
- C.** Participation in a matter that relates to a person or business from which an official, board member or employee has merely purchased goods or services, if the individual in question has no other conflict of interest relating to that person or business;
- D.** Police officers, fire fighters, and other emergency personnel from acting in the course of their official capacities when responding to emergencies in accordance with the rules and regulations of their departments; and
- E.** Supervisors of Town employees from appropriately carrying out personnel policies.

9-6 ETHICS COMMITTEE

The Ethics Committee shall:

- Educate officials, board members and employees of Town government regarding the provisions of the ethics code;
- Provide advice and counsel to officials, board members and employees regarding ethical issues with which they are confronted; and
- Hear and resolve ethics complaints, which are filed against officials, board members and employees of Town government.

A. Education

- (1)** At the time that each newly elected or appointed official, board member or employee takes the oath of office, they shall receive a copy of this code, and acknowledge in writing that they have received a copy of this code.
- (2)** The Ethics Committee shall hold a meeting each spring for newly elected or appointed officials, board members and employees so they may familiarize themselves with the provisions of this code.
- (3)** It shall be the responsibility of the supervisor of any new employee to ensure that the new employee familiarizes themselves with the provisions of this code.

B. Inquiries

The Ethics Committee shall establish a mechanism by which officials, board members, employees and residents of the Town of Merrimack may obtain advice and counsel from the committee regarding ethical issues that may arise from time to time. Upon request of a Town official, board member or employee, the Ethics Committee may issue a written advisory opinion in response to such an inquiry.

C. Complaints

- (1)** The Ethics Committee shall:

 - a.** have the power to investigate all written complaints, which are filed;
 - b.** establish forms by which officials, board members, employees, and residents of the Town of Merrimack may file complaints or request that an inquiry be made;
 - c.** only review complaints based on alleged violations of Section 9-3 (A – H) of this Article. All such requests or complaints must be in writing, shall specify the provision of the code which the complainant believes was violated, and must be signed by a resident of Merrimack. When signing the complaint, the complainant shall certify that he or she has read the Code of Ethics, that they believe the matter within the complaint is a fair subject of inquiry, and they have exhausted all other avenues of relief available to them within our Town government.
- (2)** Any official, board member or employee against whom a written complaint is filed shall be given a copy of the complaint, and upon written request shall be afforded an opportunity to be heard and to present evidence to the Ethics Committee.
- (3)** The Ethics Committee shall have sole discretion for setting rules regarding the conduct of hearings. The Committee shall seek to make sure that both the complainant and the respondent have an opportunity to be heard and to present evidence, but the committee may limit the testimony and evidence which is presented to it if in the opinion of the committee the testimony and evidence in question is irrelevant, unnecessary, redundant, or unreliable.
- (4)** The Ethics Committee may require, with sufficient written notice, any official, board member or employee of Town government to appear before it to provide testimony regarding pending complaints. The Ethics Committee, for this purpose, may administer oaths and require the production of evidence such as documents.
- (5)** Within thirty (30) days of concluding an investigation into a written complaint, the Ethics Committee shall issue a written statement setting forth its findings. The Ethics Committee shall not have the power to impose any monetary or other penalty, only to issue a written statement as set forth above.