

Conflict of Interest Ordinance

Town of Atkinson, New Hampshire

March 14, 2023

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1. Introduction

a. Purpose

This Conflict of Interest Ordinance is adopted pursuant to the authority of RSA 31:39-a. The purpose of this Ordinance is to inform Town Members who are involved in the oversight, administration, and/or provision of service for the Town, how to avoid Conflict of Interest as it pertains to their role in Town business. It is also to inform Town residents of their course of action should they suspect a Conflict of Interest involving a Member of Town government.

b. Policy

The proper operation of democratic government requires that Members be independent, impartial, responsible to the people and that government decisions and policy be made through the proper channels of government structure. Any Member must not use their position for personal gain so that the public will have confidence in the integrity of its government Members to perform their duties without conflicts between their private Interests and those of the citizens they serve. In recognition of these goals, this Ordinance for all Town Members is adopted in accordance with RSA 31:39-a and supersedes all previous issuances of the Conflict of Interest Ordinance.

c. Related Statutes

RSA 669:7 Incompatibility of Offices

d. Definitions

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

Board- Any committee, or commission, permanent or special, established by the Board of Selectmen, New Hampshire State or Federal law.

Compensation- Any consideration, money, gift, item of value or economic/financial benefit conferred on or received by any person in return for services rendered or to be rendered by him/herself or another person.

Conflict of Interest (COI)- A situation, circumstance, or financial Interest, which has the potential to, or the appearance of, causing a private Interest to influence or interfere with the proper exercise of a public duty.

Entity- Any person having an Interest.

Family- Includes spouse, parents, stepparents, grandparents, children, stepchildren, grandchildren, brothers, stepbrothers, sisters, stepsisters, in-laws, aunts, uncles, nieces, nephews and partners. Relatives are by blood, marriage or adoption as listed within this paragraph. For the purposes of this Ordinance, those who reside in the same household are included in the definition of Family.

Interest- Any legal or equitable ownership or right held directly, or indirectly, jointly, or in part, at any time during the term of office, or within the previous twelve-month period. The specific

Interests of a Member of the Town that are subject to this Ordinance as being in conflict are as follows:

- Ownership or title in a stock, security, investment, certificate, partnership, venture, trust, royalty, lease or other equity, which entitles the owner to business rights or profits.
- Creditor entitlement in a note, bond, debenture or other evidence of such entitlement.
- Ownership of land within 200 feet of any land being discussed by the Town.
- Acting as an agent of a person or company in dealings with the Town.
- A Town Member acting for the Town with a person or company who is an employer of the Member and/or a Member's Family.

Jurisdiction- This Committee is deemed to have jurisdiction when ALL three of the following conditions are met:

- The Respondent is a Town Member.
- The Respondent has an Interest as described above.
- The Petitioner identifies the infraction in this Ordinance to the best of their ability. If necessary, the COI Committee may assist in identifying the correct specific infractions of the Ordinance, even if not specifically mentioned by the Petitioner.

Member of Town Government (Member)- Any elected or appointed official, Board Member or Town employee, whether full- or part-time, permanent or temporary, including those employed by the Town and paid by federal or state assistance programs. This includes but is not limited to the following Members of:

- Budget Committee
- Board of Selectmen
- Cable Television Committee
- Checklist Supervisors
- Conservation Commission
- Rockingham Planning Commission
- Kimball Library Trustees
- Planning Board
- Recreation Committee
- Town Clerk/Tax Collector
- Town Moderator
- Treasurer
- Trustees of the Trust Funds
- Water Resource Committee
- Zoning Board of Adjustment
- Any other Town Boards, commissions and/or committees, including those yet to be established.

Petitioner- Any person who submits a formal complaint under this Ordinance.

Respondent- A Member of Town government named in a petition submitted to this Committee as an inquiry or alleging a violation of the Conflict of Interest Ordinance in relation to his/her official duties.

Town- The Town of Atkinson as a legal entity, including all of its departments, Boards, commissions, and committees.

2. Conflict of Interest Committee (this Committee)

a. COI Structure

Membership: Unless otherwise provided by law, no person shall serve on this Committee who does not have their domicile within the Town. (RSA 669:6). No Member of this Committee shall hold any Town, School District, County, State, or Federal elective or appointed office, Board membership, commission membership or trusteeship. No Member of this Committee shall be employed full- or part-time by the Town. Family of Members and contractors and contractor's employees who provide services to the Town shall not be allowed to serve on this Committee. This does not prevent a member of this Committee from volunteering unpaid services to the Town, where no Conflict of Interest is created.

Number of Members and length of terms: This Committee shall consist of five Members serving staggered three-year terms.

Vacancies: Should a vacancy in this Committee arise, the remaining Members will appoint, through a vetting process, a Town resident to serve until the next town election at which time the voters of the town shall then elect a candidate for the balance of the unexpired term or the full term as the case may be as determined by the Town Clerk.

Officers: This Committee will have three officers (Chair, Vice-Chair, and Secretary) serving one-year terms. They will be selected annually, by this Committee's majority, at the first Committee meeting following the annual town election.

b. Investigatory Power

Only when a petition is filed, shall this Committee take action to address the petition. Section 2c, Procedures for Submitting an Alleged Violation, may require that a Member, Respondent or a Petitioner, appear before this Committee to provide additional information, so that this Committee may perform its function as it relates to the submitted petition. This Committee will give at least forty-eight hours written notice of the general scope of the inquiry, which is to be made to any Member it will require to appear before it. This Committee may administer oaths and require that evidence be provided.

c. Procedures for Submitting an Alleged Violation

- Any entity, person or business may petition this Committee to investigate a situation which they feel may constitute a Conflict of Interest.

- The person submitting a petition must complete a current Conflict of Interest petition form. The petition must be submitted in writing and include the name, address and contact information of each Petitioner. Each Petitioner must then sign and date the petition to make it valid. Business owners submitting a petition must also include the name and address of their business.
- The petition must be filed **WITHIN ONE YEAR** after the alleged violation occurred.
- Anyone wishing to submit a petition, can find the form and instructions for submission on the Town website. Hard copy instructions and information regarding this Committee are available at the Town Hall. Anyone may contact the current Chairperson or a Member of this Committee, for the most up to date information on filing a petition.
- The petition must be mailed to: Conflict of Interest Committee, P.O Box 452, Atkinson, NH 03811.
- This Committee will make a finding on the petition within 30 days of receipt. If the Committee finds it necessary, the Committee may elect to extend this period up to a maximum of ninety days from the date the petition was submitted. Such an extension may be necessary to allow proper time for the evaluation, review and investigation of the petition.
- After this Committee determines it has jurisdiction over the matter and conducts its investigation, it can conclude that the matter deserves further action in the form of a hearing. The hearing will be held in a public setting. The hearing shall occur with notice posted in two (2) public places seven (7) days prior thereto. When appearing before the Conflict of Interest Committee, the Respondent may call witnesses on his or her behalf and may retain representation by legal counsel at his or her own expense. RSA 31:104 provides protection to a person acting in his or her official capacity in good faith and within the scope of his or her authority. This could include payment of legal costs. At notification of public hearing, each party must notify the others, in writing, if they will be represented by legal counsel. Pursuant to RSA 31:39-a, if this Committee, by majority vote, finds that there is a violation of this Ordinance, it will be considered grounds for recommending disciplinary action to the Board of Selectmen.
- Findings related to Respondents who are Town employees will be forwarded to the Respondent and the Board of Selectmen for appropriate action in accordance with applicable personnel policies, procedures, and union contract requirements. Findings will include all supporting evidence and arguments.
- Should a member or members of the Board of Selectmen be the subject of the complaint, the findings will be forwarded to the Superior Court.
- Findings related to the CENSURE of an appointed or an elected Member shall be forwarded to the Respondent and Board of Selectmen. Findings will include all supporting evidence and arguments.
- Findings related to the REMOVAL of an appointed or elected Member will be forwarded to the Respondent and Board of Selectmen. The Rockingham Superior Court will have jurisdiction over any removal proceedings instituted under this Ordinance and adopted under this section as per RSA 31:39-a.
- The Board of Selectmen will have forty-five (45) days from the date a finding is submitted to the Board of Selectmen to act on the Committee's findings.

- When appearing before the committee, the member may call witnesses on his or her behalf and may retain legal representation/counsel at his or her own expense if she/he chooses.
- Nothing in this Ordinance will prohibit any person from petitioning the Superior Court to remove a Member of government.
- Even if a Petitioner requests that a petition be withdrawn, this Committee can complete an investigation pursuant to the procedures described in this Ordinance.

d. Distribution of the Conflict of Interest Ordinance

Each Member, as defined in Section 1d, shall be given a copy of the Conflict of Interest Ordinance within (30) days of hire, appointment or election date and shall include a signed/receipt date. The Town Clerk's Office will provide the Ordinance to all Appointed and Elected Officials when they take their Oath of Office. The Board of Selectmen/Town Administrator's Office will be responsible for providing the Town Employees during the on-boarding process. The Town Clerk's Office and the Board of Selectmen/Town Administrator is responsible for re-distributing this Ordinance whenever it's amended. Failure to obtain the Conflict of Interest Ordinance shall not be grounds for relief from observing and complying with the ordinance. The most updated Conflict of Interest Ordinance shall be available on the Town of Atkinson website, the Town Clerks Office and in the atrium at Town Hall.

e. Review Cycle for the Conflict of Interest Ordinance

The Conflict of Interest Ordinance will be reviewed yearly by this Committee in order to ensure it is in compliance with any changes made at the Federal, State or Town level.

f. Reporting

All Town Members are **required** to immediately report any identified or perceived Conflicts of Interest.

3. Member Conduct

a. Prohibited Conduct

Any Member subject to this Ordinance who suspects that his or her personal or financial advantage may be considered a Conflict of Interest, real or perceived, must disclose all material to their respective Board, Committee and/or supervisor. If the facts demonstrate that a real or perceived Conflict of Interest exists, the appropriate committee, Board or supervisor will ensure that the Member recuse him or herself from involvement in a discussion of, or vote on, the issue at hand. The Committee, Chair and/or supervisor will ensure that such recusal is documented in the official minutes of the applicable meeting or business situation.

It is in violation of this Ordinance for any Member to:

- In his or her official capacity, introduce, discuss, deliberate, approve or vote upon any matter in which he or she or any member of his or her Family has an Interest known to said Member.
- Knowingly enter into any discussion, testimony or deliberation without first publicly and for the record, stating all dealings, Interests, relationships and possible conflicts that may exist

between said Member and his or her Family, the principals and the issue under deliberation, as may be known by the Member.

- Knowingly participate in Town business and giving preferential treatment or consideration based on personal relationships, which may adversely affect the Town.
- Knowingly participate in Town business without disclosing all potential Conflicts of Interest.
- No Town Member, or his/her Family member shall accept or 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; unless necessary to carry out his/her assigned duties.
- Use Town property or labor to influence the political cause of any candidate for public office or any political party.
- Receive or distribute political advertisements or promotional materials while conducting Town business.
- Use any confidential and/or proprietary information acquired through or by virtue of his or her official position for his or her financial benefit or for the financial benefit of any other person or business. The foregoing does not apply to information available to the general public.
- Other than as provided by law for the proper discharge of his/her official duties, directly or indirectly request or receive any Compensation from anyone other than the Town in relation to any particular matter in which the town is a party or has a direct and substantial Interest.
- Other than as provided by law for the proper discharge of his/her official duties directly promise or offer such Compensation as referred to in this Ordinance.
- Knowingly accept a gift with a value in excess of five dollars (\$5.00) or allow acceptance of such a gift by a Family member from any individual, group or corporation knowingly dealing with an area of Town government in which the Member has an Interest or jurisdiction.
- Knowingly give false information concerning dealings, Interests, relationships and possible conflicts to the various supervisors, boards, commission and committees and the Board of Selectmen.
- Knowingly fail to cooperate with this Committee or other investigating authority in the investigation of any complaint alleging a violation of the tenets of this Ordinance.
- Knowingly sign a purchase order where there is a prior or present financial Interest with the vendor(s).
- No Member, whose salary is paid in whole or in part from the Town treasury, will appear in his/her official capacity on behalf of a private Interest before any Town board.
- No Member whose salary is paid in whole or in part from the Town treasury will represent private interests, other than his/ her own in any actions or proceedings against the Interest of the town in any litigation to which the town is a party.
- No Member shall claim to act on behalf of the Selectmen, boards, committees, or departments without prior authorization from said Board.

b. Exclusions

Exclusions to prohibited conduct include but may not be limited to:

- The prohibition against gifts or favors will not apply to an occasional non-financial gift, which is insignificant in value or an award publicly presented in recognition of public service or any gift which would have been offered or given to him/her if he/she were not a Member.
- Unsolicited advertising or promotional items or materials of nominal intrinsic value such as pens and calendars.
- It will not be a violation for elected members to accept donations for the express purpose of financing a political campaign, provided that such contributions are reported in accordance with all local, state and federal laws pertaining to such donations or services and/or financial value.
- The purchase of goods or non-professional services (services from other than attorneys, engineers, architects and surveyors) from a person or business in the ordinary course of that person's or business's retail or service business will not prevent a member from introducing, discussing, approving or voting upon a matter which relates to that person or business.
- Those actions taken as part of the legislative process of making a law or laws which affect the community in general are exempt from the provisions herein. Legislative actions concerning the granting of specific contract awards and/or actions designed to benefit one (1) identified or identifiable individual specific group of individuals are not exempt.
- Nothing in this Ordinance will prevent political candidates or parties from holding public meetings in town buildings or prevent members from exercising and carrying out the responsibilities and obligations of their office or position of employment.

4. Revisions

This Ordinance is adopted March 7, 2023 and replaces the Ordinance adopted April 8, 1997 and as last amended on March 17, 2022.