TOWN OF NEW DURHAM

ETHICS POLICY

PURPOSE

The purpose of this code is to establish guidelines for the ethical behavior of the conduct for public servants.

- We expect our public servants and volunteers to act in the best interest of the town.
- We expect public servants to disclose any personal, financial, material or substantial interests in matters affecting the town which come before them for action, excluding trivial or transient interests which are the natural result of living in a small town.
- We expect public servants to remove themselves from decision making if they have a conflict of interest.
- We expect public servants 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 servant positions in our town not be used for personal gain.

It is important that the public have confidence in the integrity of its government and that town public servants have an opportunity to protect their personal reputation.

- **A duty to disclose**
- **No unfair personal use of town property**
- **No misuse of confidential information**
- **No improper gifts**
- **Fair and equal treatment**
- **No investments that conflict with duties**
- **No nepotism**
- **No conflicts of interest**
- **A duty to recuse**

This policy establishes a committee that will develop procedures by which one may obtain guidance and education regarding potential ethical issues. This committee hears inquiries and advises individuals. The Ethics Committee will provide non-binding responses to inquiries. All complaints will be handled by the Board of Selectmen.

SECTION I: DEFINITIONS

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

Appearance: To someone without knowledge of relevant facts, a public servant's involvement in a matter seems to be in violation of the standards set forth in the Town's Ethic Policy.

Board: Any board, committee or commission, permanent or special, established in accordance with New Hampshire law.

Conflict of Interest: A situation, circumstance, or financial interest which has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty, or which has rendered the individual incapable of being impartial; the situation, circumstance, or financial interest must be immediate, definite and capable of demonstration; not remote, uncertain, contingent, and speculative.

Electioneer: To act in any way specifically designed to influence the vote of a voter on any question or office.

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

Immediate Family: A spouse, civil union partner, children, step children or foster child of the public servant, a person that the public servant is the legal guardian of or where the public servant or their spouse is a person standing "in loco parentis" of another, mother, father, grandparent or sibling of either the public servant or the public servant's spouse or relative living in the public servant's domicile or a person that the public servant is otherwise in an intimate relationship with and residing in the same household as the public servant.

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, excluding incidental or minimal rights, shares or claims.

Misuse: The incorrect or improper use or misapplication of information, position, authority, or influence, as well as town resources, property or time by a public servant.

Nepotism: Favoritism shown to an immediate family member by a public servant while in his/her official capacity.

Public Servant: All town officials, boards and employees of the Town of New Durham, whether elected, appointed, paid or unpaid.

Quasi-judicial Action: Any action where the board 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.

Recuse: Completely removing or excusing oneself from participation as a public servant in a specific action or discussion due to a conflict of interest.

Resident: A person whose legal address is in the Town of New Durham.

Taxpayer: A person or business who is subject to taxation by the Town of New Durham.

Town: The Town of New Durham, including all of its public servants, residents and taxpayers.

SECTION II: PROVISIONS

A. Conflicts of Interest – Specific Provisions

(i) Public servants shall avoid conflicts of interest.

(ii) A public servant who wishes to appear on behalf of himself/herself or any party shall publicly disclose the nature and extent of that interest and disqualify him or herself before advising, deliberating, representing that someone and/or voting on the matter involved. The following conditions shall be met:

- A written public disclosure of the member's conflict of interest or relationship with an explanation of the representation is provided to the board and included in the minutes.

- The member, when representing himself/herself or any party, shall step down from the board after first publically declaring his/her reason for stepping down.

(iii) A public servant shall recuse himself/herself in any matter in which he/she or an immediate family member, have a personal interest which may directly or indirectly affect or influence the performance of his/her duties.

(iv) A public servant shall recuse himself/herself if engaged in any investment, business, transaction, or private employment or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his/her duties.

(v) No public servant shall use, or attempt to use, his/her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

(vi) No public servant shall coerce, by intimidation, threats, or otherwise, any other public servant to engage in political activities.

(vii) No public servant shall request any subordinate public servant to participate in a political campaign. For the purposes of this provision, participation in a political campaign shall

include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate, or performing any similar acts which are unrelated to public servant's duties or responsibilities.

(viii) No public servant shall electioneer while in the performance of his/her official duties or use town property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering, unless such use is available to residents and taxpayers on equal terms.

(ix) No public servant shall receive compensation for performing any official duty except from the town or a grant preapproved by the Office of Selectmen.

B. A Duty to Recuse

Conflicts of interest apply to both quasi-judicial and legislative actions and may warrant the disqualification of a board member in deciding the matter. Ultimately the decision to recuse or not to recuse is up to the individual with the alleged conflict. Information gained through general knowledge as a citizen of the town, or solely as the result of the individual's service in an official capacity, does not disqualify the member unless it has biased the member to such a degree that he or she cannot be impartial. The type of decision (quasi-judicial vs. legislative), not the type of board, is the primary factor for possible disqualification.

(i) A "quasi-judicial action" is any action where the board acts like a judge or jury to decide a matter affecting specific individuals. For example, members are involved in a quasi-judicial action when the board has a duty to notify the potential parties, hear the parties, and decide the matter only after considering and weighing such evidence and arguments as the parties choose to present. Not only do public servants of the Town of New Durham have a duty to recuse themselves as outlined in Section A, but they must also recuse themselves in a quasi-judicial action if they would not be qualified to sit as a juror in that case (RSA 673:14 and 46:6). Stricter standards of fairness tend to be applied by the courts in cases where a board is acting judicial and must demonstrate impartiality.

(ii) A legislative action is administrative in nature and involves a matter affecting all citizens equally. For example, members are acting in a legislative capacity when they set goals, create policies, develop rules, and regulations, research and write amendments, and tend to other procedural matters. Here the need to recuse is more the exception than the rule.

C. A Duty to Disclose

A public servant should make every effort to disclose a possible appearance of a conflict of interest. In any instance where there is a conflict of interest or there could be the appearance of a conflict of interest, a public servant shall disclose the circumstances prior to the time the matter arises for official consideration or discussion, stating all:

- investments or other private transactions
- interests

- relationships
- friendships
- possible conflicts

D. No Unfair Personal Use of Town Property
No public servant shall use town property, services, or labor personally, or make the same available to others unless such use is available to other residents and taxpayers upon request on equal terms.

E. No Misuse of Confidential Information
No public servant 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 public servant 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 public servant shall accept a gift (or allow acceptance of such gift by an immediate family member) from any individual, group, or corporation which have or are planning to have a matter pending before the board on which the public servant serves. This provision of the code is not meant to apply to gifts traditionally exchanged between immediate family members, at holidays or birthdays, for example.

Exceptions
Any discounts provided to a whole class which has been appropriately authorized by the Board of Selectmen and three other exceptions:

(i) Unsolicited advertising or promotional materials of nominal intrinsic value not to exceed a maximum of $25.00, such as ball caps, tee shirts, pens, and calendars.
(ii) Awards for meritorious civic service contributions.
(iii) Unsolicited consumable items that are donated to an entire work group during holidays.

G. Fair and Equal Treatment
Acting in their official capacity, all public servants shall give each and every person fair and equal treatment. No public servant 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.

H. No Nepotism
No public servant shall influence or attempt to influence the appointment, hiring, transfer, suspension, promotion, discharge, assignment, reward, discipline, direction of work, or the adjustment of grievances of an immediate family member. If a proposed appointee is a member of the immediate family of any board member, that member shall remove himself/herself completely from the process.

SECTION III: EXCLUSIONS

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

(i) Any public servant who is a resident of the Town of New Durham from fully participating in any Town Meeting;

(ii) 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 which pertain to such donations;

(iii) Participation in a matter which relates to a person or business from which a public servant has merely purchased goods or services, if the individual in question has no other conflict of interest relating to that person or business;

(iv) 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,

(v) Supervisors of Town employees from appropriately carrying out personnel policies.

B. Nothing in this policy shall read to prevent a public servant from acting when, due to circumstances beyond the control of the parties, a failure to serve or act would result in the denial of the party's basic right of representation, right to be heard, or denial of some other important due process right, provided that this exception to the policy be as narrowly drawn as possible and last as short a time as possible.

SECTION IV: FORMATION of the ETHICS COMMITTEE

The Board of Selectmen shall appoint a committee of no more than 5 or less than 3 persons, with staggered 3 year terms, such committee will be named the Ethics Committee. A quorum of three or more committee members shall be necessary to hear any inquiry that is submitted.

Appointees shall be residents of the Town of New Durham. No Board of Selectmen or Department Head shall serve on the committee; one member may be a public servant.

The Town of New Durham will establish an Ethics Committee to:

- Educate public servants regarding the provisions of the Ethics Policy guidelines.
- Provide advice and counsel regarding ethical issues.
- Submit Ethics Policy revisions to the Board of Selectmen.

SECTION V: INQUIRIES

Individuals who have questions about interpretation/application of the Ethics Policy may submit inquiries verbally or in writing to the Ethics Committee. After review of written inquiries and when requested, the Ethics Committee shall in writing reference how the policy relates to the inquiry. At the conclusion of the discussion of an inquiry, a written response will be issued within ninety (90) days.

The Ethics Committee will establish rules of procedures making every effort to protect reputations of all parties.

When submitting an inquiry, the individual certifies that he/she has read the New Durham Ethics Policy, and that the matter merits discussion. The Ethics Committee advises but does not judge the merit of an inquiry. It is the responsibility of the applicant to formalize and submit a complaint to the Board of Selectmen.

SECTION VI: COMPLAINTS

Complaints should be brought to the attention of the Board of Selectmen. Complaints involving town employees shall be handled in accordance with the procedures outlined in the New Durham Personnel Policy.

SECTION VII: EFFECTIVE DATE

This policy shall become effective thirty days (30) after its adoption by the Ethics Policy Revision Committee.

SECTION VIII: POLICY REVISIONS

Any changes to the Ethics Policy will be drafted by the Ethics Committee and submitted to the Board of Selectmen for approval.

Adopted by the Ethics Policy Revision Committee December 27, 2011