

Hampstead Town Code of Ethics Ordinance

The Town of Hampstead, New Hampshire, pursuant to RSA 31:39-a, ordains as follows:

Section 1: Title

Where Government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of that government. Each Public Servant must earn and honor that trust by her/his conduct in all official actions. The purpose of a formal ordinance is to (a) ensure fair consideration of any application or matter to be voted upon, as well as the appearance of fair consideration so as to maintain public confidence in the integrity of Town government, and, (b) ensure that Town Office is not used for personal gain or advantage. This ordinance shall be known and referred to as the “**Hampstead Town Code of Ethics**”.

Section 2: Purpose

To establish a Code of Ethics applicable to all public servants of the Town of Hampstead, whether elected or appointed, full time or part time, paid or unpaid, and to ensure consistency in the application of policy between the various Boards, Commissions, and various other official activities of the Town of Hampstead.

Section 3: Definitions

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

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

Public Servant: All officials, officers and employees of the Town of Hampstead whether elected, appointed, paid or unpaid. A person is considered a Public Servant upon his/her election, appointment or other designation as such, although she/he may not yet officially occupy that position.

Board: Any board, committee, or commission, permanent or special, appointed or elected.

Town Officials/Officers: Individuals elected or appointed to conduct business on behalf of the Town of Hampstead.

Employee: Each and every person employed by the Town of Hampstead, full time or part time, permanent or temporary, or consulting.

Family: Any person who is related to the Public Servant in one of the following ways: spouse, child, parent, grandparent, grandchild, brother, sister, aunt, uncle, niece, nephew, step-parents, step-siblings or step children. In addition, for purposes of this Ethics Ordinance, “family” also includes all persons who are members of the Public Servant’s household regardless of whether they are related by blood, adoption, or marriage.

Town of Hampstead
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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.

Abutter: Any person who owns or has a financial interest in property adjoining or directly across the street or stream from the property under consideration.

Recuse: Removing or excusing oneself from participating in a specific action (decision making or voting) due to a conflict of interest. Recusal is not intended to inhibit the Public Servant's First Amendment right to speak out on any issue as a private citizen.

Petition: A signed, written complaint alleging a violation of the Hampstead Town Code of Ethics Ordinance which meets the requirements set forth in Section 6(D)(I).

Petitioner(s): Any person or business with an interest in the Town of Hampstead, submitting a petition alleging a violation of this the Hampstead Town Code of Ethics Ordinance.

Respondent: A Public Servant named in a petition submitted to the Code of Ethics Commission alleging a violation of the Hampstead Town Code of Ethics Ordinance.

Finding: To reach a decision

Prejudice: A petition dismissed "with prejudice" may not be resubmitted.

Resident: A resident of the Town of Hampstead.

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

Section 4: Conflict of Interest

No Public Servant shall engage in any business or transaction or have a financial or personal interest, directly or indirectly on behalf of a family member, friend, neighbor, abutter, employer, employee, or client, which is in conflict with or incompatible with the proper discharge of his/her official duties or would tend to influence or impair his/her judgment and action in the performance of his/her official duties. It is a violation of this Ordinance for any Public Servant to:

- A. Engage in any 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 official duties.
- B. 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.
- C. Receive extra pay for giving expert evidence in any civil litigation brought by or against the Town. This section is not intended to preclude any Public Servant from giving testimony in a case involving that Public Servant's official testimony.

- D. Coerce or attempt to coerce, by rewards, intimidation, threats or otherwise, any public servant to engage in political activities.
- E. Require any subordinate Public Servant to participate in a political campaign. For purpose of this subparagraph, 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 the Public Servant's duties or responsibilities. Nothing contained herein shall prohibit a subordinate Public Servant from volunteering to speak on behalf of a candidate or provide information or perform other similar acts, if such acts are related to matters within the Public Servant's duties or responsibilities, nor is anything contained herein intended to prevent any Public Servant from exercising his/her right(s) to participate in the political process as they choose.
- F. Misuse his/her official authority or influence for the purpose of interfering with or affecting the results of an election.
- G. Directly or indirectly coerce, command, or advise another Public Servant to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purpose.
- H. Hold two offices that are statutorily incompatible with one another. (RSA 669:7)
- I. Receive compensation except from the Town for performing any official duty.

Section 5: Standards of Conduct

- A. No Town Officer/Employee shall knowingly or with reason to know use or attempt to use his/her official position to secure for him/herself or for others unwarranted privileges or exemptions which are not available to other citizens of Hampstead.
- B. No Town Officer/Employee shall claim to at anytime act on behalf of any board without proper written authorization from the remaining members of that board.
- C. No Town Officer/Employee shall use Town property or Town labor for personal purposes.

Section 6: Duty to Disclose and the Duty to Recuse

A. Duty to Disclose

Public Servants shall not participate in the conduct of business on behalf of the Town or enter into discussion or deliberations of any matter without first, publicly and on the record, stating all dealings, interests, relationships that would tend to compromise the Public Servant's objectivity or create a situation in which there were a potential of unfair economic advantage or the possibility of improper financial gain.

B. Duty to Recuse

Public Servants have a duty to recuse themselves from participating in specific actions or discussion due to a conflict of interest. (see RSA 673:14)

Public Servants who have been recused may remain in the hearing room for the public input portion of the hearing and shall seat themselves with other members of the public who are present. When recused, the recused person shall not participate in further discussions, unless she/he clearly states for the record that she/he is doing so only as a general member of the public.

Except as otherwise provided by state law, in the event a board member feels that a member has a conflict of interest, the board or commission may take a vote to request to have that member recuse his/herself. Such action may only be initiated by a member of the sitting board.

Not only does a Public Servant have a duty to recuse herself/himself as outlined in the section above, a Public Servant must recuse herself/himself in a quasi-judicial action if she/he 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 for any reason cannot be totally fair and impartial. (see RSA 500-A:12)

C. Boards and Committees

If a majority of a Board or Committee determines that one of its members should be recused from participating in a specific action, that member must remove her/himself from further participation as a Public Servant in that specific action. Failure of a recused member to remove her/himself from further participation in that specific action is grounds for sanctions/penalties up to and including removal from that Board or Committee.

D. Confidential Information

Except as may be required by law, no Public Servant shall willfully and knowingly disclose, or use for personal or financial gain, any confidential information acquired in the course of completing her/his official duties.

E. Accepting Gifts and/or Favors

Public Servants shall not accept gifts or favors with a value over five dollars (\$5.00), directly or indirectly, from any person or organization having an interest in a particular matter under consideration.

Section 7: Code of Ethics Commission

A. Formation of the Code of Ethics Commission

- I. Members of the Code of Ethics Commission shall consist of five (5) private citizens who are residents of the Town of Hampstead and who do not hold any Public Servant position in the Town.
- II. The first Code of Ethics Commission shall be formed from members of the Code of Ethics Committee established by the Board of Selectmen in 2004. Two additional members shall be nominated by the Code of Ethics Committee, subject to the approval of the Board of Selectmen, contingent on the adoption of Hampstead Town Code of Ethics Ordinance at the March 2005 town elections. At the Commission's first meeting the appointed members shall determine by lot:
 - a. which member will serve for a one-year term
 - b. which two members will serve for a two-year term
 - c. which two members will serve for a three-year term
- III. The Board of Selectmen of the Town of Hampstead will appoint members to the Code of Ethics Commission after these initial terms are completed.
- IV. Should a vacancy on the Commission arise, the remaining members of the Code of Ethics Commission will nominate to the Board of Selectmen a town resident to serve out the remainder of the term year.
- V. The first order of business Code of the Ethics Commission shall be to establish its Bylaws subject to the approval of the Board of Selectmen.

B. Purpose

The purpose of the Code of Ethics Commission is to:

- I. Educate Public Servants of the Town regarding the provisions of the Town of Hampstead Code of Ethics Ordinance.
- II. Provide advice and counsel to Public Servants regarding ethical issues with which they are confronted.
- III. Hear and resolve ethics complaints which are filed against Public Servants of the Town.

C. Recording and Investigating Alleged Violations

I. Process:

- a.** The petitioner(s) submitting a petition alleging a violation of the Hampstead Town Code of Ethics Ordinance must deliver said petition in writing clearly stating name of the respondent, when, where the alleged violation took place. The petitioner(s) must properly sign the petition and include either printed or typed the full name(s), address and phone number(s) of all petitioner(s).
- b.** Petitions shall be submitted and/or received by Town Hall during regular hours of business in sealed envelopes addressed to Code of Ethics Commission.
- c.** The Chair of the Code of Ethics Commission shall within seven (7) calendar days conduct an initial review to determine that the petition has been properly filed. If the petition is not in proper order, the Chair shall return the petition to the petitioner(s) indicating what information is missing, giving the petitioner(s) ten (10) calendar days to resubmit the original petition. If the resubmitted petition is not received by the Commission within this allotted period the original petition will be dismissed, with prejudice.
- d.** If the Chair determines that the petition is in proper order, she/he shall call for an executive session of the Code of Ethics Commission within ten (10) calendar days to be held in accordance to RSA 91-A:3,II a & c. Correspondence and minutes shall not be available to the public for inspection pursuant to RSA 91-A:5, IV. The purpose of the executive session is to determine the validity of the petition and to protect the respondent from allegations that may adversely affect the reputation of the respondent.
- e.** If a majority of the Committee votes to hold hearings on the alleged violation(s), the respondent shall be notified within five (5) business day of the vote by the Commission to hold hearings. The respondent shall have the option of having a non-public hearing or a public hearing.
- f.** The petitioner(s) must be present at all non-public or public hearings at which their petition is on the agenda or the petition shall be dismissed with prejudice.

II. If any person or business with an interest in the Town of Hampstead approaches a Selectman, or other Public Servant regarding an alleged violation of this ordinance, the town official shall refer said person or business to the Code of Ethics Commission.

III. If the alleged violation is against a member of the Code of Ethics Commission, the petition may be filed with the Board of Selectmen. The Board of Selectmen shall proceed in accordance to Section 6:C of this ordinance.

IV. The Code of Ethics Commission will first meet in executive session to first review and determine if it is within the jurisdiction of the Commission's authority. If the petition is found to be within the Commission's jurisdiction, the Commission shall forward a copy of the petition of alleged violation(s) to and notify the respondent by certified mail within seven (7) calendar days after the Commission's review of the petition of the alleged violation(s) and that an investigation will be conducted. The respondent shall be requested to respond to the alleged violation(s) in writing and will meet with the Commission to present any relevant material to

the investigation. The Commission shall proceed with an investigation and hearing if deemed necessary. The Commission may dismiss a petition at any point, without explanation.

- V. The respondent is entitled to a non-public hearing, or to a public hearing, with notice posted in Town Hall seven (7) calendar days prior thereto. When appearing before the Code of Ethics Commission, said respondent may call witness on his/her behalf and retain representation by legal counsel at his/her own expense, providing the respondent has notified the Commission five (5) days prior to the hearing that she/he will be represented by legal counsel. In such cases the Commission may wish to have the Town's Counsel present at the hearing. RSA 31:104 provides protection to a person acting in his/her official capacity in good faith and within the scope of his/her authority. This could include payment of legal costs. At notification of non-public or public hearing, each party must notify the other if they will be represented by legal counsel. Each party is entitled to one continuance.
- VI. The Code of Ethics Commission shall have forty five (45) calendar days from the time when the petition first appears as an agenda item in which to conduct an investigation, hold hearings and make a finding. The Commission may extend this period one time for up to an additional fifteen (15) calendar days. A continuance requested by petitioner(s) shall not be counted as part of the forty five (45) calendar days.

D. Findings and Determinations

- I. After the investigation, the Code of Ethics Commission shall make a finding by a majority vote, on the alleged violation.
- II. All finding by the Code of Ethics Commission shall be forwarded to the Board of Selectmen. Findings shall include all information pertinent to each petition. If a petition has been dismissed by the Commission, a formal statement of a finding to that effect will be issued.
- III. Pursuant to RSA 31:39-A (Powers and Duties of Towns), knowingly violating this ordinance shall be grounds for assigning penalties by the Board of Selectmen, based on the recommendation of a majority of the Code of Ethics Commissioners.
- IV. The finding may include a recommendation to the Board of Selectmen of an appropriate penalty(s) relating to the severity of the violation of the Hampstead Town Code of Ethics Ordinance. Accordingly, violations of this Ordinance may subject Public Servants to sanctions which may include, but are not limited to, written or oral warnings, suspension, immediate termination of employment, removal from office, official censure or reprimand, or forfeiture of elected office. Sanctions involving employees will take into consideration any applicable personnel rules, due process, and /or collective bargaining agreements.
- V. The Town of Hampstead Code of Ethics Ordinance shall be enforced by the Board of Selectmen as it pertains to individuals appointed to various Boards, Commissions, or Committees, to Town employees, and to individuals appointed by various Boards, Commissions, and Committees. The Ordinance shall be enforced by a Court of competent jurisdiction with regard to members of the Board of Selectmen.

Town of Hampstead
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- VI.** The Board of Selectmen will have fourteen (14) calendar days to decide whether to uphold the findings of the Ethics Commission. By a majority vote, the Board of Selectmen can either uphold the findings of the Ethics Commission or substitute its own finding. If the Board of Selectmen votes that removal is warranted, the Board of Selectmen will ask the respondent for a letter of resignation. If the respondent refuses to resign, then a petition to remove shall be filed by the Board of Selectmen with the Superior Court.

- VII.** Nothing in this ordinance shall be construed to prohibit any person from petitioning the Superior Court to remove a Public Servant on grounds that the violation in question warrants removal.

- VIII.** A respondent may request the Code of Ethics Commission make a finding on any petition that is withdrawn, invalidated or dismissed. If such a request is made, the Code of Ethics Commission shall complete an investigation pursuant to the procedures described herein.

Section 8: Appeals Proceedings

The respondent has the right to appeal any findings and/or sanctions to the Board of Selectmen within fourteen (14) days of the decision.

Section 9: Effective Date

This ordinance shall become effective 60 sixty-days after its adoption by the voters of the Town of Hampstead.

Section 10: Distribution of this Hampstead Town Code of Ethics Ordinance

- A. Upon the adoption of this ordinance by the voters of the Town of Hampstead, every Public Servant shall be given a copy of this ordinance. Each individual shall be required to sign a statement stating that they have received a copy of the Code of Ethics Ordinance. These signed statements shall be maintained by the Town Clerk's Office.

- B. Any individual upon filing for an elected town office shall receive a copy this ordinance at the time of his/her filing for said office. Upon the individual's swearing into office, she/he will receive a copy of this ordinance at which time the individual will sign a statement stating that they have received a copy of the Code of Ethics Ordinance. These signed statements shall be maintained by the Town Clerk's Office.

- C. All new employees of the Town of Hampstead shall at the time of their hiring receive a copy of this ordinance and will at that time sign a statement stating that they have received a copy of the Code of Ethics Ordinance. These signed statements shall be maintained by the Town Clerk's Office.

Ethics Ordinance

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- D. All individuals appointed to boards, committees, or commissions, permanent or special shall at the time of their swearing shall receive a copy of this ordinance and will at that time sign a statement stating that they have received a copy of the Code of Ethics Ordinance. These signed statements shall be maintained by the Town Clerk's Office.
- E. Copies of this ordinance shall be made available to the public by request through the Town Clerk's Office.
- F. Failure to be furnished a current copy of the Code of Ethics Ordinance shall not be grounds for relief from observing and compliance with this ordinance.