

DRAFT

Town Council Conflict of Interest Policy: Preliminary framework

Background:

Council Rules are specific about procedures in the event there is a conflict of interest, including what a “recusal” means and how a councilor who recuses herself/himself may still speak on the issue as a member of the public. However, the Rules provide no guidance on what could constitute a conflict of interest, leaving each councilor and every member of the public on their own to define it individually. The purpose of a more formal policy would be to achieve improved clarity and consistency about what constitutes a conflict of interest. This will benefit the councilors in their decision process around potential conflicts, as well as the public’s understanding and acceptance of councilors’ actions. It should promote improved transparency and public trust. Developing a Conflict of Interest Policy was discussed at the last two Town Council annual retreats and is in the 2015 Council work plan.

Data gathering steps:

- Discussed the issue with town attorney Bill Plouffe,
- Reviewed Maine statutes on conflicts of interest,
- Reviewed policies of other towns,
- Reviewed EcoMaine’s policy
- Discussed the matter with four former Town Councilors

Proposed framework for a Conflict of Interest Policy

The public has a right to know that its elected representatives are focused on the broad public interest and that decisions made are based on an open and transparent process. A strong Conflict of Interest Policy will help ensure the public’s trust that Councilors are indeed acting in the public interest as opposed to a personal interest or a third party interest. However, a good policy also will recognize that elected officials bring a certain philosophy or bias towards a certain approach, and that acting out of those motivations are not conflicts of interest, but simply doing what one presumably was elected to do. Therefore, it is necessary to attempt to draw a line between these motivations, and those that do, in fact constitute a conflict of interest.

A conflict of interest arises when specific circumstances exist such that a councilor may reasonably be presumed to be motivated by a personal interest as opposed to the public interest. Our proposed policy would define those instances as follows:

1. When a matter before the Council could have direct financial benefit or detriment to any Councilor or his/her family members,
2. When a matter before the Council could have a direct financial benefit or detriment to the Councilor's employer or his/her family's employer(s)
3. When a matter before the Council could have direct financial benefit or detriment to any outside organization for whom the Councilor holds an official leadership position,
4. When a matter before the Council could reasonably be deemed to put the Councilor in a direct conflict of interest between what is good for the Town and what is in the personal best interests of that Councilor. This one is a bit more subjective than the first three; recent examples could be:
 - a. A councilor living in Tidewater Farms while the Council is dealing with changes to the Tidewater Farms Master Plan.
 - b. A councilor with a shorefront residence at a time when the Council is addressing an ordinance impacting shorefront property.
 - c. A councilor who lives on a private street that is being considered to be approved as a public street

The policy should not attempt to include specific examples in this category; these are provided simply for edification.

Disclosure

Councilors will be required by this policy to disclose any financial or special interest, other than an interest held generally by the public, in any agenda item before the Council and will either recuse themselves from all decision making processes, including votes, regarding that agenda item, or explain why they feel a recusal is not necessary under the policy.

Decision-making

An important part of this policy would be a process and clear roles for ultimate decision-making regarding a recusal. One option would be for the final call to be with the Councilor who makes the disclosure or has the potential conflict of interest. Another option would be for the full Council, perhaps by majority or super-majority vote, to be empowered to force a recusal if they feel it is necessary to ensure compliance with the policy.

Next Steps

- Council discussion on the proposed framework, beginning on May 11, leading to agreement on this or a modified framework.
- Public hearing on the policy framework
- Modifications based on public input
- Drafting of specific Conflict of Interest policy language
- Council order to adopt the new policy

Draft framework submitted by:

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