



Briefing Sheet

Version 1

Update Dates: 9.22.2010

Lead Department: Administration **Action Officer:** Town Clerk, Diana Davis

Subject: Town Council Code of Ethics Policy
Adopt the Town Council Code of Ethics to be incorporated into the Town Council

Action Requested: Rules and Procedures

Briefing: 10.12.2010 **Public Hearing:** None **Action:** 11.18.2010

| Item Schedule | Select One |
|---|-------------------------------------|
| Schedule 1: <i>Brief twice – vote once (six weeks)</i> | <input checked="" type="checkbox"/> |
| Schedule 2: <i>Brief once – vote once (two weeks)</i> | <input type="checkbox"/> |
| Schedule 3: <i>No briefing required (one week)</i> | <input type="checkbox"/> |

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

“[Session Law 2009-403](#) enacts a new statute, G.S. 160A-83, which requires all North Carolina cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties to adopt a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of their official duties as members of that governing board. It must be adopted on or before January 1, 2011.

The statute leaves governing boards a good deal of leeway in deciding what their codes will contain, as long as the code addresses the five topics. It may be very detailed, or it may be very general. It may state aspirations towards which the board is striving, or it may purport to prohibit certain board actions. The board may look to model local government codes of ethics for guidance in developing the resolution or policy.”

(Ref: Coates’ Cannons: NC Local Government Law Blog, A New Ethics Law for Local Elected Officials: Codes of Ethics Now Required, Fleming Bell, 8.28.2009 <http://sogweb.sog.unc.edu/blogs/localgovt/?p=543>)

The text from *A Model Code of Ethics for North Carolina Local Elected Officials* by Fleming Bell has been included as Attachment 01. Council should discuss and consider which text to include and which to remove to create a formal Code of Ethics for adoption. The adopted text or Ethics Policy will be incorporated into the Town Council Rules and Procedures. The appendixes for *A Model Code of Ethics for North Carolina Local Elected Officials* by Fleming Bell are included as Attachment 02 as they are referenced several times in Attachment 01. Appendix Three contains applicable State Statutes that are related to this issue. It is staff’s

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suggestion that this document be saved on the Town Council secure site for reference. It will not be incorporated as part of town led training as it will be part of the Ethics Training received by local officials as part of the Session Law 2009-403 as outlined below:

“Ethics Education Requirements

[S.L. 2009-403](#) also enacts new G.S. 160A-84, which requires all members of the local governing boards covered by G.S. 160A-83 to receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to office and again within 12 months after each subsequent election or appointment to office. (For school board members, the ethics education may be included in the 12 clock hours of education that they are required to received annually. G.S. 115C-50(a))

The code of ethics requirements become effective January 1, 2011, and all members of governing boards covered by the act are to receive their initial Ethics training to comply with G.S. 160A-84 by that same date. Finally, the act also contains conforming provisions amending the statutes applicable to each of the boards covered by the act. The clerk to each governing board must maintain a record verifying receipt of the ethics education by each board member.”

(Ref: Coates’ Cannons: NC Local Government Law Blog, A New Ethics Law for Local Elected Officials: Codes of Ethics Now Required, Fleming Bell, 8.28.2009 <http://sogweb.sog.unc.edu/blogs/localgovt/?p=543>)

Additionally, the current Town Council Rules and Procedures is in the briefing material as ATTH 03 for reference and includes very minor changes. This would be a good opportunity to review that document for any other desired changes.

Staff Recommendation:

Discuss and consider which text to include and which to remove to create a formal Code of Ethics for adoption and incorporation into the Town Council Rules and Procedures.

Attachments:

- ATTH 01 TC Code of Ethics
- ATTH 02 Model Code of Ethics Appendixes
- ATTH 03 TC Rules and Procedures

Advisory Board/Committee Review:

NONE

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

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Meeting Goals and Initiatives Adopted by the Council:

(Select by checking the box for all Initiatives that are met by this briefing sheet's proposal. Area for additional comments under table.)

| Goals | | Initiatives |
|--|--|---|
| 1. A mix of land uses that is environmentally sensitive and sustains livability in a changing community | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 1.1 Implement Updated Land Use Plan 1.2 Continue Implementation of adopted Town Center Plan 1.3 Maintain a formal acquisition and implementation strategy for parks, greenways, and open space 1.4 Evaluate ordinances and policies that contribute to a sustainable and well planned community. |
| 2. A strong and stable financial position that fully utilizes all resources in a responsible, efficient and effective manner | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 2.1. Maintain a strategic financial plan 2.2. Ensure proper use of resources by enhancing internal controls 2.3. Identify potential new funding opportunities for specific town projects and services 2.4. Continue developing town infrastructure evaluation programs to analyze costs, prioritize maintenance, and secure funding |
| 3. Community services that sustain or enhance the quality of life | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> | 3.1. Provide a safe community 3.2. Continually evaluate emergency response needs and capabilities 3.3. Provide and promote healthy community activities and programs 3.4. Provide accessible and safe public parks, recreational programs, cultural resources and facilities 3.5. Continue developing and implementing strategies to enhance customer service 3.6. Refine and implement a performance measurement process to provide better information for budgetary decision-making and create a stronger link between allocation of resources and desired results. 3.7. Continually review and identify internal processes and community services to improve their efficiency and effectiveness |
| 4. Plan transportation and other public infrastructure to address community needs | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 4.1. Implement and maintain updated Transportation Plan 4.2. Continue developing a reimbursement policy, developer requirements and regional partnerships for transportation and public infrastructure 4.3. Develop and implement a Stormwater Management Plan, including creating a self-sustaining funding mechanism 4.4. Identify critical areas of traffic congestion and appropriate strategies to resolve transportation problems, drawing on NCDOT and regional partners. 4.5. Continue developing a capital fund strategy for infrastructure needs, including the Town Center 4.6. Continue evaluating the costs and benefits of in-house vs. contract engineering services 4.7. Work to promote installation of infrastructure in a timely manner to support private development |
| 5. A town image with a strong, positive identity valued by residents, businesses and visitors | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 5.1. Develop and maintain liaison with other elected officials, agencies, jurisdictions, and stakeholders 5.2. Promote transparency in town government programs and processes 5.3. Promote high quality development and attractive community |

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| | | |
|--|-------------------------------------|---|
| | <input type="checkbox"/> | appearance |
| | <input type="checkbox"/> | 5.4 Continue to require professionalism and friendliness of staff |
| | <input type="checkbox"/> | 5.5 Cultivate a responsive environment encouraging community comments and feedback. |
| 6. Regional partnerships to grow and develop new resources and opportunities | <input type="checkbox"/> | 6.1. Develop and maintain liaison with other elected officials, agencies, jurisdictions, and stakeholders |
| | <input checked="" type="checkbox"/> | 6.2. Provide educational training for Committee/Board members and Council members |
| | <input type="checkbox"/> | 6.3. Continue active participation in forums for regional cooperation |
| 7. Environmentally responsible and energy efficient community | <input type="checkbox"/> | 7.1. Evaluate and implement changes to town operations |
| | <input type="checkbox"/> | 7.2. Evaluate and implement changes to Town Ordinances, plans and policies |
| 8. A healthy and rewarding work culture where employees are our primary asset in delivering high quality services to the community | <input type="checkbox"/> | 8.1. Recruit and retain competent committed staff |
| | <input type="checkbox"/> | 8.2. Create a healthy work environment that promotes high morale |
| | <input type="checkbox"/> | 8.3. Foster career development and growth opportunities |
| | <input type="checkbox"/> | 8.4. Encourage employees to identify opportunities to improve efficiencies and effectiveness |
| 9. Citizen Involved government | <input type="checkbox"/> | 9.1. Encourage citizens to volunteer within the community |
| | <input type="checkbox"/> | 9.2. Diversify the methods of communicating with citizens to provide information on town news and issues |
| | <input type="checkbox"/> | 9.3. Increase contact with the business community about town news and issues |
| | <input type="checkbox"/> | 9.4. Develop and advance opportunities for partnership with local schools and non-profit groups |
| | <input type="checkbox"/> | 9.5. Increase public involvement in town government programs and processes |

Goals and Initiatives Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: Low

Other Potential Impacts:

NONE APPLICABLE

Staff Coordination:

Check the box for those required to comment on left. To comment-click in the box and select. (2nd Briefing is used when information has significantly changed from the first briefing.)

| Required | Staff Member | 1 st Briefing | 2 nd Briefing |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| <input checked="" type="checkbox"/> | Town Manager | Agree | |
| <input checked="" type="checkbox"/> | Town Clerk | Originator | |
| <input checked="" type="checkbox"/> | Senior Director Business Management | Reviewed | |
| <input type="checkbox"/> | Budget and Analysis Manager | | |
| <input type="checkbox"/> | Internal Auditor | | |

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| | | | |
|-------------------------------------|--------------------------------------|----------|--|
| <input type="checkbox"/> | Senior Accountant | | |
| <input type="checkbox"/> | Information Technology Director | | |
| <input type="checkbox"/> | Contracting and Purchasing Manager | | |
| <input checked="" type="checkbox"/> | Senior Director Development Services | Agree | |
| <input type="checkbox"/> | Planning Director | | |
| <input type="checkbox"/> | Town Engineer | | |
| <input type="checkbox"/> | Building Codes Administrator | | |
| <input type="checkbox"/> | Economic Development | | |
| <input checked="" type="checkbox"/> | Senior Director Community Services | Agree | |
| <input type="checkbox"/> | Risk Manager/Safety Officer | | |
| <input type="checkbox"/> | Police Chief | | |
| <input type="checkbox"/> | Fire Chief | | |
| <input type="checkbox"/> | Parks & Recreation Director | | |
| <input type="checkbox"/> | Public Works Director | | |
| <input checked="" type="checkbox"/> | Public Information Officer | Reviewed | |
| <input type="checkbox"/> | Town Attorney | | |
| <input type="checkbox"/> | Human Resources Manager | | |
| Disagree or comment, explain: | | | |
| | | | |

Public Information Plan: Please consider appropriate advertising thoughtfully. What will be used to notify residents or gain public involvement?

| | | | |
|-------------------------------------|--|--------------------------|--|
| <input type="checkbox"/> | Public Hearing (Required by GS - note below) | <input type="checkbox"/> | Public Hearing (Not Required by GS) |
| <input type="checkbox"/> | Newspaper Ad (Required by GS - note below) | <input type="checkbox"/> | Newspaper Notice (Not Required by GS) |
| <input type="checkbox"/> | Public Forum/Input Session | <input type="checkbox"/> | Press Release |
| <input type="checkbox"/> | Morrisville Connection | <input type="checkbox"/> | E-News Distribution (Next Week in MSV, etc.) |
| <input type="checkbox"/> | Social Media (Twitter, Facebook, etc.) | <input type="checkbox"/> | Website Notice |
| <input type="checkbox"/> | Special Mailing | <input type="checkbox"/> | Banners Posted |
| <input type="checkbox"/> | Flyers Posted | <input type="checkbox"/> | Survey |
| <input checked="" type="checkbox"/> | None Required | <input type="checkbox"/> | Other (please note below) |
| Other: | | | |

Town Council Approved Minutes:

(Staff Member/Action Officer Insert Minutes here after Council Adoption)



**RESOLUTION 2010-076 OF THE MORRISVILLE TOWN COUNCIL REGARDING
ADOPTION OF THE TOWN COUNCIL CODE OF ETHICS**

WHEREAS, the Constitution of North Carolina, Article I, Section 35, reminds us that a “frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty;” and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina’s state motto, Esse quam videri, “To be rather than to seem;” and

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics; and

WHEREAS, as public officials we are charged with upholding the trust of the citizens of the Town of Morrisville, and with obeying the law:

NOW, THEREFORE, BE IT RESOLVED THAT THE MORRISVILLE TOWN COUNCIL in recognition of our obligations and responsibilities as citizens of the State of North Carolina and as public officials representing the citizens of the Town of Morrisville and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we do hereby adopt the General Principles and Code of Ethics to guide the Town of Morrisville in its lawful decision-making;

BE IT FURTHER RESOLVED that the adopted General Principles and Code of Ethics be incorporated into the Town Council Rules and Procedures.

Insert Ethics..

Adopted this the (Insert Date) day of (Insert Month) 2010.

J.S. Holcombe, Mayor

ATTEST:

Diana R. Davis, Town Clerk

Morrisville Town Council Ethics Policy

Based on the book,
A Model Code of Ethics for North Carolina Local Elected Officials

By:
A. Fleming Bell, II

Institute of Government
The University of North Carolina at Chapel Hill
2010

Adopted:

May 27, 2008 (Res 2008-049)

Updates:

Version 2 – October 28, 2008 (Res 2008-099)

Version 3 – August 25, 2009 (Res 2009-050)

Version 4 – May 24, 2010 (Res 2010-024)

Version 5 - * (Res 2010-076 Inclusion of Code of Ethics)

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board members must always remain aware that at various times they play different roles:
 - As advocates, who strive to advance the legitimate needs of their citizens; and
 - As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions; and
 - As decision-makers, who arrive at fair and impartial quasi-judicial and administrative determinations.
- Board members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

PURPOSE OF THE CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for an ethical standard of conduct for the Town of Morrisville Town Council and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a Council Member's best judgment.

Section 1. Council Members should obey all laws applicable to their official actions as members of the Council. Council Members should be guided by the spirit as well as the letter of the law in whatever they do. At the same time, Council Members should feel free to assert policy positions and opinions without fear of reprisal from fellow Council Members or citizens. To declare that a Council Member is behaving unethically because one disagrees with that Council Member on a question of policy (and not because of the Council Member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Comment. While it is of course unrealistic to expect an official to know every law, rule, and regulation that exists at a given time, officials should take seriously the pledge to protect and support the state and federal constitutions and laws that they swore or affirmed as part of the oath of office.¹

This pledge may mean different things in different contexts. For example, if a local official is ever in doubt about what course of conduct is legal in a particular situation, the official should seek the advice of the local government's attorney. If the official is in doubt about what course of action is ethical, as

¹ The constitutional oath of office may be found in Article VI, Section 7, of the North Carolina Constitution. It is reprinted in Appendix 3.

opposed to legal, the official should seek the counsel of other board members and trusted advisors, again including the government's attorney. Appendix 1 contains a helpful list and discussion of behaviors that are required in order to comply with North Carolina's various conflict of interest laws for local governments.

While acting ethically can also generally ensure that one is acting legally, this is not always the case. For example, the voting statutes for city councils and county commissioners specifically require these officials to vote in all cases where their "own financial interest or official conduct" is not involved, even though the official may think a situation involves an ethical conflict.² This means, for instance, that a Council Member might be required to make a decision affecting a relative, even though the official has a personal non-financial interest in the outcome of the decision. The ethical conflict does not absolve the official from his or her voting responsibility under the law, no matter how uncomfortable voting makes the official feel.

It is sometimes suggested that a possible way around this situation is to ask to be excused from the meeting, as opposed to being excused from voting, or simply not to appear at the meeting until the Council has dealt with the item in question. While this action may be legal, it may not be the most ethically responsible solution. Public officials are expected to attend meetings and to vote.

Statutes governing land use development decisions modify this rule.³ The provisions that must be followed in land use cases are spelled out in G.S. 153A-340(g), and G.S. 160A-381(d), which establish statutory standards for conflicts of interest in legislative planning and zoning decision-making for county and city governing boards and other boards performing such functions; and in G.S. 153A-345(e1) and G.S. 160A-388(e1), which establish statutory standards for boards performing quasi-judicial functions in the land use area. In the latter case, the governing or other board may be able to vote to prevent a member who is prohibited from participating in a decision by the land use quasi-judicial conflict of interest statutes from tainting the governing board's action by that member's involvement.

The governing board must always be mindful of other relevant statutes that govern its decisions, regardless of its code. As we have just seen, specific statutes control voting by city and county governing board members on land use matters, regardless of what language may be included in the local governing board's code of ethics. Other specific laws establishing standards of conduct that Council Members must obey include G.S. 14-230 (willful failure to discharge duties); G.S. 14-234 (benefiting from public contracts by public officers or employees); G.S. 14-234.1 (misuse of confidential information); G.S. Chapter 143, Article 33C (meetings of public bodies); G.S. Chapter 132 (public records); and G.S. 133-32 (regulation of gifts and favors). The text of many of these statutes is included in Appendix 3, and some of them are discussed in Appendix 1.⁴ As noted in Section 3 of the Model Code and elsewhere in this guidebook, while board members must obey the statutes, the Council has no power to enforce the law against its members.

2. See G.S.153A-44 and G.S.160A-75. The text of both statutes is included in Appendix 3, and they are among the laws addressed in Appendix 1. See also A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials*, 2d ed., Chapters 4 and 5 (Chapel Hill: UNC School of Government, forthcoming spring 2010).

3. See G.S.153A-340(g) and G.S.160A-381(d) (legislative decisions) and G.S.153A-345(e1) and G.S. 160A-388(e1) (quasi-judicial decisions). These statutes are included in Appendix 3 and are discussed in Appendix 1.

4. See also the Comment to Section 3b of the Model Code.

The Model Code strongly cautions elected officials that they should obey the spirit as well as the letter of the law in whatever they do. “Splitting hairs” will generally not be well-received by citizens, the press, and one’s fellow Council Members, who may regard questionable behavior as unseemly even if not illegal. However, it must be recognized that public office is inherently part of a political process within which different people and groups have varying opinions and seek different results. Politicians sometimes couch policy arguments in assertions that their opponents are behaving unethically. This section makes clear that such assertions are themselves dishonest, unfair, and irresponsible and hence unethical. Honest policy disagreements are part of our democratic system and are to be encouraged, not squashed.

OPTIONAL ADDITION TO Section 1. Council Members should endeavor to keep up to date, through the Town Attorney and other sources, about new or ongoing legal or ethical issues they may face in their official positions. This educational function is in addition to the day-to-day legal advice the Council may receive concerning specific situations that arise.

Comment. This optional section recognizes that many local attorneys, as well as organizations such as the UNC School of Government, the N.C. Association of County Commissioners, and the N.C. League of Municipalities, often serve as important educational resources for Council Members, as well as being trusted advisors on particular legal matters.

OPTIONAL ADDITION TO Section 1. Council Members should endeavor to keep up to date, through the Town Attorney and other sources, about the most pertinent constitutional, statutory, and other legal requirements with which they must be familiar to meet their legal responsibilities. The Council should consider adopting a list of applicable laws and regulations, with appropriate commentary, as a reference document accompanying this Code.

Comment. In order to keep the Model Code of Ethics brief and to the point, and to avoid overlooking some of the many important statutes on a variety of topics related to ethics and other subjects that guide local officials, the text of pertinent laws is, for the most part, not included in this Model Code. At the same time, some local governing boards will probably like to have ready reference materials for those laws that they are sworn to uphold with which they are most regularly involved.

To meet this need, this optional section allows the Council to direct its attorney or other advisor to prepare and maintain for its use both a list of these statutes and a commentary about them. Technically speaking, this list would generally not be an official part of the local code. However, the Council may adopt it as a reference work or appendix to accompany the main code document.

Another very useful source for the most pertinent laws affecting North Carolina local governments is Administrative and Financial Laws for Local Government in North Carolina, available from the UNC School of Government. This publication includes the contracting conflicts of interest and gifts and favors statutes (G.S. 14-234, G.S. 14-234.1, and G.S. 133-32), as well as laws dealing with how city and county governing boards take action, multiple office-holding, financial and budgeting requirements for local governments, and oaths of office, among other topics.

Elected officials and their attorneys may also find very useful a summary of advice and cautions concerning some common legal situations they may encounter in the areas of contracting and, for city and county governing board members, voting. It was prepared by Frayda S. Blustein of the UNC School of Government and is reproduced in Appendix 1.

As it learns more about the law, the Council should continue to keep in mind the admonition above. While Council Members must of course obey the statutes, the Council has no power to enforce the law against its members. That role belongs to others such as the local district attorney.⁵

Section 2. Council Members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values; and
- Behaving consistently and with respect toward everyone with whom they interact; and
- Exhibiting trustworthiness; and
- Living as if they are on duty as elected officials regardless of where they are or what they doing; and
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner; and
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others; and
- Disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves; and
- Treating other Council members and the public with respect and honoring the opinions of others even when the Council Members disagree with those opinions; and
- Not reaching conclusions on issues until all sides have been heard; and
- Showing respect for their offices and not behaving in ways that reflect badly on those offices; and
- Recognizing that they are part of a larger group and acting accordingly; and
- Recognizing that individual Council Members are not generally allowed to act on behalf of the Council but may only do so if the Council specifically authorizes it, and that the Council must take official action as a body.

Comment. The dictionary defines integrity⁶ as “firm adherence to a code of especially moral or artistic values.” It can also mean soundness or completeness. We have all known people who especially embody this quality - they know who they are and they act in accordance with the same high standards, no matter what they are doing.

Officials who act with integrity generally assume that they are on duty at all times - that the oath of office does not cease to operate when they engage in private activities. Indeed, they recognize that they may come under greater scrutiny than at other times.

Persons who have independence of thought are generally self-governing individuals who are not subject to improper influence by others. While such people often look to others for opinions or guidance in conduct, they are not dependent on others’ points of view or advice when making decisions.

⁵ See also the Comment to Section 3b of the Model Code.

⁶ *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “integrity.” or who is or is not watching. They are faithful, trustworthy, respectful of others, and incorruptible.

In the public arena, independence of thought and from improper influence go hand-in-hand with integrity. An independent public official does not act in a vacuum. While public officials must act autonomously to make their own decisions based on their best judgment about what is in the public interest, they must also demonstrate firm principles and sound values.

Consistently acting with both independence and integrity is often one of the hardest tasks a public official will confront. A wide variety of persons and groups constantly clamor for elected officials' attention and support, as befits our expectations of a representative democracy. However, those persons are understandably often more concerned about their own particular position or interest than about the greater good of the community. An independent public official must be able to resist improper influence and say "no" when necessary, and an official with integrity must not equate private desires with public needs. Public officials who demonstrate independence and integrity should be able to resolve faithfully the ancient dilemma of whether they are in office to represent constituents or to act as independent leaders.

Persons of integrity realize the limitations as well as the benefits of independence. Recognizing that they are part of a larger elected group, they value the office and try not to bring it into disrepute. Respect for the other Council Members and for everyone else who they encounter is essential, as is a willingness to listen to the opinions of others even if a Council Member disagrees with them.

Section 3.A. Council Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. Although opinions may vary about what behavior is inappropriate, this Council will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Council Member's action would conclude that the action was inappropriate.

Comment. Consideration of propriety is important in the world of ethics. While most of us would agree that an official should be above reproach in carrying out his or her official duties, simply stating this principle does not establish a clear standard for behavior in many cases. Context often matters, and opinions may vary about what is appropriate. Even behavior that is quite innocent may appear improper in the eyes of those observing it.

At the same time, objectivity is very important if public officials are to be treated fairly by their colleagues and by citizens. The language in this section provides for determination of impropriety by an objective standard. The test for impropriety is whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Council Member's action would conclude that the action was inappropriate.

Some local governing boards may want to explicitly prevent appearances of impropriety as well as behavior that is actually improper. They may assume that doing so promotes a higher standard of conduct from Council Members. However, assuming that behavior is improper simply because of how it may appear, without objective consideration of all of the facts, presents a real danger. Innocent people may be hurt if those observing such people base their conclusions on incomplete knowledge.

Consider, for example, the case of Susan the county commissioner, who is having lunch with Bob, an old friend from college. Each of them orders and pays for their own meal at the counter of a local sandwich shop and they sit down to eat. Bob tells Susan that he will soon become the sales representative for all

of his company's government accounts in the area, including their account with Susan's local government. Susan explains to Bob that in the future it will be very important legally and ethically for her to avoid any involvement with the account, and Bob tells her he understands.

About that time, Jeff, a representative from one of Bob's competitors, walks into the sandwich shop. Upon seeing Bob and Susan together, he immediately concludes that Bob is seeking a more favorable contract with the county and that Bob is buying Susan lunch to help persuade her to go along. Jeff storms over to Susan's and Bob's table, demands an explanation, and then rushes out before one can be given.

Jeff sees an appearance of impropriety in Bob's and Susan's lunch together. Had he been aware of all of the facts, however - that Susan and Bob are old friends, that they each paid for their own meal, and that they were in fact talking about ways to avoid such impropriety - Jeff might have had a different reaction.

This simple story illustrates the problems that can arise from relying on an "appearance of impropriety" standard rather than on a standard that prohibits actual improper behavior. Councils must be vigilant in their efforts to be open and transparent, to identify potential appearance-of-impropriety problems, and to insist (to the extent that they can) that their members be judged fairly and objectively.

Section 3.B. If a Council Member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the Town's Attorney⁷ and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Comment. As we have just seen, board members may often face dilemmas because their actions are either innocently or intentionally misunderstood. Section 3.B. provides a way for Council Members to "clear the air" and avoid misunderstandings about apparent ethical breaches.

For city and county elected members, the need for explanation is especially apparent in questions about voting. For example, G.S. 153A-44 (counties) and G.S. 160A-75 (cities) require governing board members to vote, with very few exceptions. A Council Member may be excused only if the vote involves the member's own financial interest or official conduct; certain contractual matters under G.S. 14-234; or certain land use questions under G.S. Chapter 153A, Article 18, and Chapter 160A, Article 19. In all other cases the member must vote, even if the member has a personal connection to the matter in question that would normally be seen as involving a conflict between the member's public and private interests.⁸ For example, a member may be required to vote on funding for a new recreational center even though it is clear that the member's family will make use of the facility. Strictly speaking, funding this sort of community facility does not implicate the member's own financial interest.

A similar sort of dilemma arises when a governing board member also serves on the board of a non-profit corporation that relies on funds from the city or county. In this case, the conflict is between two public or quasi-public interests - that of the local government in spending its money wisely and that of the non-profit entity in receiving as much money as possible. The governing board member must

⁷ See the second paragraph of the Comment to Section 1.

⁸ See also the Comment to Section 1.

participate in decisions concerning money, even though the member may feel a conflict between two different fiduciary obligations.⁹

In cases such as those just mentioned, it is extremely important that the city or county governing board member explain to the public what he or she is doing and why. While publicly acknowledging the conflict may not allay all citizen concerns, explaining that one is required by law to participate in a decision may relieve some of them.¹⁰

Section 4. Council Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens¹¹ whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Council Members should faithfully attend and prepare for meetings. They should carefully analyze all credible information properly submitted to them, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters. They should demand full accountability from those over whom the Council has authority.

Council Members should be willing to bear their fair share of the Council's workload. To the extent appropriate, they should be willing to put the Council's interests ahead of their own.

Comment. Faithfulness is another word commonly heard in ethics circles but often not fully defined. This Model Code uses three related terms - responsibility, trust, and respect - to attempt to explain what it means. Someone who is faithful in the performance of his or her duties is likely to be someone whom others trust and respect. In the public arena, such persons are sometimes referred to as "especially responsible citizens"¹² - that is, they are trusted to act as representatives on behalf of all of us.

To be faithful as an elected board member, one must attend required meetings and come prepared to engage in the business of the Council. Council Members must also demand accountability from others in order to help preserve the trust and respect of their citizens. In many cases, not all persons and entities working for or doing business with the local government will report directly to the governing board. However, the governing board must insist on being adequately informed so it can effectively and responsibly govern.

Members should also foster trust among themselves by acting responsibly and by putting the Council's interests ahead of their own to the extent appropriate. Thus, for example, a faithful Council Member should bear his or her fair share of the elected body's workload. As another example, a Council Member should generally be willing to keep confidential information from legally called and held closed sessions and to keep private information that the Town's Attorney has determined is confidential.

⁹ For further discussion of conflict issues when non-profit entities are involved, see Frayda S. Bluestein, "Board Members Who Serve on Non-profit Boards—Conflict of Interest" Coates' Canons, UNC School of Government, September 30, 2009, <http://sogweb.sog.unc.edu/blogs/localgovt/?p=823>.

¹⁰ For further discussion of the legal and ethical requirements for voting that apply to city and county governing boards, please see A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials*, 2d ed., Chapter 4 (Chapel Hill: UNC School of Government, forthcoming spring 2010).

¹¹ Terry L. Cooper, *The Responsible Administrator: An Approach to Ethics for the Administrative Role*, 4th ed. (San Francisco: Jossey-Bass, 1998), 48 (quoting Paul Appleby).

¹² Ibid.

Council Member's loyalty to the group should not be absolute, however. In some instances, the interests of the majority of the Council may be at odds with those of the community the Council Members were elected to serve. If a Council Member conscientiously decides that he or she must refuse to go along with actions being taken by the rest of the Council, the member should take whatever responsible steps are necessary to keep faith with the citizens and explain openly and respectfully his or her decision.

Section 5. Council Members should conduct the affairs of the Council in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to Council Members or their employees.

In order to ensure strict compliance with the laws concerning openness, Council Members should make clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to make certain that any closed sessions held by the Council are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Comment. If citizens are to have faith in their local governments and trust their local officials to make decisions in the public's best interest, they must have information about what those governments and officials are planning and doing. The law of North Carolina acknowledges this fact in some of the first paragraphs of the state's open meetings and public records statutes, included below. These provisions recognize the citizens as the ultimate beneficiaries of the open meetings and public records laws. The preamble of the open meetings law states:

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.¹³

Similarly, the General Assembly has provided for very broad access to public records in North Carolina, unless a specific statute exempts a particular record from disclosure. According to the public records law:

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.¹⁴

¹³ G.S. 143-318.9.

¹⁴ G.S. 132-1(b). In addition to charging the direct cost of duplicating the record, a reasonable special service charge may be assessed if the request requires extensive use of information technology resources or extensive clerical or supervisory assistance, and in other limited cases. G.S. 132-6.2(b)

The importance of transparency to the General Assembly is underscored by the fact that complying with open meetings and public records law is mentioned twice in the statutory guidelines for local codes of ethics. The fifth requirement specifically calls for compliance “with all applicable laws governing open meetings and public records.” At the same time, the first requirement stresses the need “to obey all applicable laws regarding official actions taken as a Council Member,” which would include actions relating to meetings and to records.

Hence, Section 5 emphasizes openness. This emphasis is in keeping with the open meetings and public records laws as well as with the statutory requirements for local codes of ethics. Local governing boards must also be mindful, however, of extraordinary situations recognized in the statutes as calling for closed sessions or confidential records.

Violations of the open meetings and public records laws can have real legal and financial consequences and can also cause bad publicity and a loss of citizen trust in government. See G.S. 143-318.16 to G.S. 143-318.17, set out in Appendix 3, for a description of the potential effects of violating the open meetings statute, and G.S. 132-9, also in Appendix 3, for a similar outline in the public records law.

To elected officials and their staff members, it may sometimes seem easier to govern if citizens would simply leave them alone, not asking questions and not seeking information. However, an ethical democratic society is based on openness, trust, and honesty, all of which are values that laws relating to greater transparency promote. The requirements of G.S. 160A-86 and of the open meetings and public records laws are intended to foster such a society.

To some extent, Section 5 may be considered the linchpin that holds the entire Model Code together. It would be difficult for a citizen to judge whether an elected governing board is following the tenets in Sections 1 through 4 unless the governing board adheres to the principles of Section 5.

Section 5 implicitly assumes that citizens and others who ask for information about their local government will do so in an open and respectful manner. To the extent this is not the case, local elected and appointed officials should nevertheless scrupulously obey the letter and the spirit of the law and the code of ethics when dealing with any person they are privileged to serve.

OPTIONAL SECTION ON CENSURE OF BOARD MEMBERS

NOTES. As noted earlier, the state law that requires local governing boards to adopt codes of ethics does not provide authority for enforcing them. In contrast, other state statutes and the common law do contain standards and, in some cases, specific remedies for violations of particular legal requirements. For the most part, the local Council has no role to play in enforcing these laws, other than calling the violation to the attention of the district attorney or other proper enforcement authority.

A resolution censuring a member is the main action the Council can take when it concludes that one of its members has violated its code. Such a resolution has no legal effect on the censured Council Member.

The Council has no legal authority to create or impose other sanctions. For example, unless a Council is covered by a specific local act of the legislature that provides otherwise (which is rarely the case), the Council cannot legally require its members to sign pledges agreeing to obey the local code, or to

produce financial disclosure statements, and it has no legal authority to punish members who refuse to do so. Indeed, since such requirements exceed a Council's legal powers, it is probably unethical to try to establish them. Below are suggested guidelines for a Council to follow if it decides to include a censure procedure in its code. However, a strong caution is in order. Councils should consider carefully the implications for community and Council trust and for an accused member's reputation before including such a procedure in the code or before beginning censure proceedings in particular cases. Censure is a serious measure, and it should not be entered upon lightly. The Town Attorney should be involved at every step of the process, both to ensure that proper procedures are followed and to help the Council Members avoid making statements that might provoke accusations of libel or slander from the accused.

Censure Procedures. If a majority of the Council has reason to believe that one of its members has violated a provision of this Code of Ethics, it [shall] [may] open an investigation into the matter to determine whether probable cause exists to initiate censure proceedings against the member. All information compiled, including the grounds for any finding of probable cause, shall be shared with the member when it is received. All information pertaining to the case shall be open to public inspection and copying pursuant to the North Carolina public records statutes. If upon investigation the Council concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the Council determine that it wishes to proceed further with censure proceedings, it shall call for a hearing, to be held at a regular meeting or at a special meeting convened for that purpose. Notice of the hearing stating its time, place, and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Alternatively, the hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the member is available for public inspection and copying in the office of the Clerk to the Council.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the North Carolina open meetings statutes. The accused board member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of the bias of any other Council Member or the presiding officer. An audio or video and audio tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken by the ayes and noes and recorded in the Council's minutes.

Once the hearing is concluded, it shall be closed by vote of the Council. The presiding officer shall next entertain a motion to adopt a non-binding resolution censuring the member based on specified violations of the code of ethics. Any motion made must be an affirmative one in favor of adopting a non-binding resolution of censure. If the motion or resolution does not state particular grounds for censure under the code of ethics, the presiding officer shall rule it out of order.

If a motion to adopt a nonbinding resolution of censure stating particular grounds under the code of ethics has been made, the Council shall debate the motion. The accused member shall be allowed to participate in the debate [but shall not] [and shall also be allowed to] vote on the motion to adopt the resolution.¹⁵

At the conclusion of the debate, the Council shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a [majority] [two-thirds] [three-fourths] vote of those present and voting, a quorum being present, the motion passes and the non-binding resolution of censure is adopted.¹⁶

The text of the nonbinding resolution of censure shall be made a part of the record of the Council. Any recording of the Council's proceedings shall be approved by the Council as a permanent part of the minutes. The proceedings shall then be considered concluded, the Council having done all it legally can with respect to the matter in question.

Comment. As noted earlier, North Carolina law provides very few remedies for local governing boards that believe one of their members has violated a local code of ethics. In a very few cities, recall elections are possible, and in extreme cases an old common law remedy called amotion might be available as a means for removing a governing board member from office.¹⁷ G.S. 14-230, which deals with neglect of duty in office, provides for removal from office under very extreme circumstances. However, the local district attorney must choose to pursue a prosecution under the statute, which almost never occurs.¹⁸

The reason for these limitations on local governing boards' powers is simple. Members of local boards such as city councils, boards of county commissioners, school boards, and sanitary district boards attain their seats and legal powers through actions of the state legislature and the voters. Legally, each of the members is an independent actor, subject only to minimal control by the others.¹⁹ Unlike a self-governing private organization, which was created by persons who became its members and continues to exist under its members' control, the members of a local governing board have been given no general authority to discipline each other. Unless a specific statute allows more, the most a governing board can do is register its displeasure with a member's conduct, either by some form of political persuasion or by adoption of a non-binding resolution censuring the member. Such a resolution is an effective way to make public the governing board's conclusion that a violation of the code has occurred and to provide

¹⁵ Under both the city and the county voting statutes, persons may be excused from voting on matters involving their own financial interest or official conduct. See G.S. 160A-75 and G.S. 153A-44, respectively. A censure proceeding is a matter involving a member's official conduct, and the member accused in the proceeding should not take part in any votes that take place. Sanitary district boards and boards of education do not have such specific statutes about voting, and they may choose if they wish to have a different rule.

¹⁶ There is no legal authority for a governing board to create a supermajority voting requirement in cases such as this where such a requirement is not specified by statute. Instead, the default requirement of majority vote applies. The supermajority option is nevertheless included in the Model Code's text in recognition that, since the censure resolution is binding on no one, the number of votes required for adoption may be inconsequential.

In addition, some local town attorneys may advise their governing boards to require a supermajority vote to help avoid possible misuse of the censure process for political purposes.

¹⁷ See Frayda S. Bluestein, "I Second that Amotion," *Coates' Canons*, UNC School of Government, October 28, 2009, <http://sogweb.sog.unc.edu/blogs/localgovt/?p=1139>, and David M. Lawrence, *Removing Local Elected Officials from Office in North Carolina*, 16 Wake Forest L. Rev. 547-561 (1980).

¹⁸ There is also a chance that federal statutes relating to "honest services" and "misuse of office" may apply to local officials and their codes of ethics. See, e.g., 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1346. However, these laws are beyond the scope of this Code. Court cases currently pending may help to answer this question.

¹⁹ Of course, as we have discussed, an ethical public official may choose to place voluntary limits on that independence.

information to the voters, who ultimately have the authority to take action against the governing board member in the next election.

This section sets out a rather detailed censuring procedure. The main reason for its level of specificity is to ensure fairness to the governing board member and to the member's reputation. It is perhaps more detailed than some governing boards would like, and they might adjust it accordingly, as long as fairness to the accused is maintained. Making the procedure somewhat complicated also serves to screen out mean-spirited accusations of ethics violations that are actually based on personal, political, or policy disputes. Most governing board members truly endeavor to be ethical. They may occasionally be misunderstood, however, or may have an honest policy or other dispute with their colleagues. Likely most citizens and governing board members do not want to waste time on mean, unfair, or irresponsible accusations.

The Model Code provides different options for how to proceed after the initial accusation has been made. Note that all parts of the proceedings, including the collection of relevant materials, the hearing, and the governing board's deliberations, are public, in keeping with the requirements of the open meetings and public records laws. For example, the open meetings law specifically forbids discussing the performance of members of the local governing board in closed session. See G.S. 143-318.11(a)(6).²⁰

Since there are no statutory guidelines for this type of hearing, the governing board is generally free to adopt its own rules, as long as those rules are fair and comply with existing law and generally accepted principles of parliamentary procedure. The governing board should also consider the extent to which whatever procedures it chooses comport with its code of ethics, which binds all of the governing board members.

A governing board has no legal authority to create a supermajority voting requirement in cases such as this in which the rule is not specified by statute. Instead, for adoption of a resolution of censure and for other votes during the proceeding, the default requirement of majority vote applies.

Nevertheless, the Model Code includes several voting options with respect to the adoption of the resolution (majority, two-thirds, three-quarters), in recognition that, as explained in note 20, the number of votes required for adoption may be inconsequential since the censure resolution is not legally binding. In addition, requiring a supermajority vote may help to prevent misuse of the censure process for political purposes.²¹

²⁰ In contrast, the board is allowed to "plan, conduct, or hear reports concerning investigations of alleged criminal misconduct" in closed session. G.S. 143-318.11(a)(7). However, the governing board itself has no power to plan or conduct criminal investigations concerning one of its members, and it could only hear a report about a criminal investigation involving a Council Member if the district attorney or a law enforcement agency wanted to inform the governing board about the investigation.

²¹ 1. See, for example, many of the statutes referenced in the Comment to Section 1 of the Model Code and reproduced in Appendix 3.

2. Thanks to Frayda S. Bluestein of the UNC School of Government for authoring this part of the guidebook.

Appendix 1: Guidelines for Ethical Behavior

As noted at various points in the Model Code of Ethics, local governing boards have no legal power to bring criminal or other charges against their members or otherwise to directly control one another's behavior. At the same time, board members should be familiar with laws that may affect them in their actions as public officials,¹ and they should take care to avoid common pitfalls. For example, some boards have found it useful in avoiding legal conflicts of interest to start each meeting by asking members to voluntarily inform the board if any matter on the agenda might present a conflict of interest or might require the member to be excused from voting.

The following guidelines are designed to translate current legal requirements into specific behaviors board members should avoid.² While statutory provisions should be viewed as a minimum standard, board members should always consider whether there are ethical problems with other behaviors, even if such behavior does not violate criminal or other statutes dealing with conflicts of interest or other subjects.

- 1. Avoid deriving a direct benefit from contracts in which you are involved in making or administering on behalf of the public agency.** (G.S. 14-234(a)(1); criminal penalty; note defined terms in the statute: *direct benefit, involved in making or administering a contract.*)
- 2. Avoid attempting to influence others involved in making or administering a contract on behalf of the public agency, even if you aren't involved, if you will derive a direct benefit from the contract.** (G.S. 14-234 (a)(2); criminal penalty; note defined terms in the statute: *direct benefit, involved in making or administering a contract.*)

1. See, for example, many of the statutes referenced in the Comment to Section 1 of the Model Code and reproduced in Appendix 3.

2. Thanks to Frayda S. Bluestein of the UNC School of Government for authoring this part of the guidebook.

- 3. Avoid soliciting or receiving any gift or reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency you serve. (G.S. 14-234(a)(3); criminal penalty.)**
- 4. Consider the ethical and practical consequences of deriving a direct benefit from a contract authorized under any exception to the statute and weigh these considerations against the potential advantage to the public agency and to yourself. Follow reporting requirements to ensure transparency. (G.S. 14-234(b); (d1).)**
- 5. Avoid participating in deliberations about or voting on a contract in which you have a direct benefit, when the contract is undertaken as allowed under any exception to the statute. (G.S. 14-234(b1); criminal penalty.)**
- 6. Avoid using your knowledge of contemplated action by you or your unit, or information known to you in your official capacity and not made public, to acquire a financial interest in any property, transaction, or enterprise, or to gain a financial benefit that may be affected by the information or contemplated action. Avoid intentionally aiding another to do any of these things. (G.S. 14-234.1; criminal penalty.)**
- 7. Avoid receiving any gift or favor from a current, past, or potential contractor. (G.S. 133-32(a); criminal penalty.)**
- 8. Consider the ethical and practical consequences of accepting a gift or favor under any exception to the statutory prohibition, and follow reporting requirements to ensure transparency. (G.S. 133-32(d).)**
- 9. Avoid voting on matters involving your own financial interest or official conduct. (G.S. 160A-75; 153A-44.) Identify and disclose these matters in advance so your board can determine whether you have a conflict allowing you to be excused by the board from voting. When in doubt, obtain an opinion from your local attorney about whether you must vote or may be excused.**
- 10. Avoid voting on any zoning map or text amendment where the outcome of the vote is reasonably likely to have a direct, substantial, and readily identifiable financial impact on you. (G.S. 153A-340(g); G.S. 160A-381(d).)**
- 11. Do not participate in or vote on any quasi-judicial matter, including matters that come before the board when the board is acting in a quasi-judicial capacity under G.S. 153A-345 or G.S. 160A-388, if participation would violate affected persons' constitutional right to an impartial decision-maker. Impermissible conflicts under this statutory standard include "having a fixed opinion prior to hearing the matter that is not susceptible to change"; "undisclosed ex parte**

communications [communications between a board member and someone involved in the matter that occur outside the official quasi-judicial proceeding]”; “a close familial, business, or other associational relationship with an affected person”;³ or “a financial interest in the outcome of the matter.”

(G.S. 153A-345(e1), G.S. 160A-388(e1); violation of the constitutional standard by one member invalidates the entire vote.)

- 12. Fulfill your statutory obligation to vote on all matters that come before you even when there are appearances of conflict, and only refrain from voting when there is a legal basis for being or a requirement to be excused from voting.**

(G.S. 153A-44; G.S. 160A-75.)

Questions for Discussion

Are the legal enforcement standards described above useful to you? Why or why not?

Which of the statutes set out in Appendix 3 would you like to have further explained (for example, G.S. 14-234, Misuse of confidential information, or G.S. 133-32, Gifts and favors regulated)? You may wish to make a note and ask your board attorney for additional information.

What else would you like to know about your ethical responsibilities as an elected official?

In what ways will your board’s code of ethics be most helpful?

3. The terms in this phrase appear in G.S. 153A-345(e1) and G.S. 160A-388(e1), but they are not defined.

Appendix 2: Background Information on Codes of Ethics

This appendix to the Model Code of Ethics supplies additional information that may be useful to local board members as they develop their codes. It provides background reading on what codes of ethics typically cover, and it discusses the appropriate place of ethics codes in a broader program to promote an ethical climate in local government.

What Codes of Ethics Typically Cover

Three Approaches

Codes of ethics typically come in three basic types: aspirational, prohibitive, and a hybrid blend of the first two.¹

Aspirational codes are those that are concerned primarily with how we ought to be. They state the norms of behavior toward which we aspire, through the use of both general provisions and more specific requirements. Aspirational codes typically emphasize widely accepted ethical principles. They speak, for example, of responsibility, integrity, fairness, avoidance of conflicts of interest, and the need to act diligently and responsibly and to inspire and maintain public confidence and trust.

Aspirational codes appeal to public officials' higher and better desires. They promote ethical behavior by challenging public officials to go beyond the letter of the law and to become the "especially responsible citizens" that a community needs to govern it.

Prohibitive codes, in contrast, recognize that public officials may sometimes act in a manner that is self-serving or otherwise incompatible with the public trust. They promote

1. This section and the rest of Appendix 2 are adapted from Chapter 3 of A. Fleming Bell, II, *Ethics, Conflicts and Offices: A Guide for Local Officials*, 2nd ed. (Chapel Hill: UNC School of Government, forthcoming spring 2010).

better behavior by prohibiting and specifying sanctions for conduct that is considered to be unethical.

Hybrid codes that combine aspirational features with prohibitions of certain acts also are common. They attempt to inspire good behavior while imposing penalties for behavior that falls below specified standards.

Which Approach Works Best?

Is it better to praise and inspire, or to warn and sanction, when one wants public officials to adhere to ethical principles? That is, should one use positive reinforcement to encourage ethical behavior or impose rules and laws that control behavior by threat?

At their best, the aspirational and prohibitive approaches should balance and reinforce each other and not give conflicting signals. Codes of ethics should appeal to humans' better nature, while at the same time keeping our darker side in check. This suggests that hybrid codes may be the most useful.

Michael Josephson, a leading researcher and speaker on ethical topics, defines several characteristics of an effective ethics code. According to Josephson,

1. The code *should be comprehensive, covering the full range of ethical principles that apply to public officials.*
2. It should contain a *statement of guiding principles* that sets the tone for the code and to which public officials may return as they construe the more detailed code provisions. In effect, this is the aspirational part of the code.
3. The code *should have prohibitive aspects* that specifically apply principles of behavior to situations that are reasonably likely to occur. At the same time, however, it should be realistic in the standard of behavior it expects.
4. Finally, the code *should be clear and unambiguous*, simple, and easy to read and use, with devices such as *indexes* to help make it accessible. It also *should include a commentary* with explanations and illustrations.²

Is it realistic to assume that a code embodying all of these characteristics can be drafted? Some qualities, such as comprehensiveness, simplicity, and ease of use, seem to point in contrary directions, even if they are not mutually exclusive.

The drafter of Josephson's ideal code will encounter an age-old problem in legal writing: how does one draft clearly and simply, with general enough language to cover a variety

2. Adapted from Michael Josephson, "Sample Codes and Policies," in *Ethics Corps: A Training Program on Teaching Ethics in the '90s*, materials from seminar held Nov. 29–Dec. 2, 1993, in Airlie, Va. (Marina del Rey, Calif.: Joseph and Edna Josephson Institute for the Advancement of Ethics, 1993), 3–5.

of situations, but, at the same time, draft specifically enough to avoid uncertainty and to make it reasonably possible to adhere to the code's commands? Furthermore, if the code of ethics is being drafted for local elected governing boards, the writer must also consider the limits imposed on such codes by various other laws and by a lack of specific statutory authorization to impose sanctions against local elected officials.

Creating an Ethical Climate: The Appropriate Use of Codes

Codes of ethics can help to provide certainty, accountability, and identity for public officials. While it can sometimes be challenging to draft and interpret codes, it is important to realize the advantages of using codes to create an atmosphere in which the public trust is upheld. At their best, codes can be powerful tools for improving the ethical climate of local government.

But there may also be some dangers to overcome in overemphasizing the code approach to ethical decision making. First, adopting a code of ethics may in some cases take away the incentive to think critically about one's behavior. Some public officials may show a tendency simply to obey the letter of the law (the code) without understanding or considering the underlying rationale for the code's provisions. At worst, one may become like the police officer who, when confronted with the fact that he had lied about a matter, responded that lying was not specifically prohibited by his department's code of ethics.³

Second, a code of ethics is only useful if those whom it affects are committed to what it says. The highest ranking officials in the organization must serve as role models in carefully following the code's provisions.

Third, a code that attempts to anticipate and deal with every sort of situation that a public official may confront will be so long and detailed that many public officials will be unable to understand or follow it.⁴ And, as was just noted, a code that is not obeyed by the officials whom it covers will not be useful. Instead, cynicism will likely develop among citizens and among the public officials themselves. To put it in today's jargon, if one is going to "talk the talk," one also has to "walk the walk." Having no written code of ethics at all may be better for public confidence than having a code that is not understood or obeyed.

3. Incident reported by a participant in an ethics session of the Law Enforcement Executives Training Program, held on February 8, 1995, at the UNC School of Government.

4. North Carolina's ethics and lobbying laws for state officials may suffer from this flaw of too much complexity.

On the other hand, a code that is short enough to be workable will likely be quite general and provide few specific answers. It will probably require that officials weigh situations and make their own judgments.

Of course, engaging in a thoughtful discernment process can be a very good thing. If a workable code is one that encourages such deliberations, then local governing boards may want to help their elected and appointed officials learn how to think critically when ethical dilemmas arise.⁵

In short, while ethics codes are important, the development of skills in ethical decision making is perhaps even more important in maintaining the public's trust in its elected and appointed officials. The public trust can only be preserved if public officials take their calling seriously and make informed decisions that reflect the core ethical principles that they and their citizens share.

5. The ethics training courses offered by the UNC School of Government emphasize critical thinking about ethical and related legal dilemmas.

Appendix 3: Related Statutes

This appendix to the Model Code is intended for general reference. It contains the constitutional oath of office and the text of many of the North Carolina statutes related to ethical behavior, including those that are discussed in Appendix 1. It concludes with Session Law 2009-403, the local government ethics act.

North Carolina Constitution

Article VI

Suffrage and Eligibility to Office

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

“I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God.”

North Carolina General Statutes

§ 14-230. Willfully failing to discharge duties.

If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

§ 14-234. Public officers or employees benefiting from public contracts; exceptions.

- (a)
 - (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.
 - (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.
 - (3) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.
- (a1) For purposes of this section:
 - (1) As used in this section, the term “public officer” means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.
 - (2) A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.
 - (3) A public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.
 - (4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.
 - (5) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.
- (b) Subdivision (a)(1) of this section does not apply to any of the following:
 - (1) Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility regulated under the provisions of Chapter 62 of the General Statutes.

- (2) An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.
- (3) Any employment relationship between a public agency and the spouse of a public officer of the agency.
- (4) Remuneration from a public agency for services, facilities, or supplies furnished directly to needy individuals by a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by the agency if: (i) the programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; (ii) neither the agency nor any of its employees or agents, have control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the assistance; (iii) the remuneration for the services, facilities or supplies are in the same amount as would be paid to any other provider; and (iv) although the public officer or employee may participate in making determinations of eligibility of needy persons to receive the assistance, he or she takes no part in approving his or her own bill or claim for remuneration.

(b1) No public officer who will derive a direct benefit from a contract entered into under subsection (b) of this section may deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

(c) through (d) Repealed by Session Laws 2001-409, s. 1, effective July 1, 2002.

(d1) Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 15,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more

than 15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if all of the following apply:

- (1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed twenty thousand dollars (\$20,000) for medically related services and forty thousand dollars (\$40,000) for other goods or services within a 12-month period.
- (2) The official entering into the contract with the unit or agency does not participate in any way or vote.
- (3) The total annual amount of contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county.
- (4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly.

(d2) Subsection (d1) of this section does not apply to contracts that are subject to Article 8 of Chapter 143 of the General Statutes, Public Building Contracts.

(d3) Subsection (a) of this section does not apply to an application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes or the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met.

(d4) Subsection (a) of this section does not apply to an application for, or the receipt of a grant or other financial assistance from, the Tobacco Trust Fund created under Article 75 of Chapter 143 of the General Statutes by a member of the Tobacco Trust Fund Commission or an entity in which a member of the Commission has an interest provided that the requirements of G.S. 143-717(h) are met.

(d5) This section does not apply to a public hospital subject to G.S. 131E-14.2 or a public hospital authority subject to G.S. 131E-21.

(d6) This section does not apply to employment contracts between the State Board of Education and its chief executive officer.

(e) Anyone violating this section shall be guilty of a Class 1 misdemeanor.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when:

(i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A public agency that is a party to the contract may request approval to continue contracts under this subsection as follows:

- (1) Local governments, as defined in G.S. 159-7(15), public authorities, as defined in G.S. 159-7(10), local school administrative units, and community colleges may request approval from the chair of the Local Government Commission.
- (2) All other public agencies may request approval from the State Director of the Budget.

Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare.

§ 14-234.1. Misuse of confidential information.

(a) It is unlawful for any officer or employee of the State or an officer or an employee of any of its political subdivisions, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information which was made known to him in his official capacity and which has not been made public, to commit any of the following acts:

- (1) Acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or official action; or
- (2) Intentionally aid another to do any of the above acts.

(b) Violation of this section is a Class 1 misdemeanor.

§ 132-9. Access to records [from G.S. Chapter 132, Public Records]

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover its reasonable attorneys' fees if attributed to those public records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs.

§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contract; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent a gift a public servant would be permitted to accept under G.S. 138A-32, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift.

§ 143-318.9. Public policy [from G.S. Chapter 143, Article 33C, Meetings of Public Bodies].

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.

§ 143-318.16. Injunctive relief against violations of Article [33C, Meetings of Public Bodies].

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 932, s. 3, effective October 1, 1986.

§ 143-318.16A. Additional remedies for violations of Article [33C, Meetings of Public Bodies].

(a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other persons be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.

(b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.

(c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:

- (1) The extent to which the violation affected the substance of the challenged action;
- (2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;
- (3) The extent to which the violation prevented or impaired public knowledge or understanding of the people's business;
- (4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;
- (5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;

(6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

(d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.

(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article.

**§ 143-318.16B. Assessments and awards of attorneys' fees
[in actions brought under Article 33C, Meetings of Public Bodies].**

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed.

**§ 143-318.16C. Accelerated hearing; priority
[for actions brought under Article 33C, Meetings of Public Bodies].**

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

§ 143-318.17. Disruptions of official meetings.

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor.

§ 153A-44. Members excused from voting.

The board [of county commissioners] may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 153A-340(g), or 153A-345(e1). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct.

§ 153A-340. Grant of power [from G.S. Chapter 153A, Article 18, Planning and Regulation of Development].

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. . . .

* * *

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

§ 153A-345. Board of adjustment.

* * *

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article [18 of Chapter 153A] shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

§ 160A-75. Voting.

No member [of a city council] shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal divi-

sion, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council.

§ 160A-381. Grant of power [from G.S. Chapter 160A, Article 19, Planning and Regulation of Development].

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. . . .

* * *

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

§ 160A-388. Board of adjustment.

* * *

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article [19 of G.S. Chapter 160A] shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-403
HOUSE BILL 1452

AN ACT TO REQUIRE ALL CITIES, COUNTIES, LOCAL BOARDS OF EDUCATION, UNIFIED GOVERNMENTS, SANITARY DISTRICTS, AND CONSOLIDATED CITY-COUNTIES TO ADOPT A CODE OF ETHICS FOR THE GOVERNING BOARD AND TO REQUIRE THE MEMBERS OF THOSE GOVERNING BOARDS TO RECEIVE EDUCATION ON ETHICS LAWS APPLICABLE TO LOCAL GOVERNMENT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

“Part 3A. Ethics Codes and Education Programs.

“§ 160A-83. Local governing boards’ code of ethics.

(a) Governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall adopt a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of the member’s official duties as a member of that governing board.

(b) The resolution or policy required by subsection (a) of this section shall address at least all of the following:

- _____ (1) The need to obey all applicable laws regarding official actions taken as a board member.
- _____ (2) The need to uphold the integrity and independence of the board member’s office.
- _____ (3) The need to avoid impropriety in the exercise of the board member’s official duties.
- _____ (4) The need to faithfully perform the duties of the office.
- _____ (5) The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

“§ 160A-84. Ethics education program required.

(a) All members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office and again within 12 months after each subsequent election or appointment to the office.

(b) The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.

(c) The ethics education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the governing board.

(d) The clerk to the governing board shall maintain a record verifying receipt of the ethics education by each member of the governing board.”

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

“(57) To adopt a code of ethics. – Local boards of education shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.”

SECTION 3. G.S. 115C-50 reads as rewritten:

“§ 115C-50. Training of board members.

(a) All members of local boards of ~~education~~ education, whether elected or appointed, shall receive a minimum of 12 clock hours of training annually. The 12 clock hours of training may include the ethics education required by G.S. 160A-84.

(b) The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education.

(c) The training may be provided by the North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education.”

SECTION 4. Article 4 of Chapter 153A of the General Statutes is amended by adding a new section to read:

“§ 153A-53. Ethics.

(a) The board of commissioners shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the board of commissioners, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84.”

SECTION 5. Article 1A of Chapter 160B of the General Statutes is amended by adding a new section to read:

“§ 160B-2.3. Ethics.

(a) The governing board shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the governing board, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84.”

SECTION 6. Part 2 of Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

“§ 130A-49.5. Ethics.

(a) The governing board shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the governing board, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84.”

SECTION 7. The resolution or policy containing a code of ethics that is required by G.S. 160A-83 shall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy.

SECTION 8. Except as otherwise provided in this act, this act becomes effective January 1, 2010. All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-84 within 12 months after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 2:00 p.m. this 5th day of August, 2009

Appendix 4: Additional Resources

A. Fleming Bell, II. *Ethics, Conflicts, and Offices: A Guide for Local Officials*. 2d ed. Chapel Hill, N.C.: UNC School of Government, forthcoming spring 2010.

Frayda S. Bluestein. *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments*. Chapel Hill, N.C.: UNC School of Government, 2004 ed. with 2007 supp.

David M. Lawrence. *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*. 7th ed. Chapel Hill, N.C.: UNC School of Government, 2008.

David M. Lawrence. *Public Records Law for North Carolina Local Governments*. 2d ed. Chapel Hill, N.C.: UNC School of Government, forthcoming 2010.

Ethics for Local Government Officials. Chapel Hill, N.C.: UNC School of Government. 2010. www.sog.unc.edu/programs/ethics/index.php.

Morrisville Town Council Meeting Rules of Procedure

**Based on the book,
Suggested Rules of Procedure for a City Council
*Third Edition***

**By:
A. Fleming Bell, II**

**Institute of Government
The University of North Carolina at Chapel Hill
2000**

Adopted:

May 27, 2008 (Res 2008-049)

Updates:

Version 2 – October 28, 2008 (Res 2008-099)

Version 3 – August 25, 2009 (Res 2009-050)

Version 4 – May 24, 2010 (Res 2010-024)

Rule 1. Regular Meetings

The Town Council (TC) shall hold regular meetings on the second (briefing) and fourth (public hearings, public comment, and voting) Tuesday of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held on the next business day. The meetings shall be held at the Town Hall TC meeting room and shall begin at 6:30 p.m. A copy of the TC's current meeting schedule shall be filed with the town clerk. No other meetings shall be set outside of Rule 2.

Rule 2. Special, Emergency, Recessed [or Adjourned], Rescheduled or Postponed Meetings

(a) Special Meetings. The mayor, the mayor pro tempore, or any two members of the TC may at any time call a special TC meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. At least forty-eight hours before a special meeting called in this manner, written notice of the meeting stating its time and place and the subjects to be considered shall be (1) delivered to the mayor and each council member via email to the email addresses on file with the town clerk,. Should notice of receipt not be received then a printed notice shall be left at his or her usual dwelling place; (2) posted at the door of the TC's usual meeting room; and (3) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the town clerk.

A special meeting may also be called or scheduled by vote of the TC in open session during another duly called meeting. The motion or resolution calling or scheduling the special meeting shall specify its time, place, and purpose. At least forty-eight hours before a special meeting called in this manner, notice of the time, place, and purpose of the meeting shall be (1) posted at the door of the TC's usual meeting room; and (2) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the town clerk.

Such notice shall also be emailed or delivered at least forty-eight hours before the meeting to each council member not present at the meeting at which the special meeting was called or scheduled and to the mayor if he or she was not present at that meeting.

Only those items of business specified in the notice may be discussed or transacted at a special meeting called in this manner, unless all members are present and agree or those not present have signed a written waiver of notice, and the TC determines in good faith at the meeting that it is essential to discuss or act on the time immediately.

(b) Emergency Meetings. Emergency meetings of the TC may be called only because of generally unexpected circumstances that require immediate consideration by the TC. Only business connected with the emergency may be considered at an emergency meeting. One of the following two procedures must be followed to call an emergency meeting of the TC.

(1) The mayor, the mayor pro tempore, or any two Council Members may at any time call an emergency TC meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each Council Member or left at his or her usual dwelling place at least six hours before the meeting.

(2) An emergency meeting may be held at any time when the mayor and all members of the TC are present and consent thereto, or when those not present have signed a written waiver of notice, but only in either case if the TC complies with the notice provisions of the next paragraph.

Notice of an emergency meeting under (1) or (2) shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request, which includes the newspaper's, wire service's, or station's telephone number, with the town

Morrisville Town Council Meeting Rules of Procedure

clerk. This notice shall be given either by telephone or by the same method used to notify the mayor and the Council Members and shall be given at the expense of the party notified.

(c) Recessed Meetings. A properly called regular, special, or emergency meeting may be recessed to a time and place certain by a procedural motion made and adopted as provided in Rule 18, Motion 2, in open session during the regular, special, or emergency meeting. No further notice need be given of a recessed [or adjourned] session of a properly called regular, special, or emergency meeting.

(d) Rescheduled or Postponed Meetings. During the period between regularly scheduled meetings, the Council may reschedule or postpone a regular meeting by submitting a written notice or email to the Town Clerk and Town Manager stating the time, place and reason for the rescheduled meeting. Such action may be initiated by the Mayor, Mayor Pro Tem, or any Council member, but a majority of the Council must submit a confirming notice or email to the Clerk and Manager in order for the action to be effective. Such action must be taken at least 72 hours prior to the originally scheduled meeting time.

Upon receipt of such notice by a majority of the Council, the Town Manager and Town Clerk shall take the necessary steps to (1) notify each Council member of the rescheduled meeting, (2) post a notice of the rescheduled meeting on the Town's website and on the door of the Council's usual meeting room, and (3) notify each person, newspaper, television or radio station who has filed a written request with the Town Clerk for notice of Town meetings. Such notices shall be posted or mailed at least 48 hours prior to the rescheduled meeting time. To the extent practical, the Manager and Clerk shall also notify by phone or email those persons having business on the agenda that the meeting has been rescheduled.

Rule 3. Organizational Meeting

On the date and at the time of the first regular meeting in December following a general election in which TC members are elected, or at an earlier date, if any, set by the incumbent TC, the newly elected members shall take and subscribe the oath of office as the first order of [new] business. As the second order of [new] business the TC shall elect a mayor pro tempore. This organizational meeting shall not be held before the municipal election results are officially determined, certified, and published in accordance with Subchapter IX of Chapter 163 of the North Carolina General Statutes.

Rule 4. Agenda

(a) Proposed Agenda. The town manager shall prepare a proposed agenda for each meeting. Any council member may, by a timely request, have an item placed on the proposed agenda for discussion. A copy of all proposed ordinances shall be attached to the proposed agenda. An agenda package shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce. Each council member shall receive a copy of the proposed agenda and the agenda package and they shall be available for public inspection and distribution or copying when they are distributed to the council members.

(b) Adoption of the Agenda. As its first order of business at each meeting, the council shall, as specified in Rule 6, discuss and revise the proposed agenda and adopt an agenda for the meeting. If items are proposed to be added to the agenda of a meeting, the council may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all council members.

The council may by majority vote add items to or subtract items from the proposed agenda, except that (a) the council may not subtract items from the proposed agenda stated in the notice of a special meeting called by the mayor, mayor pro tempore, or two council members, unless those calling the meeting consent to the deletion, (b) the council may not add items to the proposed agenda stated in the notice of a special meeting called by the mayor, mayor pro tempore, or two council members, unless all members

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are present, or those who are absent sign a written waiver of notice, and (c) only business connected with the emergency may be considered at an emergency meeting. The council may add items to the proposed agenda of a special meeting only if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

The council may designate certain agenda items “for discussion and possible action.” Such designation means that the council intends to discuss the general subject area of that agenda item before making any motion concerning that item.

(c) **Consent Agenda.** The council may designate a part of the agenda as the “consent agenda.” Items shall be placed on the consent agenda by those preparing the proposed agenda if they are judged to be noncontroversial and routine. Any member may remove an item from the consent agenda and place it on the regular agenda while the consent agenda is being discussed and revised prior to its adoption. All items on the consent agenda shall be voted on and adopted by a single motion, with the minutes reflecting the motion and vote on each item.

Rule 5. Public Address to the Council

At the briefing and business session meetings of each month, the Council shall set aside a time for public comment.

The Council believes in a fair process for individuals that are interested in presenting suggestions, comments or other thoughts. Public comment is vital to the function of Town governance and we like to encourage a wide variety of input for fair representation during decision making, which encourages great leadership and better enables the decision making process.

- **Public Address** refers to the portion of the Business Session or Briefing Session Meetings in which public comment is submitted to the Council in an open platform and there may be several different issues addressed that may not be related. The **Public Address** will be limited to a maximum of thirty minutes for the entire comment period. If the time period runs out before all persons who have signed up to speak have an opportunity, those names will be carried over to the next Public Address Period.
- **Public Hearing** refers to specific items listed on the meeting agenda and is usually legally required by State Statutes. There are usually several small public hearings during a Business Session Meeting. **Public Hearing** Comments will be limited to twenty minutes for those in favor and twenty minutes for those in opposition at each meeting. Note that one public hearing may be continued through several meetings and speakers may present only once while the public hearing is open. Additional opportunity for input to a public hearing is available through the Public Hearing Access Point online prior to action on an item.
- Speakers will not discuss matters which are the subject of Public Hearings during the Public Address, as those matters have separate times scheduled for comment.
- Items scheduled for action that receive public input during a meeting will not receive consideration for approval or denial until a future meeting.

The following procedures apply to both Public Hearings and Public Address Periods:

- Please sign in on the Public Input Registry and fill in all requested information. The registry period will end when the first public hearing or public address begins and will not be refreshed. All commentators will be called upon to speak in the order registered. The Public Input Registry will open at 5:00 p.m. the day of each meeting for early registration. At the appropriate time, the mayor will acknowledge those persons who have signed in. Speakers will address the Council

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as a whole from the podium at the front of the room and begin their remarks by stating their name and role in the community address.

- Only one speaker will be acknowledged at a time. Individual comments are limited to three minutes unless otherwise stated by the presiding officer.
- Groups are encouraged to designate a lead speaker on their behalf who can be granted three additional minutes by the group for a total of six minutes.
- The Council generally will not be able to answer questions, but may refer items to staff for response or follow-up.
- Speakers should be courteous in their language and presentation.
- Speakers who have prepared written remarks or supporting documents are encouraged to leave a copy of such remarks and documents with the town clerk.
- Those who do not wish to speak, but would like to submit comments are encouraged to do so. These comments will not be read aloud. However, the Council will be made aware of such comments that will be available for their review.
- This is not the only opportunity to address the Council. Those with comments are strongly encouraged to please contact the Council and/or staff with any questions or comments

Rule 6. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each business meeting shall be as follows:

Call to Order
Invocation
Pledge of Allegiance
Adoption of Agenda
Adoption of Minutes
Presentations
Public Hearings
Public Address
Action Items
 Old Business
 New Business
Consent Agenda
Items Removed from the Consent Agenda
For the Good of the Order
 Administrative Reports
 Council Comments
Announcements
Closed Session
Adjournment

The order of business for each briefing meeting shall be as follows:

Call to Order
Invocation
Pledge of Allegiance
Adoption of Agenda
Presentations

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Public Hearings

Action Items (time sensitive items or old business carried over from the previous business meeting)

 Old Business

 New Business

Previously Briefed Items – With Updates

New Items

Previously Briefed Items – No Updates

For the Good of the Order

 Administrative Reports

 Council Comments

Announcements

Closed Session

Adjournment

By general consent of the council, items may be considered out of order or added to the agenda

Rule 7. Office of Mayor

The mayor shall preside at all meetings of the council and shall have the right to vote on all matters.

The mayor or other presiding officer shall have the following powers:

- (a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- (b) To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- (c) To entertain and answer questions of parliamentary law or procedure;
- (d) To call a brief recess at any time;
- (e) To adjourn in an emergency.

A decision by the presiding officer under (a), (b), or (c) may be appealed to the council upon motion of any member, pursuant to Rule 18(b), Motion 1. Such a motion is in order immediately after a decision under (a), (b), or (c) is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion if timely made may not be ruled out of order.

Rule 8. Office of Mayor Pro Tempore

At the organizational meeting, the council shall elect from among its members a mayor pro tempore to serve at the Council's pleasure. A Council Member who serves as mayor pro tempore shall be entitled to vote on all matters and shall be considered a Council Member for all purposes, including the determination of whether a quorum is present. In the mayor's absence, the Council may confer on the mayor pro tempore any of the powers and duties of the mayor. If the mayor should become physically or mentally incapable of performing the duties of his or her office, the Council may by unanimous vote declare that he or she is incapacitated and confer any of his or her powers and duties on the mayor pro tempore. When a mayor declares that he or she is no longer incapacitated, and a majority of the Council concurs, the mayor shall resume the exercise of his or her powers and duties. If both the mayor and mayor pro tempore are absent from a meeting, the Council may elect from among its members a temporary chairman to preside in such absence.

Rule 9. When the Presiding Officer Is in Active Debate

Not used.

Rule 10. Action by the Council

The council shall proceed by motion, except as otherwise provided for in Rule 4 and in Rule 31. Any member may make a motion.

Rule 11. Second Not Required

Motions require a second, except for procedural motions under Rule 18, where no second is required.

Rule 12. One Motion at a Time

A member may make only one motion at a time.

Rule 14. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 27 being present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

See Rule 23 concerning the number of votes necessary to adopt an ordinance, adopt a change in a zoning ordinance when a protest petition has been received, or approve a contract. Other extraordinary voting requirements imposed by particular statutes are not specified in these rules. The town attorney should be consulted as questions arise.

Rule 15. Voting by Written Ballot

The council may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the council shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the town clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Rule 16. Debate

The mayor, or other presiding officer, may state the motion and then open the floor to debate on it. The mayor shall preside over the debate according to the following general principles:

- (a) The maker of the motion is entitled to speak first;
- (b) A member who has not spoken on the issue shall be recognized before some who has already spoken;
- (c) To the extent possible, the debate shall alternate between proponents and opponents of the measure.

Rule 17. Ratifications of Actions

To the extent permitted by law, the council may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Rule 18. Procedural Motions

(a) Certain Motions Allowed. In addition to substantive proposals, only the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

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The procedural motions are summarized in table form in the appendix. Note that the appended table is intended only to provide a quick reference guide to the motions; this rule and its comments should be consulted for a discussion of how each procedural motion is used.

(b) Order of Priority of Motions. In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the council, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To adjourn. This motion may be made only at the conclusion of council consideration of a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess to a time and place certain shall also comply with the requirements of Rule 2(c).

Motion 3. To Take a Brief Recess. Any council member can request a recess and the presiding officer can recess the meeting at will.

Motion 4. Call to Follow the Agenda. The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.

Motion 5. To Suspend the Rules. The council may not suspend provisions of the rules that state requirements imposed by law on the council. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats.

Motion 6. To Go into Closed Session. The council may go into closed session only for one or more of the permissible purposes listed in G.S. 143-318.11(a). The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318(a)(3) shall identify the parties in each existing lawsuit concerning which the council expects to receive advice during the closed session, in fact such advice is to be received.

Motion 7. To Leave Closed Session.

Motion 8. To Divide a Complex Motion and Consider It by Paragraph.

Motion 9. To Postpone Consideration. The council may postpone a substantive motion for later consideration at an unspecified time. A substantive motion the consideration of which has been deferred expires 100 days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending (has not expired). A member who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 18(b), Motion 14], or else move to suspend the rules [Rule 18(b), Motion 5].

Motion 10. Motion for the Previous Question. The motion is not in order until there have been at least 20 minutes of debate, and every member has had an opportunity to speak once.

Motion 11. To postpone to a Certain Time or Day.

Motion 12. To Refer a Motion to a Committee. Not used

Motion 13. To Amend. An amendment to a motion must be pertinent to the subject matter. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. During discussion of a motion should the board, by consensus, determine that a friendly amendment is in order the presiding officer shall ask the members who made and seconded the motion to agree to the friendly amendment and upon agreement the board shall continue debate considering the amended motion.

Motion 14. To Revive Consideration. Not used, see motion 9.

Motion 15. To Reconsider. The council may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the “nays” prevail) and at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.

Motion 16. Not Used

Motion 17. To Prevent Reintroduction for [Six] Months. Not used.

Rule 19. Not Used

Rule 20. Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before it is amended or before the presiding officer puts the motion to a vote, whichever occurs first.

Rule 21. Duty to Vote

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Rule 22. Introduction of Ordinances

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by the council.

Rule 23. Adoption of Ordinances and Approval of Contracts

(a) **Generally.** An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor’s vote in case of an equal division) shall be required to adopt an ordinance, to take any action that has the effect of an ordinance, or to make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance or action that has the effect of an ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of all the actual membership of the council, excluding vacant seats,

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and not including the mayor unless he or she has the right to vote on all questions before the council. No ordinance shall be adopted unless it has been reduced to writing before a vote on adoption is taken.

(b) **Zoning Protest Petitions.** An affirmative vote equal to three-fourths of all the members of the city council shall be required for an ordinance making a change in zoning regulation, restriction, or boundary to become effective, if a valid protest petition is received in accordance with the requirements set out in G.S. 160A-385(a) and G.S. 160A-386. This rule shall not apply in those cases excepted by G.S. 160A-385(a).

Rule 24. Adoption of the Budget Ordinance

(1) Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular meeting of the council by a simple majority of those present and voting, a quorum being present;

(2) No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolution by the council; and

(3) The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the council and ending with the adoption of the budget ordinance, the council may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of the open meetings law, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (a) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (b) no business other than consideration of the budget is taken up. This rule does not allow, and may not be construed to allow, the holding of closed meetings or executive sessions by the council if it is otherwise prohibited by law from holding such a meeting or session.

Rule 25. Special Rules of Procedure

- 1.) Consideration for adjournment will be made through a motion called for by the Mayor at each meeting immediately following discussion of the current item being discussed at 10:00 pm.

Rule 26. Closed Sessions

The council may hold closed sessions as provided by law. The council shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session. If the motion is based on G.S. 143-318.11(a)(1) (closes session to prevent the disclosure of privileged or confidential information or information that is not considered a public record), it must also state the name or citation of the law that renders the information to be discussed privileged or confidential. If the motion is based on G.S. 143-318.11(a)(3) (consultation with attorney; handling or settlement of claims, judicial actions, or administrative procedures), it must identify the parties in any existing lawsuits concerning which the public body expects to receive advice during the closed session. The motion to go into closed session must be approved by the vote of a majority of those present and voting. The council shall terminate the closed session by a majority vote.

Only those actions authorized by statute may be taken in closed session. A motion to adjourn or recess shall not be in order during a closed session.

Rule 27. Quorum

A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum. A majority is more than half. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Rule 28. Public Hearings

Rules governing public hearings required by law or deemed advisable shall be organized by the town staff and announced by the mayor. The rules shall set forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted for each speaker, and other pertinent matters. The rules may include, but not limited to, rules (a) fixing the maximum time allotted to each speaker (usually three minutes for each speaker); (b) providing for the designation of spokespersons for groups of persons supporting or opposing the same positions (usually permitting six minutes for the sole representative of the group to speak); (c) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the open meetings law, for those excluded from the hall to listen to the hearing); and (d) providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the open meetings law applicable to council meetings shall also apply to public hearings at which a majority of the council is present; such a hearing is considered to be part of a regular or special meeting of the council. A public hearing for which any notices required by the open meetings law or other provisions of law have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the council is present.

At the time appointed for the hearing, the mayor or his or her designee shall call the hearing to order and then preside over it. When the allotted time expires or when no one wishes to speak who has not done so, the presiding officer shall entertain or make a motion to end the hearing.

Rule 29. Quorum at Public Hearings

A quorum of the council shall be required at all public hearings required by state law. If quorum is not present at such a hearing, the hearing shall be continued until the next regular council meeting without further advertisement.

Rule 30. Minutes

Full and accurate minutes of the council proceedings, including closed sessions, shall be kept. The board shall also keep a general account of any closed session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection of the public, except as otherwise provided in this rule.

Minutes and general accounts of closed sessions are sealed and not open to public inspection, but may be unsealed by action of the council when public inspection will not frustrate the purpose of the closed session.

Rule 31. Appointments

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The council may consider and make appointments to other bodies, including its own committees, if any, only in open session. The council may not consider or fill a vacancy among its own membership except in open session.

The Mayor shall vote on appointments that come before the council.

Rather than proceeding by motion, the council shall use the following procedure to make appointments to various other boards and offices: The mayor shall open the floor for nominations, whereupon the names of possible appointees may be forwarded by the town staff and/or council members. The names submitted shall be debated. When the debate ends, the mayor shall call the roll of the members, and each member shall cast his or her vote or may call for the ballots (see Rule 15) of nominees.

The voting shall continue until one nominee receives a majority of the votes cast, whereupon he or she shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes in each balloting as there are slots to be filled, and votes from a majority of the members voting shall be required for appointment. During each balloting, a member may cast all of his or her votes or fewer than all of them, but he or she shall not cast more than one vote for a single candidate.

Rule 32. Committees and Boards

(a) Establishment and Appointment. The council or the mayor, if the mayor is delegated that power by the council, may establish and appoint members for such temporary and standing city committees and boards as are needed to help carry on the work of city government. Any specific provisions of law relating to particular committees and boards shall be followed.

(b) Open Meetings Law. The requirements of the open meetings law shall apply to all elected and appointed authorities, boards, commissions, councils, or other bodies of the city that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi judicial, administrative, or advisory functions. However, the law's requirements shall not apply to a meeting solely among the city's professional staff.

Rule 33. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendments of the rules as one of the stated purposes of the meeting, so long as the amendment is consistent with the city charter, general law, and generally accepted principles of parliamentary procedure.

Rule 34. Reference to *Robert's Rules of Order Newly Revised*

To the extent not provided for in these rules, and to the extent it does not conflict with North Carolina law or with the spirit of these rules, the council shall refer to *Robert's Rules of Order Newly Revised*, to answer unresolved procedural questions.

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| | Motion | Vote Required | Special Requirements |
|----|---|---------------|---|
| 1 | To Appeal a Procedural Ruling of the Presiding Officer | Majority | Is in order immediately after the presiding officer announces a procedural ruling, as specified in Rule 7, and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion if timely made may not be ruled out of order. |
| 2 | To Adjourn | Majority | May not interrupt deliberation of pending substantive matter. Motion to [recess] [adjourn] to a time and place certain must also comply with Rule 2(c). |
| 3 | To Take a Brief Recess | Majority | None |
| 4 | Call to Follow the Agenda | Majority | Must be made at first reasonable opportunity, or the right to make it is waived for the out-of-order item in question. |
| 5 | To Suspend the Rules | Two-Thirds | The council may not suspend provisions of the rules that state requirements imposed by law on the council. |
| 6 | To Go into Closed Session | Majority | Motion must cite one or more of the permissible purposes for closed sessions listed in G.S. 143-318.11(a) and must be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) must also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318.11(a)(3) must identify the parties in each existing lawsuit concerning which the council expects to receive advice during the closed session, if in fact such advice is received. |
| 7 | To Leave Closed Session | Majority | None |
| 8 | To Divide a Complex Motion and Consider it by Paragraph | Majority | None |
| 9 | To Postpone Consideration | Majority | A substantive motion the consideration of which has been deferred expires [100] days thereafter unless a motion to revive consideration (Motion 14) is adopted. While a postponed motion remains pending, a new motion with the same effect cannot be introduced. CAUTION: Do not confuse with Motion 11. |
| 10 | Motion for the Previous Question | Majority | Not in order until there have been at least [20] minutes of debate, and every member has had an opportunity to speak once. |
| 11 | To Postpone to a Certain Time and Day (See Motion 9) | Majority | None |
| 12 | To Refer a Motion to a Committee | Majority | [60] days or more after a motion is referred to a committee, the introducer may compel consideration of the measure by the council, regardless of whether the committee has |

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| | | | |
|----|--|------------|--|
| | | | reported the matter to the council. |
| 13 | To Amend | Majority | (a) Amendments must be pertinent to the subject matter of the motion being amended. An amendment is improper if adoption of the motion with that amendment added has the same effect as rejection of the original motion. A proposal to substitute a different motion shall be treated as a motion to amend. (b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. (c) Any amendment to a proposed ordinance must be reduced to writing before the vote on the amendment. |
| 14 | To Revive Consideration | Majority | In order at any time within [100] days after the day of a vote to postpone consideration (Motion 9). Failure to adopt Motion 14 within the [100] day period results in expiration of the postponed substantive motion. |
| 15 | To Reconsider | Majority | Must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the “nos” prevail). May only be made at the meeting at which the original vote was taken, including any continuation of that meeting through [recess] [adjournment] to a time and place certain. Cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting. |
| 16 | To Rescind or Repeal | Majority | Not in order if recession or repeal of an action is forbidden by law. |
| 17 | To Prevent Reintroduction for [Six] Months | Two-Thirds | In order immediately following defeat of a substantive motion and at no other time. If adopted, the restriction imposed by the motion remains in effect for [six] months or until the next organizational meeting of the council, whichever occurs first. |