

Code of Ethics for the City Council of Clinton, North Carolina

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

WHEREAS, as elected local government officials, we are charged with upholding the trust of the citizens of the City of Clinton, North Carolina and with obeying relevant laws.

NOW, THEREFORE, BE IT RESOLVED in recognition of our obligations as citizens of the State of North Carolina and as elected local government officials representing the citizens of the City of Clinton, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the City Council of Clinton, North Carolina, do hereby adopt the following general principles and code of ethics to guide the City Council in its lawful decision-making. (Hereinafter the terms “elected local government official(s) or elected official(s), the board, board member(s) or elected member(s),” shall be used interchangeably when referring to the City of Clinton City Council.)

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depends 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.
- Elected local government officials 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.

- Elected local government officials must always remain aware that at various times they play different roles:
 - **As advocates**, who strive to advance the legitimate needs of their citizens,
 - **As legislators**, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions, and
 - **As fair and impartial decision-makers**, when making quasi-judicial and administrative determinations.

Elected local government officials must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.

- Elected local government officials 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.

CODE OF ETHICS

Purpose. The purpose of this code of ethics is to establish guidelines for ethical standards of conduct for board members and to provide guidance in determining what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a board member's best judgment.

Section 1. Board members should take care to obey all laws that apply to their official actions as board members. Board members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, board members should feel free to assert policy positions and opinions without fear of reprisal from fellow board members or citizens. To assert that a board member is

behaving unethically based upon a disagreement with that board member based on a question of policy (and not on the board member's ethical behavior) is unfair, dishonest, irresponsible, and itself unethical.

The board shall endeavor to keep itself up-to-date, through its attorney or other sources, of new or on-going legal or ethical quandaries or difficulties that they may face in their official positions.

Section 2. Board members should act with integrity and with independence from improper influence as they exercise the functions of their offices.

Board members should use their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner. They should be self-governing and not subject to improper influence, while at the same time being able to consider the opinions and ideas of others.

At the same time, however, board members should recognize that they are part of a larger group and should act accordingly. They should respect their office and not behave in ways that reflect badly on it. They should treat other board members and the public with respect, and should honor the opinions of others even when they disagree. They should recognize that they are not generally authorized to act on behalf of the board, since the board must take official action as a body.

Section 3. Board members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. A board member is considered to be acting with impropriety if a reasonable person who was made aware of the totality of the circumstances surrounding the board member's action would conclude that it was more likely than not that the behavior did not befit someone in the board member's position.

If a board member concludes that his or her actions, while legal and ethical, may be misunderstood, he or she may seek the advice of the board's attorney. He or she may also state on the record the facts of the situation and the steps taken to resolve it.

Section 4. Board members of local governing boards should be faithful in the performance of the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect.

Board members should be faithful in their attendance at meetings and in their preparation for those meetings. They should carefully analyze all credible information that is provided to them.

As a group of citizens to whom much has been entrusted, the board should demand full accountability from those over whom it has authority. The board should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

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

Section 5. Board members of local governing boards should conduct the affairs of their boards 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. This recognition includes sensitivity to those matters recognized by law. The board should remember when meeting that they are conducting the public's business. They should also remember that the records of their local government belong to the public and not to them or their employees. They should make clear that a climate of openness is to be maintained at all times in their governmental units.

In order to ensure strict compliance with the laws governing openness, governing board members should strive to be open. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps before they go into closed session for any reason, to ensure that the closed session will be lawful.

Censure Procedures. If the elected board has reason to believe that one of its board members has violated a provision of this code of ethics, it may open an investigation into the matter. All information compiled, including the grounds for the finding of probable cause, shall be shared with the board member when it is received. All information pertaining to the case shall be open to public inspection and copying as pursuant to the North Carolina General Statute §132-1.

Should the board determine, by a minimum two-thirds majority, that it wishes to proceed further with censure proceedings, it shall call for a quasi-judicial hearing 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 published twice in two separate calendar weeks in a newspaper of general circulation or shall be advertised for the same amount of time on the jurisdiction's website. The notice shall state that a detailed list of the allegations against the board member is available for public inspection and copying in the office of the city clerk.

The hearing shall be convened at the time and place specified. Any and all votes during the hearing and any deliberations that follow shall be taken by the "ayes" and "noes" and recorded in the board's minutes. The hearing and any deliberations shall be conducted in open session in accordance with the requirements of the North Carolina open meetings statutes – General Statutes §143-318.9 and §143-318.10. The rules governing the hearing shall be those that apply to a standard quasi-judicial hearing. For purposes of illustration but not limitation, 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. An audio or video recording of the proceedings shall be prepared.

The accused board member shall have the right to challenge the participation of any other board member or the presiding officer based on bias or self-interest. If such a challenge is made, the board shall immediately hear evidence and vote on the challenge. Neither the accused board member nor the board member whose participation is challenged may vote, although both may offer evidence. The challenge shall be decided by a majority vote of those present and voting, a quorum being present.¹

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall next entertain a motion to adopt a non-binding resolution censuring the board 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 non-binding resolution of censure stating particular grounds under the code of ethics has been made, the board shall debate the motion. The accused board member and any other board members who have been removed from participation because of bias or self-interest may remain present, but shall not be allowed to participate in the debate. At the conclusion of the debate, the board members shall vote, except for the accused board member and any other board members who have been removed from participation. If the motion is approved by a minimum two-thirds vote of those present and voting, a quorum being present, the motion is approved and the non-binding resolution of censure is adopted.

¹ 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 153A-43, 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. Since a censure proceeding is a quasi-judicial matter, board members should also be excused from voting if they are impermissibly biased in the matter under consideration. This is the basis for excusing members other than the person who is being directly accused.

The non-binding resolution of censure shall be made a part of the minutes of the board. Any recording of the board's quasi-judicial proceedings shall be approved by the board as a permanent part of the board's minutes. The proceedings shall then be considered concluded, the board having done all that it legally can with respect to the matter in question.

Legal Enforcement. As explained in the prior section and elsewhere in the code of ethics, local governing boards have no legal power to bring criminal or other charges against each other, or otherwise to control each other's behavior directly. At the same time, the board expects that individual board members will probably wish to behave in a manner that is both legal and ethical.

We offer the following legal rules² that also relate to ethical principles to help meet this need. Local governing board members should consider legal restrictions in terms of behavior that they should avoid. While requirements found in the law should be viewed as a minimum standard, board members should always consider whether there are ethical problems with other

behavior, even if it does not violate criminal or other statutes dealing with conflicts of interest or other subjects:

- 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 The committee thanks Professor Frayda Bluestein of the UNC School of Government for this part of the code documents.

- Avoid attempting to influence others who are involved in making or administering a contract on behalf of the public agency, even if you are not 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.)
- 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.)
- Consider the ethical and practical consequences of deriving a direct benefit from a contract that is 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).)

- 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.)
- 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.)
- Avoid receiving any gift or favor from a current, past, or potential contractor. (G.S. 133-32(a); criminal penalty.)
- 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).)
- Avoid voting on matters involving your own financial interest or official conduct. (G.S. 160A-75; 153A-44.) Disclose the existence of the direct financial interest in advance, and, when in doubt, obtain an opinion from your local attorney about whether you must vote or may be excused.
- 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.
- Do not participate in or vote on any quasi-judicial matter, including matters that come before the board when acting in a quasi-judicial capacity under G.S. 160A-388 or 153A-345, if participation would violate affected persons' constitutional right to an impartial

decision-maker. Impermissible conflicts under this standard include 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. (G.S. 381(d), 160A-388(e1), 153A-340(g), 153A-345(e1); violation of constitutional standard by one board member invalidates the entire vote.)

- 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 or requirement to be excused from voting.
- Avoid secret meeting(s) before the actual city council meeting.