

## **Code of Ethics for the Board of County Commissioners of Orange County, North Carolina**

**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 and residents of Orange County, and with obeying the law, and

**WHEREAS**, as public officials of Orange County we believe our citizens and residents are entitled to the most open and ethical government possible under the law.

**NOW THEREFORE**, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens and residents of Orange County and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Orange County Board of Commissioners, do hereby adopt the following General Principles and Code of Ethics to guide the Board of County Commissioners in its lawful decision-making. The Orange County Board of Commissioners directs all advisory boards and committees, which currently serve, or which may in the future be created to serve, the Board of County Commissioners, to respect and abide by these same General Principles and Code of Ethics in the performance of their lawful duties insomuch as they may be applicable to the performance thereof.

## 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.
- 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 residents,
  - 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.

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.

# CODE OF ETHICS

## Purpose.

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Board of County Commissioners 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.

(a) Board members should obey all laws that apply to their official actions as members of the board. 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 due to the fact that one has 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 is itself unethical.

(b) Board members should endeavor to keep themselves up-to-date, through the board's attorney, of the most pertinent constitutional, statutory, and other legal requirements with which they must be familiar in order to meet their legal responsibilities. A list of applicable laws and regulations accompanies this Code as Attachment "A".

(c) Board members shall comply with General Statute §160A-87 in receiving two clock hours of ethics education within 12 months of each appointment or election to office. Board members may additionally receive two clock hours of ethics education annually, but failure to receive such additional ethics education shall not constitute a violation of this Code of Ethics.

## Section 2.

Board members should act with integrity and with independence from improper influence as they exercise the functions of their offices. Characteristics and behaviors that are consistent with this standard are:

- Adhering firmly to a code of sound values.
- Behaving consistently and with respect towards everyone with whom they interact.
- Exhibiting trustworthiness.
- Living as if they are on duty as elected officials regardless of where they are or what they are doing.
- 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.

- Remaining incorruptible, self-governing, and not subject to improper influence, while at the same time being able to consider the opinions and ideas of others.
- 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.
- Treating other board members and the public with respect, and honoring the opinions of others even when they disagree.
- Being careful not to reach conclusions on issues until all sides have been heard.
- Showing respect for their office and not behaving in ways that reflect badly on it.
- Recognizing that they are part of a larger group and acting accordingly.
- Recognizing that individual board members are not generally allowed to act on behalf of the board, but may only do so if the board specifically so authorizes, and that the board must take official action as a body.

### **Section 3.**

(a) Board 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 board will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the board member's action would conclude that the action was inappropriate.

(b) Board members shall, at the first regular meeting after the annual organizational meeting of the Board immediately after assuming office, and annually thereafter, file with the Clerk to the Board of County Commissioners a written statement describing any interest he or she or his or her spouse or domestic partner has in real property situated in whole or in part in Orange County and the general description or location of that property.

(c) Board members shall, at the first regular meeting after the annual organizational meeting of the Board immediately after assuming office, and annually thereafter, file with the Clerk to the Board of County Commissioners a written statement describing any legal, equitable, beneficial or contractual interest he or she or his or her spouse or domestic partner has in any business, firm or corporation, which is currently doing business with Orange County pursuant to contracts awarded by Orange County, or is attempting, or has attempted in the past calendar year, to secure the award of a bid from Orange County or the approval of

any Board or Agency of Orange County.

(d) If a board member believes that his or her actions, while legal and ethical, may be misunderstood, he or she should seek the advice of the board's attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it, such as consulting with the attorney.

(e) Sections 3(b) and 3(c) shall specifically apply to the Board of County Commissioners of Orange County, Board of Adjustment of Orange County, Planning Board of Orange County and Board of Equalization and Review of Orange County and any other advisory boards or committees specifically designated by the Board of County Commissioners except that members of boards other than the Board of County Commissioners shall file the required disclosure within 30 days of their initial and subsequent appointments to said boards.

#### **Section 4.**

Board members should be faithful in the performance of the duties of their offices. They should act as especially responsible citizens 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.

Board members should faithfully attend and prepare for meetings. They should carefully analyze all credible information that is 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 board has authority.

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.**

Elected 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. They should remember when they meet 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.

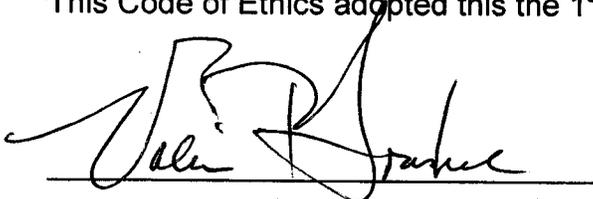
In order to ensure strict compliance with the laws governing openness, governing board members should strive to be open. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to ensure that any closed sessions held

by the board are lawfully conducted, and that such sessions do not stray from the purposes for which they are called.

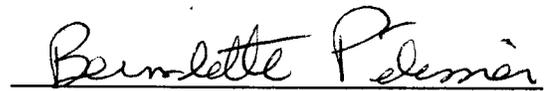
**Section 6.**

If, by a majority vote of the board, the board has reasonable cause to believe that one or more of its members has violated a provision of this Code of Ethics, it may at a regular meeting of the Board of County Commissioners direct the County Attorney to open an investigation into the matter. All information compiled, including the grounds for the finding of reasonable 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 of a violation of this Code of Ethics, the board has reasonable cause to believe that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney. Should the board determine that it wishes to proceed further with censure proceedings, it shall, by a majority vote, call for a hearing to be held at a regular meeting or at a special meeting convened for that purpose and shall adhere to the procedures set out in Attachment "B" "Censure Procedure". This section shall apply only to the Board of County Commissioners of Orange County.

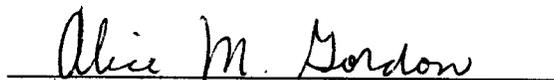
This Code of Ethics adopted this the 1<sup>st</sup> day of June, 2010.



Valerie Foushee, Chair



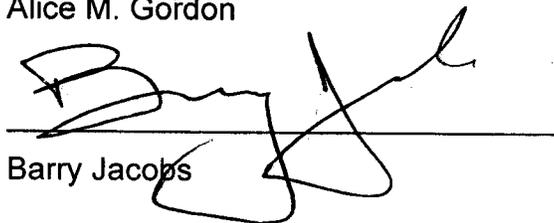
Bernadette Pelissier, Vice Chair



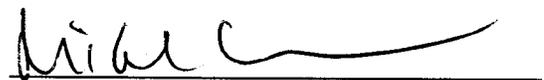
Alice M. Gordon



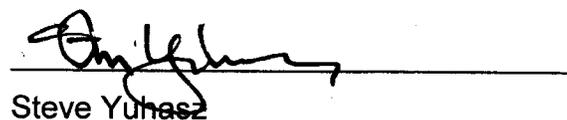
Pam Hemminger



Barry Jacobs



Mike Nelson



Steve Yuhasz

**ATTACHMENT "A"**  
**APPLICABLE LAWS AND REGULATIONS**

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 who are 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.)
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 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).)
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 that your board can determine whether or not you have a conflict that allows 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); 160A-381(d).)
11. 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. 153A-345 or 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 else who is involved in the matter that occur outside the official quasi-judicial proceeding]"; "a close familial, business, or other associational relationship with an affected person"; or "a financial interest in the outcome of the matter." (153A-345(e1), 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 or requirement to be excused from voting. (G.S. 153A-44; 160A-75.)

## **ATTACHMENT "B"**

### **CENSURE PROCEDURE**

Notice of the required public 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 or secretary to the board.

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 requirements of the North Carolina open meetings statutes. The County Attorney shall conduct the hearing and shall carry the burden of proving the allegations by a preponderance of the evidence.

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 board member or the presiding officer and shall have the burden of proving such bias by a preponderance of the evidence. 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 board's minutes.

Once the hearing is concluded, it shall be closed by a majority vote of the board. The presiding officer shall next entertain a motion to adopt a 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 and stating that the evidence presented has met the burden of proof. If the motion or resolution does not state particular grounds for censure under the Code of Ethics or state that the evidence presented has met the burden of proof, the presiding officer shall rule it out of order.

If a motion to adopt a resolution of censure stating particular grounds under the Code of Ethics has been made and appropriately seconded, the board shall debate the motion. The accused member shall be allowed to participate in the debate, but shall not vote on the motion to adopt the resolution of censure.

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the resolution of censure is approved by a two-thirds vote of those present and voting, a quorum being present, the motion passes and the non-binding resolution of censure is adopted.

The text of the resolution of censure shall be made a part of the minutes of the board. Any recording of the board's 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.