Polk County Board of Commissioners of
Polk County, North Carolina
Code of Ethics

PREAMBLE

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 this county, and with obeying 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 of the County of Polk and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Polk County Board of Commissioners do hereby adopt the following General Principles and Code of Ethics to guide the Polk County Board of Commissioners in its lawful decision-making.

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
- As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions
- 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.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Polk County Board of Commissioners and to help determine 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 obey all laws applicable 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 declare that a board member is behaving unethically because one disagrees with that board member on a question of policy (and not because of the board member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Board members should endeavor to keep up to date, through the board's 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 board may receive concerning specific situations that arise.

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 opposed to legal, the official should seek the counsel of other board members and trusted advisors, again including the government's attorney.

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 board

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 board 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 board's action by that member's involvement. The 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 board 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). [4] As noted in Section 3 of the Model Code and elsewhere in this guidebook, while board members must obey the statutes, the board has no power to enforce the law against its members. 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 board 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 quashed.

This 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 board members, as well as being trusted advisors on particular legal matters.

[1] The constitutional oath of office may be found in Article VI, Section 7, of the North Carolina Constitution.
[2] See G.S. 153A-44 and G.S. 160A-75. 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. 160A388(e1) (quasi-judicial decisions). [4] See also the Comment to Section 3b of the Model Code.

Section 2. Board 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
• Behaving consistently and with respect toward 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 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 unaffected by 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 the board members disagree with those opinions
• Not reaching conclusions on issues until all sides have been heard
• Showing respect for their offices and not behaving in ways that reflect badly on those offices
• 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 do so only if the board specifically authorizes it, and in the manner authorized by the board, and that the board must take official action as a body

Comment. The dictionary defines integrity[5] 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 or who is or is not watching. They are faithful, trustworthy, respectful of others, and incorruptible.

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 then 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.

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 oft en 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 board members and for everyone else whom they encounter is essential, as is a willingness to listen to the opinions of others even if a board member disagrees with them.

[5] Merriam-Webster's Collegiate Dictionary, 11th ed., s.v. "integrity."

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.

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 board member's action would conclude that the action was inappropriate.

Some local 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 board 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. Boards 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 board member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the board's attorney[6] and/or the University of North Carolina School of Government and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney or School of Government).

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 board members to "clear the air" and avoid misunderstandings about apparent ethical breaches.

For city and county elected board 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 board 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.[7] 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 nonprofit 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 nonprofit entity in receiving as much money as possible. The governing board member must participate in decisions concerning money, even though the member may feel a conflict between two different fiduciary obligations.[8]

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.[9]

[6] See the second paragraph of the Comment to Section 1.
[7] See also the Comment to Section 1.
[8] For further discussion of conflict issues when nonprofit entities are involved, see Frayda S. Bluestein, "Board Members Who Serve on Nonprofit Boards—Conflict of Interest? Coates' Canons, UNC School of Government, September 30, 2009, http://sogweb.sog. unc.edu/blogs/localgovt/?p=823.
[9] 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).

Section 4. Board members should faithfully perform the duties of their offices. They should act as the especially responsible citizens[10] 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 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.

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"[11]—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 board or committee. Board 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 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 board's interests ahead of their own to the extent appropriate. Thus, for example, a faithful board member should bear his or her fair share of the elected board's workload. As another example, a board member should generally be willing to keep confidential information from legally called and held closed sessions and to keep private information that the board's attorney has determined is confidential.

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

[10] 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).
[11] Ibid.

Section 5. Board members should conduct the affairs of the board 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 board members or their employees.

In order to ensure strict compliance with the laws concerning openness, board 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 board 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.[12]

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.[13]

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 board 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 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 for a description of the potential effects of violating the open meetings statute, and G.S. 132-9 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 board adheres to the principles of Section 5.

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)

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.

[12] G.S. 143-318.9.
[13] G.S. 132-1(b).

Censure Procedures. If a majority of the board has reason to believe that one of its members has violated a provision of this Code of Ethics, it 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 board concludes 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 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 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 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 board 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 board's minutes.

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 nonbinding 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 nonbinding 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 board shall debate the motion. The accused member shall be allowed to participate in the debate and shall also be allowed to vote on the motion to adopt the resolution.[14]

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a majority

vote of those present and voting, a quorum being present, the motion passes and the nonbinding resolution of censure is adopted.[15]

The text of the nonbinding 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 minutes. The proceedings shall then be considered concluded, the board 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 board member from office.[16] 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.[17]

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.[18] 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 board can do is register its displeasure with a member's conduct, either by some form of political persuasion or by adoption of a nonbinding resolution censuring the member. Such a resolution is an effective way to make public the board's conclusion that a violation of the code has occurred and to provide information to the voters, who ultimately have the authority to take action against the 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 board member and to the member's reputation. It is perhaps more detailed than some 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 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 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 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).[19]

However, the 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 board member if the district attorney or a law enforcement agency wanted to inform the board about the investigation.

Since there are no statutory guidelines for this type of hearing, the 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 board should also consider the extent to which whatever procedures it chooses comport with its code of ethics, which binds all of the board members.

A 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 15, 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.[20]

[14] 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.

[15] There is no legal authority for a 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 board attorneys may advise their boards to require a supermajority vote to help avoid possible misuse of the censure process for political purposes.

[16] 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).

[17] 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.

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

[19] 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).

[20] See note 15.