

SESSION LAW 2019-224 CONFLICT OF INTEREST POLICY STATEMENT

CHECKLIST

1/8/2020

GRANTEE: TOWN OF ELM CITY

Instruction: Attach Copy of Grantee's Policy to Checklist

COI POLICY REVIEW QUESTIONS		YES	NO	ACTION REQUIRED (NA-No Action or R&RS-Revise and Resubmit)
1	Does COI Policy include any definitions?	X		
2	Does COI Policy apply to state funded grants?	X		
3	Does COI Policy apply to federal funded grants?	X		
4	Does COI Policy include reference to or copies of Statutes regarding conflicts of interests and prohibition of gifts to public officials and public employees?	X		
5	Does COI Policy identify employees or position that must comply with the COI policy?	X		
6	Does COI Policy Cover Grantee's Management Employees ("MEs")?	X		
7	Does COI Policy Cover Grantee's Governing Body Members ("GBMs")?	X		
8	Does COI Policy address situation of Grantee's MEs and GBMs may directly benefit from Grantee's disbursement of State grant funds?	X		
9	Does COI policy define or give examples of direct benefits?	X		
10	Does COI Policy address situation of Grantee's MEs and GBMs may indirectly benefit from Grantee's disbursement of State grant funds?	X		
11	Does COI policy define or give examples of indirect benefits?	X		
12	Does COI Policy include actions or processes in avoiding COIs?	X		
13	Does COI Policy include actions or processes in avoiding appearance of impropriety?	X		
14	Does COI Policy include sanctions or disciplinary action taken against Grantee's MEs and/or GBMs for violating the COI Policy?	X		
CONCLUSION		APPROVED		
COMMENTS: COI Policy is comprehensive and a good model.				

Completed by

Durwin P. Jones

Durwin P. Jones, OSBM-DR General Counsel

1/8/2020

Date

CONFLICT OF INTEREST POLICY FOR THE TOWN OF ELM CITY

Article I: Purpose

This Conflict of Interest Policy is designed to foster public confidence in the integrity of the Town of Elm City (the "Town") and to protect the Town's interest when it is contemplating entering into a transaction (defined below) that might benefit the private interest of an elected Commissioner or an insider (defined below). This Conflict of Interest Policy replaces and supersedes any other Conflicts of Interest Policies previously adopted.

Article II: Definitions

The following are considered *insiders* for the purposes of this policy:

1. The mayor and each member of the Elm City Board of Commissioners;
2. The Town Administrator, Town Clerk, Town Finance Officer, or any other person with the responsibilities of any of these positions;
3. Any *key employee*. A key employee is one who (a) has responsibilities or influence over the Town similar to that of Commissioners, or (b) manages a program that represents ten percent (10%) or more of the activities, assets, income, or expenses of the Town, or (c) has or shares authority to control ten percent (10%) or more of the Town's capital expenditures, operating budget, or compensation for employees.

Interest means any benefit, commitment, investment, relationship, obligation, or involvement, financial or otherwise, direct or indirect, that may influence a person's judgment, including receipt of compensation from the Town, a sale, loan, or exchange transaction with the Town.

A *conflict of interest* is present when, in the judgment of the Board of Commissioners, an insider's stake in the transaction is such that it reduces the likelihood that an insider's influence can be exercised impartially in the best interests of the Town.

Conflicts of interest arise in violations of the following sections of the North Carolina General Statutes:

§ 14-234 (prohibition against deriving a direct benefit from any contract in which a person is involved on behalf of the Town)

§ 14-234.1 (prohibition against improper use of confidential information)

§ 133-32 (prohibition against accepting gifts or favors)

A *direct benefit* occurs when a public officer or employee, or his or her spouse, (1) owns more than ten percent (10%) of an entity that is a party to a contract with the Town, or that is a party to a subcontract with a party to a contract with the Town, or (2) derives any income or commission directly from the contract, or (3) acquires property under the contract.

Transaction means any contract, agreement, or arrangement between an insider and the Town, or between the Town and any third party where an insider has an interest in the transaction or any party to the transaction.

Transaction also means any contract, agreement, or arrangement associated with federal or state funded grants awarded to the Town.

Article III: Procedures

1. *Duty to Disclose*

Each insider shall disclose to the Board and the Town Attorney all material facts regarding his or her interest in the transaction, promptly upon learning of the proposed transaction.

2. *Determining Whether a Conflict of Interest Exists*

With regard to an insider, the Board shall determine if a conflict of interest exists. The insider(s) and any other interested person(s) involved with the transaction shall not be present during the Board's discussion or determination of whether a conflict of interest exists, except as provided in Article IV below.

3. *Procedure for Addressing a Conflict of Interest*

The Board shall follow the procedures set forth in Article IV in order to decide what measures are needed to protect the Town's interests in light of the nature and seriousness of the conflict, to decide whether to enter into the transaction and, if so, to ensure that the terms of the transaction are appropriate.

Article IV: Review by the Board

The Board may ask questions of and receive presentations(s) from the insider(s) and any other interested person(s), but shall deliberate and vote on the transaction in their absence. The Board shall ascertain that all material facts regarding the transaction and the insider's conflict of interest have been disclosed to the Board and shall compile appropriate data, such as comparability studies, to determine fair market value for the transaction.

After ascertaining due diligence, which may include investigating alternatives that present no conflict, the Board shall determine whether the transaction is in the Town's best interest, or its own benefit, and whether it is fair and reasonable to the Town; the majority of disinterested members of the Board then in office may approve the transaction.

Article V: Records of Proceedings

The minutes of any meeting of the Board pursuant to this policy shall contain the name of each insider who disclosed or was otherwise determined to have an interest in a transaction; the nature of the interest and whether it was determined to constitute a conflict of interest; any alternative transactions considered; the members of the Board who were present during the deliberations on the transactions, those who voted on it, and to what extent interested persons were excluded from the deliberations; any comparability data or other information obtained and relied upon by the Board and how the information was obtained; and the result of the vote, including, if applicable, the terms of the transaction that was approved and the date it was approved.

Article VI: Annual Disclosure and Compliance Statements

Each Commissioner and the Mayor, the Town Administrator, the Town Clerk, the Town Finance Officer, and each key employee of the Town, shall be provided a copy of this policy.

Article VII: Violations

If the Board has reasonable cause to believe that an insider of the Town has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a related interested person, it shall inform such insider of the basis for this belief and afford the insider an opportunity to explain the alleged failure to disclose. If, after hearing the insider's response and making further investigation as warranted by the circumstances, the Board determines that the insider has failed to disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action.

Article VIII: Annual Reviews

To ensure that the Town operates in a manner consistent with its status as an organization exempt from federal income tax, the Board shall authorize and oversee an annual review of the administration of this conflict of interest policy. The review may be written or oral. The review shall consider the level of compliance with the policy, the continuing suitability of the policy, and whether the policy should be modified and improved.

Resolved, this the 17th day of December, 2019



Mayor



Town Clerk

CODE OF ETHICS for the BOARD OF COMMISSIONERS of the TOWN OF ELM CITY

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

WHEREAS, each member, including the Mayor, of the Board of Commissioners is charged with upholding the trust of the citizens of Elm City and with obeying the law; and

NOW, THEREFORE, in recognition of our obligations as citizens of the State of North Carolina, and as public officials representing the citizens of Elm City, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Board of Commissioners for the Town of Elm City do hereby adopt the following General Principles and Code of Ethics to guide the Board of Commissioners in its lawful decision making:

GENERAL PRINCIPLES

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 the 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.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Board of Commissioners and to help to 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. The terms, "Board of Commissioners," "Board," and "Board Members" shall be construed to include the Mayor.

(1) Board members should obey all laws applicable to their official actions as members of the Elm City Board of Commissioners. 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 of disagreements on questions of policy (and not because of the council member's behavior) is unfair, irresponsible, and itself unethical.

Board members should endeavor to keep up to date, through the Town Attorney and other sources such as the UNC School of Government, about new or ongoing legal or ethical issues they may face in their official positions. Newly elected or re-elected Commissioners are required by State law to go through two (2) hours of ethics training within the first year following election. These educational functions are in addition to the day-to-day legal advice the Board may receive concerning specific situations that arise.

(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 are doing.
- Using their best independent judgment to pursue the common good as they see it, presenting their opinion 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 contracts 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 council members and the public with respect and honoring the opinions of others even while the council 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 on those offices.
- Recognizing that they are a 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 authorizes it, and that the Board must take official action as a body.
- Avoiding conflicts of interest, in accordance with the Town's Conflict of Interest Policy.

(3) 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.

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 Town Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it.

(4) Board members should faithfully perform 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 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.

(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 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 government unit. They should prohibit unjustified delay in fulfilling public record requests. They should take deliberate steps to make certain that any closed sessions are lawfully conducted and that such sessions do not stray from the purpose for which they are called.

(6) Board members should be informed concerning campaign finance, conflict of interest, and other appropriate state and federal laws and will scrupulously comply with the provisions of

such laws. Each member should refrain from financial and business dealings that tend to reflect adversely on the Board or on Town government, or that interfere with the proper function of the Town. Each member should manage his or her personal financial interests to minimize the number of cases in which he or she must ask to be excused from voting on matters coming before the Board. Each member should not disclose any information acquired in his or her official capacity as a Town Commissioner or Mayor in financial dealings or for any other purpose not related to official duties.

THIS CODE OF ETHICS SUPERCEDES AND REPLACES ANY PRIOR CODE OF ETHICS ADOPTED BY THE BOARD OF COMMISSIONERS.

Resolved, this the 17th day of December, 2019.



Mayor



Town Clerk