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Overview

Chapter 160D clarifies the rules for conflicts of interest for local government elected officials, appointed board members, and administrative staff. These clarified rules must be incorporated into local ordinances, procedures, or policies. This guidance provides more detail on how the new conflict of interest provisions can be legally established and administered, outlines sample language that may be incorporated into local ordinances or policies, surveys ordinance provisions used by communities in North Carolina, and provides additional resources on ethics in land development regulation.

Basic Provisions

Chapter 160D makes significant changes to the various conflict-of-interest provisions that apply to governing boards, advisory boards, and staff administering development regulations. Those various provisions are consolidated in G.S. 160D-109.

Governing Boards and Appointed Boards

- *Financial conflicts.* A board member must not vote on a decision if the outcome would have a direct, substantial, and readily identifiable financial impact on the board member.
- *Relationship conflicts.* A board member must not vote on a decision if the board member has a close family, business, or associational relationship with certain interested individuals (relationship with the property owner for a rezoning, the applicant for a text amendment, and an affected person for quasi-judicial decision).
- *Additional Conflicts for Quasi-Judicial Decisions.* In addition to the financial and relationship conflicts, for quasi-judicial decisions a board member also must not vote if the board member has bias or undisclosed *ex parte* communications. This was the case under prior law also.
- *Resolving objections.* Board members may recuse themselves. If there is objection to a board member participating, and the member chooses not to recuse, then the remaining members of the board must vote on the member's participation.

This Chapter 160D Guidance is one in a series of guidance documents intended to provide supplemental information on specific topics. Additional guidance documents, training videos, an explanatory book, and other Chapter 160D resources are available at nc160D.sog.unc.edu.

Administrative Staff

- **Financial conflicts.** A staff person cannot make a decision if the outcome would have a direct, substantial, and readily identifiable financial impact on that person.
- **Relationship conflicts.** A staff person cannot make a decision if that person has a close familial, business, or other associational relationship with the applicant or other person subject to the decision.
- **Business conflicts.** Staff cannot have a financial or employment interest in a business with a financial interest in a development in the jurisdiction. An exception is provided for when the staff person is the owner of the property.
- **Additional conflicts.** The conflict standard also prohibits administrative staff from engaging in work that is inconsistent with their duties or the interest of the local government. Local government policy can help clarify those expectations.
- **Conflicts and Staff Recommendations.** While the statute does not explicitly refer to staff recommendations (such as a recommendation on a rezoning), it is prudent to apply the same conflict of interest standards as when the administrator is the decision-maker.

Key Considerations

When drafting ordinance language to address conflicts of interest, it is important to make sure the resulting language complies with applicable law and meets the policy interests of the governing board. Here are some important considerations.

- **Statutory Minimum.** The statutory conflict of interest provisions set the floor for conflict of interest standards. Local governments may choose to add stricter conflict provisions. For administrative staff, for example, state law prohibits staff from engaging in work that is inconsistent with their duties or the interest of the local government. Local government policy can help strengthen and clarify that requirement. Additionally, note that these conflict of interest standards are in addition to, not replacing, other various legal and ethical limitations.
- **Quick Guide.** Consider providing a reference sheet or summary of applicable conflicts of interest to decision-makers, staff, and other participants in the local planning process.
- **Ordinance Drafting Options.** Local governments can choose from several options for incorporating the conflict of interest standards from Chapter 160D: copy the statutory language, incorporate the statutory language by reference, or craft more restrictive local rules. Each is discussed below. Regardless of the approach, it is helpful for a local government to provide a quick guide of applicable conflicts provisions.

- *Cut-and-Paste.* A local government may copy the state statutory provisions into the local ordinance. The benefit of this approach is that it would serve as a reminder to decision-makers, staff, and other participants in the local planning process of what the state requirements are and provide an accessible reference. The drawback is that the statutes may change again, requiring a local government to update this provision of its ordinance.

The language could be included altogether in a single section on conflicts of interest in the local development regulations, or broken out into the separate ordinance sections describing the responsibilities of the governing board, appointed boards, administrative staff, and quasi-judicial bodies in the land use decision-making process. If provisions are separated to different sections, take care to ensure the language for “Resolution of Objection” and “Familial relationship” is included or referenced in each section.

- *Incorporate by Reference.* The local government may adopt the state conflict of interest standard by incorporating the provisions by reference. This would provide the benefit of reminding decision-makers, staff, and other participants in the local planning process that there are state requirements, but would make them a little bit harder to find, unless the local government included links to the state statutes or provided a reference page or summary. The drawback again is that the statute references might change, requiring a local ordinance change, although this is less likely than a change in the specific statutory language. If local governments would like to take this approach, they can include a reference to “North Carolina General Statutes §160D-1-9. Conflicts of interest” in a single section on conflicts of interest in the local development regulations, or by referencing the appropriate statutory subsections (a, b, c, d) in the separate ordinance sections describing the responsibilities of the governing board, appointed boards, administrative staff, and quasi-judicial bodies in the land use decision-making process.
- *Strengthen State Minimums.* A local government may establish more stringent local ethics requirements. A local government may find benefit in establishing additional ethical requirements beyond what state law currently requires. For example, a local provision could establish requirements regarding gifts, equal treatment of local government clients, incompatible employment, and other ethical considerations, and could enumerate possible penalties for violations. Sometimes these and other conflict of interest requirements are included in local Human Resources policies.

- **Continuing ethics education.** State law requires local government governing board members to take two hours of ethics education within a year after each election or appointment to office. State law does not require continuing ethics education for local government employees and local appointed board members. However, a local government can establish such a requirement through a local policy or ordinance.
- **Local ethics policy.** Beyond these conflict of interest requirements for development regulations decisions, each local governing board subject to the state ethics education requirement must adopt a local ethics policy that directs board members to:
 - A) obey all applicable laws regarding official actions taken as a board member.
 - B) uphold the integrity and independence of the board member's office.
 - C) avoid impropriety in the exercise of the board member's official duties.
 - D) faithfully perform the duties of the office.
 - E) conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

Statutory Authorization

Here is G.S. 160D-109 for quick reference.

§ 160D-109. Conflicts of interest.

(a) *Governing board.* A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) *Appointed boards.* Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) *Administrative staff.* No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) *Quasi-judicial decisions.* A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) *Resolution of Objection.* If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) *Familial relationship.* For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Example Ordinance Provisions

The best sample ordinance language is from the statutes. General Statute 160D-109 clearly and succinctly lists the applicable conflict of interest standard. Of course, additional provisions or altered phrasing may be appropriate for a given ordinance or community. Here are some local ordinance provisions as examples. Please note that many of these statements were developed

prior to the 2019 passage of Chapter 160D. Minor revisions are noted to align with Chapter 160D.

GOVERNING BOARDS

Alleghany County: Code of Ethics for the Board of Commissioners of Alleghany County, NC (2020)

<http://alleghanycounty-nc.gov/CommissionersPDFS/CodeofEthics.pdf>

Notes: Includes language that provides more detail on how to comply with the five principles required by the state for governing boards.

City of Charlotte: Code of Ethics, Gift Policy, and Disclosure Requirements for the Mayor and City Council (2020)

<https://charlottenc.gov/CityClerk/Documents/Code%20of%20Ethics%20Mayor%20and%20Council.pdf>

Notes: Includes a gifts policy and a procedure for filing complaints.

Cumberland County: Board of Commissioners Code of Ethics (2020)

<https://www.ncacc.org/DocumentCenter/View/2736/Cumberland-County-Code-of-Ethics?bidId=>

Notes: Includes language that provides more detail on how to comply with the five principles required by the state for governing boards.

Town of Kernersville: Code of Ethics for the Kernersville Board of Aldermen (Resolution R-2019-36) (2020)

<https://toknc.civicweb.net/document/20774>

Notes: Includes additional principles beyond the five required by state law for governing boards.

APPOINTED BOARDS

Town of Nags Head Unified Development Ordinance (2020)

Section 2.3 Conflicts of Interest.

Members of the Board of Commissioners, Planning Board, and Board of Adjustment must act in the public interest and not to advance their own financial interests. A member of an elected board, planning board, or board of adjustment may not vote on an UDO action where there is a potential financial conflict of interest. A board member with a financial interest in the outcome of the decision may not participate in making decisions on rezonings and other legislative zoning matters. [An appointed board member shall not vote on any zoning amendment if the landowner of the property

subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.] With quasi-judicial zoning decisions, board members may not participate in a matter involving someone with whom they have a close family, associational, or business relationship, nor may they participate if they have a bias (defined as fixed opinion that is not susceptible to change upon hearing the facts at the hearing). When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If a member states a conflict of interest or if an objection is raised to a member's participation, the remaining members shall by majority vote decide if the member is excused from participation.

City of Wilson Unified Development Ordinance (2020)

Chapter 14: Administrative Agencies

14.7.3 CONFLICTS OF INTEREST

Members of boards and commissions shall not vote on recommendations, permits, approvals, or other issues where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. No member shall be excused from voting except upon those matters as noted, above, or upon those others involving the consideration of his own financial interest or official conduct.

QUASI-JUDICIAL BOARDS

Buncombe County Zoning Ordinance (2020)

DIVISION 3. BOARD OF ADJUSTMENT

Sec. 78-618. Rules of conduct.

- (a) Members of the board of adjustment may be removed by the board of commissioners for cause, including violation of the rules stated in this section.
- (b) Faithful attendance at meetings of the board of adjustment and conscientious performance of the duties required of members of the board of adjustment shall be considered a prerequisite of continuing membership on the board of adjustment.
- (c) A member of the board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome

of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(d) No board of adjustment member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that a member may receive and/or seek information pertaining to the case from the zoning administrator or any other member of the board of adjustment or its clerk prior to the hearing.

(e) Members of the board of adjustment shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(f) No board of adjustment member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise, from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the county.

(g) No board of adjustment member shall accept any gift, favor, or thing of value that may tend to influence that board member in the discharge of duties.

(h) No board of adjustment member shall grant any improper favor, service, or thing of value in the discharge of duties.

ADMINISTRATIVE STAFF

City of Fayetteville (2020)

Code of Ethics (click on the link below and scroll down to "Code of Ethics")

<https://fayettevillenc.gov/government/city-council/city-council-policies>

Notes: Includes some provisions that are applicable to staff, includes a policy on gifts, establishes an Ethics Commission, and delineates a policy for determining violations and making appeals.

Other Resources on Ethics

The UNC School of Government provides several publications on ethics and conflicts of interest, including

- Frayda S. Bluestein and Norma R. Houston, "Chapter 7 -- Ethics and Conflicts of Interest," *County and Municipal Government in North Carolina*, 2nd Ed. (2014), Frayda S. Bluestein, ed.
- A. Fleming Bell, II, *Model Code of Ethics for North Carolina Local Elected Officials* (2010)

- A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials*, 2nd Ed. (2010)

Other codes of ethics that provide guidance or are often applicable to local staff include the AICP Code of Ethics and the ICMA Code of Ethics. Here are some selections that are particularly applicable to local government staff in their regular work on planning issues.

Code of Ethics of the American Institute of Certified Planners (AICP)

<https://www.planning.org/ethics/>

Principles to Which We Aspire:

A.2.c. We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

Rules of Conduct:

B5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

B6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

AICP Ethical Principles in Planning

<https://www.planning.org/ethics/ethicalprinciples/>

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.

3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;

Code of Ethics for the International City Managers Association (ICMA)

<https://icma.org/icma-code-ethics>

Tenet 12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest. Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.