



Code of Conduct and Ethics for Town Council

Continued Discussion

8/27/2024 Work Session



Brief Recap

- Resolution 2010-2080 adopted November 16, 2010, complying with State mandate to adopt an ethics resolution or policy
- Legal Department drafted Code of Conduct and Ethics to update the 2010 resolution
- Presented to Town Council at the June 25th Work Session
- Feedback received from each Council Member
- Some items may require additional discussion



Resolution (2010) 2080

NCGS § 160A-86 requires all Town Councils to adopt an ethics resolution or policy addressing:

1. The need to obey all applicable laws regarding official actions
2. The need to uphold the integrity and independence of the office
3. The need to avoid impropriety in exercising official duties
4. The need to faithfully perform the duties of the elected office
5. The need to conduct the affairs of Town Council in an open and public manner including compliance with the Open Meetings and Public Records Acts



An Ideal Code of Conduct

Contains mutually agreed upon expectations of how the Council will ensure open and effective government;

Provides for individual Council members to commit to speaking and behaving in accordance with the expectations and to holding individuals accountable when expectations are not met; and

Will be reviewed periodically to evaluate whether the expectations need to be revised.



Aspirational v. Regulatory/Punitive

Aspirational

- Positive message
- Council to set the example for Town staff and the public
- Instill public confidence in the political process
- Praise in public

Regulatory/Punitive

- Negative message
- Punishes bad behavior
- Difficult to define what speech crosses the line
- Criticize in private (written comments would be public records)



Draft Code of Conduct and Ethics

- Section One – Obey All Laws
- Section Two – Uphold Integrity and Independence of Elected Office
- Section Three – Avoid Impropriety or Appearance of Impropriety
- Section Four – Perform Duties Diligently
- Section Five – Conduct Town Affairs in Open and Public Manner
- Section Six – Minimize Conflicts of Interest
- Section Seven – Refrain from Activity Inappropriate to the Office
- Section Eight – Treat Other Council Members, Town Staff, and the Public with Respect and Civility



Draft Code of Conduct and Ethics

Dispute Resolution Process

Censure resolution after notice and opportunity to be heard
(unclear if this must be in open session)

Conflicting provisions in State law – NCGS 143-318.11(a)(6)

- May hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee in closed session
- May NOT consider qualifications, competence, performance, character, fitness, or removal of a Council Member in closed session



Items for Additional Discussion

- Defining specific actions that are unacceptable
- Making the draft more positive and aspirational as a model for others
- Limiting the draft to remove redundant language
- Limiting Rules of Procedure to procedural matters (removing ethical guidelines)
- Clarifying how the minority may comment after a decision is made
- Clarifying social media section and campaign speech
- Clarifying or replacing certain terms – respect, honor, promptly
- Committing to a specific amount of training each year



Defining unacceptable speech or conduct

Specific examples in draft:

- Should never belligerently challenge or belittle the speaker (p. 23 of agenda packet)
 - No personal attacks (p. 23)
 - Should not appear intimidating, belittling, or aggressive (p. 23)
 - Inappropriate to overtly or implicitly promise Council action (p. 23)
 - Unacceptable to make derogatory or belittling comments about other Council members, their opinions and actions (p. 24)
 - Public comments that express bigotry towards a protected class may be considered unbecoming conduct (p. 25)
 - No shouting or physical actions that could be construed as threatening will be tolerated (p. 25)
- Are there additional examples to add?



Making the draft more aspirational

- Change “Candidates should not mispresent their identity, qualifications, present position, or other fact” to “Candidates should accurately represent their identity, qualifications, present position, and other facts”? (p. 22)
 - Council should rather than should not?
- Other suggestions



Remove redundant language

- Section 8 is currently organized as follows:
 - Interactions with public at public meetings
 - Interactions with public in unofficial settings
 - Social Media
 - Interactions between Council Members in public meetings
 - Interactions between Council members in private
 - Interactions with Town staff
- Each section includes common themes
- Some sections overlap with Council Rules of Procedure



Respecting the Decision of Council

Council Rules of Procedure
(effective 5/1/23)

Rule 42 – After a decision is made by a majority of Town Council, the minority should respect and honor the decision. Elected officials should avoid public acts or comments that impugn the Town, the Town staff, or its processes.

Draft Code of Conduct and Ethics
Section 8, Subsection 5.h. –

Once a vote has been taken, the minority must respect the majority. No member should attempt to renegotiate, undo, or interfere with any Council-approved action or project, except through a valid motion for reconsideration.



Social Media and Campaigning

Recent US Supreme Court decision addresses personal social media accounts:

- Town may be subject to liability if a public official has actual authority to speak on the Town's behalf and purports to exercise authority to speak on the Town's behalf.
- Personal social media accounts should have a disclaimer.

When campaigning for office, incumbents may want to explain votes on certain items, particularly if the individual did not vote in favor of a decision, action, or program

- *what is the expectation for how to do this and still respect the decision of Council?*
- *should campaigning be subject to a different standard than in public meetings?*



Clarifying certain terms

- Which terms are unclear?
 - Important to ensure that all Council Members know and agree what is expected.
 - Some standards are inherently subjective and difficult to define.
- What types of speech or conduct violate the expectations or standards?
 - Should the same standards apply to meetings, private conversations, and social media?



Commitment to Training

Two-hour ethics training mandated by State law within 12 months of each election or appointment.

All Town Council members will have participated in the League of Municipalities Commit to Civility Training and receive training on avoiding liability in 2024.

- Does Council want to place an additional mandate on each individual member?
- If so, should the topics and type of training be defined?



Options

- Maintain Resolution (2010) 2080 as the Code of Ethics
- Adopt proposed Resolution as the Code of Conduct and Ethics (without changes)
- Provide further instruction for revisions to Code of Conduct and Ethics and Council Rules of Procedure