

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 2 June 2008

**SUBJECT:** Ethics Code

**ATTACHMENT(S):** Draft Code

#### **SUMMARY OF REQUEST:**

While considering the adoption of rules of procedure for the Zoning Board of Adjustment and thereafter, several Board members requested a draft comprehensive ethics code to apply to County Officials (elected, employed, and appointed).

Attached is a draft code which would flatly prohibit any official taking any official, county-related action which would benefit themselves, their family, their business or their employer. It also prohibits serving on any board or committee which acts in an appellate capacity to another board on which a member sits or position which a member holds.

NOTE: This is intended to be a fairly stringent position in this regard. The Board may wish to adopt this position, or consider less stringent positions (disclosure only, no prohibition, for example).

County staff will present further information on this matter.

#### **BOARD ACTION REQUESTED:**

Review and comments on the draft code.

If the Board is inclined to move forward with immediate adoption, the following motion is suggested:

**Section 1. Declaration of Policy**

- (a) The Proper Operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policy be made publicly; that public offices not be used for personal gain; and that the public maintain confidence in the integrity of its government.
- (b) In recognition of these goals, a code of ethics for Henderson County officials is hereby adopted. The purpose of this policy statement is to set forth guidelines for ethical standards of conduct for all such officials by setting forth acts or actions that are incompatible with the best interests of Henderson County.

**Section 2. Definitions**

As used in this article, the following terms shall have the meaning indicated:

**Business Entity** means any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust or corporations which is organized for financial gain or profit.

**Confidential Information** means any information or knowledge which has not been made public through the regular affairs of government. Information that has become public knowledge, whether or not through the regular affairs of government, is not considered confidential information.

**County Official** means the County Manager, County Attorney, Assistant County manager, County Commissioners, officials appointed by the County Commissioners to other county boards and commissions, department heads, and any employees involved in purchasing or acquiring goods and services for the county.

**Immediate Family** means the County Official, his/her spouse, and minor children (including stepchildren and foster children).

**Interest** means direct or indirect pecuniary or material benefit, as a result of an official act, a contract, or transaction with Henderson County, accruing to:

- (i) A County Official;
- (ii) Any person in a County Official's Immediate Family;
- (iii) Any business entity in which the County Official, member of the County Official's Immediate Family, or is about to be, an officer or director;
- (iv) Any business entity in which an excess of ten (10) percent of the stock, or legal or beneficial ownership of, is controlled or owned directly or indirectly by the County Official, or the County Official's Immediate Family member; or
- (v) The primary employer (other than Henderson County) of any County Official.

For the purposes of the above paragraphs, 2, 3, and 4, a County Official is presumed to have knowledge of the financial affairs of the County Official's Immediate Family members and primary employer. For the purpose of this policy, the County Official only has an Interest in the affairs of other Immediate Family members if the County Official has knowledge of or should have known of the Interest of the family member.

**Official Act Or Action** means any legislative, administrative, appointive, or discretionary act of any County Official.

**Section 3. Standards of Conduct**

All County Officials as defined in this article shall be subject to and abide by the following standards of conduct.

- (a) Interest in contract or agreement. No County Official shall participate in selection or award of a contract if the contract involves the County Official's interest or the Official is prohibited from voting pursuant to N.C. Gen. Stat. § 14-234.
- (b) Use of official position. No County Official shall use his/her official position or the county's facilities for his/her private gain, or for the benefit of his interest, or for the benefit of any individual, which benefit would not be available to any other member of the public in the same or similar circumstance. No County Official shall appear before or represent any private person, group or interest before any department, committee, or board of the county except in matters of purely civic or public concern. The provisions of this paragraph are not intended to prohibit a County Official from speaking before neighborhood groups and other nonprofit organizations.
- (c) Disclosure of information. No County Official shall use or disclose confidential information gained in the course of or by reason of his/her official position with the county for purposes of advancing:
  - (i) His/her interest;
  - (ii) The Interest of a business entity of which the County Official or an Immediate Family member has an Interest;
  - (iii) The financial or personal interest of a member of his/her Immediate Family;
  - (iv) The financial interest of the employer of the County Official; or
  - (v) The financial or personal interest of any citizen beyond that which is available to every other citizen.
- (d) Incompatible service. No County Official shall engage in, or accept private employment or render service for private interest, when such employment or service for private interest, when such employment or service is incompatible with the proper discharge of his/her official duties with the county or would tend to impair his/her independent judgment or action in the performance of his/her official duties with the county, unless otherwise permitted by law and unless disclosure is made as provided in this policy.
- (e) Gifts. No County Official shall directly or indirectly solicit any gift, or accept or receive any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which a reasonable person would believe that the gift was intended to influence him/her in the performance of his/her official duties, or was intended as a reward for any official action on his/her part. Legitimate political contributions to County Officials shall not be considered as gifts under the provisions of this paragraph.

Exempted from the prohibition are reasonable honorariums for participating in meetings, advertising items or souvenirs of nominal value or meals furnished at banquets. County Officials must report in writing to the Clerk to the Board of County Commissioners all honorariums, and all gifts and favors from friends and relatives if made by a covered contractor, subcontractor, or supplier. There is no prohibition on gifts if the circumstances make it clear that it is the personal relationship, rather than the business or the persons concerned, which is the motivating factor and where the value of the gift, entertainment, or favor is appropriate to the circumstance and consistent with the long-standing relationship. If such a gift, entertainment, or favor exceeds \$100 in value, the County Official must disclose the nature and value of the gift, entertainment, or favor in a letter to the Clerk to the Board of County Commissioners.

It shall not be a violation of this policy for any Public Official to solicit donations, contributions or support for any charitable activity which does not result in direct pecuniary benefit to the Public Official, a member of his Immediate Family, or Business Entity with which he is associated.

(f) County Attorney to Advise. In any case where the value of a gift is in question, or when the circumstances make it unclear as to whether a thing constitutes a “gift” within the meaning of this provision, any individual may consult with the County Attorney for an opinion.

(g) Special Treatment. No County Official shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

(h) Service on Appellate Board. No County Official may serve on a board or committee of the County which acts in an appellate capacity reviewing the acts of the County Official, or any other board or committee on which the County Official serves. As by virtue of their primary office members of the Board of Commissioners are required to serve in an *ex officio* capacity on many boards and committees of the County, this prohibition shall not apply to members of the Board of Commissioners.

#### **Section 4. Disclosure of Interest in Legislative Actions<sup>1</sup>**

Any County Official who has an interest in any business before the Board of County Commissioners shall publicly disclose on the record of the Board the nature and extent of such interest, and shall withdraw from any discussion, deliberation or decision regarding said matter. It shall be a violation of this policy for a County Official who has an Interest in some business before the County Commission to advocate, whether publicly or privately, that Interest to other County Officials.

#### **Section 5. Advisory Opinions**

When any County Official has a doubt as to the applicability of any provision of this policy to a particular situation involving that County Official, or as to the definition of terms used in this article, he/she may apply to the County Attorney for an advisory opinion. The County Official shall have the opportunity to present the County Official’s interpretation of the facts at issue and of the applicability of provisions of this policy before such advisory opinion is made.

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<sup>1</sup> In addition to this document, the Board’s Rules of Procedure deals with conflicts of interest in quasi-judicial hearings, including those not held before the Board of Commissioners.