

SANTA FE COUNTY
RESOLUTION NO. 2016 82

A RESOLUTION AMENDING RESOLUTION 2010-104 (CREATING A SANTA FE COUNTY HOUSING AUTHORITY BOARD) TO DEFINE THE TERM "CAUSE" AND TO ESTABLISH A PROCEDURE FOR DISCIPLINE OF THE EXECUTIVE DIRECTOR OF THE SANTA FE COUNTY HOUSING AUTHORITY

WHEREAS, on June 29, 2010, the Board of County Commissioners of Santa Fe County (BCC) adopted Resolution 2010-104, creating the Santa Fe County Housing Authority (hereinafter "Housing Authority") comprised of a seven member board; and

WHEREAS, on February 24, 2015, the BCC adopted Resolution 2015-37, amending Resolution 2010-104 to clarify the process for appointment of members of the Housing Authority; and

WHEREAS, Resolution 2010-104 specifies that the Executive Director of the Housing Authority is hired, evaluated and fired for cause by the Authority; and

WHEREAS, Resolution 2010-104 does not contain a definition of cause, nor does it contain a disciplinary process for the Executive Director of the Housing Authority; and

WHEREAS, it is in the best interest of the Authority and any Executive Director thereto, to know the definition of cause as used in Resolution 2010-104 and to have a defined process for discipline of the Executive Director.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that:

1. Paragraph 11 of Resolution No. 2010-104 is amended to add the following:

"The term 'cause', as used within this Resolution means incompetency, poor job performance, failure to comply with the regulations and policies of the United States Department of Housing and Urban Development, malfeasance, misappropriation, mismanagement, unlawful or tortious conduct, negligence, insubordination, failure to comply with the Santa Fe County Human Resources Handbook and/or the Santa Fe County Code of Conduct, unsatisfactory performance, or any behavior inconsistent with the position of Executive Director."

2. The following shall be added to govern the disciplinary process and will be inserted as Paragraph 13 to Resolution No. 2010-104:
- a. The Housing Board may discipline the Executive Director, up to and including termination, for cause. The position of Executive Director is not subject to the Human Resources Handbook provisions on discipline and is not entitled to progressive discipline.
 - b. For the purpose of this Resolution, "days" mean Monday through Friday, and does not include holidays or time when the Santa Fe County Administrative Offices are closed.
 - c. The HR Director or designee may, independently or at the request of the Housing Board, investigate any matter which could lead to the discovery of information substantiating cause for discipline of the Executive Director. Investigations shall include an opportunity for the Executive Director to respond to any allegations regarding cause for discipline.
 - d. When the HR Director or designee completes an investigation, a written investigative report will be provided to the Housing Board for use in determining whether cause exists to discipline the Executive Director.
 - e. The Housing Board may engage in a discussion during the closed session portion of a Housing Board meeting regarding the investigative report and/or the need to recommend imposition of disciplinary action against the Executive Director.
 - f. Prior to imposing discipline on the Executive Director, the Housing Board shall take action in open session to have mailed or hand delivered to the Executive Director a written confidential disciplinary memorandum (memo) recommending that discipline be imposed on the Executive Director and setting forth the reasons for proposed discipline, including a detailed description of the evidence supporting the proposed discipline. The memo shall be hand delivered or mailed to the Executive Director by certified mail.
 - g. A grievance meeting is an opportunity for the Executive Director to respond to the memo. The Executive Director may file a written request for a grievance meeting with the Housing Board by delivering the request to the HR Director within seven (7) days of mailing or receipt of the memo. The grievance meeting shall occur during the executive session portion of a meeting of the Housing Board, unless the Executive Director requests that the meeting take place in open session.

- h. Failure of the Executive Director to attend a scheduled grievance meeting shall constitute abandonment of the grievance, in which case the Housing Board may take action to impose the recommended disciplinary action in open session following the executive session. If the Executive Director attends the grievance meeting, the Housing Board will hear the Executive Director's response to the memo prior to imposition of discipline. Following a grievance meeting, if the Housing Board takes action to impose discipline on the Executive Director, the action will be in open session.
- i. If the Executive Director does not timely request a grievance meeting, at a subsequent Housing Board Meeting, the Housing Board may further discuss the matter in executive session and may take action on the following agenda item: Imposition of discipline upon the Executive Director.
- j. The Housing Board will strive to take action to impose discipline within sixty days after completion of the grievance hearing or mailing of the memo, however failure to meet that time line will not serve to invalidate any action to impose discipline taken outside of the sixty day period.

3. The following shall be added as Paragraph 14 to Resolution No. 2010-104:

- a. If the Executive Director elects to challenge a suspension, demotion or termination imposed by the Housing Board, the following post-disciplinary hearing procedure shall be the sole and exclusive method to appeal that action.
- b. The Executive Director shall have no right to request a post-disciplinary hearing unless the Executive Director first completes the grievance process as provided in Paragraph 13 above, inclusive of attending a grievance hearing.
- c. A request for a post-disciplinary hearing must be made in writing and delivered to the Human Resources Director no later than five days from imposition of discipline by the Housing Board. A statement of the specific grounds for the appeal must accompany the request.
- d. Failure to request a post-disciplinary hearing within five (5) days shall constitute forfeiture of the right to appeal.
- e. The Human Resources Director will select a hearing officer deemed capable of providing a fair and impartial hearing to the Executive Director.

- f. The Hearing Officer shall set a hearing date no more than one-hundred-twenty (120) days from the receipt of the request for a post-disciplinary hearing. The hearing shall be recorded by the Hearing Officer. The timeline can be extended by the Hearing Officer.
- g. Either party to the proceeding may represent itself or designate an attorney to represent them.
- h. Oral evidence shall be taken only under oath or affirmation. The Hearing Officer has the power to administer oaths, issue subpoenas for witnesses and compel either party to produce documents pertinent to the post-disciplinary hearing.
- i. The post-disciplinary hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the State of New Mexico. However, in order to support a decision, there must be a residuum of legally competent evidence to support a verdict in a court of law. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- j. The Hearing Officer shall control the conduct of all parties and all other persons present at the post-disciplinary hearing. The hearing examiner may, under the appropriate circumstances; (1) remove any person from the hearing room; (2) close the hearing to the general public; (3) exclude all witnesses until they are called to testify; (4) continue the hearing to a later time and date; and (5) take any other action the Hearing Officer determines is necessary to insure orderly proceedings and conduct a fair and impartial hearing.
- k. The Executive Director shall present its evidence after the evidence presented on behalf of the Housing Board.
- l. Each party shall have the right to:
 - a. make opening and closing statements;
 - b. call and examine witnesses;
 - c. cross-examine witnesses;
 - d. impeach any witnesses; and
 - e. rebut any relevant evidence.
- m. The Hearing Officer may take administrative notice of those matters of which courts of this state may take judicial notice.

- n. If the Executive Director fails to appear or participate in the post-disciplinary hearing, their right to continue the appeal is forfeited. The record of the hearing shall reflect the failure to appear or participate in the appeal process.
- o. The Hearing Officer will render a decision within sixty (60) days from the final date of the post-disciplinary hearing. The Hearing Officer shall determine if there was cause for the disciplinary action. However, the Hearing Officer shall not substitute his or her discretion for that of the Housing Board regarding the appropriate level of discipline.
- p. Any party that is adversely affected by a final decision of the Hearing Officer may seek judicial review of the decision by filing a petition for writ of certiorari in the First Judicial District Court. The District Court reviews the Hearing Officer's decision for arbitrariness, capriciousness, lack of substantial evidence, or nonconformance with the law.

PASSED, APPROVED AND ADOPTED this 26th day of July, 2016.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

Miguel M. Chavez
Miguel M. Chavez, Chair

ATTEST:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk



APPROVED AS TO FORM:

Gregory S. Shaffer
Gregory S. Shaffer, Santa Fe County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for
Record On The 27TH Day Of July, 2016 at 01:05:07 PM
5 And Was Duly Recorded as Instrument # 1799864
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Deputy Laura Hernandez Geraldine Salazar
County Clerk, Santa Fe, NM