

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

Santa Fe, New Mexico

April 2, 2013

This meeting of the Santa Fe County Ethics Board was convened by Chair Adair Waldenberg, on the above-cited date at approximately 3:03 p.m. at the Santa Fe County Legal Conference Room, County Administration Building, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Adair Waldenberg, Chair
Estevan Baca, Vice Chair
William Peyton George
David Mittle
Leon Young

Member(s) Excused:

None

Others Present:

Diane Garrity, Ethics Board Contract Counsel
Steve Ross, County Attorney
Willie Brown, Assistant County Attorney
Lisa Roybal, County Manager staff
Penny Ellis-Green, Growth Management Director
Bernadette Salazar, County HR Director

III. Approval of Agenda

Mr. Mittle moved to approve the agenda and Mr. Baca seconded. The motion to approve the agenda carried by unanimous [5-0] voice vote.

IV. Approval of February 11, 2013 minutes

It was noted that Mr. Young was referred to as Mr. Leon on the first page

Mr. Mittle moved to approve the minutes as amended and Mr. Baca seconded. The motion carried unanimously.

V. Discussion of Qualifications and Hiring Practices for Appointed At-Will Employees

Human Resource Director Bernadette Salazar said under state statute the Assessor, Treasurer and Clerk are allowed to appoint deputies without reference to any minimum qualifications. However, HR tries to work with the elected officials to come up with guidelines for qualifications, job descriptions and duties. They are exempt from the regular recruitment process.

Chair Waldenberg asked if the elected officials paid attention to the guidelines. Ms. Salazar said the suggestions are generally well received.

Mr. Brown indicated his research found various casual mentions of deputies. There is a nepotism provision in state law. Section 10-1-3 prohibits hiring a deputy who has been convicted of a felony or infamous crime. In 1959 case law the Attorney General gave the opinion that "County officers may employ their regular employees without the approval of the County Commissioners but in certain instances extra employees or special employees require the consent of the County Commissions." Mr. Brown took that to mean that the Commission cannot dictate who can be appointed as a deputy.

Chair Waldenberg asked if the Ethics Board had the authority to recommend cooperation with HR. Mr. Brown said such a recommendation would not be binding. Ms. Salazar reiterated that a job description is provided and a background check done. Any new positions have to be approved by the BCC.

Mr. Young said he hoped they would follow EEO regulations. Mr. Baca said this committee has no standing since the state has spoken on the matter. Ms. Salazar said she believed there was a job description for all the deputies.

VI. Discussion of Other Municipalities' Ethics Reporting and Their Measures Taken For Reporting *[Exhibit 1: City of Santa Fe Code of Ethics; Exhibit 2: Albuquerque Code of Ethics; Exhibit 3: Bernalillo County Code of Conduct]*

Ms. Roybal referred to the distributed material from the City of Albuquerque, City of Santa Fe, and Bernalillo County regarding ethics reporting. Albuquerque and Santa Fe require filing complaints with the Clerk and that the statements be signed and an address provided. Names of witnesses should be provided. Bernalillo County used to receive anonymous complaints but their ordinance has now been amended. Complaints are filed with the Clerk. The statements are sworn before the Clerk. Bernalillo County has hired a hearing officer but no complaints have been filed at this point. The City of Santa Fe has had one complaint and Albuquerque none.

Mr. Brown referred to HB 190 that treats anonymous complaints. The 109-page bill died in the Senate. The packet shows new language that was recommended for ethics complaints action. He reviewed the proposed bill.

Ms. Garrity went over the process for dealing with complaints whereby she would act in the role of prosecutor and the board would determine sanctions.

Among the provisions in the bill there were protections for whistleblowers; libel can be charged.

Referring to Section 16 of the bill, Mr. Mittle asked how confidentiality could be maintained if the complaint is filed with the Clerk. Ms. Garrity pointed out that sometimes in licensing cases the investigation of the complaint is confidential but if there is a notice to the licensee that action will be taken it becomes public. Mr. Brown said that used to be law in New Mexico prior to a recent decision that says only confidential informants are exempt, and there is no executive privilege or deliberative exception.

Ms. Garrity said there used to be a balancing provision weighing right to know versus privacy. That is no longer true and exceptions have been narrowed.

Mr. Mittle asked if the complainant cannot be protected and Ms. Garrity said no. Mr. Brown gave an example involving a request for records involving a personnel matter where it was made public. Ms. Garrity said it should be assumed that everything is public, adding that even with protections for whistleblowers there is still a lot of retaliation.

Chair Waldenberg asked if employees had been queried about what they regard as hurdles to reporting. Ms. Salazar said they have not been asked specifically but they are told of protections in the HR handbook and in the Whistleblower Protection Act, as well as union provisions.

Chair Waldenberg expressed her concern that no cases were coming forward because of employee fear. Ms. Garrity said in her experience people are afraid of losing their jobs and being blacklisted.

Mr. Young recounted examples of employees who have filed complaints being transferred or put in onerous situations rather than being fired outright.

Ms. Salazar indicated that since trainings have begun there has been a huge increase in internal complaints, meaning the comfort level is higher. She said HR investigates complaints even if they are anonymous. Chair Waldenberg asked to see the statistics.

Ms. Garrity noted that ethics can appear esoteric with vast gray areas. People who have been slandered deserve exoneration.

Mr. Young stated many times there is an issue of perception versus reality, particularly in cases of favoritism and the awarding of contracts.

Mr. Baca asked if an employee went into the Legal Department to discuss matters, would that be considered a privileged conversation. Mr. Brown explained that the Legal

Department represents the County, rather than the individual employees. Ms. Garrity indicated that confidentiality is defined by someone seeking advice and the other person gives it.

Mr. Young asked if conversations with HR were considered confidential. Ms. Salazar indicated if it goes into investigation and there is an IPRA request it would be granted unless someone would be put in danger.

Ms. Garrity noted that anonymous complaints can be tricky, particularly if they contain detailed information. Various interests have to be weighed. She added that most people would not understand what making a sworn statement entails.

Chair Waldenberg asked why Santa Fe County has complaints go to the Legal Department rather than to the Clerk, which is the case in the other ethics agreements.

The discussion turned to the pros and cons of having a set complaint form. Mr. Brown said that is a possible amendment. Chair Waldenberg suggested making a form optional. Mr. Young said that a form would make it too much of a bureaucratic exercise and a barrier. Mr. George felt a form could lead a complainant down a path. Ms. Garrity stated if someone wants to come forward they will and they will sign their name.

Chair Waldenberg stated people want to feel they are being heard.

Mr. Young pointed out complaints can be made on something out of context – something seen to be unethical but was in fact not. The innocent should be vindicated but false vindications also need to be guarded against.

VII. Ethics Board Training of Elected Officials

Ms. Salazar said the Clerk, Treasurer and Assessor have gone through trainings and the ethics ordinance was discussed at the BCC orientation study session. Chair Waldenberg encouraged training of the Commissioners since they are role models.

VIII. Review, Discussion and Possible Direction of Possible Amendments to the Code of Conduct Ordinance

Mr. Brown reviewed amendments he was suggesting to the current code. The following are from the **2011 amendments**:

- Section 4.H, definition of contract
- Section 4.L, definition of family
- Section 4.N, definition of immediate family
- Section 4.T, definition of volunteer – everything should be underlined
- Section 10.A, regarding affirmative duty
- Section 12.C, pertaining to “family”
- Section 24.A, Ethics Board membership
- Section 24.L, M, N, board details

- Section 27.B.1,a, should read, When the official or anyone living in the official's household
- Section 27.B.2, *et seq.*, recusal
- Section 29.E, statute reference

Amendments stemming from the **Governmental Conduct Act** were:

- Section 4.F, definition of confidential information
- Section 8, substantial changes
- Section 15, regarding confidential information
- Section 29, final section

Suggestions made at the **previous meeting** elicited the following:

- Section 26.A, retaliation

From the **Employee Handbook**:

- Section 26.B, consequences of false claims

New material being suggested by Mr. Brown included two versions of Section 4.B, the issue in contention being gifts of alcohol. The problem with accepting such gifts, even if the value falls below the threshold value, is that it conflicts with the Employee Handbook provisions. He noted that federal regulations have 46 disparaging references to alcohol. Prohibiting all alcohol would simplify the situation.

Mr. Young pointed out that alcohol is not an ethics issue. Including it creates an unnecessary problem, as long as it is not being consumed in the workplace.

Ms. Salazar said a conflict between regulations creates problems for the County. Chair Waldenberg mentioned if there is no mention that does not constitute a conflict. Mr. Brown said non-alcoholic beverages are mentioned. He strongly urged the inclusion of alcohol for the sake of consistency.

Ms. Garrity asked if an employee could be fired for receiving a gift of alcohol and Ms. Salazar said he could be disciplined. Ms. Garrity stated it seemed the employee handbook was geared toward prohibiting use on the premises. Mr. Brown said the County's policy specifies a drug- and alcohol-free workplace and the code should not be in conflict with that.

Ms. Salazar explained that if a person receives a gift and self-discloses it to HR they would probably not be disciplined. Mr. Brown said the burden is on the employee.

Mr. Young said the emphasis should be on openness and non-offending. Most people are not aware of the value of items such as a plaque. Mr. George said it is more important to worry about the value of a gift rather than its composition.

Mr. Brown pointed out that drinking alcohol is absolutely prohibited when driving a County vehicle and there is no reimbursement for alcoholic beverages.

Ms. Garrity conceded that although it is not an ethical issue, for consistency she was willing to go along with the inclusion of the mention of alcohol. Ms. Salazar noted it was not a huge problem. Even over the holidays no one reported getting a gift of alcohol. The suggestion is for uniformity.

Mr. Mittle moved to have the amendment to the existing Section 4.B definition of anything of value, prohibiting alcohol. The wording was changed to: if having an aggregate market value over \$25 ~~with the exception of any alcoholic beverage~~. Mr. Young seconded and the motion carried by 4-1 vote with Mr. George voting against.

Mr. Brown continued with amendments involving new language. Section 23 previously included no due process and the amendments would clarify the process. He also added provisions about notifying the complainant about the disposition of the case. Swearing to the truth of a statement is made mandatory. This section would treat the storing of unsworn complaints.

Chair Waldenberg said the language "other than a member of the County Ethics Board" is confusing, which implies they cannot file complaints. She suggested capitalizing "County's Contract Ethics Official."

A discussion ensued regarding whether complaints addressed to the Ethics Board would be delivered to them. Chair Waldenberg said the sender of an anonymous complaint has a reasonable expectation the board would see a complaint addressed to them, even if it is not discussed. Mr. Mittle pointed out it would subsequently have to be sent to the Legal Department. Ms. Garrity said mail should not be intercepted even if the board cannot act on it.

Mr. Brown said there is some ambiguity regarding the word "mail." He added this would speak in favor of the need for a complaint form.

Mr. George wondered if mail would be sitting in a mailbox somewhere until the next meeting.

Chair Waldenberg asked to see language clarifying that issue.

IX. Matters from the Board

Chair Waldenberg noted that the amendments being discussed would probably not be ready for presentation on the next presentation to the BCC. Ms. Roybal said she would work on scheduling the quarterly report to the Commission.

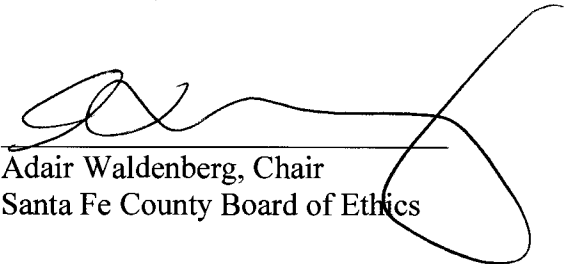
X. Matters from the Public

None were presented.

XI. Adjournment

Having completed the agenda and with no further business to come before this Board,
Ms. Waldenberg declared adjourned at 5:08 p.m.

Approved by:


Adair Waldenberg, Chair
Santa Fe County Board of Ethics

ATTEST TO:

COUNTY CLERK

Before me, this ____ day of _____, 2013.

My Commission Expires: _____

Notary Public

Submitted by:


Debbie Doyle, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

ETHICS BOARD MINUTES
PAGES: 38

I Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of December, 2013 at 10:00:41 AM
And Was Duly Recorded as Instrument # **1724743**
Of The Records Of Santa Fe County


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

REC. CLERK RECORDED 12/06/2013 12:00:41 PM

1-7 CODE OF ETHICS.*



***Editor's Note:** Prior ordinance history includes portions of SFCC 1981, §§1-5-1-1-5-10 and Ord. Nos. 1982-4, 1984-60, 1986-43, 1987-23, 1993-34, 1995-30, 1997-23, 1998-31, 1999-22, 2000-33 and 2001-16.

1-7.1 Title.

This section may be cited as the "Code of Ethics." (Ord. #2005-14, 1)

1-7.2 Statement of Policy.

The proper operation of a democratic government requires that public officials and public employees be independent, impartial, and responsible to the people; that governmental decision and policy be without conflicts of interest; that public office or employment not be used for personal gain; and that the public has confidence in the integrity of its government. (Ord. #2005-14, 2)

1-7.3 Purpose and Intent.

The purposes of the Code of Ethics are:

A. To fulfill the obligation imposed on the governing body by Section 2.01 of the city of Santa Fe Municipal Charter to adopt an ordinance establishing standards for the ethical conduct of all public officials and public employees of the city, and to provide consequences for violating such ethical standards;

B. To adopt standards of behavior for public officials and employees of the city of Santa Fe that insure that decisions are made without consideration of personal benefit to the decision-maker;

C. To provide clear guidance with respect to such standards by clarifying which acts are allowed and which are not;

D. To advance openness in city government by requiring disclosure by public officials or public employees and establishing a process for reviewing and resolving alleged violations of this section; and

E. To exercise to the fullest extent the legislative powers granted to the governing body by Article X, Section 6, of the New Mexico Constitution and the New Mexico Municipal Charter Act (§§3-15-1 et seq. NMSA 1978) and to adopt a code of ethics which particularly suits the local concerns and needs of the city of Santa Fe without regard to any provisions of state law that may be inconsistent with the city's code.

(Ord. #2005-14, §3; Ord. #2011-8, §1)

SEE CLERK RECORDED 12/28/2013

1-7.4 Quasi-Judicial Acts Subject to Additional Standards.

It is recognized that public officials and public employees are frequently called upon to participate in adjudicatory ("quasi-judicial") proceedings. The city of Santa Fe Code of Ethics applies to public officials and employees acting in a quasi-judicial capacity. There are, however, additional standards of conduct that are required of public officials and employees when acting in a quasi-judicial capacity which standards are imposed by the New Mexico and United States Constitutions and which are not set out in this section. Under the United States and New Mexico Constitutions those standards prohibit official actions tainted by a decision-maker's conflicts of interest, bias and prejudice, prejudgment, or other conduct creating the actuality or the appearance of impropriety. (Ord. #2005-14, 4)

1-7.5 Definitions.

As used in the Code of Ethics:

Business means a corporation, partnership, sole proprietorship, firm, or other profit-making enterprise.

Confidential information means information which is acquired by a public official or public employee by reason of his or her public office or public employment, which has not previously been made public, and which is not required to be made available to the public under the Inspection of Public Records Act (§§10-15-1 et seq. NMSA 1978).

Conflict of interest means a specific and identifiable prospect of pecuniary gain or loss, other than a gain or loss that is de minimis in amount or shared with a substantial segment of the general public, to any of the individuals or entities here listed from an official act of any public official or employee:

- (1) The public official or public employee who is to perform the official act;
- (2) Any member of his or her family;
- (3) Any business of which he or she or any member of his or her household is an owner;
- (4) Any employer, client or customer from whom the public official or public employee knows or reasonably should know that he or she or any member of his or her household or any business of which he or she is an owner has received remuneration of more than five hundred dollars (\$500.00) during the year preceding the official act;
- (5) Any civic group, labor union, or social, charitable or religious organization of which the public official or public employee or a member of his or her household is an officer or director; or
- (6) Any "contributor" who has made "contributions," as those terms are defined in subsection 9-2.3G. and H. SFCC 1987, to the public official's or public employee's campaign for elected office

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during the two (2) years preceding the official act of more than one thousand dollars (\$1,000.) in the aggregate for councilor position and of more than two thousand five hundred dollars (\$2,500.) in the aggregate for mayor position.

Employer, in the case of a person who is employed by a governmental entity other than the city, means the governmental department for which the person works.

Family of an individual means members of the individual's household, his or her children, step-children, brothers, sisters, parents, step-parents, domestic partner and all persons claimed as dependents on the individual's latest federal income tax return.

Financial benefit means any money, service, license, permit, contract, loan, travel, entertainment, gratuity or any other thing of monetary value or any promise of any of these.

Governing body means the mayor and the city council.

Governmental body means the governing body and any board, commission or committee appointed by the governing body or by the mayor with the advice and consent of the governing body.

Household of an individual means all persons whose primary residence is in the individual's home, including non-relatives, who are not rent-payers or employees.

Official act means an official decision, vote including, but not limited to items on a consent calendar, recommendation, approval, disapproval or other action which involves the use of discretionary authority.

Owner of a business means each of the business's proprietors, partners or holders of more than two percent (2%) of its outstanding stock.

Public employee means any exempt, classified, probationary, temporary, term or part-time employee of the city of Santa Fe except the municipal judge, the city manager, the city clerk, the city attorney and the members of the governing body.

Public official means the city manager, the city attorney, the city clerk and any member of a governmental body, including the governing body.

Subordinate of a public official or public employee means a public employee over whose work for the city the public official or public employee has direction, supervision or control. All public officials and public employees except other members of the governing body are deemed to be subordinates of each member of the governing body.
(Ord. #2005-14, §5; Ord. #2011-8, §2)

1-7.6 Public Officials and Public Employees; Disclosure.

A. Each public official and public employee shall be given a copy of the Code of Ethics upon election, appointment or employment and shall sign a statement to the effect that the public official or public employee has received the Code of Ethics and understands that the public official or public

employee shall abide by its terms and conditions. The city attorney's office shall conduct an annual review of the Code of Ethics for all public employees.

B. Upon election, appointment, or employment, public officials and department heads shall disclose in writing to the city clerk the information listed below. This information shall be updated every July and shall be available to the public at all times.

- (1) Name;
- (2) Address and telephone number;
- (3) Employer, if other than the city;
- (4) Professional, occupational or business licenses;
- (5) Membership on board of directors of corporations, public or private associations or organizations; and
- (6) Businesses of which he or she is an owner.

C. The information on the disclosures shall be made available by the city clerk for inspection, upon request. In addition, the city clerk shall forward a copy of the disclosure statement for those public employees required to make disclosures to the personnel office for inclusion in the public employee's personnel file. The ethics and campaign review board shall be given copies of the disclosures for its review.

(Ord. #2005-14, §6; Ord. No. 2011-8, §3)

1-7.7 Improper Gifts; Improper Transactions; Representation of Private Interests; Conflicts of Interest; and Other Prohibitions.

A. *Improper Gifts to Public Officials and Employees.* A public official or public employee shall not request or receive, directly or indirectly, a gift or other financial benefit, including, but not limited to, travel and accommodations, from any person or entity which, to the knowledge of the public official or public employee, has any prospect of direct or indirect pecuniary gain or loss from any official act to be performed by the public official or public employee, other than a gain or loss shared with a substantial segment of the general public. If a public official or public employee has received a gift or other financial benefit from a person or entity within the last calendar year and then discovers that this person or entity has any prospect of direct or indirect pecuniary gain or loss from any official act to be performed by the public official or public employee, that public official or public employee shall return the gift or shall be deemed to have a conflict of interest and shall deal with that conflict under the provisions of subsection 1-7.7 L. SFCC 1987. However, nothing in this paragraph A. shall be deemed to prohibit any of the following:

- (1) An occasional meal or nonpecuniary gift with a fair market value not to exceed fifty dollars (\$50.00) valued in a manner consistent with Internal Revenue Service (IRS) rules.
 - (a) If relevant to the performance of his or her official duties, members of the

governing body, the city manager, the city attorney, or the city clerk may receive an occasional non-pecuniary gift not to exceed two hundred fifty dollars (\$250.); however, such person shall report the gift, its value and the provider to the city clerk's office within ten (10) days of receipt of the gift, and such gift report shall be immediately posted by the city clerk, on the city's website.

(b) If relevant to the performance of his or her official duties, a public employee may receive an occasional non-pecuniary gift not to exceed two hundred fifty dollars (\$250.); however, such person shall report the gift, its value and the provider to the city manager and the public employee shall obtain the manager's approval prior to receiving the gift, and if approved, such gift report shall be immediately posted by the city clerk, on the city's website;

(2) An award, publicly presented in recognition of public service, having a fair market value not to exceed fifty dollars (\$50.00) valued in a manner consistent with IRS rules except for employee of the month recognition or non-profit or civic recognition of a public employee that does not otherwise violate the Code of Ethics;

(3) A campaign contribution that is properly received and reported in the manner required by Section 9-2 SFCC 1987;

(4) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the state to engage in the business of making loans; or

(5) Compensation for services rendered or capital invested or payment for a sale of property which is normal and reasonable in amount, commensurate with the value of the property sold or services rendered or the magnitude of the risk undertaken on the investment, and in no way increased or enhanced by reason of the recipient's position as a public official or public employee.

B. *Improper Transactions with the City.* A public official or public employee shall not enter into a contract or transaction with the city of Santa Fe during his or her term of office or employment or for a period of one (1) year following the leaving of public office or public employment when the contract or transaction is a result of an official act by that public official or public employee; provided, however, that nothing in this paragraph B. shall be deemed to prohibit a present or former public official or public employee from seeking or obtaining, on his or her own behalf, a city permit, license or service that is provided by the city on the same terms and conditions to a substantial segment of the general public.

C. *Representation of Private Interests.*

(1) A governing body member, the city manager, the city attorney and the city clerk shall not, during his or her term of office or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city or matter before the city.

(2) A public employee shall not, during his or her term of employment or within one (1) year after the termination thereof, accept monetary compensation from a third party for

consulting with, representing, or advising that party regarding any transaction with the city department that the public employee is or was employed by or any matter before such city department in which the public employee has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a city employee.

(3) A governmental body member, excluding members of the governing body, shall not, during his or her term of office or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with such governmental body or matter before such governmental body in which he or she has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a governmental body member.

D. *Misuse of Confidential Information.* A public official or public employee shall not use or disclose confidential information when he or she knows or reasonably should know that the use or disclosure will or may result in a financial gain or the avoidance of a financial loss on the part of any person or entity other than the city.

E. *Misuse of City Resources.* A public official or public employee shall not use city services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public.

F. *Nepotism.* A public official or public employee shall not perform any act to obtain the employment or to influence the employment by the city of a member of his or her family. No public official or public employee shall serve as the immediate supervisor of a member of his or her family.

G. *Financial Dealings with Subordinates.* A public official or public employee shall not knowingly require, expressly or impliedly, or authorize another person to require that any subordinate of the public official or public employee engage in a non-official financial transaction, including a personal loan or charitable contribution.

H. *Improper Political Campaigning.* A public official or public employee shall not knowingly request or authorize another person to request that any subordinate of the public official or public employee make a campaign contribution or provide services to a political campaign, and shall not engage in political campaigning while on duty for the city, or use city funds, supplies, vehicles or facilities to benefit or assist a political campaign.

I. *City Employment as a Political Reward.* A public official or public employee shall not promise an appointment or the use of his or her influence to obtain an appointment to any position with the city as a reward for any political activity or contribution.

J. *Honoraria.* A public official or public employee shall not request or receive an honorarium for a speech or service rendered in the performance of his or her duties as a public official or public employee. For the purposes of this paragraph J., "honorarium" means payment of money, or any other thing of monetary value, but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service. However, the public official or public employee shall report all such reimbursement to the city clerk within ten (10) days of receipt.

K. *Retaliation and Whistleblower Protection.* A public official or public employee shall not be dismissed, threatened with dismissal, or otherwise singled out for retaliation for the reason that the person has filed a complaint of violation of this Code of Ethics or any other violation of a legal prohibition or requirement or has given evidence or participated in an investigation of any such violation. Any act in violation of this paragraph K. shall be deemed a violation of the Code of Ethics. The outcome of the original ethics complaint shall not be deemed relevant to the complaint of retaliation itself.

L. *Conflicts of Interest.* The following shall govern conflicts of interest:

(1) A public official or public employee who has a conflict of interest as defined in subsection 1-7.5 SFCC 1987 shall immediately disclose the conflict in the following manner:

(a) In the case of a member of a governmental body, to the governmental body at a public meeting;

(b) In the case of the city manager, the city attorney or the city clerk, to the governing body at a public meeting, and

(c) In the case of a public employee, to the city manager.

(2) A public official or public employee shall not perform an official act or attempt to influence another person to perform an official act in any matter in which he or she has a conflict of interest.

(3) If compliance with paragraph L.(2) above by a public official or public employee would deprive a governmental body of a quorum for taking necessary action or would render the city unable to take necessary action on any matter, and it is deemed an emergency, the public official or public employee shall be excused from such compliance when he or she has made the disclosure required by paragraph L.(1) above.

(Ord. #2005-14, §7; Ord. #2011-8, §4)

1-7.8 Reserved.*

***Editor's Note:** Former subsection 1-7.8, Discharge of Alleged Conflict of Interest, previously codified herein and containing portions of Ordinance No. 2005-14, was repealed in its entirety by Ordinance No. 2011-8.

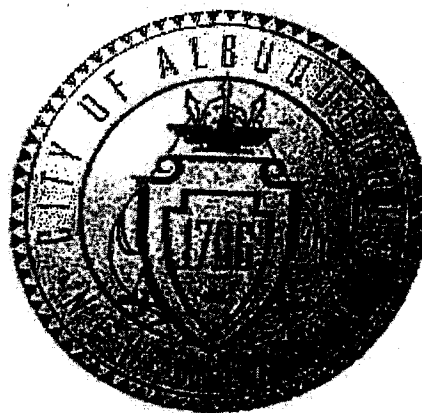
1-7.9 Enforcement.

A. The Code of Ethics shall be enforced by the ethics and campaign review board pursuant to the provisions of Section 6-16 SFCC 1987.

B. The governing body may by separate ordinance establish an office of inspector general.
(Ord. #2005-14, §12; Ord. #2011-8, §6)

2011-07-07 10:00 AM
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**Rules & Regulations
Of the
Board Of Ethics
&
Campaign Practices**



**For The
Code of Ethics
Of the
City Charter**

**Millie Santillanes, City Clerk
Office of the City Clerk
P.O. Box 1293**

RULES AND REGULATIONS OF THE BOARD OF ETHICS AND CAMPAIGN PRACTICES RELATING TO THE CODE OF ETHICS OF THE CITY CHARTER

Section 1 Pursuant to the authority granted by the City Charter of the City of Albuquerque, the Board of Ethics and Campaign Practices (hereinafter referred to as the "Board") issues the following Rules and Regulations for its conduct, and for interpretation and enforcement of the Code of Ethics (Article XII) of the City Charter.

In the event that these Rules and Regulations are in conflict with the provisions of the Code of Ethics of the City Charter, the provisions of the Code of Ethics shall prevail.

Terms and words, which are used but not defined in these Rules and Regulations, shall have the same meaning as defined or used in the Code of Ethics.

Section 2 WHERE TO FILE AND ADDRESS INQUIRES

A Questions to the Board concerning the Code of Ethics or these Rules and Regulations are to be directed to the Office of the City Clerk.

B All declarations, statements, disclosure statements, forms, and any other documents required by the Code of Ethics or these Rules and Regulations to be filed with or submitted to the Board shall be filed in the Office of the City Clerk in accordance with the times specified in the Code of Ethics, these Rules and Regulations or as specified by the Board. The first disclosure statement under City Charter Article XII, Section 5 (c) shall be due February 15, 2002 and shall be filed on reporting forms approved by the Board. The disclosure statement may be signed by a representative of the Mayor or Councillor filing the statements, provided that the Mayor or Councillor has designated such representative on a form approved by the City Clerk.

C It is the responsibility of the person filing or submitting such documents to request and receive from the Office of the City Clerk a signed receipt showing the date and time of filing or submission.

D All documents required by the Code of Ethics or these Rules and Regulations to be filed with or submitted to the Board shall be complete in all respects. Documents submitted will be considered incomplete unless all of the enumerated information is provided. Incomplete submissions will not be considered to be timely filed unless the information is provided on a corrected submission filed prior to the times specified in the Code of Ethics or these Rules and Regulations.

Section 3 ADVISORY OPINIONS

A The Board shall issue advisory opinions to any Official pursuant to the following procedures. For purposes of these rules and regulations, "Official" shall have the same definition found in City Charter Article XII, Section 2.

1 The Subcommittee. A subcommittee of the Board shall review advisory opinion requests from Officials. The subcommittee shall consist of the Chair and Vice Chair of the Board and a third member of the Board who shall be designated by the Chair on an ad hoc basis. The Subcommittee shall make recommendations to the entire Board on each opinion request.

2 The Official shall file a request for advisory opinion with the City Clerk on a form approved by the City Clerk.

3 The subcommittee may require the Official requesting an opinion to provide additional information and to appear before the subcommittee to respond to questions related to the request.

4 The Board shall review all recommendations from the subcommittee. The Official requesting an opinion may attend such review hearing. The Board may require the Official requesting an opinion to answer questions or provide additional information or documentation at the review hearing. The Board may modify the recommended advisory opinion submitted by the subcommittee.

5 Each advisory opinion shall be issued only after a majority of the entire membership of the Board has voted in favor of the advisory opinion.

B Confidentiality, Public Hearings and Public Record

1 The request for an advisory opinion shall remain confidential and shall not be a public record until the request and recommendations of the subcommittee are heard by the Board.

2 The meetings of the subcommittee shall not be open to the public. The review hearing on advisory opinions by the Board shall be an open meeting.

3 All advisory opinions approved by the Board shall be filed with the City Clerk and shall be a public record. The City Clerk shall index the advisory opinions by subject matter and date.

C Advisory Opinion Requirements

1 The Official shall file a request for advisory opinion with the City Clerk on a form approved by the City Clerk.

2 The request for an opinion shall be about the conduct of the Official making the request, not that of some other person.

3 The request shall be only about prospective conduct, not past or present actions.

4 The request must be about a real or potential conflict the requesting Official is facing.

5 All material facts must be revealed in the request.

6 The Official who is issued an advisory opinion is the only one who may use the opinion as a defense.

7 The Board may include in the advisory opinion that the Official must take particular actions or refrain from certain conduct in order to be eligible to use the advisory opinion as a defense to any future complaint.

D Advisory Opinions as a Defense

1 An Official who receives an advisory opinion may rely on the opinion under the following conditions. If a complaint is filed against that Official based on the same facts that are the basis for the opinion request, the Official may raise the advisory opinion as a defense in his response to the complaint or any portion of the complaint. The Board shall determine if the opinion was followed and whether the complaint is based on the same facts revealed in the opinion request. If both are found, the Board shall dismiss the complaint or that portion of the complaint that pertains to the advisory opinion.

2 In the event the Board finds that material facts were omitted by the Official in requesting the advisory opinion, that the Official did not follow the advisory opinion, or that the complaint involves material facts other than those that are the basis of the advisory opinion, the Board shall not dismiss the complaint solely on the basis of the advisory opinion, however the Official may use the advisory opinion as part of his defense.

3 Advisory opinions may be used by both Complainants and Respondents as precedence, but such opinions are not binding on the Board unless it is an opinion found by the Board to have issued to and followed by the Respondent pursuant to paragraph D 1 of this section.

Section 4 ENFORCEMENT

A Complaints and Violations

1 A complaint alleging any violation of the Code of Ethics shall be made in writing by the filing of a notarized statement attesting to the truth of its contents on a form approved by the City Clerk. The complaint shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violations. Complaints and answers to complaints shall be verified. The Board shall not hear a complaint that is not verified. A Respondent's failure to timely file a verified answer may be construed by the Board, depending on the totality of the circumstance, as an admission of allegations. A sample form of verification is available at the Office of the City Clerk.

2 The complaint shall specify the provision or provisions of the Code of Ethics or these Rules and Regulations alleged to have been violated and provide a clear and concise statement of what events took place that the Complainant believes violated the provision or provisions of the Code of Ethics or these Rules and Regulations that are cited in the complaint. No complaint will be accepted for filing unless it is signed and notarized and unless the documentation referred to above and the statement of the provision alleged to have been violated or reason for the complaint is presented at the same time the complaint is offered for filing. Complaints may be accompanied by verified affidavits pertaining to material elements of the complaint.

3 Limitations The Board will not set for hearing any complaint charging a violation alleged to have occurred more than one hundred twenty (120) days prior to the date the complaint is filed unless the facts and documentation supporting the charges alleged in the complaint were not public knowledge or available for public inspection within that time frame. But in no event shall the Board hear a complaint alleging violations in which the alleged violation occurred more than one year in the past unless the Complainant also alleges fraud or purposeful misrepresentation on the part of the Respondent to conceal the conduct that is the subject of the complaint.

4 All complaints shall be filed with the Office of the City Clerk, who in turn will immediately deliver a copy of the complaint to each member of the Board and each Respondent. After reviewing the complaint at a preliminary hearing the Board shall either accept the complaint for hearing or reject the complaint and notify the Complainant in writing of the rejection and the reasons therefore and the Complainant's right to appeal the rejection.

B Summary Dismissals

Upon receipt of a Complaint by the City Clerk, the Clerk shall send a copy of the Complaint with all attachments to each member of the Board along with the names of the Board members who will be on the review committee, established hereafter. Any Board member who requests that the Complaint be considered at a preliminary hearing shall so notify the Clerk within ten days of that Board member's receipt of the Complaint. If the Clerk receives such notice, the Clerk shall schedule a preliminary hearing and the summary procedure provided hereafter shall not apply to the Complaint. When no Board

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member requests that the Complaint be heard at a preliminary hearing, complaints filed pursuant to these Regulations shall be reviewed by a Review Committee that shall consist of the Chair and two other Board members designated by the Chair to determine whether the complaint states a violation of the Code of Ethics. Designation of the two board members shall be by alphabetical rotation by last name of the Board members. If a Board member is not available, the Chair may designate the next Board member on the alphabetical list. If the three Board members agree that no violation of the Code of Ethics is stated in the Complaint, the Complaint shall be dismissed without a preliminary hearing. The three board members shall not be required to meet to make their decision. The City Clerk shall compile the decisions of the three Board members and when all three agree on dismissal, the Clerk shall prepare an order of dismissal, which only the Chair shall be required to sign. The Complainant shall be entitled to appeal the decision by filing a notice of appeal with the City Clerk within ten calendar days after Complainant's receipt of the notice of dismissal. Upon receipt of a notice of appeal filed within the required time, the City Clerk shall schedule a preliminary hearing. The Respondent shall be given notice of all actions taken pursuant to this section. The City Clerk shall provide all Board members a copy of the Complaint and the order of dismissal at the time of dismissal.

C Response For Preliminary Hearing

Respondents may file a statement with the Board explaining why the complaint fails to state a violation of the Code of Ethics. Respondents shall be given twenty (20) calendar days notice of the preliminary hearing. The Respondent's statement shall be filed with the City Clerk ten (10) calendar days prior to the preliminary hearing. The City Clerk shall provide the Complainants and Board members with the Respondent's statement three (3) City working days prior to the preliminary hearing.

D Preliminary Hearing

1 A preliminary hearing shall be held by the Board for the purpose of deciding whether to accept a complaint. The Board's decision shall be based on findings that the factual statements made in the complaint, taken as being true, establish that Respondent has violated the provision or provisions of the Code of Ethics or these Rules and Regulations that are cited in the complaint.

2 Complainants and Respondents and their representatives shall, at the Board's request, address the Board at the preliminary hearing. Such presentations shall be limited to discussion of whether the complaint contains sufficient factual allegations to support a finding that a violation of the Code of Ethics occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the complaint shall be accepted at this hearing. The Board shall also consider the complaint, Respondent's response to the complaint made pursuant to section 4 B of these rules and regulations and any other documentation provided at the request of the Board.

3 Reasons for Dismissing a Complaint At the preliminary hearing, the Board may dismiss a complaint if any one of the following is found or for such other reason as may be determined by the Board.

a The Board has no jurisdiction over the subject matter specified in the complaint or over the Respondent.

b The time in which a complaint could be filed has run.

c The conduct alleged in the complaint, if true, would not constitute a violation of the Code of Ethics.

d The complaint on its face is frivolous, groundless, or brought for the purpose of harassment.

e The subject of the complaint has become moot.

f The Respondent had obtained an advisory opinion concerning the identical facts alleged in the complaint and Respondent complied with the advisory opinion.

4 Appeal A Complainant who is aggrieved by the Board's rejection of the Complainant's complaint may file an appeal to the District Court. Such appeal shall be filed within five days of Complainant's receipt of the final order of the Board.

5 The Board shall promptly set hearing dates for complaints not rejected.

6 Persons required to testify before the Board shall be served with a subpoena issued by the City Clerk's office and signed by the Chairman of the Board or his designee. Complainants and Respondents shall request issuance of subpoenas through the City Clerk's office in a timely manner.

E Consent Order/Settlement Process

1 At any time after the filing of the complaint, the Respondent may offer to settle the complaint by admitting to the allegations in the complaint and requesting a settlement conference with the staff of the Board. Based on the settlement conference, the staff shall prepare a proposed settlement agreement that shall be submitted to the Board. The settlement agreement shall state the sections of the Code of Ethics and/or these Rules and Regulations violated, the action taken or to be taken by the Respondent to correct the violation and proposed sanctions, if any, upon Respondent.

2 Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement

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agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a consent order that shall be provided to all parties. The review of the settlement agreement and vote on the consent order shall be conducted at a public hearing. Testimony shall not be allowed at such hearing nor shall argument of the parties be accepted. The Respondent shall attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent and sanctions imposed. The consent order shall be a final order concluding the case. The settlement agreement approved by the Board and the consent order shall be public records. In the event a settlement agreement is rejected by the Board, such settlement agreement may not be used as evidence in any subsequent hearings.

F Investigations For the purposes of these Rules and Regulations, the term "allegations" means any formal charges filed with the Board and any other information raising a substantial question related to compliance with the Code of Ethics which least [-six-] [+four+] or more members of the Board vote to investigate.

1 Investigation of Allegations

a Formal Charges

(1) Formal charges are those charges or complaints brought before the Board pursuant to Section 7, Article XII, City Charter and filed in accordance with these Rules and Regulations. Formal charges also include those charges brought by the Board on its own initiative.

(2) By an affirmative vote of at least four members of the Board, the Board may determine to have an investigation of any formal charge prior to or during any hearing that the Board may hold relative to the formal charge.

(3) Decision on any such charges that the Board votes to investigate shall be held in abeyance pending investigation.

b Other information

(1) Any member of the Board may request that the Board authorize an investigation of any information regarding compliance with the Code of Ethics coming to the attention of such member other than as a formal charge.

(2) Such an investigation shall be authorized only upon an affirmative vote of at least four members of the Board.

c Scope of Investigation The scope of any investigation of allegations authorized by the Board shall be specifically defined by the Board prior to the investigation being undertaken.

2 Selection and Retention of Investigators

a If the Board determines, by an affirmative vote of at least four members of the Board, to investigate allegations concerning compliance with the Code of Ethics, the Board may utilize the Office of Internal Audit and Investigations+, City staff assigned to the Board or temporarily employ or contract with investigators. In selecting and retaining investigators to investigate such allegations, the Board is not bound by the procurement procedures of the City of Albuquerque, however, any such selection and retention shall be accomplished in accordance with the procedures in these Rules and Regulations. Investigation assignments to the Office of Internal Audit and Investigations and City staff assigned to the Board requires no procurement procedure and may be accomplished by a vote of at least four members of the Board.

b If the Board has determined, by an affirmative vote of at least four members of the Board, to investigate allegations concerning compliance with the Code of Ethics by using a private entity or individual, the Board shall select an investigator in accordance with the following procedure:

(1) If sufficient time is available, the Board shall seek written proposals by issuing a request for proposals. The request for proposals shall specify the services required, all terms and conditions applicable to providing the services, all evaluation factors, and instructions and information to proposers relative to the preparation and submission of proposals.

(2) If the Board determines that sufficient time is not available to issue a request for written proposals, the selection of an investigator shall be accomplished through such competition as is practicable under the circumstances.

(3) The selection of an investigator shall be determined by majority vote of those Board members in attendance.

(4) The selection of an investigator shall be documented, and any agreement with an investigator shall be reduced to writing and signed by the investigator and the Chairperson of the Board, attested by the City Clerk, and filed in the office of the City Clerk. An investigator selected by the Board shall be retained by the Board for whatever length of time the Board determines is necessary for the investigation of the allegations.

G Answers Answers shall include a response to each allegation in the Complaint and shall be filed with the City Clerk by all Respondents within fifteen days after the Respondent receives notice from the City Clerk that the Board has accepted the complaint at a preliminary hearing. Each Respondent shall send a copy of his/her answer to each Complainant by first class mail and file a certificate of mailing with the City Clerk

certifying that such mailing occurred on or before the date the answer was filed with the City Clerk.

H Hearings In conducting hearings, all parties shall be afforded an opportunity for a full and fair hearing. In this regard, the Board shall follow these procedures:

1 **Parties** The party filing a complaint with the Board shall be referred to herein as the "Complainant" and the party responding to alleged violations of the Code of Ethics or these Rules and Regulations shall be referred to herein as the "Respondent."

2 **Notice**

a The Board shall give at least fourteen (14) days written notice of the hearing to each party stating the time and place of the hearing.

b The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing.

c The Board shall require that the parties provide in advance a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness's testimony, and copies of all documentary evidence to be introduced at least ten (10) days prior to the scheduled hearing. One copy of each item required pursuant to this paragraph shall be provided to the City Clerk to the attention of the Board, and one copy to each opposing party. Failure of a Complainant to comply fully with this paragraph shall result in a dismissal of the complaint with or without prejudice at the Board's discretion in view of a totality of the circumstances. Failure of a Respondent to comply fully with this paragraph may result, based on a totality of the circumstances, in an admission of all alleged charges in the complaint. Parties objecting to authenticity of proposed exhibits must make an objection in writing to the Office of the City Clerk at least three (3) days prior to the scheduled hearing and shall provide a copy of the objection to opposing parties simultaneously. A party's failure to make a timely objection to the authenticity of opposing party's exhibits shall result in the admission of those exhibits.

3 **Continuances** Requests for continuances shall be made, in writing, at least seven (7) days prior to the hearing, and shall be delivered to the Office of the City Clerk to the attention of the Board.

4 **Evidence**

a The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant,

immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.

b Hearsay testimony shall be admissible subject to the other limitations on admissibility contained in these rules, provided that anonymous statements shall not be admissible.

c The Board shall base its decision on evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Each violation of the Code of Ethics or these Rules and Regulations found by the Board shall be supported by at least some evidence that is admissible in a court of law.

5 Hearing Procedure

a The Chairperson of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or wishes to delegate this duty, in which case the Board members shall select a presiding officer. The presiding officer shall

- (1) Determine the admissibility of evidence and testimony;
- (2) Make rulings on procedural issues; and
- (3) Be responsible for the Board's written ruling in each case.

- (4) Issue an administration subpoena for the appearance of a person at a hearing or for the production of documents, or both. When the Board has authorized an investigation, pertinent documents may be required to be produced to the investigator at other than a Board meeting.

- (5) Request the City Attorney to apply for a Court order compelling compliance with an administrative subpoena or for a Court order requiring the giving of the testimony or production of documents.

- (6) The presiding officer may impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings.

- (7) The presiding officer may set time limits for presentation of opening and closing statements.

- (8) The presiding officer may prohibit repetitive testimony.

b Should an action of the presiding officer challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.

c The Board may, but is not required to recognize any agreements on facts and issues between the parties and eliminate certain facts not in dispute in defining the issues to be heard.

d Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available at the City Clerk's Office. The City Clerk shall index all Board case decisions by subject and date.

e The Board may request clarification by the Complainant of a complaint prior to any hearing, request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.

f Any party may be represented by representatives.

g The Board may dismiss a complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, Respondent has come into compliance voluntarily and the Board determines that no sanction is required or when the Complainant does not appear at a hearing, but only if the Board determines that it would be unfair to the Respondent not to have the opportunity to examine the Complainant.

h In the absence of the Board's decision to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing shall be as follows:

(1) Opening Statement of Issues The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented.

(2) Complainant's Presentation of Its Case The Complainant's case will first be presented to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case. Following each witness's testimony, the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complainant's respective witnesses.

(3) Presentation of Respondent's Case Respondent's presentation shall follow Complainant's and the same format as the presentation of Complainant's case shall apply.

(4) Rebuttal Testimony Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised.

(5) Closing Statements At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement, which shall be limited to issues brought forth in the Respondent's closing statement.

(6) Decision Any decision or opinion of the Board, including findings of fact, which shall consist of a written statement of the facts relied on to support the decision of the Board, shall be given to each party by certified mail or personal service, and shall be filed in the Office of the City Clerk.

(7) Record The following records of the Board's proceedings shall be kept:

(a) A full record of the hearing by sound recording (which shall be retained for one year after the final decision is issued);

(b) All documents of other items considered and received as evidence; and

(c) Any decision or opinion of the Board.

I Fines

1 Pursuant to the Code of Ethics, the Board may, after due hearing, issue a public reprimand or impose a fine not to exceed \$500 for each violation of the Code of Ethics or do both.

2 All fines shall promptly be paid to the City of Albuquerque by depositing the amount of any such fine in the Office of the City Clerk.

3 In addition to imposing such sanctions or as an alternative thereto, the Board may recommend to the City Council that the violator be suspended or removed from

office.

J Communications After a complaint has been filed, none of the parties or their representatives may communicate on an ex parte basis with the Board or any Board member on any matter pertaining to the complaint. All communications pertaining to the complaint shall be sent to the office of the City Clerk.

K Board Initiated Charges Notwithstanding any other provision in these Rules and Regulations, the Board may, on its own initiative, initiate a charge or charges that an Official has committed a violation of the Code of Ethics or of these Rules and Regulations.

Section 5 MISCELLANEOUS

A Notice Any notice required by the Code of Ethics or these Rules and Regulations shall be given by certified mail or personal service.

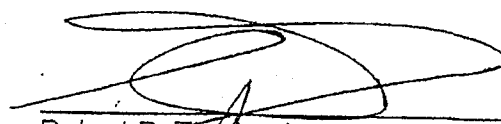
B Meetings The Board shall comply with the provisions of the New Mexico Open Meetings Act relating to notice to the public of its meetings and meetings being open to the public. The length of notice given to the public of the Board's meetings shall be determined by annual resolution. Deliberations on cases, including the drafting of findings and conclusions, may be in closed or open sessions.

C Records All records of the Board in the conduct of its business, including but not limited to minutes of meetings and recommendations to the City Council and Mayor, shall be under the custody of the Office of the City Clerk, and shall be preserved intact as permanent public records, provided that video and audio records need be retained for only one year.

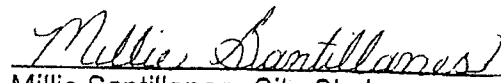
D Amendments The Board, by majority vote, may amend these Rules and Regulations pursuant and subject to the authority granted under Section 10 of the Code of Ethics.

E Effective Date and Filing These Rules and Regulations, having been approved by the Board of Ethics and Campaign Practices on May 30, 2007 by a vote of five for, none against and two absent, shall be effective on the date entered below and shall be filed in the Office of the City Clerk.

ADOPTED THIS 30th DAY OF MAY 2007.



Robert P. Tiffin, Jr.
Chairman, Board of Ethics and Campaign Practices



Millie Santillanes, City Clerk

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Bernalillo County, New Mexico, Code of Ordinances >> DIVISION 4. - CODE OF CONDUCT >>

DIVISION 4. - CODE OF CONDUCT

Sec. 2-126. - Authority.
Sec. 2-127. - Declaration of policy.
Sec. 2-128. - Responsibility of public office.
Sec. 2-129. - Definitions.
Sec. 2-130. - Standards of conduct.
Sec. 2-131. - Disclosure of certain financial interests.
Sec. 2-132. - Reporting violations of code of conduct.
Sec. 2-133. - Code of conduct review board.
Sec. 2-134. - Right of appeal.
Sec. 2-135. - County compliance officer.
Sec. 2-136. - Nonretaliation.
Sec. 2-137. - Restrictions on employment and appointment after leaving office.
Sec. 2-138. - Employee code of conduct.
Sec. 2-139. - Severability.
Secs. 2-140—2-200. - Reserved.

Sec. 2-126. - Authority.

This division is enacted under the authority of NMSA 1978, §§ 3-17-1, 4-37-1 and 10-16-13, and this division shall be known as the Code of Conduct.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-127. - Declaration of policy.

The proper operation of democratic government requires that candidates, elected officials, employees and volunteers of local governments be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office or the pursuit of public office not be used for personal gains; that the public have confidence in the integrity of its government; and, that, persons and businesses seeking to contract and contracting with the county abide by the requirements set out herein to prevent conflicts of interest and unfair contracting practices. To assist in attaining these goals, there is established a code of conduct for all candidates, elected officials, employees and volunteers of county government, including members of boards, committees and commissions (hereinafter "candidates and public servants"). The purpose of this division is to establish standards of conduct for all candidates for elected office and for public servants, by setting forth those acts or actions which are incompatible with the best interests of the county and by requiring such candidates, and public servants to disclose personal interests, financial or otherwise, in matters affecting the county. It is the further purpose of this code to protect county employees and volunteers from undue influence, threats or fear of threat or reprisal with respect to the exercise of their constitutional right to support candidates of their choice.

This code is promulgated under the county's authority to regulate the conduct of candidates, public servants under its control and contractors doing business with the county and prospective contractors. The penalties and remedies are not exclusive, and are complementary to other standards of conduct, including criminal prohibitions, and New Mexico's Governmental Conduct Act, NMSA 1978 § 10-16-1 et seq., which apply to individuals covered by this code. The penalties under the Governmental Conduct Act may be more stringent than this code. Nothing herein shall preempt or prevent law enforcement or other governmental jurisdictions to investigate or pursue penalties for the same course of behavior prohibited under this code.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-128. - Responsibility of public office.

Public servants hold office, employment, or volunteer for the benefit of the public. They are bound to uphold the Constitution of the United States and the New Mexico Constitution; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state and county; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

Public servants have the common obligation of serving the public. In performing their duties, public servants shall treat the public and each other with respect, concern, and responsiveness, recognizing that their common goal of exceptional public service can only be achieved by working together. Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent on resolving these disputes is money not spent on important public needs.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-129. - Definitions.

[The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Business means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

Candidate means any person who has filed a declaration of candidacy for the position of county commissioner, sheriff, treasurer, assessor or clerk, including the period of time from the filing of the declaration of candidacy through being sworn into the elected office.

Compliance officer means an independent county employee who accepts and processes complaints alleging county government misconduct, and violations of this code, ensures that the complaints are routed to the proper office for handling, investigation, and response; tracks and reports to the review board, county manager and county commission quarterly on the number of complaints, their subject matter, and their resolution; and coordinates annual code of conduct training. The compliance officer shall strive to be unbiased and as impartial as possible and shall conduct themselves with fairness and professionalism at all times.

Contract means an agreement or transaction having a value of more than \$1,000.00 with the County of Bernalillo for:

- (1) The rendition of services, including professional services;
- (2) The furnishing of any material, supplies or equipment;
- (3) The construction, alteration or repair of any public building or public work;
- (4) The acquisition, sale or lease of any land or building;
- (5) A licensing arrangement;
- (6) A loan or loan guarantee; or
- (7) The purchase of financial securities or instruments.

Domestic partners means two adults, capable of consent who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, where both persons have a common residence, and neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved or adjudged a nullity. The two persons are at least 18 years of age and not related by blood in a way that would prevent them from being married to each other in this state. A "common residence" means that both domestic partners share a common residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

Elected official means the members of the board of county commissioners, sheriff, treasurer, assessor, and clerk, but does not include the probate judge.

Employee means all persons filling an allocated position of county employment, including appointees of a county commissioner, the board of county commissioners, or any other elected official.

Employment means rendering of services for compensation in the form of salary as an employee.

Family member means an individual's spouse, parents, children or siblings, by consanguinity or affinity and includes an individual's domestic partner.

Financial interest or substantial financial interest means an interest held by an individual or the individual's family that is:

- (1) An ownership interest in business or property greater than 20 percent; or
- (2) Any employment or prospective employment for which negotiations have already begun.

Gift means any money, property, real property, personal property, service, license, permit, contract, authorization, loan, travel, entertainment, food, hospitality, gratuity, or any promise of these, or anything of value that is received or given without equivalent consideration or compensation. For purposes of this division, "gift" does not include:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public;
- (2) Anything for which the elected official, employee or volunteer, or his or her spouse, or family member pays the market value;
- (3) Any (i) contribution that is lawfully made and reported in accordance with the election code, or (ii) activities associated with a fundraising event in support of a political organization or candidate, unless otherwise prohibited by this code;
- (4) An award, plaque, certificate, or similar personalized item given in recognition of the official's public, civic, charitable, or professional service;
- (5) An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization;
- (6) The use of a public facility or public property made available by a governmental agency for a public purpose;
- (7) Gifts provided directly or indirectly by a state, regional or national organization whose primary purpose is the promotion of the exchange of ideas between governmental officials or employees or to provide for the professional development or training of such governmental officials or employees;
- (8) Any gift accepted on behalf of and to be used by the county for the costs of attending public meetings or conferences where elected officials or employees are attending as part of their official duties, including local events and the costs of travel and related expenses associated with attending such events outside of the county;
- (9) Any gift given by a family member for personal reasons; and,
- (10) Food or beverage with a value under \$25.00.

Official act means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.

Person means any individual, corporation, partnership, joint venture, association or business organization.

Political activity means:

- (1) Preparing for, organizing or participating in any political meeting, political rally, political demonstration or other political event;
- (2) Soliciting contributions on behalf of a political candidate or political party including, but not limited to, the purchase of, selling, distributing, or receiving payments for tickets for any political fundraiser, political meeting or other political event;

- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a political contribution;
- (4) Soliciting votes on behalf of a candidate for elective office or a political organization;
- (5) Initiating for circulation, preparing, circulating, reviewing or filing any petition on behalf of a candidate for elective office;
- (6) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or for or against any referendum question;
- (7) Campaigning for any elective office;
- (8) Managing or working on a campaign for elective office; or
- (9) Preparation or design of any campaign materials or any form of media for a candidate for elective office.

Privileged or confidential information means any written or oral material, or electronic data or media related to county government which had not become part of the body of public information and which is designated by statute, rule, court decision, lawful order, ordinance, resolution or custom as privileged, confidential or exempt from disclosure pursuant to the New Mexico Inspection of Public Records Act.

Restricted donor means any person or entity who:

- (1) Is seeking official action (i) by an elected official or volunteer, or (ii) in the case of an employee by the employee or by an elected official, a county department or an employee's supervisor;
- (2) Does business with or seeks to do business (i) with the board of county commissioners, the county, an elected official or volunteer, or (ii) in the case of an employee, with an employee or his/her department, elected office or an employee's supervisor;
- (3) Conducts activities regulated (i) by an elected official or volunteer, or (ii) in the case of an employee, with the employee or his/her department or the employee's supervisor; or
- (4) Has interests that may be substantially affected by the performance or nonperformance of the official duties of the elected official, volunteer or employee.

Standards mean the conduct required by the code of conduct.

Volunteer means any person who is appointed by an individual county commissioner or by a majority of the board of county commissioners to any board, committee or commission for which the individual receives no compensation.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-130. - Standards of conduct.

- (a) *General ethical standards of public service.*
 - (1) Public servants shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
 - (2) Public servants shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
 - (3) Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
 - (4) No public servant may request or receive, and no person may offer any money, thing of value or promise thereof, other than any county pay received, that is conditioned upon or given in exchange for promised performance of an official act.
- (b) *Improper influence.* No public servant shall make, participate in making or in any way attempt to use his or her position to influence any county governmental decision or action in which he knows, he or she has reason to know, or should know that he or she has any substantial interest. No county commissioner shall make, participate in making or in any way attempt to use his or her position to influence any hiring decision or other decision regarding employment for any county employee, except for appointees of the county commissioners, the county manager, the county attorney and the fire chief. The prohibition does not prohibit:
 - (1) A county commissioner from being listed as a reference for an applicant seeking employment with the county; or
 - (2) A county commissioner from participating in and making comments during any concurrence process related to the selection of deputy county managers the public information officer, human resources director and the director of the economic development office; or
 - (3) A county commissioner raising his or her concerns regarding the performance or conduct of a deputy county manager or department director with the county manager, or stating his or her satisfaction, dissatisfaction, compliment, criticism or concern regarding the actions of a deputy county manager or department director publicly; or
 - (4) A county commissioner notifying the county manager or county attorney, in a confidential communication, of allegations of poor employee performance or employee misconduct and requesting appropriate investigation and action if found by the county manager to be warranted.
- (c) *Prohibited bidding and contracting.*
 - (1) No public servant shall accept a bid or proposal from a person who directly participated in the preparation of the specification, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.
 - (2) No public servant shall attempt to influence the process or outcome of a competitive bid, proposal or request for a proposal, unless formally or specifically appointed to participate in the bid or proposal process; or by virtue of their job duties has the authority to advise or take action on a specific bid or proposal.
 - (3) No elected official or employee shall enter into contracts or obtain financial interests with a person or business that are, or are attempting to have business with the county.
 - (4) No public servant who participated, directly or indirectly in a county procurement process shall seek employment, be an employee, or receive any financial consideration from a person or business contracting or seeking to contract with the county.
 - (5) No public servant shall enter into contracts with, or take any action favorably affecting, any person or business that is represented in the matter by a person who has been an elected official or employee of the county within the preceding year.
 - (6)

No person or business who is doing business with the county or seeking to do business with the county shall attempt to influence the outcome of a bid process by contacting any candidate or public servant about a bid or proposal process unless the public servant contacted is formally or specifically appointed to participate in the bid or proposal process; or by virtue of their job duties has the authority to advise or take action on a specific bid or proposal. Persons or businesses doing business or seeking to do business with the county shall be required to comply with the provisions of this Code of Conduct as they apply to their interactions with the county and any violation of the Code of Conduct requirements are hereby found to be a breach of a county contract they hold and shall be grounds for rejection of any bid or proposal.

- (d) *Receiving and soliciting gifts.*
 - (1) *Restrictions.* No candidate, or public servant shall intentionally solicit or accept a gift or gifts with a market value greater than \$100.00 from any restricted donor within a calendar year. No candidate or public servant shall intentionally solicit or accept a gift or gifts in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes family members of the candidate, elected official, employee or volunteer. No restricted donor shall intentionally offer or make a gift that violates this restriction.
 - (2) *Disclosure.* All gifts accepted by a candidate or public servant from a restricted donor, regardless of their value, shall be reported on a quarterly basis to the county clerk on a form approved by the board of review. The report shall include the market value of the gift, the name of the person(s) providing the gift, and the date the gift was received. Gifts of food and refreshments may be reported in estimated value if below \$35.00 in market value. The quarterly reports provided to the county clerk shall also be posted on the county's transparency portal.
- (e) *County-owned property.* No public servant shall engage in or permit the unauthorized use of county-owned property for any political activity or in violation of any county policy.
- (f) *Use or disclosure of privileged or confidential information.* No public servant shall use or disclose privileged or confidential information gained in the course of or by reasons of his or her position or employment, other than; (i) in the performance of his or her official duties; (ii) as may be required by law; or (iii) as permitted by this code of conduct.
- (g) *Conflicts of interest.*
 - (1) *Official act for personal financial interest.*
 - a. It is unlawful for public servant to take an official act for the primary purpose of directly enhancing or improving their financial interest or financial position.
 - b. A public servant shall be disqualified from engaging in any official act directly affecting their or their family members' substantial financial interest.
 - c. No elected official during the term for which elected, and employee or volunteer during the period of their service shall acquire a substantial financial interest when they believe or should have reason to believe that the new substantial financial interest will be directly affected by the officer's or employee's official act.
 - (2) No public servant shall make, or participate in making, any county governmental decisions with respect to any matter in which the public servant or their family member has any substantial financial interest.
 - (3) Any employee who has a conflict of interest as described in subsections (1) and (2) above shall advise his or her supervisor of the conflict or potential conflict in writing. The immediate supervisor may ask for guidance on the nature of the potential conflict from the compliance officer, county manager or county attorney, if it is determined there is a conflict the supervisor shall either:
 - a. Assign the matter to another employee;
 - b. Require the employee to eliminate the substantial interest giving rise to the conflict and only thereafter shall the employee continue to participate in the matter;
 - c. It shall not be considered a violation of this code of conduct where an employee timely discloses his or her potential conflict of interest and complies with the direction of his or her supervisor.
 - (4) Any public servant, while acting in a quasi-judicial, legislative or adjudicative role, shall disclose the potential conflict of interest and shall disqualify themselves from participating in any official act, including any substantive discussion or vote. Any elected official may ask guidance on potential conflicts of interests from the county attorney, compliance officer or seek an advisory opinion from the board of review.
- (5) *Interest in county business.*
 - a. No public servant shall have any substantial financial interest in his or her own name, or in the name of any other, in any contract, work or business of the county or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the county. Compensation for property taken pursuant to the county's eminent domain power shall not constitute a substantial interest within the meaning of this section if sold pursuant to a process of competitive bidding following public notice. No public servant shall have a substantial financial interest in the purchase of any property that; (i) belongs to the county; or (ii) is sold for taxes or assessment; or (iii) is sold by virtue of legal process at the suit of the county.
 - b. For purposes of section (a), "substantial financial interest" shall not include the interest of the spouse of a public servant which interest is related to the independent occupation, profession or employment of the spouse.
 - c. The county shall not enter into a contract with a public servant or with their family or with a business in which they or their family has a substantial interest unless the public servant has disclosed through public notice to the county clerk their substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to salary for the elected office or employee compensation by the county. A person negotiating or executing a contract on behalf of the county shall exercise due diligence to ensure compliance with the provisions of this section.
- (h) *Political activity.*
 - (1) No candidate or public servant shall compel, coerce or intimidate any elected official, volunteer or employee to make, or refrain from making, any political contribution. No candidate or public servant shall directly solicit any political contribution from county employees or immediate family of county employees. Nothing in this subsection shall be construed to prevent any candidate or public servant from voluntarily making a contribution or receiving a voluntary contribution.
 - (2) No candidate or elected official shall accept any campaign contribution in excess of \$1,000.00, per primary, general or special election, from any restricted donor or in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes immediate family members of the restricted donor. No restricted donor shall offer or make a contribution

- that violates this division. No candidate or elected official shall accept a campaign contribution from an individual or group of individuals when the candidate or elected official knows, or has reason to believe, that the original source of the campaign contribution was a restricted donor.
- (3) No employee with contract management authority or property management authority shall serve as a paid political consultant or as a member of the political fundraising committee of any elected official or candidate for federal, state, city or county office.
 - (4) No employee shall be permitted to serve as a paid campaign consultant, paid campaign treasurer or paid campaign manager for a candidate for federal, state, city or county office. No employee shall be permitted to receive more than \$250.00 in reimbursement from any political campaign or political candidate, in any 12-month period.
 - (5) Public servants shall not perform any political activity while at work and during any compensated time, other than annual leave, personal leave, holidays or other time off. Public servants shall not use any county property or resources for any political activity for the benefit of any campaign for elective office or any political organization.
 - (6) At no time shall any public servant solicit or require any employee to perform any political activity; (i) as part of the employee's county duties; (ii) as a condition of county employment; or (iii) during any time off that is compensated by the county (such as annual leave, personal leave or holidays).
 - (7) At no time shall any public servant; (i) threaten to deny a promotion or pay increase to a county employee who does or does not vote for certain candidates; (ii) require an employee to contribute a percentage of the employee's pay to a political fund; (iii) influence a subordinate employee to purchase a ticket to a political fundraising dinner or similar event; or, (iv) advise an employee to take part in political activity or similar activities.
 - (8) No county employee shall be directly or indirectly coerced or attempt to coerce another county employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose.
 - (9) A county employee shall not be awarded any additional compensation or employment benefit in the form of a salary adjustment, promotion, or continued employment in consideration for the employee's participation in any political activity.
 - (10) Nothing in this section prohibits activities that are otherwise appropriate for a county employee to engage in as a part of his official county employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.
- (i) *Honoraria.* No public servant may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of \$100.00, but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.
 - (j) *Outside employment.* An employee shall disclose in writing to the employee's respective office or employer all employment engaged in by the employee other than the employment with or service to the county and must receive written approval of that outside employment.
 - (k) *Prohibited employment.* It is unlawful for an employee who is participating directly or indirectly in the contracting process to become or to be, an employee or contractor for any person or business contracting with the county.
 - (l) *Prohibited sales.*
 - (1) An elected official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through their family or a business in which the elected official or employee has a substantial interest, to an employee supervised by the elected official or employee. An elected official or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the elected official or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a elected official or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under their supervision.
 - (2) An elected official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through their family or a business in which the public officer or employee has a substantial interest, to a person over whom the elected official or employee has regulatory authority.
 - (3) An elected official or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom they have regulatory authority.
 - (4) An elected official or employee shall not accept from a person over whom they have regulatory authority an offer of employment or an offer of a contract in which the elected official or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom they have regulatory authority.
 - (m) *Prohibited contributions; financial service contractors*
 - (1) A business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to an elected official or employee of the county who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects.
 - (2) An elected official or employee of the county that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects, shall not knowingly accept a contribution of anything of value from a business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects.
 - (3) For the purposes of this section:
 - a. "Anything of value" means any gift as prohibited by the code of conduct.
 - b. "Contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.
 - (n) *Contracts involving former elected officials and employees.*
 - (1) The county shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
 - a. Represented personally in the matter by a person who has been an elected official or employee of the county within the preceding year if the value of the contract or action is in excess of \$1,000.00 and the contract is a direct result of an official act by the elected official or employee; or
 - b. Assisted in the transaction by a former elected official or employee of the county whose official act, while in county employment, directly resulted in the county's making that contract or taking that action; or
 - c.

A former public officer or employee shall not represent a person in the person's dealings with the county on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

- (2) For a period of one year after leaving county service or employment, a former elected official or employee shall not represent for pay a person before the county.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-131. - Disclosure of certain financial interests.

Within ten days after swearing in of any elected official, the elected official shall file a statement of economic interest with the Bernalillo County Clerk. Amended statements of economic interest shall be filed on an annual basis or before the 11th day of January of each year.

- (1) *Form of statement.* The elected official shall provide the following information to the county clerk:
 - a. Interest in land. A description of all parcels of real estate within the county in which the person owns any interest including an option to purchase.
 - b. Elected officials shall identify all corporate interests in any business organization, either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two-percent ownership interest of any other business that is doing business with the county in an amount in excess of \$7,500.00 annually.
- (2) *Amended statements.* Any person required to file a statement hereunder shall not be required to file an amended statement unless that person undergoes a change in those economic interests that are required to be disclosed by this section. Such persons shall file the amended statement in the manner prescribed above within 90 days of the date of any change in circumstances requiring filing thereof.
- (3) *[Compliance.]* All elected officials shall comply with the provisions of this section within 30 days after the requirements hereof are imposed upon such office or position.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-132. - Reporting violations of code of conduct.

- (a) Any person who has reason to believe the code of conduct has been violated may report the suspected violation in the following manner:
 - (1) By submitting to the compliance officer, a sworn and signed complaint alleging facts which, if true, would constitute a violation of the code. The sworn complaint must identify the specific section(s) of the code allegedly violated and the facts that support such a violation. The complaint must include the complainant's name and contact information. The mailing address, contact information and direct e-mail link to the compliance officer shall be posted on the county's website.
 - (2) Upon receipt of the sworn complaint, the compliance officer shall refer it to the chair of the review board within three business days.
 - (3) The chair shall schedule a preliminary hearing for the board of review to determine whether the allegations in the complaint, if taken as true, would constitute a violation of the code of conduct, and the complaint is properly heard by the review board.
 - (4) If necessary, the compliance officer shall also refer the complaint to the district attorney or appropriate law enforcement agency to review the matter for potential criminal conduct.
 - (5) The review board shall issue a preliminary order that:
 - a. Dismisses the complaint if it does not state a claim under the code, or if it is not properly heard by the review board and refers the complaint to the compliance officer for handling outside of the code; or
 - b. Holds the case in abeyance while the case is reviewed for potential criminal conduct; or
 - c. Refers complaints involving classified county employees that report to the county manager or county attorney for disposition as an employee disciplinary investigation; or
 - d. Determines that the complaint states a facial claim; schedules the case for an evidentiary hearing and establishes a prehearing schedule; or
 - e. Finds that the allegations require an independent investigation before an evidentiary hearing is held, and sends the case to the compliance officer with specific instructions on what investigation the board determines to be necessary. Investigations deemed necessary shall be performed by an independent investigator selected by the compliance officer and county attorney.
- (b) All sworn and signed complaints are public records and shall be made available in accordance with the provisions of the Inspection of Public Records Act.
- (c) The complaints shall be served by the compliance officer on the respondent within three business days of receipt.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-133. - Code of conduct review board.

- (a) There shall be a Bernalillo County code of conduct review board (hereinafter "review board") which shall consist of five members, and five alternates who shall be appointed by the board of county commissioners, with each commissioner appointing one member, and one alternate from his or her commission district. The citizen members shall not be affiliated with county government in any capacity including, but not limited to, employment (including employment for which the salary is in any way funded by or through the county), appointment or election. The members of the review board may not hold elected public office or office with any political party within the county. Terms of office of citizens shall be two years, subject to reappointment thereafter. Regardless of the date of appointment, the term of any individual appointed to the review board shall expire when the commissioner making the appointment leaves office or his/her term expires, and a replacement has been duly appointed by the new commissioner.
- (b) The review board shall elect its own chair and vice-chair. The review board shall sit as a quasi-judicial body and act upon complaints submitted to it by the compliance officer. The alternate members shall be called upon by the chair when a hearing is set and a member of the board is unavailable. Any member whom misses three consecutive meetings, unexcused by the chair, shall be deemed to have resigned from the board and may be replaced by the original appointing commissioner. Members may attend non-quasi judicial hearings by phone.
- (c) The jurisdiction of the review board is limited to acting within the scope of matters covered by this code.
- (d) The review board shall adopt rules of procedure for conducting "due process" hearings. The rules of procedure shall be consistent with the rules for conducting administrative hearings in the State of New Mexico.

- (e) The review board shall have the power to issue administrative subpoenas compelling the attendance of witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the Second Judicial District Court.
- (f) If the review board finds that an unclassified employee or volunteer violated this code, the review board, upon a majority vote of a quorum of the board, shall forward its written findings of fact and conclusions of law to the county manager for appropriate action. If the complaint involves the county manager or county attorney the board shall refer the violation to the board of county commissioners.
- (g) If the review board finds, upon a majority vote of a quorum of the board, that a candidate or elected official has violated this code of conduct, the review board may impose any of the following penalties after the entry of written findings of fact and conclusions of law:
 - (1) A civil fine not to exceed \$1,000.00; or
 - (2) A written finding of censure; and
 - (3) When an elected official has committed an act that the board believes could be grounds for removal from office, refer their decision to the district attorney.
- (h) Limitations on complaints:
 - (1) Complaints filed more than one year after a violation of this code is alleged to have occurred shall be dismissed as untimely; and
 - (2) All complaints submitted shall be resolved, determined, or dismissed by the review board within 90 days from the submission of the complaint. If the complaint is not resolved within 90 days, the complaint shall be dismissed, unless delayed by order of the review board upon a showing of good cause.
- (i) All penalties contained herein are non-exclusive, and do not foreclose other remedies available by law. The county reserves the right to refer any conduct, whether covered by the code of conduct or not, to any agency or law enforcement agency with competent jurisdiction for criminal or civil prosecution.
- (j) Review board. Additional duties and authority:
In addition to acting on complaints and conducting due process hearings, the review board may also:
 - (1) Recommend amendments to the code of conduct to the board of county commissioners;
 - (2) Provide advisory opinions regarding the applicability or interpretation of any provision of this code of conduct upon the request of any candidate or public servant. It shall be a complete defense to any complaint where a candidate or public servant asked the review board for an advisory opinion prior to taking any action prohibited by this division, and complied with the advice of the review board.
 - (3) The review board shall meet at least once per quarter, and more often when necessary, to hear cases, act on reports, issue advisory opinions, discuss policy, and/or approve the quarterly report. The review board shall provide the board of county commissioners with a quarterly report stating the number of complaints that were submitted alleging a violation of the ethics ordinance, the number of complaints submitted to the review board by the compliance officer, and a summary of the status of each complaint to include the date of the complaint date for the case to be heard, and date for possible final action. The quarterly status report must be approved by the review board and made available to the public on the county's website

(Ord. No. 2012-13, 8-14-12)

Sec. 2-134. - Right of appeal.

Any decision of the review board finding a violation of this code, with respect to an elected official, candidate or volunteer may be appealed to the Second Judicial District Court. Any decision regarding an employee shall be covered by the terms of the employment rules and regulations or collective bargaining agreement, as applicable.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-135. - County compliance officer.

- (a) A Bernalillo County compliance officer (hereinafter "compliance officer") position is hereby created. The compliance officer will be a neutral, non-partisan county official that will be the staff person for the review board. The compliance officer shall be an unclassified employee selected by the county manager and county attorney acting jointly and may only be removed for cause. The compliance officer may also be the staff person for other county boards and commissions as determined to be necessary by the county manager. The compliance officer shall:
 - (1) Accept all complaints or allegations of misconduct submitted to them by citizens or public servants, whether covered by the provisions of this code of conduct or not, and monitor them to ensure that they are appropriately dealt with, log all complaints and keep record of their referral status and outcome;
 - (2) Inform the subject of the complaint about the complaint, when legally necessary, and inform the complainant where the complaint has been referred to and inform them of the outcome of the complaint and report quarterly all non code of conduct complaints to the board of review, keeping the complainants names confidential where legally allowed;
 - (3) Direct the complaint to the appropriate law enforcement agency, the review board, county manager or county attorney for review, any necessary investigation, and disposition. If appropriate for a complaint that is easily answered and is not an alleged code of conduct violation, the compliance officer may resolve the complaint and provide a copy of the complaint and resolution to the review board, county manager and county attorney;
 - (4) For complaints alleging violations of the code of conduct, the compliance officer shall file the complaint and submit it to the chair of the review board and schedule a preliminary hearing;
 - (5) The compliance officer, with assistance from the county manager, shall be responsible for education of public servants on the code of conduct and the responsibilities of public service;
 - (6) The compliance officer shall keep all non code of conduct complaints confidential to allow the county to perform a self critical analysis to the extent allowed by law;
 - (7) The compliance officer shall accept requests for advisory opinions on the meaning and interpretation of the code of conduct that will be reviewed and issued by the board of review with the assistance of the compliance officer and county attorney; and
 - (8) The compliance officer shall maintain an open door policy and shall meet privately and confidentially with public servants or the public to answer their questions and provide them with information about the code of conduct and the obligations of candidates and public

servants and resolve their issues informally if possible. These discussions shall be kept confidential except when formal complaints are filed, probable criminal conduct may have occurred, or there are imminent threats to the health and safety of other individuals being made, or their identity must legally be disclosed in order to enforce county, state or federal law.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-136. - Nonretaliation.

The board of county commissioners does not tolerate retaliation against any person who has reported a violation of this code or of other county ordinances or state laws when made in good faith. This nonretaliation provision applies whether the complaint is ultimately determined to be well founded or unfounded. All county personnel and elected officials are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim of violation. Anyone who feels that they have been retaliated against in violation of this policy should submit a sworn complaint to the review board setting forth the claim of retaliation.

A complainant's report of facts may be regarded as being covered by the Whistleblower Protection Act, NMSA § 10-16(c)-I, et seq., and the county shall not retaliate against a complainant for filing a complaint. However, in regard to county employees, merely filing a complaint shall not provide immunity, or protection from county actions related to the complainant's own misconduct, poor job performance, a reduction in work force or other legitimate business purpose. The county reserves the right to act in the public interest in balancing the rights of complainant to bring forward charges of misconduct while maintaining orderly and efficient operations of county government.

If the review board finds that a complaint for violation of the code submitted by an employee is without merit and was made with an intent to harm, harass or intimidate the subject of the complaint, it shall refer the complaint to the county manager for review for proposed disciplinary action. For complaints of violations not covered by the code found to be without merit, the county manager and the county attorney may determine if a complaint was made with the intent to harm, harass or intimidate the subject and may take disciplinary action.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-137. - Restrictions on employment and appointment after leaving office.

- (a) No former county commissioner shall accept or enter into any arrangement or agreement for remuneration with the county for consultant work, part-time or full-time employment in any capacity for a period of 12 months from and after leaving office.
- (b) This provision shall have retroactive effect to January 1, 2011.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-138. - Employee code of conduct.

- (a) The county manager and county attorney shall create and maintain an employee code of conduct for county employees that shall prescribe standards, in addition to those set forth in this code of conduct that are appropriate to ensure that the citizens are served in an ethical and responsible manner. The employee code of conduct shall, if violated, constitute cause for discipline. The county manager, county attorney and compliance officer shall adopt ongoing education programs to advise the employees about the employee code of conduct. Upon approval of the county manager, separate offices, and departments of the county may adopt departmental employee codes of conduct for the unique missions they have.
- (b) The employee codes of conduct shall be reviewed at least once every four years.
- (c) All public servants shall attend a minimum of two hours of ethics continuing education and training biennially.

(Ord. No. 2012-13, 8-14-12)

Sec. 2-139. - Severability.

The provisions of this division are severable, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this division or their application to the persons or circumstances. It is hereby declared to be the intent of the board of county commissioners that this division would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this division or part thereof is inapplicable had been specifically exempted therefrom.

(Ord. No. 2012-13, 8-14-12)

Secs. 2-140—2-200. - Reserved.

FOOTNOTE(S):

⁽⁴⁾ *Editor's note— Ord. No. 2012-13, adopted August 14, 2012, repealed the former Div. 4, §§ 2-126--2-136, and enacted a new Div. 4 as set out herein. The former Div. 4 pertained to the code of ethics and derived from Ord. No. 2010-1, adopted January 12, 2010; Ord. No. 2011-3, adopted March 22, 2011; Ord. No. 2011-5, adopted March 22, 2011 and 2012-10, adopted June 26, 2012. [\[Back\]](#)*

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