

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**ETHICS BOARD MEETING**

**Santa Fe, New Mexico**

**April 24, 2014**

This meeting of the Santa Fe County Ethics Board was convened by Chair Estevan Baca, on the above-cited date at approximately 3:00 p.m. in the Santa Fe County Chambers, County Administration Building, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

**Members Present:**

Estevan Baca, Chair  
Bill Heimbach, Vice Chair  
William Peyton George  
Carol Thompson  
Adair Waldenberg

**Member(s) Excused:**

None

**Others Present:**

Willie Brown, Assistant County Attorney  
Lisa Katonak, Manager's Office

**III. Approval of Agenda**

Ms. Waldenberg moved to approve the agenda as published. Her motion was seconded by Mr. Heimbach and passed by unanimous [5-0] voice vote.

**IV. Approval of Minutes: March 13, 2014**

Mr. Heimbach referred to page 7 and his suggestion for correcting the complaint form. He wished it to read "the activity complained about."

On page 4, paragraph 9, Mr. Brown stated it should say Assistant County Attorney rather than Assistant County Manager. On page 5 "Governmental Code of Conduct" should read "Governmental Conduct Act" in two places on that page.

Ms. Waldenberg noted that on the first page it should read "Mr. Baca moved to approve the minutes, rather than the agenda. She said her first sentence in the verbatim portion is incomplete. She probably intended to say, "Do you want to comment?"

A discussion ensued about the reason for having that part of the minutes regarding appointment of board members in verbatim format. Ms. Katonak said she and Mr. Aaboe asked for verbatim in order to capture the information in preparation for rewriting the ordinance.

Ms. Waldenberg moved to change that part of the minutes to summary. Mr. Heimbach seconded and the motion passed unanimously.

Ms. Waldenberg moved to approve the minutes as amended. Mr. Heimbach seconded and the minutes were approved 4-0 with Mr. George abstaining.

Ms. Thompson recommended that the minutes be reapproved at the next meeting when the summary is available and so moved. Chairman Baca seconded and the motion carried 3-1 with Ms. Waldenberg voting against and Mr. George abstaining.

Noting that the minutes should be available for public review within ten days of approval, Mr. Brown suggested publishing them as is and reconsidering them at the next meeting with the changes in place.

**V. Review, Discussion and Approval of Recommended Amendments to the Board of County Commissioners to amend the Santa Fe County Code of Conduct Ordinance**

Ms. Waldenberg asked if there was input from the incoming County Attorney on the changes and whether these changes had been discussed with the board.

Mr. Brown stated the new County Attorney is not yet on board. The County Manager had asked Steve Ross, the previous County Attorney to look over the proposed changes. He subsequently went to Europe and then resigned. The changes in red on this document [*Exhibit 1*] are from Mr. Ross, Deputy County Attorney Rachel Brown and himself. He did not know if the County Manager had reviewed the changes and he has not discussed them with the Ethics Board. He did not know if Ms. Salazar from HR has seen the changes but she does have a copy. Ms. Katonak said it was circulated to Ms. Miller and the two assistant County Managers.

Chairman Baca asked about a previous reference to problems with constitutionality and whether those issues had been addressed. Mr. Brown said there were legal and First Amendment issues that he felt had been addressed.

Ms. Waldenberg noted that the Supreme Court recently lifted the campaign contribution ceiling and said the ordinance still has a \$2,300 limit. Mr. Brown said that is

still legal; the Supreme Court decision dealt with federal provisions; not state law, so the \$2,300 limit is still valid.

Addressing the latest draft, Mr. Brown said the staff changes, shown in red, include both minor changes and substantive changes that the committee may not agree with. On the first page the statement describing the contents of the ordinance is more detailed and explicative. Also on that page are minor language changes.

On page 2, the County Attorney changed the travel expense limitation from \$25 to \$50 since even a trip to Albuquerque could cost more than \$25. The statement beginning "Anything of value..." was deemed too substantive and should be in a different section, not definitions.

In Section 4. B. vi, Ms. Waldenberg asked about the phrase "serving in a political capacity" which she found too exclusive. Mr. Brown suggested that it should read "official capacity."

Page 3 amplifies the definition of "Candidate" and subsection I adds a definition of the CCEO. The definition of "Family" includes reference to third degree and Mr. Brown showed a chart showing consanguinity relationships. He said siblings and cousins are included in that definition. Ms. Waldenberg recommended those groups be specifically cited.

Page 4, under "Financial Interest", "in joint or concurrent ownership" was added. Ms. Waldenberg asked for a definition of concurrent. Mr. Brown said joint and concurrent are essentially the same thing. Ms. Waldenberg said she had a problem with narrowing the definition in that way. Mr. Brown indicated without that provision it is overreaching. The standard should be if there is potential gain. New Mexico laws allow separate ownership between spouses. If the property is not jointly owned it does not have to be declared. Ms. Waldenberg expressed the view that anything that could potentially influence you should be declared. Chairman Baca pointed out that as it stands currently, the disclosure forms requires divulgence of financial interests of minor children or a spouse, and changes need to be updated.

Turning to the definition of "Party" Mr. Brown said Mr. Ross changed references throughout the ordinance to instances only where someone is named in an ethics complaint is called the party. "Political action" is not used in the code and is therefore stricken.

Page 5 clarifies non-partisanship and expectations regarding avoidance of impropriety. The last lines of 7. C that have been stricken refer to how you measure what creates a reasonable inference of an office being used for private gain, which is very subjective, according to Mr. Brown, and is aspirational.

Page 6 has some minor tightening of language. Section 9 now also includes the word "Disclosure" and references a prior section.

On page 7, B, C, D and E have been moved to Section 11, Prohibited Activities. The new subsection B treats how does one know if someone is doing business with the County and would impose a duty to document information in writing. Discussion ensued about where the documentation was to reside and what constitutes an official document. Mr. Brown said it would seem that the person receiving the gift should do the documenting. Ms. Waldenberg said that should be made more specific. Mr. Brown stated. "I don't think it has to be the kind of public record that we index and file with the County or record with the Clerk." Mr. Heimbach indicated the language should make clear where the documentation is to be kept. Ms. Thompson mentioned the case of a City Councilor who had done business with a company potentially involving a conflict of interest. She asked where would it have been disclosed. Chairman Baca said he understood not wanting to create a burden of paperwork, but this would be creating a record. He suggested changing the language so it doesn't create an undue hardship but maintains the intent.

Page 8 brings in the language moved from the previous page. Section 12 now includes a reference to the Whistleblower Protection Act.

Referring to Section 13 B, "shall" report to law enforcement is changed to "is encouraged to." Ms. Waldenberg stated she would prefer "should" or "strongly encouraged." Mr. Brown noted "you can't make somebody call the cops...it's a moral choice." Turning to 14 C. the stricken language was somewhat contradictory in allowing exceptions. Likewise, language was stricken from 15 A since it was deemed to wishy washy.

Ms. Waldenberg asked if the County reminded employees and officials of what they can and cannot do as the election approaches. Mr. Brown said that does occur and a flyer is contemplated.

Page 10, 15 B and C, "Candidate" is stricken as being not the focus of the intent, and language is clarified in C as to what is a facility.

Political Activity is treated in Section 18, and "elected official, appointed official, employee or volunteer" is stricken since this section refers to candidates of all kinds. 18 C. contains clarifying language. Subsections G, H and I are replaced by the new G that consolidates those restrictions.

Page 15 deals with complaints before the Ethics Board and prohibits members from submitting complaints. Mr. Brown said a member submitting a complaint would turn into an advocate and would have to recuse him or herself, thereby diminishing the size of the sitting board. Chairman Baca said that was also true in any case of conflict of interest. He asked what would occur if a member should witness a violation. Ms. Waldenberg said board members feel an obligation to report violations. "If we don't, who does? She added it was this committee that recommended increasing the membership on

the board from three to five. Chairman Baca agreed. Mr. Brown said they were acting as a tribunal, not advocates.

In 24 C, staff recommended striking receiving unsworn complaints. Mr. Brown stated this was to avoid libel liability and potentially ruining someone's career through unfounded allegations. The Legal Department saves all documents for a reasonable period of time pursuant to the retention schedule, after which they are destroyed. Chairman Baca understood such complaints were not to be discussed. Ms. Waldenberg said if the provision is struck a complainant who had a reasonable expectation that their complaint would be heard by the Ethics Board would be disappointed in that expectation. "Something that is addressed to the board needs to be received by the board." She disagreed with staff interceding. Fear of retaliation has a dampening effect. Mr. Brown asked what the point was of getting unsworn complaints if you can't act on them. Ms. Waldenberg pointed out the value was if they received ten complaints on the same thing that would be important to know. Chairman Baca said letters addressed to the committee should come to the committee.

Page 17 uses the word "respondent" to clarify intent. Discussion ensued regarding dismissal of charges and hearing procedures, specifically whether a complaint can be dismissed by this board without notification to the respondent and complainant.

On page 18, Subsection 7, language is deleted that is featured elsewhere in the document.

Page 19, part of Subsection B was moved to J where it is more appropriate. The reporting to the BCC was changed from quarterly to biannually.

Language on page 21 regarding retaliation was changed to make it less verbose.

Staff included "immediate" in 28. B. 1. b before family and there was a suggestion to remove b since it is covered in Subsection a. A comma was added after "ongoing relationship" in a. "Party" was clarified in B. 4 and 5.

On page 23 Subsection 6 was added to make the importance of recusal abundantly clear. 30. A. 4 puts employees on notice that sanctions apply to them if there are violations to the handbook, even though they are not in the purview of the Ethics Board.

#### **XI. Matters from the Board**

Mr. Heimbach pointed out that the last set of Ethics Board meeting minutes available on the County website was from October. Ms. Katonak said a change was needed on the signature page and as soon as that was made the January minutes could be posted.

The calendar for action on the ordinance was reviewed and the Board scheduled its next meeting May 12<sup>th</sup> at 2:00 pm.

**XII. Matters from the Public**

None were presented.

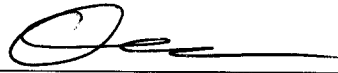
**XIII. Matters from Staff**

None were presented.

**XIV. Adjournment**

Upon motion by Ms. Waldenberg and second by Ms. Thompson, Chair Baca declared this meeting adjourned at 5:05 p.m.

Approved by:



Estevan Baca, Chair  
Santa Fe County Board of Ethics



TESTIFY TO:

*Geraldine Salazar*  
COUNTY CLERK

7-15-2014

Respectfully submitted by:

*Debbie Doyle*  
Debbie Doyle, Wordswork



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

ETHICS BOARD MINUTES  
PAGES: 30

I Hereby Certify That This Instrument Was Filed for  
Record On The 16TH Day Of July, 2014 at 08:41:11 AM  
And Was Duly Recorded as Instrument # 1741467  
Of The Records Of Santa Fe County

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

REC'D  
FILED  
JUL 15 2014  
SANTA FE COUNTY

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. ~~2010-12~~ 2014-

AMENDING AND RESTATING ORDINANCE 2010-12

AN ORDINANCE ENACTING A SANTA FE COUNTY CODE OF CONDUCT; DEFINES TERMS USED IN THE CODE; DESCRIBES CONFLICTS REQUIRING DISCLOSURE AND REQUIRES DISCLOSURE OF CONFLICTS; CREATES A FIVE-MEMBER ETHICS BOARD AND ESTABLISHES THEIR DUTIES; DESCRIBES PROHIBITED ACTIVITY; CREATES COUNTY'S CONTRACT ETHICS OFFICIAL POSITION TO PROSECUTE CHARGES; PROVIDES MECHANISM FOR PUBLIC COMPLAINTS, CHARGING AN INDIVIDUAL FOR VIOLATIONS, AND DETAILED PROCEDURES FOR CONDUCTING A HEARING TO DETERMINE VIOLATION OF CODE; PROVIDES PENALTIES FOR VIOLATIONS OF CODE; AND REPEALING ORDINANCE NO. 2004-3 AND ORDINANCE NO. 2011-9

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY:

SECTION 1. SHORT TITLE.

This Ordinance may be cited as the "Santa Fe County Code of Conduct."

SECTION 2. DECLARATION OF POLICY.

The proper and effective exercise of the democratic process and of democratic government requires that Elected Officials, Appointed Officials, Employees and Volunteers of Santa Fe County government be independent, impartial and responsible to the people; that decisions of the government and development of policy are made fairly, legally and as the result of a fair and open process; that public office or the pursuit of public office should not be used for personal gain or influence; and that the public have and maintain confidence in the integrity of government. To assist in attaining these goals, this Ordinance establishes a code of conduct and ~~establishes~~ minimum standards for ethical behavior for all Elected Officials, Appointed Officials, Employees and Volunteers of county government. This Ordinance also establishes the highest ~~guidelines for standards of~~ ethical behavior for all Candidates for elected office, Elected Officials, Appointed Officials, Employees and Volunteers, by setting forth explicit standards of conduct and ethical behavior, explicitly describing acts which are inconsistent with these standards, and by requiring candidates for elected office, Candidates, Elected Officials, Appointed Officials, Employees and Volunteers to disclose personal interests, financial or otherwise, in matters of the County, and to remove themselves from decision-making when such interests exist.

SECTION 3. RESPONSIBILITY OF PUBLIC OFFICE AND EMPLOYMENT.



Elected Officials, Appointed Officials, Employees and Volunteers hold office or employment for the benefit of the public. They are bound to uphold the Constitution of the United States and the New Mexico Constitution and the Laws of the State of New Mexico; to observe the highest standards in the exercise of the powers and duties of office or employment; to impartially carry out their duties; to discharge faithfully the duties of office regardless of personal considerations; and to recognize that the public interest must be the prime objective.

#### SECTION 4. DEFINITIONS.

A. **“Administrative Action”** means action based upon the application, or interpretation of a County Ordinance or a state statute, or a proceeding involving a license, permit, franchise or development use.

B. **“Anything of Value,” “benefit” or “thing of value”** includes all matters, whether tangible or intangible, that could reasonably be considered to be of advantage or worth, use or service to the person to whom they are conferred, and having an aggregate market value of over \$25 if received from any one person or entity at one time, an aggregate value of more than \$50 if received from the same person or entity in a single calendar year, and any alcoholic beverage regardless of its value. **“Anything of value,” “benefit” or “thing of value”** further includes, if having an aggregate market value over \$25: (i) money, ~~including campaign contributions~~ or pledges; (ii) products or merchandise; (iii) works of art or collectibles; (iv) stocks, bonds, notes or options; real property or an interest in real property; contracts or a promise of a future interest in a contract; (v) an interest or a promise of a future interest in a business; (vi) meals whose total value exceeds twenty-five dollars (\$25), ~~non-alcoholic beverages or~~ lodging, excepting meals provided in connection with an event produced by a non-profit charitable organization or a public event where the person attending is serving in a political capacity; (vii) transportation and related travel expenses not to exceed ~~fifty twenty-five fifty~~ dollars (~~\$50 25 50~~) per trip; (viii) services, including loaned employees; (ix) loans, loan guarantees or co-signing; (x) loans at below market interest; (xi) forgiveness of a debt; (xii) discounts or rebates not extended to the public generally; (xiii) preferential treatment; (xiv) tickets of admission; (xv) paid compensation not commensurate with the fair and reasonable value of the services rendered; (xvi) free or discounted use of office equipment and facilities; (xvii) intentional overpayment or knowing duplicate payments for expenses or costs; (xviii) radio or television time which is not paid at fair market value; (xix) promise or offer of present or future employment; (xx) use of autos, boats, apartments, or other recreational or lodging facilities; (xxi) intangible rights such as a cause of action; (xxii) licenses, patents, intellectual property, copyrights, or an interest in them; and (xxiii) any other item, tangible or intangible, having economic value. ~~“Anything of value,” “benefit” or “thing of value” does not include political endorsements, support in a political campaign or a promise of an endorsement, political activities, or political support.~~

C. **“Appointed Official”** means a person who is not an Elected Official or County Employee and has been appointed by the Board of County Commissioners to serve on a County Board, Commission, or Committee established by the Board of Commissioners, or to perform other functions at the request of the Board of County Commissioners.



**D. "Board of County Commissioners" or "Board"** means the Board of County Commissioners of Santa Fe County.

**E. "Candidate"** means a person who has filed a declaration of candidacy for a position as an Elected Official of Santa Fe County. A Candidate is a Candidate from the time of filing the declaration of candidacy until the election. **A person is also a Candidate under §1-19-26(C) of the Campaign Reporting Act if that person: (i) has received contributions or expenditures of \$1,000 for the purpose of seeking election to office, or (ii) authorized another person or campaign committee to receive or make expenditures of \$1,000 or more for the purpose of seeking election to a County office.**

**F. "Confidential Information"** means information that **has been classified as confidential by law or practice is not available to the public.**

**G. "Conflict of Interest"** means a situation in which a person exercising a duty has an interest, financial or otherwise, that potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the duty.

**H. "Contract"** means an agreement between two or more parties, whether express or arising by operation of law.

**I. "County's Contract Ethics Official ("CCEO")** a licensed attorney under contract with the County who investigates ethics complaints, and if substantiated and charged by the Ethics Board, administratively prosecutes the individual charged with violation of the Code of Conduct.

**J. "Employee" or "County Employee"** means a person who is employed, in any capacity, by the County of Santa Fe.

**JK. "Elected Official"** means a member of the Board of County Commissioners, the County Clerk, the County Treasurer, the County Sheriff, the County Assessor, **the County Surveyor, including a Candidate for those positions,** but does not include the County Probate Judge.

**KL. "Ex parte communication"** means a direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceeding. *Ex parte* communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.

**LM. "Family"** means an individual's spouse, domestic partner, parent, child, sibling and like in-laws, by consanguinity or affinity, **those relatives within the third degree as determined by the common law, and persons, related or unrelated, living within the household.** Those related to someone in "the third degree" usually refer to great-grandparents, great-grandchildren, aunts, uncles, nieces and nephews whether by blood or by marriage.

**MN. "Financial Interest"** means any interest of an Elected Official, an Employee, an Appointed Official, a Volunteer, that is: (i) an ownership interest or other interest in any contract or prospective contract with the County; (ii) an interest in the sale of real or personal property to or from the County; (iii) a financial relationship with a person or business whose interests may be affected by the County; (iv) any employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property to or from the County; or (v) any other interest that may be affected by the County. An interest held ~~in joint or concurrent ownership with~~ the Elected Official's spouse or minor children shall be considered an interest of the Elected Official, Appointed Official, a Volunteer, or Employee for purposes of this Ordinance.

**NO. "Immediate Family"** means a spouse, domestic partner, child of a sibling, a parent, a grandparent, a grandchild, like in-laws, and like step-relationships.

**OP. "Non-public Information"** means information that is obtained in the course of an Elected Official's, Appointed Official's, Employee's or Volunteer's duties and is subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public; and if used or disclosed, a personal benefit or advantage is likely to result.

**PQ. "Party" or "Complaining Party"** means a person who has submitted to the County an ~~application seeking affirmative relief; a person who has filed a formal ethics complaint or protest;~~ a complaining party who has submitted an ethics complaint is considered a party once the County Ethics Board issues a notice of hearing to the respondent named in the ethics complaint. ~~person who is the subject of a formal complaint or investigation; and members of the general public who participate in a pending adjudication.~~

**QR. "Pending adjudication"** means any application, petition, complaint, ~~protest,~~ investigation or other administrative adjudicatory proceeding requiring decision or action by the Board of County Commissioners, the Land Use Administrator or the County Planning Commission.

**RS. "Personal benefit"** means the obtaining or the promise of obtaining anything of value.

**S. "Political action"** means conduct in which Elected Officials or Appointed Officials use their official positions to exercise influence on County Employees, Elected Officials or Appointed Officials; the phrase includes intervention on behalf of constituents with a governmental agency, and endorsement, pledging support, or actively supporting a County governmental matter, a nominee or a candidate for public office.

**T. "Volunteer"** means a person who provides services without being paid and without expectation of payment, and includes a volunteer firefighter or emergency responder (notwithstanding receipt of reimbursement for expenses pursuant to the volunteer recruitment and retention incentive program), a volunteer member of the Sheriff's reserve, any other volunteer who is not supervised or monitored by a County employee or Elected Official, a



volunteer who has the authority to make decisions that affect County business, or a volunteer who has the ability to purchase goods or services with County resources.

## SECTION 5. NON-PARTISANSHIP.

All actions, decisions and votes on matters relating to the County government shall be made on the merits. Decisions shall be made objectively and without party or political partisanship considerations, and without fact which are not directly and properly related to the matter requiring action.

## SECTION 6. PUBLIC TRUST.

A. Elected Officials, Appointed Officials, Employees and Volunteers shall Act according to the highest principles of representative democracy to ensure that County government is worthy of public respect, trust and support.

B. Elected Officials, Appointed Officials, Employees and Volunteers shall not engage in conduct that they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have used their public positions improperly, unethically or otherwise have not conducted themselves in accordance with the standards of conduct of this Ordinance.

## SECTION 7. CONDUCT AVOIDING IMPROPRIETY.

A. Elected Officials, Appointed Officials, Employees and Volunteers shall avoid conduct that creates the appearance of impropriety or that is otherwise unbecoming a public official.

B. Elected Officials, Appointed Officials, County Employees and Volunteers shall not knowingly engage in conduct that violates the rights of others to be treated fairly and with dignity and respect.

C. Elected Officials, Appointed Officials, Employees and Volunteers shall use the powers and resources of public office/public employment only to advance the public interest and not to obtain personal benefits or pursue private interests, and 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. refrain from engaging in conduct, even if lawful, where personal gain or advantage is involved in a way that creates a reasonable inference that such office has been used for private benefit.

## SECTION 8. LIMITATIONS ON EMPLOYMENT WITH AND APPEARANCE BEFORE THE COUNTY FOLLOWING GOVERNMENT SERVICE.

A former Elected Official, Appointed Official or Employee shall not represent a person in dealings with Santa Fe County government on a matter in which the former Elected Official, Appointed Official or Employee participated personally and substantially while an Elected

Official, Appointed Official or Employee for a period of one year following termination of service or employment. An Elected Official, Appointed Official or Employee participates in a matter personally and substantially for purposes of this Section when the Elected Official, Appointed Official or Employee is in a decision-making capacity during the government service and has the capacity to affect the outcome of the matter while an Elected Official, Appointed Official or Employee. Incidental contact with a matter, or supervisory control over persons with direct control over a matter, is not personal and substantial for purposes of this Section.

A. A former Elected Official, Appointed Official or Employee shall not for pay represent a person in dealings with Santa Fe County government for one year after leaving County service or employment.

B. A former Elected Official, Appointed Official or Employee shall not ~~ever~~ represent a person in dealings with Santa Fe County government after leaving County service or employment on a matter in which that person participated personally and substantially while a County Official or Employee.

C. Santa Fe County government shall not enter into a contract with or take action favorably affecting, any person or business that is:

1. Represented personally in the matter by a person who ~~has been~~ ~~was~~ ~~acting as~~ a County Official or Employee within the preceding year, if the value of the contract or action is greater than one thousand dollars (\$1,000) and the contract was a direct result of an official act by the County Official or Employee; or

2. Assisted in the transaction by a former County Official or Employee of the County whose official act, while in service of or employment with the County, directly resulted in the County making that contract or taking that official action.

## **SECTION 9. PROHIBITED FINANCIAL INTEREST IN COUNTY BUSINESS | DISCLOSURE.**

A. No Elected Official, Appointed Official, Employee or Volunteer may have a Financial Interest ~~as defined in Section 4 of this Ordinance~~, if the Elected Official, Appointed Official, Employee or Volunteer is in a decision-making capacity with respect to the Financial Interest.

B. Elected Officials, Appointed Officials, and County Employees who have any Financial Interest shall disclose such interest by filing a Disclosure of Interest Form as described in Section ~~1819~~ of this Ordinance and recording same with the County Clerk and by disclosing the interest as ~~also~~ ~~otherwise~~ provided in ~~Section 19~~ ~~this Ordinance or by Law~~, and shall thereafter be disqualified from participating in any debate, decision or vote relating thereto.

## **SECTION 10. CONFLICTS OF INTEREST, DISCLOSURE.**



A. Elected Officials, Appointed Officials, Employees or Volunteers shall strictly avoid transactions and relationships that create a Conflict of Interest. Where a Conflict of Interest is unavoidable, the Elected Official, Appointed Official, Employee or Volunteer shall have an affirmative duty to disclose the Conflict of Interest and shall have an affirmative duty to subordinate the conflicting interest to the public interest.

B. A Conflict of Interest for purposes of this Section includes receipt by an Elected Official, Appointed Official or employee of Anything of Value from a person or business doing business with the County, contracting with the County, regulated by the County, has an application pending before the County, or whose interests may be affected by the County. It shall be sufficient to determine whether a person or business is doing business with the County if the Elected Official, Appointed Official, Employee or Volunteer: (i) asks the person or business to verify if they are doing business with the County, or (ii) asks the County Procurement Manager to verify if the person or business is doing business with the County. Either method of verification should be documented in writing.

B. Elected Officials, Appointed Officials, Employees or Volunteers shall exercise their duties, powers and prerogatives without prejudice or favoritism to hire, promote, or simply to reward family members, relatives, friends, or political supporters, or to hinder or punish enemies and opponents.

C. Elected Officials, Appointed Officials, Employees or Volunteers shall assure that constituents and others who may be affected by decisions of the County have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide personal benefits or political support to the Elected Official, Appointed Official, Employee or Volunteer.

D. Elected Officials, Appointed Officials, Employees and Volunteers shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different service if gifts, personal benefits or political or charitable contributions are provided.

E. Elected Officials, Appointed Officials, Employees and Volunteers shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or Anything of Value under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result. Nor may Anything of Value be solicited or received from a person or business doing business with the County, contracting with the County, regulated by the County, has an application pending before the County, or whose interests may be affected by the County.

F. Elected Officials, Appointed Officials or Employees shall not accept Anything of Value from a person, business, or other entity when the Elected Official, Appointed Official, or Employee knows or reasonably should know that said person, business, or entity does any business with the County, desires to do business with the County, contracts with the County, is regulated by the County, has an application pending before the County, or whose interests may be affected by the County. Section 13-1-191.1 of the Procurement Code prohibits a prospective



contractor, including their family member or representative, from giving a campaign contribution or other thing of value to an elected County official who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or has authority to negotiate a sole source or small purchase contract.

## **SECTION 11. PROHIBITED ACTIVITIES**

A. Elected Officials, Appointed Officials, Employees or Volunteers shall exercise their duties, powers and prerogatives without prejudice or favoritism to hire, promote, or simply to reward family members, relatives, friends, or campaign contributors political supporters, or to hinder or punish enemies and opponents. All hiring or promotion shall be based upon documented merit about a person and not upon that person's relationship or friendship with an Elected Official, Appointed Official, Employee or Volunteer.

B. Elected Officials, Appointed Officials, Employees or Volunteers shall assure that constituents and others who may be affected by decisions of the County have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide personal benefits or political support to the Elected Official, Appointed Official, Employees or Volunteer.

C. Elected Officials, Appointed Officials, Employees and Volunteers shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different service if gifts, personal benefits or political or charitable contributions are provided.

D. Elected Officials, Appointed Officials, Employees and Volunteers shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or Anything of Value under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result.

## **SECTION 1112. CONFIDENTIAL INFORMATION AND MISUSE OF NON-PUBLIC CONFIDENTIAL INFORMATION.**

No Elected Official, Appointed Official, Employee or Volunteer shall disclose or use Confidential Information maintained by the County without proper authorization, and such information shall not be used to advance the financial or other private interests of said person. No Elected Official, Appointed Official, Employee or Volunteer shall use Confidential Information for personal benefit. This provision should not be construed, nor is it intended, to prevent any employee from exercising that employee's rights under the Whistleblower Protection Act.

## **SECTION 1213. DUTY TO REPORT IMPROPER OFFERS.**

A. Elected Officials, Appointed Officials, Employees and Volunteers who receive an offer of a Gift or Anything of Value that reasonably appears to have been intended to improperly

influence County governmental action shall firmly and unequivocally reject the offer and caution the person making it about a possible violation of bribery laws.

B. ~~If the attempt to improperly influence is clear, the A~~ person receiving the offer ~~shall is encouraged to~~ report it to law enforcement authorities, ~~or if a County employee, to that person's supervisor.~~

#### **SECTION 1314. MISUSE OF COUNTY PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.**

A. An Elected Official, Appointed Official, Employee or Volunteer shall not use public property for any private purpose or nongovernmental purpose except as specifically provided by law. Public property includes public funds, time, facilities, property, equipment, mailing lists, computer data, services or any other government asset or resource. This section does not prohibit the occasional and limited use of County property and resources for personal purposes if:

1. the use does not interfere with the performance of public duties;
2. the cost or value related to the use is so nominal that reimbursement procedures would not be justified; and
3. the use does not create the appearance of improper influence.

B. No Elected Official, Appointed Official, Employee or Volunteer shall seek, accept, use, allocate, grant or award public funds for a purpose other than that authorized by law or make a false statement in connection with a claim, request or application for compensation, reimbursement or travel allowances from public funds.

C. Unless authorized by the County Human Resources Handbook, no County Employee shall be asked or permitted to perform personal services for an Elected Official or Appointed Official. An Elected Official or Appointed Official shall not require a County employee to perform personal services or assist in a private activity. ~~except in unusual and infrequent situations where the person's service is reasonably necessary to permit the Elected Official or Appointed Official to perform official duties.~~

#### **SECTION 1415. MISUSE OF COUNTY PROPERTY OR RESOURCES FOR POLITICAL PURPOSES.**

A. Public resources, including funds, facilities and personnel, may not be used to further partisan campaign purposes or to influence the outcome of an election, ~~except for an election on a question proposed by the County such as whether a tax should be imposed or a debt contracted for in which case public resources may be used for the limited purpose of educating voters about the details of the question.~~



B. ~~A Candidate or an~~ **An** Elected Official shall not use or authorize the use of public funds, time, facilities, equipment, mailing lists, computer data, services or other government assets or resources for the purpose of political fundraising, campaigning, or influencing an election. This section does not prohibit the use of mailing lists, computer data or other public information lawfully obtained from a government agency and available to the general public for nongovernmental purposes.

C. ~~A Candidate, an~~ **An** Elected Official, another person on behalf of a Candidate or Elected Official, or a campaign committee of a Candidate or Elected Official, shall not solicit or accept or authorize the solicitation or acceptance of a campaign contribution in a facility or office ordinarily used to conduct County government business. This provision applies to telephone conversations, personal meetings, and solicitations by mail. If such a contribution is offered ~~in a facility or office ordinarily used to conduct County government business~~, it shall be refused or returned promptly. If an unsolicited contribution is received in the mail ~~in a facility~~, or a lawfully solicited contribution is misdirected to ~~a facility or office an office ordinarily used to conduct County business~~, if otherwise lawful, it may be accepted, but it may not be processed in that office, and it shall be delivered promptly to an appropriate location.

D. An Elected Official, a Candidate, or a campaign committee or another person on behalf of an Elected Official or Candidate, shall not distribute or post literature, placards, posters, or other communications intended to influence the election of a candidate in an election in a facility or office ordinarily used to conduct County government business.

#### **SECTION 1516. USE OF CONFIDENTIAL INFORMATION FOR PRIVATE GAIN.**

An Elected Official, Appointed Official, Employee or Volunteer, or a former Elected Official, Appointed Official, Employee or Volunteer who terminated County service within one year, shall not use or disclose Confidential Information to obtain a benefit for the Elected Official, Appointed Official, Employee, Volunteer or former Elected Official, Appointed Official, Employee or Volunteer, or another person, including a person with whom the Elected Official, Appointed Official, Employee, Volunteer or former Elected Official, Appointed Official, Employee, or Volunteer is associated or has negotiated prospective employment. This section does not allow the disclosure of information made confidential by law or practice which is not available to the public.

#### **SECTION 1617. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.**

A. An Elected Official, Appointed Official, Employee or Volunteer shall not use, induce, cause, or encourage others to use the authority, title, official letterhead or prestige of the Elected Official's, Appointed Official's, Employee's or Volunteer's office or service for his or her own private gain or personal advantage.

B. An Elected Official, Appointed Official, Employee or Volunteer shall not solicit or accept Anything of Value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the

authority, title or prestige of office had been exploited. Nothing in this section prohibits the use of official title of an Elected Official, Appointed Official, Employee or Volunteer as a part of a political campaign or political endorsement.

**SECTION 1718. POLITICAL ACTIVITY.**

A. No Candidate, ~~Elected Official, Appointed Official, Employee or Volunteer~~ shall compel, coerce or intimidate any Elected Official, Appointed Official, Employee or Volunteer to make, or refrain from making, any political contribution. No Candidate, Elected Official, Appointed Official, Employee or Volunteer shall solicit or obtain by coercion any political contribution from Employees. Nothing in this subsection shall be interpreted to provide that an Elected Official, Appointed Official, Employee or Volunteer is precluded from voluntarily making a contribution or receiving a voluntary contribution.

B. ~~Effective November 3, 2010, no~~ No Candidate, ~~Elected Official, Appointed Official, Employee or Volunteer~~ shall ~~not~~ accept ~~or solicit~~ any campaign contribution in excess of \$ 2,300 per primary, general or special election, or in violation of any federal, state or local statute, law, rule or ordinance. A loan by the candidate to the campaign is not a campaign contribution for purposes of this paragraph.

C. ~~No Employee with contract management authority, property management authority or land-use authority shall serve as a paid political consultant, a campaign treasurer, or as a member of the political fundraising committee of any Candidate for federal, State, city or County office, or Elected Official. No Elected Official, Appointed Official, Employee or Volunteer shall directly or indirectly coerce or attempt to coerce another Elected Official, Appointed Official, Employee or Volunteer to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose.~~

D. ~~Neither Elected Officials Appointed Officials,~~ nor Employees shall not perform any political activity during any compensated time.

E. A Candidate, Elected Official, Appointed Official, Employee or Volunteer shall not require an Employee to perform political activity: (i) as a part of the Employee's duties, (ii) as a condition of County employment; or (iii) during any time off that is compensated by the County.

F. An Employee shall not be required to participate in any political activity.

G. ~~An Employee shall not be awarded additional compensation or employment benefit in any form to engage in as a part of the Employee's official County employment duties or activities that are undertaken by an Employee on a voluntary basis as permitted by law.~~

H. ~~Nothing in this section prohibits an Employee from engaging in political activity on behalf of the County or, consistent with Section 1718(C), engaging in voluntary political activities of the Employee's choosing when not on duty.~~



I. No Candidate shall engage in any conduct that would, to an objective third party, constitute an undue threat to an Employee's continued employment.

IG. Pursuant to Section 10-16-4.2 of the Governmental Conduct Act, Employees that employees who receive compensation or reimbursement from a Candidate or political campaign on behalf of a Candidate in excess of \$250 shall report this outside employment in writing to be required to report such compensation or reimbursement to the County Manager, which shall include disclosure of the nature of the compensation or reimbursement.

## SECTION 1819. DISCLOSURE.

A. Within ten (10) days after the swearing in of any Elected Official, the Elected Official shall file a statement of economic interest with the County Clerk on a form provided by the County. Amended statements of economic interest shall be filed on an annual basis or before the 11<sup>th</sup> day of January of each year.

B. Within ten (10) days of assuming duties as an Appointed Official, Employee or Volunteer, each shall file a statement of economic interest with the County Clerk on a form provided by the County. Amended statements of economic interest shall be filed on an annual basis or before the 11<sup>th</sup> day of January of each year.

C. The following information shall be provided:

1. A description of all parcels of real estate within the County in which the person owns any interest including an option to purchase.

2. All 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 annually.

3. The identity of each person from which the individual who is required to file received, directly or indirectly, any gift or gifts having an aggregate value of more than \$250 within the taxable year proceeding the time of filing, except that such disclosure is not required for any gift from a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, spouse, boyfriend, girlfriend, domestic partner, fiancé or fiancée.

D. 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 ninety (90) days of the date of any change in circumstances requiring filing thereof.



E. All persons required to file a statement hereunder shall comply with the provisions of this section within thirty (30) days after the requirements hereof are imposed upon such office or position.

**SECTION 1920. PROPER USES OF CAMPAIGN FUNDS.**

Campaign funds for County elected office shall be used only to advance the interests of a campaign. Campaign funds may properly be expended for any otherwise lawful purpose intended to influence voters to elect or reelect the Candidate to an elected office, including payment of staff and consultants; rental of space and equipment for a campaign office; purchase of media time and space; printing and distribution of campaign materials; postage; taking polls and interpreting them; advertising and promotional materials; and travel and related expenses for the Candidate and members of the Candidate's staff or immediate family.

**SECTION 2021. PROHIBITED USES OF CAMPAIGN FUNDS.**

A. A Candidate shall not:

1. use funds raised and designated as campaign funds for the personal benefit of the Candidate or for payment of attorneys' fees and other legal expenses arising from civil, criminal, or administrative actions based on conduct not directly related to the campaign or official duties;
2. convert surplus campaign funds or interest earned on campaign funds to personal income;
3. seek or claim a personal tax deduction or other economic benefit for surplus campaign funds disbursed to a charity; or
4. borrow from campaign funds or lend them to another person or group.

B. A Candidate, or another person on behalf of the Candidate or a campaign committee of the Candidate, shall not knowingly pay more than the fair market value for goods or services purchased for the campaign.

C. Campaign funds shall not be paid to a member of the Candidate's immediate family ~~Immediate Family of the candidate~~ as an employee ~~or for -~~ Goods goods or services shall not be provided to the ~~Campaign by a member of the Candidate's immediate family~~ unless the amounts paid do not exceed the fair market value of the goods or services provided.

D. A Candidate or a committee controlled by a Candidate shall not use campaign funds to make a contribution to another Candidate running for office or to a committee supporting an opposing Candidate for office.

E. Campaign funds shall not be used to pay fines or other monetary penalties or costs assessed against a candidate by a court or other body, unless the fine, penalty, or cost is assessed

as a result of prescribed actions by a member or employee or a campaign committee or another person acting on behalf of the Candidate under circumstances where the candidate did not know of or have reason to know of those actions.

**SECTION 2122. DISBURSEMENT OF SURPLUS CAMPAIGN FUNDS.**

A. If a Candidate ceases to be a Candidate or if there remains a balance in the account of the Candidate or a committee controlled by the Candidate after the date of the election, unexpended funds in excess of the amount allowed under this section may only be used as provided in this section or to pay for a victory or thank you party. Within sixty (60) days after the end of the candidacy or the election, unexpended funds shall be:

1. used to retire bona fide loans supported by written documentation, including loans made to a campaign by the candidate or a member of the candidate's immediate family provided that all other outstanding loans are paid first;
2. returned on a pro rata basis to those who have made contributions in excess of one hundred dollars (\$100) in the aggregate a year;
3. donated to the County general fund;
4. donated to one or more organizations that qualify as charitable organizations; provided that the charity is not one that is controlled by the candidate or a member of the candidate's immediate family or in which the candidate or a member of the candidate's immediate family is personally involved as a director, trustee, member of the board, officer or other position of responsibility; or
5. transferred to an ongoing political account controlled by the candidate or another candidate, but only in the amounts and according to the requirements set out in this section.

B. Funds carried over under subsection A of this section may be expended for any political purpose for which campaign funds may otherwise be properly used.

**SECTION 2223. COERCION.**

A. An Elected Official shall not, directly or by authorizing another to act on his or her behalf, state or imply that the Elected Official's willingness to meet with a person, is dependent on the person making a campaign contribution, donating to a cause favored by the Elected Official or providing a thing of value to the Elected Official.

B. An Elected Official shall not directly, or by authorizing another to act on the Elected Official's behalf:

1. agree or threaten to take or withhold any County governmental action, as a result of a person's decision to provide or not provide a political contribution;



2. state or imply that the Elected Official will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution;

3. agree to or participate in a scheme or plan intended to evade the requirements of any applicable state ethics statutes, this Ordinance, or another financial disclosure provision of state or County law; or

4. knowingly accept a contribution given or offered in violation of any applicable state ethics statutes or this Ordinance.

### **SECTION 2324. REPORTING AND RESOLVING ETHICS VIOLATIONS OF THIS ORDINANCE.**

**A.** Any Elected Official, Appointed Official, Employee, or Volunteer, or member of the public person, except a member of the County Ethics Board, may submit a complaint of alleging unethical conduct a violation of this ordinance to the County Ethics Board, by delivering to the County Attorney's Office a signed sworn complaint sworn to under penalty of perjury to be true, that alleges alleging facts which, if true proven, would constitute a violation of this Ordinance. Such complaint shall contain a valid mailing address, email address or telephone number for the person submitting the complaint so that the complainant can be contacted. Complaints filed or submitted more than one (1) year after a violation of this Code is alleged to have occurred shall be beyond the jurisdiction of the Ethics Board and shall be dismissed with prejudice. As to ethics complaints submitted by County Ethics Board members:

1. Any County Ethics Board member submitting an ethics complaint shall submit a letter to the County's Contract Ethics Official ("CCEO"), together with their complaint, that recuses him/her from participating in any discussions, deliberations or voting on the merits of their complaint.

2. Because of the prohibitions in this Ordinance against *ex parte* communications, during the pendency of the complaint, such complaining Ethics Board member shall not formally or informally discuss the merits or substance of his/her ethics complaint with any other Ethics Board members unless: (a) the CCEO has dismissed the complaint because it failed to state a claim and the Ethics Board member has not appealed the dismissal; or, (b) the County Ethics Board has issued a final decision on the complaint after a hearing.

**B.** The County Attorney's office will forward all such signed, sworn complaints, in whatever method received, to the County's contract ethics official CCEO, who will determine whether the complaint states a claim under this Ordinance.

**C.** The County Attorney's office will not forward un-sworn complaints to the CCEO, but will instead process them in accordance with the County's records retention policy after determining whether law enforcement, the County Manager or the Human Resources Director should be notified. However, all complaints addressed to the County Ethics Board or a member



of the Board, whether sworn or not and whether anonymous or not, shall be forwarded to the County Ethics Board as well as to the CCEO. The form of complaint shall also be noted whether it is an email, letter, phone message, etc.

D. For any complaints forwarded or submitted directly to either the CCEO or to the Ethics Board, the procedures for processing complaints in Subsections A to E shall be followed. The Ethics Board shall take no action nor discuss at an open meeting a complaint it receives directly or is forwarded to it by reason of the complainant's having addressed the complaint to them, but shall turn such complaints over to the CCEO for processing and investigation if it is sworn and it states a claim. The CCEO shall neither discuss nor share with members of the Ethics Board any sworn complaints except as provided in Subsection H.

E. The County's contract ethics official CCEO shall refer all employment matters any sworn complaint involving a County employee alleged to have committed an ethical infraction prohibited by this Ordinance to the County's Human Resources Department for investigation and appropriate action pursuant to the Human Resources Handbook or collective bargaining agreement, as applicable. A sworn complaint making ethics allegations about both a County employee and a County official or volunteer shall, if the CCEO determines the complaint to state a claim under this Ordinance, be investigated by the CCEO as to the allegations against the County official or volunteer only. The remainder of such complaint involving a County employee shall be investigated by the Human Resources Department pursuant to the Human Resources Handbook or handled according to a collective bargaining agreement as applicable. The Human Resources Department may also rely on acts or practices prohibited by this Code of Conduct because County employees must comply with the prohibitive provisions of this Ordinance.

F. If the sworn complaint fails to state a claim under this Ordinance, the complaining party shall be so informed in writing by the CCEO who shall dismiss the complaint and the complaint shall be dismissed, subject to a right of appeal to the County Ethics Board within seven (7) calendar days solely on the issue of whether the complaint stated a claim under this Ordinance. The Ethics Board may reverse a dismissal of a complaint if it determines that the ethics official's CCEO's dismissal was arbitrary or capricious, such as the reasons given for dismissal did not properly interpret the Code of Ethics, or the reasons given misapplied the prohibitive provisions of the Code to the facts alleged in the complaint. The Ethics Board may also reverse a dismissal of a complaint based upon newly discovered evidence not previously submitted for consideration, provided that the newly discovered evidence is clear and convincing and its truthfulness is sworn to in writing by the complainant or otherwise deemed reliable by the Ethics Board. Newly discovered evidence whose truthfulness is not sworn to in writing shall not form the basis of reversing a dismissal of the complaint. If the Ethics Board reverses a dismissal of a complaint, they shall remand the matter back to the CCEO for further investigation and the setting of the matter for hearing, with notice to the complainant and person(s) named in the sworn complaint.

G. If the complaint states a claim under this Ordinance, the County's ethics official CCEO shall investigate the allegations, prepare a report and recommendations to either dismiss the complaint or proceed to a hearing, and shall present the same to the County Ethics Board for



consideration at its next available meeting after completion of the investigation for further proceedings.

H. The County Ethics Board shall conduct a public hearing prior to taking any of the actions described in Section 2-425(H) of this Ordinance. At its next meeting after completion of the investigation, the County Ethics Board shall review the report and recommendation to either dismiss or proceed to a hearing, and either:

1. determine where and when a hearing should take place for which it shall provide advance written notice to the Respondent person(s) named in the sworn complaint, in which case the Respondent person(s) named in the sworn complaint:

a) may be represented by counsel at their the Respondent's own expense, who is licensed to practice law in this State;

b) shall within 10 days of making a written request have a right to a list of witnesses of those intended to be called at the hearing by the CCEO, and must provide the CCEO with a list of witnesses he/she intends to call during the hearing within 10 days of receiving a written request;

c) shall within 10 days of making a written request have a right to receive copies of all documents not privileged that were obtained by the CCEO during his/her investigation and intends to use during the hearing, and must provide the CCEO with copies of all documents he/she intends to use during the hearing within 10 days of receiving a written request;

d) shall have a right to the issuance of an administrative subpoena a notice by the County Ethics Board compelling the attendance of witnesses at hearings and the production of documents.

2. dismiss recommend dismissal of the complaint without further action other than to notify the person(s) named in the sworn complaint and the complainant in writing of the dismissal; or

3. dismiss recommend dismissal of all or part of the complaint because, while it did state a claim under the Code of Conduct, the conduct complained of is too insignificant or seemingly unintentional to warrant a formal hearing.

I. A determination by the Ethics Board to dismiss a complaint shall be final and not subject to appeal, re-determination, reconsideration, further review, or resubmittal by the complainant or any other complainant on the same issue involving the same person(s) suspected of charged with the ethics infraction. Provided that any Respondent whose complaint is recommended for dismissal shall be given a notice and an opportunity to be present at the Ethics Board to receive an explanation from the Board why the complaint is being dismissed. At this meeting, the Respondent may provide any additional information to assist the Ethics Board in its decision.

J. In order to provide a full and fair hearing under this Ordinance a Section 2-425(H) public hearing shall proceed as follows:



1. all persons present to give testimony must be sworn before testifying and shall leave the hearing room until they testify;

2. the CCEO shall proceed first by calling witnesses and submitting documents into evidence;

3. the ~~Elected Official, Appointed Official or Volunteer (here, for "Respondent")~~ ~~suspected of the ethics infraction~~ Respondent shall have the right to cross-examine any witness called by the CCEO;

4. any Ethics Board member ~~after seeking acknowledgement to proceed from the Chair~~ may ~~ask any question~~ ask witness questions related to ~~the~~ ~~that~~ witness's testimony or related to the documentary evidence that was introduced;

5. after the CCEO has rested, the Respondent(s) may proceed with a defense of the allegations set forth in the sworn complaint by presenting witnesses and documentary evidence, subject to cross-examination by the CCEO and questioning by members of the Ethics Board;

6. while the technical rules of evidence shall not apply, the ~~e~~Chair may rule on the admissibility of irrelevant, immaterial, unreliable, unduly repetitious, or argumentatively presented evidence and may require substantiation of statements or records tendered where their accuracy or truth is in reasonable doubt, so long as any final decision of the Ethics Board is supported by a legal residuum of competent evidence;

7. hearings shall be recorded ~~and at least 7 days prior to a hearing the CCEO and respondent shall exchange witness lists and copies of documents they intend to use as evidence during the hearing~~;

8. after testimony is completed and both sides have rested, the Ethics Board may permit closing statements from both sides;

9. the Ethics Board may deliberate but not vote on ~~their~~ ~~its~~ disposition of the case in executive session as an administrative adjudicatory deliberation after which ~~they~~ ~~the Board~~ must return to an open session to vote on the disposition of the ethics case; and

10. after deliberating on the merits of the case before them, the Ethics Board shall issue a written decision consistent with ~~their~~ ~~its~~ vote and containing findings of fact and conclusions of law, which may: impose one of the consequences permitted by Section ~~2425~~(H) upon the Respondent if they find a violation of this ~~e~~Ordinance has occurred, decline to impose one of the consequences even if ~~they find~~ a violation ~~is found~~, impose a consequence less severe than those permitted by Section ~~2425~~(H), or find no violation of this ordinance has occurred in which case the complaint shall be dismissed. The burden of proof for finding a violation of the Code of Ethics shall be by a preponderance of the evidence. A copy of the Ethics Board's written decision shall be delivered or mailed to the Respondent, the CCEO and the Office of the County Clerk.



K. Prior to the hearing, either the Respondent or the CCEO may file motions related to continuance of the date set for hearing or for issues related to discovery. The Ethics Board may consider any such motions at a special meeting. The Ethics Board shall not be required to consider dispositive motions filed by Respondent such as motions to dismiss or for summary judgment.

## **SECTION 2425. COUNTY ETHICS BOARD.**

A. There shall be created a Santa Fe County Ethics Board that shall consist of ~~three~~ **five** members who shall be appointed by the Board of Commissioners. At least one citizen member shall be appointed; the citizen member 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, election, or serving as a volunteer. The members of the County Ethics Board may not hold elected public office or office with any political party within the County. Each member shall serve a two year term, subject to reappointment thereafter.

B. The County Ethics Board shall elect its own chair and vice-chair. ~~If any member of the County Ethics Board petitions the Ethics Board for a hearing and advice regarding his or her own conduct or the conduct of others, such member shall not be eligible to sit in such cases, and an alternate member shall be seated when the need arises.~~

C. The jurisdiction of the Ethics Board is limited to acting within the scope of matters covered by this Ordinance as they relate to Elected Officials, Appointed Officials and Volunteers of Santa Fe County government, but may periodically review and recommend amendments to this Ordinance. In addition the Ethics Board shall have authority to make recommendations to the Board of County Commissioners regarding ethics training.

D. Upon the sworn complaint of any person alleging facts which, if true, would constitute a violation of this Ordinance, and pursuant to the procedures set forth in Section 1324 which require an investigation, unless it recommends dismissal of the case, the County Ethics Board shall conduct a public hearing on the allegations of the complaint.

E. The County Ethics Board shall adopt rules of procedure for conducting hearings pursuant to this Ordinance. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Santa Fe County. [Reserved]

F. The County Ethics Board shall have the power to issue administrative subpoenas compelling to compel the attendance of county employees as witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the First Judicial District Court. A notice to attend will be delivered through the employee's chain of command.

G. If the County Ethics Board finds that an Elected Official, Appointed Official, or Volunteer violated any provision of this Ordinance, the County Ethics Board, upon a majority

vote of the entire membership, shall forward its written findings of fact and conclusions of law to the County Manager or, as appropriate, the District Attorney, for appropriate action.

H. If the County Ethics Board finds, upon a majority vote, that a candidate, Elected Official, Appointed Official, or Volunteer has violated this Ordinance, the County Ethics 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 \$300; or
2. a written finding of censure; or
3. a referral to the District Attorney or appropriate governmental office for commencement of criminal or other proceedings.

I. ~~No action may be taken by the County Ethics Board on any complaint that is filed later than one year after a violation of this Ordinance is alleged to have occurred or that is filed more than six months from the date of the discovery of the alleged violation, upon due diligence by the complaining party, of the facts constituting a violation, whichever event occurs later.~~  
[Reserved]

J. The County Ethics Board may also provide advisory opinions regarding the applicability or interpretation of the provisions of this Ordinance upon the request of any Elected Official, Appointed Official, Volunteer or County Employee. ~~If any member of the County Ethics Board petitions the Ethics Board for a hearing and advice regarding his or her own conduct or the conduct of others, such member shall not be eligible to sit on the Board in such cases.~~

K. On a ~~quarterly~~ biannual basis, the Board of Commissioners shall be provided with a report prepared and approved by the County Ethics Board that updates its activities and states the number of complaints that were submitted alleging a violation of this Ordinance.

~~L. A member of the Ethics Board may be removed by the Board of County Commissioners for just cause, which shall mean a reason that is related to a Board Member's administration of this Code or any other reason that implicates a Board member's continued fitness to serve on the Board.~~

~~M. A vacancy on the Board shall be filled in the same manner as the initial appointment and the appointment shall continue for the remainder of the unexpired term of the departing Board member.~~

~~N. Members of the Board shall not receive any salary or compensation for services.~~

## SECTION ~~2526~~. RIGHT OF APPEAL .

Any decision of the ~~County~~ Ethics Board finding a violation of this Ordinance with respect to an Elected Official, Appointed Official, Employee or Volunteer, may be appealed to the First Judicial District Court pursuant to NMSA 1978, Section 39-3-1.1 (1998, as amended);



provided, however, that any decision regarding an Employee shall be covered by the terms of the Human Resources Handbook or collective bargaining agreement, as applicable.

## SECTION 2627. NON-RETALIATION.

A. The Board of Commissioners does not tolerate retaliation, workforce discrimination, intimidation or harassment of any kind against any person who has reported a violation of this Ordinance in good faith. This non-retaliation provision applies whether the complaint is ultimately determined to be well-founded or unfounded. All Elected Officials, Appointed Officials, Employees and Volunteers are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a good faith claim in good faith of a violation. Anyone who believes that they have been subject to workplace discrimination, intimidation or harassment of any kind or who has been retaliated against in violation of this Ordinance should submit a sworn complaint to the Ethics Board or the Human Resources Department setting forth the claim. Any employee who engages in workplace discrimination, harassment or intimidation against anyone in retaliation for filing an ethics complaint pursuant to this Ordinance, for testifying at a hearing or for cooperating in an investigation described herein of an ethics violation, may be disciplined up to and including termination.

B. This non-retaliation provision is not applicable to claims that were not submitted in good faith and for which the County Ethics Board finds that the complaint was frivolous. An employee who knowingly files a false ethics complaint may be disciplined up to and including termination and may not rely on a claim of retaliation as a defense if disciplined.

## SECTION 2728. EX PARTE COMMUNICATIONS.

### A. EX PARTE COMMUNICATIONS PROHIBITED.

1. An Elected Official or Appointed Official designated to hear an administrative adjudicatory matter pursuant to the County's Land Development Code or any other County ordinance, shall not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside the hearing and outside of the presence of all other interested parties concerning the pending matter.

2. An administrative adjudicatory matter is one that involves the use of a discretionary standard, as specified in the Land Development Code or other County ordinance, to an application for discretionary approval.

3. Notwithstanding the provisions of Subsection 1, above, *ex parte* communications for procedural or administrative purposes, during emergencies, or that do not deal with the merits of the application, shall not be prohibited if the Elected Official or Appointed Official reasonably believes that no party will gain an advantage as a result of the *ex parte* communication and promptly notifies all other parties of the substance of the *ex parte* communication.

4. An Elected Official or Appointed Official who receives or who makes or knowingly causes to be made a communication prohibited by this Ordinance shall disclose the communication to all parties and give other parties an opportunity to respond.

## B. RECUSAL.

1. An Elected Official or Appointed Official shall recuse himself or herself in any pending administrative adjudicatory matter in which the official **has a financial interest or** is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the official can make a fair and impartial decision, including:

a. when the official has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship, **a financial interest, a conflict of interest,** including a professional, personal, familial or other intimate relationship, that renders the official unable to exercise his or her functions impartially;

b. when the official **or anyone in the official's immediate family** **household** has a pecuniary or Financial Interest in the outcome of the proceeding;

c. when, during previous employment, the official served as an attorney, adviser, consultant or witness in the matter in controversy; or

d. when the official announced how he or she would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

**2. The Elected Official or Appointed Official recusing himself or herself shall disclose the specific reason for a recusal contemporaneous with the recusal.**

**23.** An Elected Official or Appointed Official shall not be required to recuse himself or herself in any pending administrative adjudicatory matter merely because the official possesses and discusses general viewpoints on public policy that an application may raise. Similarly, an Elected Official shall not be required to recuse himself or herself in any pending administrative adjudicatory matter merely because the Elected Official made representations during a political campaign on viewpoints on public policy that an application may raise.

**34.** If, prior to the hearing, an Elected Official or Appointed Official fails to recuse himself or herself when it appears that grounds exist, a **party member of County staff or fellow Official** shall promptly notify the Elected Official or Appointed Official of the grounds for recusal. If Elected Official or Appointed Official declines to recuse himself or herself upon request of a **the member of County staff or fellow Official party,** the official shall provide a full explanation in support of his refusal to recuse himself or herself.

**45.** If, during the hearing, an Elected Official or Appointed Official fails to recuse himself or herself when it appears that grounds exist, a **party member of County staff or**



**fellow Official** shall promptly notify the Chair of the grounds for recusal. If the Elected Official or Appointed Official declines to recuse himself or herself, the Chair may entertain a motion to excuse the official from further participation in the matter. If the motion is successful, the official shall be excused from further participation in the matter.

**6. An Elected Official or Appointed Official who fails to recuse him/her-self after being notified of the grounds for recusal as set forth in Section 28 B by reason of a financial interest, may be considered to have committed a violation of this Code of Conduct.**

## **SECTION 2829. RESTRICTIONS ON THE BOARD OF COUNTY COMMISSIONERS; ADMINISTRATION OF THE PERSONNEL SYSTEM, MANAGEMENT.**

A. The Board of County Commissioners shall not perform, collectively or individually, an executive function in the administration of the personnel system, except for employment and removal of the **County Manager**, making collective recommendations to the County Manager on general personnel policy, approving or disapproving collective bargaining agreements and county personnel policies, or approving any proposed reorganization which creates or abolishes a department.

B. The Board of County Commissioners shall not perform, collectively or individually, general executive management functions in the administration of county government; these functions shall be delegated to the County Manager. This paragraph shall not apply to matters of policy, the responsibility and authority of the Board of County Commissioners to approve budgets and expenditures, contracts outside the signature authority of the County Manager, and matters that, in the discretion of the Board of County Commissioners, while they may involve management issues, are of County-wide importance.

## **SECTION 2930. PENALTIES.**

### **A. County Penalties**

A person who violates this Ordinance is **guilty of a misdemeanor and is** subject to one or more of the following:

**A1.** a fine of up to three hundred dollars (\$300.00) for each separate violation of this Ordinance;

**B2.** a public reprimand;

**C3.** a recommendation **from the County Ethics Board** to the District Attorney that the violation be pursued in criminal or other proceedings **or that it be pursued if the violation is also a violation of the Criminal Code or constitutes a common law crime; and**

**D4.** **proceedings and penalties pursuant to the Santa Fe County Personnel Handbook, where appropriate; and**

**4. proceedings and penalties pursuant to the Santa Fe County Personnel Handbook if the violator is a County employee; and**

§543. a recommendation to the District Attorney that proceedings to remove the person from elected office be commenced pursuant to NMSA 1978, § 10-4-1 *et seq.* (1909, as amended).

B. Other Penalties

The Governmental Conduct Act was made applicable to officials and employees of local government on July 1, 2011. Knowing and willful violation of that Act is a misdemeanor and any person found guilty can be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Any such prosecutions would be handled by a district attorney or the Attorney General. [Section 10-16-1 to 10-16-18, NMSA 1978]. These other penalties could apply where conduct prohibited by the Code of Conduct also constitutes conduct prohibited by the Governmental Conduct Act.

**SECTION 3031. REPEAL.**

Santa Fe County Ordinances No. 2004-3 and 2011-9 are hereby repealed.

**SECTION 3132. EFFECTIVE DATE.**

This Ordinance shall become effective as of the date provided by law.

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
DANIEL W. MAYFIELD, Chair

**ATTEST:**

\_\_\_\_\_  
GERALDINE SALAZAR, County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
STEPHEN C. ROSS, County Attorney