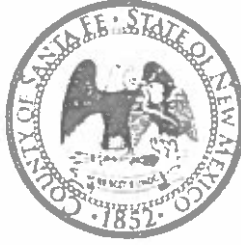


**P. Roybal**  
Commissioner, District 1

**Miguel M. Chavez**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**Date:** March 1, 2015

**To:** Board of County Commissioners

**From:** Penny Ellis-Green, Growth Management Director *PEG*

**Via:** Katherine Miller, County Manager  
Gregory S. Shaffer, County Attorney

**Re:** Request Authorization to Publish Title and General Summary of An Ordinance Entitled "an Ordinance Amending Section 3.5.4. Of Ordinance No. 2015-11, the Santa Fe County Sustainable Land Development Code, Concerning Hearing Officer Qualifications."

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**Issue:** On December 8, 2015, the Board approved Ordinance No. 2015-11 The Sustainable Land Development Code (SLDC), which became effective on January 15, 2016. The SLDC requires the appointment of a hearing officer but in the RFP process it became clear that the qualification language regarding what excludes a hearing officer is unintentionally overbroad. The current language excludes more candidates than necessary to ensure the hearing officer does not have any conflicts of interest.

**Background:** Chapter 3, Section 3.5 of the SLDC requires that the Board appoint a Hearing Officer. The qualifications necessary to become a hearing officer are in Section 3.5.4., which require the following:

**3.5.4. Qualifications.** A Hearing Officer shall have a J.D. degree from a law school certified by the American Bar Association or Association of American Law Schools, with not less than six (6) years of legal experience, and shall be licensed to practice law in New Mexico for a period of not less than three (3) years. A Hearing Officer shall not hold other appointed or elective office or position in government during his/her term.

As staff began the process of soliciting a Hearing officer for appointment and, upon further review of the language, found that this section had a much broader reading than was intended. The last sentence, "[a] Hearing Officer shall not hold other appointed or elective office or position in

government during his/her term” excludes many candidates who would have desired experience such as hearing officers appointed in other jurisdictions or individuals appointed to an ethics board or State Bar Association Board.

**Proposed Ordinance:** To avoid unnecessarily disqualifying attorneys with experience and to ensure attorneys applying do not have conflicts of interest; staff has drafted language to amend this section of the SDLDC prior to the RFP being awarded so there is no confusion in the meaning of the language. The redlined language is attached in Exhibit A. This amendment is coming forward prior to the 6 month review for this one specific change so we can move forward with the RFP and appoint a hearing officer.

The new language requires the following:

**“3.5.4. Qualifications.** A Hearing Officer shall have a J.D. degree from a law school certified by the American Bar Association or Association of American Law Schools, with not less than six (6) years of legal experience, and shall be licensed to practice law in New Mexico. During the term of the Hearing Officer’s appointment, neither the appointed Hearing Officer nor the Hearing Officer’s law firm shall represent persons or entities with regard to land use applications submitted to the County or in appeals of or lawsuits regarding County land use decisions. In addition, a Hearing Officer shall not:

- a. hold elective office;
- b. be employed by the County;
- c. be appointed to any County board or committee;
- d. be employed by any political subdivision of the State of New Mexico or tribal government the geographic boundaries of which are located either wholly or partly within the geographic boundaries of the County; or
- e. be employed by a governmental entity from which the County requests opinions pursuant to Sections 4.4.7 and 5.7.5.1 of the SLDC.”

If the Board authorizes the publication of title and general summary, the Ordinance will be heard at the March 29<sup>th</sup> BCC meeting for final approval.

**Action Requested:** Staff requests that the Board grant approval to publish title and general summary of the attached Ordinance amending Section 3.5.4 of the SLDC to allow the public hearing to proceed.

**Attachments:** Exhibit A – Proposed Ordinance Amending Section 3.5.4 of the SLDC

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. 2016-\_\_\_\_\_

AN ORDINANCE  
AMENDING SECTION 3.5.4 OF ORDINANCE NO. 2015-11, THE SANTA FE COUNTY  
SUSTAINABLE LAND DEVELOPMENT CODE, CONCERNING HEARING OFFICER  
QUALIFICATIONS

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT SECTION 3.5.4 OF ORDINANCE NO. 2015-11, THE SANTA FE COUNTY SUSTAINABLE LAND DEVELOPMENT CODE, IS HEREBY AMENDED TO READ IN ITS ENTIRETY AS FOLLOWS:

**3.5.4. Qualifications.** A Hearing Officer shall have a J.D. degree from a law school certified by the American Bar Association or Association of American Law Schools, with not less than six (6) years of legal experience, and shall be licensed to practice law in New Mexico ~~for a period of not less than three (3) years.~~ During the term of the Hearing Officer's appointment, neither the appointed Hearing Officer nor the Hearing Officer's law firm shall represent persons or entities with regard to land use applications submitted to the County or in appeals of or lawsuits regarding County land use decisions. In addition, ~~Aa~~ Hearing Officer shall not:

~~hold other appointed or elective office or position in government during his/her term.~~

- a. hold elective office;
- b. be employed by the County;
- c. be appointed to any County board or committee;
- d. be employed by any political subdivision of the State of New Mexico or tribal government the geographic boundaries of which are located either wholly or partly within the geographic boundaries of the County;
- e. be employed by a governmental entity from which the County requests opinions pursuant to Section 4.4.7 and Section 5.7.5.1 of the SLDC.

PASSED, APPROVED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2016, by the Board of County Commissioners of Santa Fe County.

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

By \_\_\_\_\_  
MIGUEL M. CHAVEZ, Chair



**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
GREGORY S. SHAFFER, County Attorney



