

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

ORDINANCE NO. 2022-03

**AN ORDINANCE ENACTING A SANTA FE COUNTY CODE OF CONDUCT;
REPEALING ORDINANCE NOS. 2010-12 AND 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 of ethical behavior for all Elected Officials, Appointed Officials, Employees and Volunteers of county government, by: (1) setting forth explicit standards of conduct and ethical behavior; (2) explicitly describing acts that are inconsistent with these standards; and (3) by requiring 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 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.

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SECTION 4. DEFINITIONS.

A. **“Administrative action”** means action based on the application, or interpretation of a county ordinance or a state statute, or a proceeding involving a license, permit, franchise or development use.

B. **“Administrative adjudicatory matter”** means a proceeding brought by or against a person before the **Board of County Commissioners**, County Planning Commission, or other county decision-making body in which individual legal rights, duties or privileges are required by law to be determined after an opportunity for a trial-type hearing and the decision-making body is required to make a quasi-judicial as opposed to legislative decision.

C. **“Affirmative duty”** an obligation to a take a positive step to do something.

D. **“Anything of value”** includes any money, property, service, loan, or promise donated or transferred to the recipient or recipient’s Family for the personal use of the recipient or recipient’s Family without commensurate consideration. Anything of value does not include admission to public events, including entertainment, meals, or beverages provided at such events, valued at less than \$250, unless the person organizing or paying for admission to the event (i) is a Party; (ii) is regulated by the county; (iii) contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects; or (iv) is prohibited from giving campaign contributions or other thing of value pursuant to NMSA 1978, § 13-1-191.1(E). Conduct in violation of Section 8(D) is not exempted regardless if it is a public event or not.

E. **“Appointed official”** means a person who is not an **Elected Official** or **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 County Commissioners, or to perform other functions at the request of the Board of County Commissioners.

F. **“Board of County Commissioners”** means the Board of County Commissioners of Santa Fe County.

G. **“Confidential information”** means information that by law or practice is not available to the public.

H. **“Conflict of interest”** concerns divided loyalties and means a situation in which a person exercising a duty has an interest, financial or otherwise, that conflicts with or potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the person’s duty.

I. **“Contract”** means an agreement between two or more parties, whether express or arising by operation of law.

J. **“County”** means Santa Fe County.

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K. "County's contract ethics official" or "CCEO" means a licensed attorney under contract with the county who performs the functions specified for that position in Section 20 of this Ordinance for that position.

L. "Employee" means a person who is employed by the County.

M. "Elected official" means a member of the **Board of County Commissioners**, the County Clerk, the County Treasurer, the County Sheriff or the County Assessor but does not mean the County Probate Judge.

N. "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.

O. "Family" means a person's spouse, domestic partner and other relatives within the third degree of consanguinity or affinity and persons living within the household.

P. "Financial interest" means any interest held by **Elected Official, Employee, Appointed Official or Volunteer** or the **Family** of an Elected Official, Appointed Official, Employee or Volunteer, that is: (i) an ownership interest or other interest in business or property; or ii) any employment or prospective employment for which negotiations have already begun.

Q. "Good faith" means that a reasonable basis exists in fact as evidenced by the facts available to the person reporting or claiming a violation of this Ordinance.

R. "Non-public information" means information, written or spoken, that is obtained in the course of an **Elected Officials, Appointed Official's, Employee's or Volunteer's** duties and, if contained in a document or record would be subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public.

S. "Party" means a person who has submitted to the **County** an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and a member of the general public who participates in a **Pending Adjudication**.

T. "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.

U. "Personal benefit" means the obtaining or the promise of obtaining **Anything of Value**.

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V. **“Political endorsements”** means support in a political campaign or a promise of an endorsement, or political activities, political support, or Anything of Value offered with intent to influence an Elected Official, Appointed Official, Employee or Volunteer’s decision or action on any county question, matter, cause or proceeding, including an appointment, which is pending or might be brought before them are prohibited from being made, accepted or solicited.

W. **“Respondent”** means a person named in a sworn ethics complaint submitted to the county ethics board by a complainant.

X. **“Sworn complaint”** means a signed complaint that is sworn to under penalty of perjury on the form provided on the County website or in the county attorney’s office that contains a valid mailing address and the telephone number or email address for the person submitting the complaint so that the complainant can be contacted.

Y. **“Volunteer”** means a person who is not an Elected Official, Appointed Official or Employee who provides services for the County as a Volunteer, without being paid and without expectation of payment for those services 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 their merits. Decisions shall be made objectively, without Party or partisanship considerations and without facts that are not directly and properly related to the matter requiring action, with the exception of decisions to hire employees or select volunteers who are required by state statute to be a member of a partisan political party.

SECTION 6. PUBLIC TRUST.

Elected officials, Appointed Officials, Employees and Volunteers shall treat their government position as a public trust. They shall use the powers and resources of public office only to advance the public interest and not to obtain Personal Benefits or pursue private interests.

SECTION 7. RECUSAL.

A. An Elected Official or Appointed Official shall recuse himself or herself in any pending Administrative Adjudicatory Matter in which the official believes he or she is unable to make a fair and impartial decision or in which there is a reasonable perception that the official is unable to make a fair and impartial decision, including:

1. when the official has a bias or prejudice concerning a **Party** or its representative or has prejudged a disputed evidentiary fact;
2. when the official or anyone in the official's **Family** has a **Financial Interest** in the outcome of the proceeding;
3. when, during previous or current employment, the official served as an attorney, adviser, consultant or witness in the matter in controversy; or
4. when the official announced how he or she would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

B. The **Elected Official or Appointed Official** recusing himself or herself shall disclose the specific reason for the recusal contemporaneously with the recusal.

C. An **Elected Official or Appointed Official** shall not be required to recuse himself or herself in a 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 a 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.

D. If, at the start of the hearing, an **Elected Official or Appointed Official** fails to recuse himself or herself when it appears that grounds exist, a **party** shall promptly notify the **Elected Official or Appointed Official** of the grounds for recusal. If the **Elected Official or Appointed Official** declines to recuse himself or herself upon request of a party, the official shall provide a full explanation in support of such refusal.

E. If, during the hearing, an **Elected Official or Appointed Official** fails to recuse himself or herself when it appears that grounds exist, a **Party** shall promptly notify the chairperson 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.

SECTION 8. CONDUCT AVOIDING IMPROPRIETY.

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

B. **Elected Officials, Appointed Officials, Employees and Volunteers** shall not engage in conduct that violates the rights of others to be treated fairly and with dignity and respect, including unlawful discrimination and harassment. Harassment includes, but is not limited to, the following: verbal or physical conduct intended to threaten, intimidate or coerce; verbal or physical conduct that has the purpose or effect of unreasonably interfering with work

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performance or that creates an intimidating, hostile or offensive working environment; and the uttering of words, or the display or circulation of written materials that are degrading to persons of a particular sex, race, color, age, national origin, disability, religion, or sexual orientation.

C. **Elected Officials, Appointed Officials, Employees and Volunteers** shall refrain from engaging in conduct, even if lawful, where **Personal Benefit** or personal advantage is involved in a way that creates a reasonable inference that such office has been used for that purpose.

D. Political Endorsements, support in a political campaign or a promise of an endorsement, political activities, political support, or **Anything of Value** offered with intent to have an Elected Official, Appointed Official, Employee or Volunteer's decision or action on any question, matter, cause or proceeding or appointment influenced thereby and which is pending or might be brought before them in their official capacity are prohibited from being made, accepted or solicited.

SECTION 9. LIMITATIONS ON EMPLOYMENT WITH, AND APPEARANCE BEFORE, THE COUNTY, FOLLOWING GOVERNMENT SERVICE.

Pursuant to the Governmental Conduct Act [NMSA 1978, §§ 10-16-1 through 10-16-18]:

A. a former **Elected Official, Appointed Official or Employee** shall not receive compensation to represent a person or any business entity in dealings with Santa Fe County for one year after leaving County service or employment;

B. a former **Elected Official, Appointed Official or Employee** shall not represent a person or any business entity in dealings with Santa Fe County after leaving County service or employment on a matter in which that person participated personally and substantially while an **Elected Official, Appointed Official or Employee**;

C. Santa Fe County shall not enter into a **Contract**, memoranda of understanding or other action favorably affecting, any person or business that is:

1. represented personally in the matter by a person who was serving as an **Elected Official, Appointed 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 **Elected Official or Employee**; or

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

SECTION 10. PROHIBITED FINANCIAL INTEREST IN COUNTY BUSINESS.

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A. Except as otherwise provided in the Santa Fe County Code of Conduct, an **Elected Official, Appointed Official, Employee or Volunteer** shall not have a **Financial Interest** if the Elected Official, Appointed Official, Employee or Volunteer is in a decision-making capacity with respect to that Financial Interest.

B. **Elected Officials, Appointed Officials, Employees or Volunteers** who have any **Financial Interest** shall disclose such interest by filing a Conflict of Interest and Financial Disclosure Statement as described in Section 18 of the Santa Fe County Code of Conduct and recording same with the County Clerk and by disclosing the interest as otherwise provided in that code or by law, and shall be disqualified from participating in any debate, decision or vote relating to the interest.

SECTION 11. EX PARTE COMMUNICATIONS.

A. An **Elected Official or Appointed Official** designated to hear an **Administrative Adjudicatory Matter** pursuant to a County ordinance, including but not limited to the County's Land Development Code, shall not initiate, permit or consider an **Ex Parte Communication**.

B. An **Elected Official or Appointed Official** who receives or who makes or causes to be made a communication prohibited by the Santa Fe County Code of Conduct shall disclose the communication to all parties and give other parties an opportunity to respond.

C. Notwithstanding the provisions of Subsection 1 of this section, **Ex Parte Communications** for procedural or administrative purposes, during emergencies or that do not deal with the merits of an application shall not be prohibited if the 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**.

SECTION 12. CONFLICTS OF INTEREST, DISCLOSURE.

A. **Elected Officials, Appointed Officials, Employees and 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 has an **Affirmative Duty** to disclose the Conflict of Interest and subordinate the conflicting interest to the public interest.

B. **Elected Officials, Appointed Officials, Employees and Volunteers** shall exercise their duties, powers and prerogatives without prejudice or favoritism. They shall not hire, promote or otherwise reward **Family** members, friends or political supporters or hinder or punish enemies and opponents.

C. **Elected Officials, Appointed Officials, Employees and Volunteers** shall ensure 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.

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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 **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. Anything of value shall not be solicited or received from a person, business or other entity that is doing business or contracting with the **County**; that is regulated by the County; that has an application pending before the County; or whose interests may be affected by the County.

F. **Elected Officials, Appointed Officials and 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 the person, business or other entity that **Contracts** or does any business with the **County**; desires to contract or do business with the County; is regulated by the County; has an application pending before the County; or whose interests may be affected by the County.

G. Upon the request of an **Elected Official, Appointed Official or Volunteer**, the Ethics Board may issue an advisory opinion pursuant to Section 21(H) of this Ordinance as to whether acceptance of **Anything of Value** from a person, business or other entity violates this section or any other section of this Ordinance. Advisory opinions from the County Ethics Board interpret only this Ordinance, and shall not interpret whether conduct is a violation of any other ordinance or law, including state law.

SECTION 13. MISUSE OF CONFIDENTIAL-INFORMATION.

A. An **Elected Official, Appointed Official, Employee or Volunteer** shall not disclose or use **Confidential Information** maintained by the **County** without proper prior written authorization.

B. The use of **Confidential Information** by an **Elected Official, Appointed Official or Employee** for private gain is prohibited as provided in NMSA 1978, Section 10-16-6. This section does not allow the disclosure of information made confidential by law.

SECTION 14. DUTY TO REPORT IMPROPER OFFERS.

Elected Officials, Appointed Officials, Employees and Volunteers who receive an improper offer of **Anything of Value** shall firmly and unequivocally reject the offer and shall report the same to the appropriate law enforcement agency in the case of a violation of state law and, in the case of a violation of the Santa Fe County Code of Conduct, to, the County Attorney pursuant to Section 20 for a violation by an Elected Official, Appointed Official or Volunteer and the Human Resources Director for a violation by an Employee.

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SECTION 15. MISUSE OF COUNTY PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL BENEFIT.

A. An **Elected Official, Appointed Official, Employee or Volunteer** shall not use public property for any **Personal Benefit** 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.

B. An **Elected Official, Appointed Official, Employee or Volunteer** shall not 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, an **Employee** shall not be asked or allowed to perform personal services for an **Elected Official or Appointed Official**. An **Elected Official or Appointed Official** shall not require an **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 16. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL BENEFIT.

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.

C. Pursuant to NMSA 1978, § 10-16-4.3, it is unlawful for an **Employee** who is participating directly or indirectly in the contracting process, to become or to be an **Employee** of any person or business contracting with the **County** while also an **Employee** with the **County**.

SECTION 17. POLITICAL ACTIVITY.

A. An **Employee** with Contract management authority, property management authority or land use authority shall not serve as a paid political consultant, a campaign treasurer or as a member of the political fundraising committee of a candidate for federal, state, municipal or **County** office, or **Elected Official**.

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B. **Employees** shall not perform any political activity during any compensated time.

C. A candidate, **ex, Appointed Official, another Employee or Volunteer** shall not require an Employee to perform political activity: (i) as a part of the Employee's duties, or (ii) as a condition of **County** employment.

D. An **Employee** shall not be required to participate in a political activity.

E. 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, activities that are undertaken by an Employee that benefit a candidate.

F. Nothing in this section prohibits an **Employee** from engaging in political activity on behalf of the **County** or, consistent with Section 19(A), engaging in voluntary political activities of the Employee's choosing when not on duty.

G. No candidate shall engage in any conduct that would, to an objective third-party, constitute an undue threat to an **Employee's** continued employment.

H. **Employees** who receive compensation or reimbursement from a candidate or political campaign on behalf of a candidate in excess of a total of two hundred fifty dollars (\$250) per campaign, shall be required to report such compensation or reimbursement to the County manager in writing, which shall include disclosure of the nature of the compensation or reimbursement.

SECTION 18. DISCLOSURE.

A. Within ten (10) days after the swearing in of any Elected Official, the Elected Official shall file a Conflict of Interest and Financial Disclosure Statement with the Human Resources Division to be maintained by the County Clerk on a form provided by the County. Thereafter, Conflict of Interest and Financial Disclosure Statements of economic interest shall be filed on an annual basis before the January 11th of each year. Conflict of Interest and Financial Disclosure Statements Disclosure statements shall be amended to reflect a change in circumstances pursuant to Subsection D below.

B. Within ten (10) days of assuming duties as an Appointed Official, Employee or Volunteer, each shall file a Conflict of Interest and Financial Disclosure Statement with the Human Resources Division to be maintained by the County Clerk the County clerk on a form provided by the County. Thereafter, appointed officials, employees, and Volunteers shall file Conflict of Interest and Financial Disclosure Statements of economic interest on an annual basis before the January 11th of each year. Conflict of Interest and Financial Disclosure Statements Disclosure statements shall be amended to reflect a change in circumstances pursuant to Subsection D below.

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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 person or his or her **Family** owns more than two percent of the outstanding stock or any class or equity, or more than two (2) percent ownership interest of any other business that is doing business with the **County** in an amount in excess of seven thousand five hundred dollars (\$7,500) annually; and

3. the identity of each person who provided the **Elected Official, Appointed Official, Employee or Volunteer**, directly or indirectly, any gift having an aggregate value of more than two hundred fifty dollars (\$250) within the taxable year preceding the time of filing, except that such disclosure is not required for a gift from a **Family** member other than an unrelated household member; provided that the person making the gift is not also contracting, attempting to contract or otherwise doing business with the **County**.

D. A person who undergoes a change in the economic interests that are required to be disclosed by this section shall file an amended statement in the same manner as required by Subsection A or B of this section within ninety (90) days of the change.

E. Temporary election workers are exempted from the requirement of filing a Conflict of Interest and Financial Disclosure Statement.

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

SECTION 19. COERCION.

A. A candidate, **Elected Official, Appointed Official, Employee or Volunteer** shall not compel, coerce or intimidate any Elected Official, Appointed Official, Employee or Volunteer to make, or refrain from making, any political contribution. 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. An **Elected Official** shall not, directly or by authorizing another to act on the Elected Official's 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 **Anything of Value** to the Elected Official.

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

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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, the Santa Fe County Code of Conduct, or another financial disclosure provision of state law or County law; or

4. accept a contribution given or offered in violation of any applicable state ethics statutes or the Santa Fe County Code of Conduct.

SECTION 20. REPORTING AND RESOLVING ALLEGED ETHICS VIOLATIONS

A. An **Elected Official, Appointed Official or Volunteer** has an Affirmative Duty to, and an Employee or any member of the public may, submit a complaint alleging unethical conduct to the county ethics board by delivering to the county attorney's office a **Sworn Complaint** alleging facts that, if proven, would constitute a violation of the Santa Fe County Code of Conduct.

B. The County Attorney's Office will forward all **Sworn Complaints** to the County's **Contract Ethics Official (CCEO)**.

1. The County Attorney's Office shall not forward un-Sworn Complaints to the **CCEO**, but instead process them in accordance with the **County's** records retention policies after determining whether law enforcement, the County Manager or the Human Resources Director should be notified.

2. **Sworn Complaints** submitted more than two (2) years after a violation of this Code is alleged to have occurred, shall be beyond the jurisdiction of the **Ethics Board** and shall be summarily returned to the complainant by the **CCEO** with a notation that the Ethics Board has no jurisdiction to hear them because of the two-year limitations requirement.

C. The **CCEO** shall make a threshold determination as to whether a **Sworn Complaint** is against an **Employee, an Elected Official, an Appointed Official, or a Volunteer**. If the Sworn Complaint is against an Employee, the CCEO shall not conduct any further analysis or investigation and shall promptly refer the Sworn Complaint against an Employee to the **County's** human resources division for investigation and appropriate action pursuant to the Human Resources Handbook or collective bargaining agreement as applicable. A **Sworn Complaint** making ethics allegations against an Employee, an Elected Official, Appointed Official or volunteer shall, if the CCEO determines the complaint to state a claim under this Ordinance against an Elected Official, Appointed Official or Volunteer, be investigated by the CCEO as to the allegations against the Elected Official, appointed official or Volunteer only. The remainder of the complaint involving the Employee shall be investigated by the human

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resources division, pursuant to the Human Resources Handbook or handled according to a collective bargaining agreement as applicable.

D. The CCEO shall determine whether a **Sworn Complaint** against an **Elected Official, Appointed Official or Volunteer** states a claim under the Santa Fe County Code of Conduct. If the **Sworn Complaint** fails to state a claim under that code, the complainant shall be so informed in writing by the CCEO who shall dismiss the complaint, subject to a right of appeal to the County Ethics Board. An appeal shall be submitted to the County Attorney's Office within seven (7) calendar days from the date on which the complainant receives the notice of dismissal and shall be based solely on the issue of whether the Sworn Complaint stated a claim under that code. The County Attorney shall refer the appeal to the Ethics Board. After referral of the appeal to the Ethics Board, the Ethics Board may reverse a dismissal of the complaint if it determines that the CCEO's dismissal was erroneous based on a review of the issues raised in the appeal. If the Ethics Board reverses a dismissal of the complaint, it shall remand the matter back to the CCEO for further investigation and handling in accordance with Sections 24(E) and 24(F), with notice to the complainant and other person(s) named in the Sworn Complaint.

E. If the **Sworn Complaint** states a claim under the Santa Fe County Code of Conduct, the CCEO shall investigate the allegations, prepare a report and recommendations to either dismiss the complaint or proceed to a public hearing, and shall present the same to the Ethics Board for consideration at its next available meeting after completion of the investigation.

F. The Ethics Board shall conduct a public hearing prior to taking any action described in Section 25 of the Santa Fe County Code of Conduct. At its next meeting after completion of the investigation, the Ethics Board shall review the CCEO's report and recommendation to consider whether it will dismiss or proceed to a hearing, and either:

1. determine where and when a public hearing should take place for which it shall provide advance written notice to the **Respondent**, in which case the Respondent:
 - a) may be represented by counsel at the Respondent's own expense, who shall be an attorney licensed to practice law in New Mexico;
 - b) may request in writing from the CCEO a list of witnesses intended to be called at the public hearing by the CCEO, which list shall be provided by the CCEO within ten (10) days of receiving the request;
 - c) shall provide the CCEO with a list of witnesses that the Respondent intends to call during the public hearing within ten (10) days of receiving a written request from the CCEO;
 - d) may request in writing from the CCEO copies of all documents and other material not privileged that were obtained by the CCEO during the CCEO's investigation or which the CCEO intends to use during the public hearing, which copies shall be provided by the CCEO within ten (10) days of receiving the request;
 - e) shall provide the CCEO with copies of all documents the Respondent intends to use during the public hearing within ten (10) days of receiving a written request from the CCEO; and
 - f) shall have a right to the issuance of a notice by the Ethics Board compelling the attendance of County Employees as witnesses at hearings.

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In addition to the time, date, and place of the hearing, the notice of public hearing shall advise the Respondent of the rights and obligations set forth in this paragraph.

2. dismiss the complaint without further action other than to notify the Respondent and the Complainant in writing of the dismissal, which dismissal shall be based on either:

- a) failure to state a claim under the Santa Fe County Code of Conduct; or
- b) insufficient evidence to meet the standard of proof.

G. 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 charged with the ethics infraction.

H. In order to provide a full and fair hearing under the Santa Fe County Code of Conduct, a public hearing on the merits shall proceed as follows:

1. all persons present to give testimony shall be sworn before testifying and shall exit the hearing room until they testify. Persons testifying shall not discuss their testimony with other witnesses until the public hearing is concluded;
2. the **CCEO** shall proceed first by calling witnesses and tendering other evidence;
3. the **Respondent** shall have the right to cross-examine any witness called by the CCEO, and the CCEO shall have the right to cross-examine any witness called by the Respondent;
4. any Ethics Board member may question any witness;
5. after the CCEO has rested, the Respondent may proceed with a defense of the allegations set forth in the **Sworn Complaint** by calling witnesses and tendering other evidence;
6. after the Respondent has rested, the CCEO may call rebuttal witnesses;
7. while the technical rules of evidence shall not apply, the Chairperson may exclude irrelevant, immaterial, unreliable, unduly repetitious or argumentatively presented evidence and may require substantiation of statements or records tendered if 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;
8. written verbatim minutes of the public hearing shall be prepared and retained with any evidence submitted at the public hearing. Public hearings may be audio recorded for the purpose of preparing such minutes; however, the written verbatim minutes shall constitute the official record of the public hearing;

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

10. the Ethics Board may deliberate but not vote on its disposition of the case in executive session as an administrative adjudicatory deliberation, after which the Ethics Board shall return to an open session to vote on the disposition of the ethics case; and

11. after deliberating on the merits of the case before them, the Ethics Board shall issue a written decision consistent with its vote and containing findings of fact and conclusions of law, which may: impose one of the consequences permitted by Section 25(A) upon the **Respondent** if it finds a violation of the Santa Fe Code of Conduct has occurred; decline to impose one of the consequences even if a violation is found; impose a consequence less severe than those permitted by Section 25(A); or find no violation of that code has occurred. The burden of proof for finding a violation of that code 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, the Complainant, the County Manager, the Office of the County Clerk and, where appropriate, the District Attorney. The Ethics Board may postpone issuance of the written decision to another date.

I. Prior to the hearing on the merits, either the **Respondent** or the **CCEO** may file motions in accordance with a schedule established by the Ethics Board. The Ethics Board may consider such motions at a special meeting or at the beginning of the hearing on the merits. The Ethics Board shall not consider dispositive motions filed by Respondent, such as motions to dismiss or for summary judgment.

SECTION 21. COUNTY ETHICS BOARD.

A. The Ethics Board is created. The Ethics Board consists of five members who shall be appointed by the **Board of County Commissioners**. At least one member shall be appointed who 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 service as a **Volunteer**. The members of the Ethics Board may not hold elected public office or office with any political party within the County. Each member shall serve a two (2) year term, subject to reappointment.

B. The Ethics Board shall elect its chairperson and vice-chair. If a member of the Ethics Board petitions the Ethics Board for a hearing and advice regarding his or her own conduct or the conduct of another member, the 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 the Santa Fe Code of Conduct, but may periodically review and recommend amendments to that code.

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D. Upon the **Sworn Complaint** of a person alleging facts that, if proven, would constitute a violation of the Santa Fe County Code of Conduct, the Ethics Board shall conduct a public hearing on the allegations of the complaint.

E. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Santa Fe County.

F. The Ethics Board shall have the power to compel the attendance of **Employees** as witnesses at a hearing. A notice to attend will be delivered through the **Employee's** chain of command.

G. No action may be taken by the Ethics Board on any complaint that is filed later than two (2) years after a violation of the Santa Fe County Code of Conduct is alleged to have occurred.

H. The Ethics Board may also provide advisory opinions regarding the applicability or interpretation of the provisions of the Santa Fe County Code of Conduct upon the request of any **Elected Official, Appointed Official or Volunteer**.

I. On a quarterly basis, the **Board of County Commissioners** shall be provided with a report from the County Attorney stating the number of complaints that were submitted alleging a violation of the Santa Fe County Code of Conduct.

J. A member of the Ethics Board may be removed by the **Board of County Commissioners** for just cause.

K. A vacancy on the Ethics Board shall be filled in the same manner as the initial appointment and the appointment shall continue for the remainder of the unexpired term.

L. Members of the Ethics Board shall not receive a salary or other compensation for services.

SECTION 22. RIGHT OF APPEAL.

A decision of the Ethics Board finding a violation of the Santa Fe County Code of Conduct, with respect to an **Elected Official, Appointed Official 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 a decision regarding an **Employee** shall be covered by the terms of the Human Resources Handbook or collective bargaining agreement, as applicable.

SECTION 23. NON-RETALIATION.

The **Board of County Commissioners** does not tolerate retaliation, workforce discrimination or harassment of any kind against a person who has reported in **Good Faith** a violation of the Santa Fe County Code of Conduct. This non-retaliation provision applies whether the complaint is ultimately determined to be well-founded or unfounded. All **Elected**

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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 claim in **Good Faith**.

SECTION 24. 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 that 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 to approve budgets and expenditures, **Contracts** outside the signature authority of the County Manager, and matters that in the discretion of the board, while they may involve management issues, are of county-wide importance.

SECTION 25. PENALTIES.

A. An **Elected Official, Appointed Official or Volunteer** who violates the Santa Fe County Code of Conduct is subject to one or more of the following penalties imposed by the Ethics Board:

1. a written finding of censure in the form of publication of the Ethics Board's findings of fact and conclusions of law on the **County's** website for a period of ten (10) days;
2. a recommendation to the District Attorney or other appropriate governmental entity that the violation be pursued in criminal or other proceedings; or
3. 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. In addition to the penalties set forth above, other penalties might apply when certain conduct prohibited by the Santa Fe County Code of Conduct also constitutes conduct prohibited by the Governmental Conduct Act [NMSA 1978, Chapter 10, Article 16]. That 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 a person found guilty may be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one

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year or both. Prosecutions under that act shall be handled by a District Attorney or the Attorney General.

C. Employees who violate the Santa Fe County Code of Conduct are subject to discipline, up to and including dismissal, in accordance with the Santa Fe County Human Resources Handbook and any applicable collective bargaining agreement.

D. Violation of the Santa Fe County Code of Conduct shall constitute a petty misdemeanor and a person found guilty may be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment for a period not exceeding ninety (90) days in jail or both.

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SECTION 26. REPEAL.

Santa Fe County Ordinance No. 2010-12 and Ordinance No. 2011-9 are repealed.

SECTION 27. EFFECTIVE DATE.

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

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

By Anna T. Hamilton
Anna T. Hamilton, Chair

ATTEST:

Katharine E. Clark
Katharine E. Clark, County Clerk

Approved as to form:

Rachel Brown
Rachel Brown, Interim County Attorney



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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
BCC ORDINANCE
PAGES: 19
I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of May, 2022 at 11:14:21 AM
And Was Duly Recorded as Instrument # 1988249
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark

Deputy Destiny Romero County Clerk, Santa Fe, NM

