

**- DRAFT -**  
**AUGUST 30, 2010**

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

**ORDINANCE NO. 2010 - \_\_\_\_**

**AN ORDINANCE ENACTING A SANTA FE COUNTY  
CODE OF CONDUCT  
AND REPEALING ORDINANCE NO. 2004-3**

**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 ~~(NEW)~~.**

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 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.

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**SECTION 3. RESPONSIBILITY OF PUBLIC OFFICE AND EMPLOYMENT ~~(NEW)~~.**

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. **“Anything of value,” “benefit” or “thing of value”** includes (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, non-alcoholic beverages or lodging; (vii) transportation and related travel expenses not to exceed fifty dollars (\$50.00) 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 or 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.

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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 including the period of time of from filing the declaration of candidacy until the election. through being sworn into the elected office.

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F. **“Confidential Information”** means information that has been classified as confidential by law.

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.

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

**I. "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 but does not include the County Probate Judge.

**J. "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.

**K. "Family"** means an individual's spouse, domestic partner, children, siblings, or parents.

**L. "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 business; (ii) an interest in the sale of real or personal property to or from the County; ~~-(iii) any employment or prospective employment for which negotiations have already begun;~~ (iii) a financial relationship with a person or business whose interests may be affected by the County either because of the County's regulatory authority or because of a pending application; ~~-(iv) or (iv) any other interest that may be affected by the County;~~ or (v) 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, a financial relationship with a person or business whose interests may be affected by the County either because of the County's regulatory authority or because of a pending application, or any other interest that may be affected by the County. An interest held by 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.

**M. "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.

**N. "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 members of the general public who participate in a pending adjudication.

**O. "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.

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

**Q. "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.

**R. "Volunteer"** means a person who is not an Elected Official, Appointed Official or an Employee who provides services for the County as a volunteer, without being paid and without expectation of payment for those services.

#### **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 partisanship considerations, or without facts 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 the 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 ethical 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 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 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.

#### **SECTION 9. PROHIBITED FINANCIAL INTEREST IN COUNTY BUSINESS ~~(NEW)~~.**

A. No Elected Official, Appointed Official, Employee or Volunteer shall have a Financial Interest if the Elected Official, Appointed Official, Employee or Volunteer is in a decision-making capacity and has the capacity to affect the outcome of the matter in which a Financial Interest exists.

B. Elected Officials, Appointed Officials, and County Employees who have any Financial Interest shall disclose such interest by filing a Conflict of Interest Form and recording same with the County Clerk and by disclosing the interest as otherwise provided in this Ordinance or by Law, and shall thereafter be disqualified from participating in any debate, decision or vote relating thereto. [MOVED FROM SECTION 10]

~~-in any contract, work or business of the County or in the sale of any article to the County when the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administrated by the County. No Elected Official, Appointed Official, Employee or Volunteer shall have a financial interest in the purchase of any property that (i) belongs to the County, or (ii) is sold for taxes or assessment, or (iii) is sold by virtue of any legal process or litigation of the County.~~

#### **SECTION 10. PROHIBITED CONFLICTS OF INTEREST, DISCLOSURE ~~(NEW MATERIAL)~~.**

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 disclose the Conflict of Interest and shall subordinate the ~~is~~ conflicting interest to the public interest.

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 and Employees shall not vote for or otherwise participate in the negotiation or the making of any contract with any person, business or other entity in which the Elected Official, Appointed Official has a Financial Interest.~~

CD. 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.

DE. 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.

EF. Gifts, personal benefits, favors, gratuities or political or charitable contributions, or Anything of Value shall not be solicited or received under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result of the contribution. Anything of Value shall not be solicited or received from persons doing business with the County, contracting with the County, a person or business that is regulated by the County, a person or business that has an application pending before the County, or a person or business whose interests may be affected by the County.

EG. No Elected Official, Appointed Official or Employee shall 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.

~~H. Elected Officials, Appointed Officials, and County Employees who have any Financial Interest, direct or indirect, in any contract or matter pending before the County, who is regulated by the County, who has an application pending before the County, or whose interests may be affected by the County, shall disclose such interest by filing a Conflict of Interest Form and recording same with the County Clerk and by disclosing the interest as otherwise provided in this Ordinance or by Law, and shall thereafter be disqualified from participating in any debate, decision or vote relating thereto.~~

## **SECTION 11. 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.

**SECTION 12. 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 person receiving the offer shall report it to law enforcement authorities.

### **SECTION 13. 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. 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 14. 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 educating voters about the details of the question.

B. A Candidate or 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 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, it shall be refused or returned promptly. If an unsolicited contribution is received in the mail, or a lawfully solicited contribution is misdirected to 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 15. 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.

#### **SECTION 16. 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 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 17. POLITICAL ACTIVITY ~~(NEW)~~.

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.

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B. No Candidate, Elected Official, Appointed Official, Employee or Volunteer shall accept 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.

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C. No Employee with contract management authority, property management authority or land use authority shall serve as a paid political consultant or as a member of the political fundraising committee of any Candidate or Elected Official.

D. No Employee shall serve as a paid political consultant, paid campaign treasurer or paid campaign manager for a candidate for federal, state city or County office. No employee shall be permitted to receive more than \$250 in reimbursement from any political campaign or political candidate in any twelve month period.

E. Employees shall not intentionally perform any political activity during any compensated time. County employees shall not intentionally misappropriate any County property or resources by engaging in any political activity for the benefit of any campaign for elective office or any political campaign.

F. At no time shall any Candidate, Elected Official, Appointed Official, Employee or Volunteer misappropriate the services of any Employee by requiring that the Employee perform and 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.

G. An Employee shall not be required at any time to participate in any political activity.

H. 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.

I. Nothing in this section prohibits activities that are otherwise appropriate for an Employee to engage in as a part of County employment duties or activities that are undertaken by an Employee on a voluntary basis as permitted by law.

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

K. Employees that receive compensation or reimbursement from a Candidate or political campaign on behalf of a Candidate in excess of \$250 shall 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 18. DISCLOSURE ~~(NEW)~~.**

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 19. 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 20. PROHIBITED USES OF CAMPAIGN FUNDS.**

A. A candidate for County elected office 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 for County elected office, 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 as an employee or for goods or services provided to the campaign unless the amounts paid do not exceed the fair market value of the goods or services provided.

D. A candidate for County elected office 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 21. 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 22. 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 23. REPORTING VIOLATIONS OF THIS ORDINANCE.**

Any Elected Official, Appointed Official, Employee or Volunteer, or member of the public, may submit a complaint of unethical conduct to the County Ethics Board by delivering to the County Attorney's Office a sworn complaint alleging facts which, if true, would constitute a violation of this Ordinance. The County Attorney's office will forward all such sworn complaints to the County Ethics Board for further proceedings. ~~In the alternative, any individual may submit a confidential report of facts which, if true, would constitute a violation of this Ordinance to the County Attorney's Office who shall immediately forward the confidential report to the Internal Audit Contractor. Thereafter, the allegations shall be investigated by the County's Internal Audit Contractor. If the Internal Audit Contractor finds facts that constitute a violation of this Ordinance, the Internal Audit Contractor will prepare the sworn complaint and present its investigation to the County Ethics Board.~~

### **SECTION 24. COUNTY ETHICS BOARD ~~(NEW)~~.**

A. There shall be created a Santa Fe County Ethics Board that shall consist of five members ~~who shall be appointed by the Board of Commissioners, with each Commissioner nominating one member residing in his/her Commission District. At least one citizen member shall be appointed; the citizen members shall not be affiliated with County government in any capacity, including, but not limited to, employment (including employment for which the salary is in any way funded by or through the County), appointment, 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.~~

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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 from that Commission District when the need arises.

C. The jurisdiction of the Ethics Board is limited to acting within the scope of matters covered by this Ordinance, but may periodically review and recommend amendments to this Ordinance.

D. Upon the sworn complaint of any person alleging facts which, if true, would constitute a violation of this Ordinance, ~~or upon the filing of a complaint by the Internal Audit~~

~~Contractor,~~ 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.

F. The County Ethics Board shall have the power to issue administrative subpoenas compelling the attendance of witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the First Judicial District Court.

G. If the County Ethics Board finds that an Elected Official, Appointed Official, Employee 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, Employee 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 appropriate governmental office.

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.

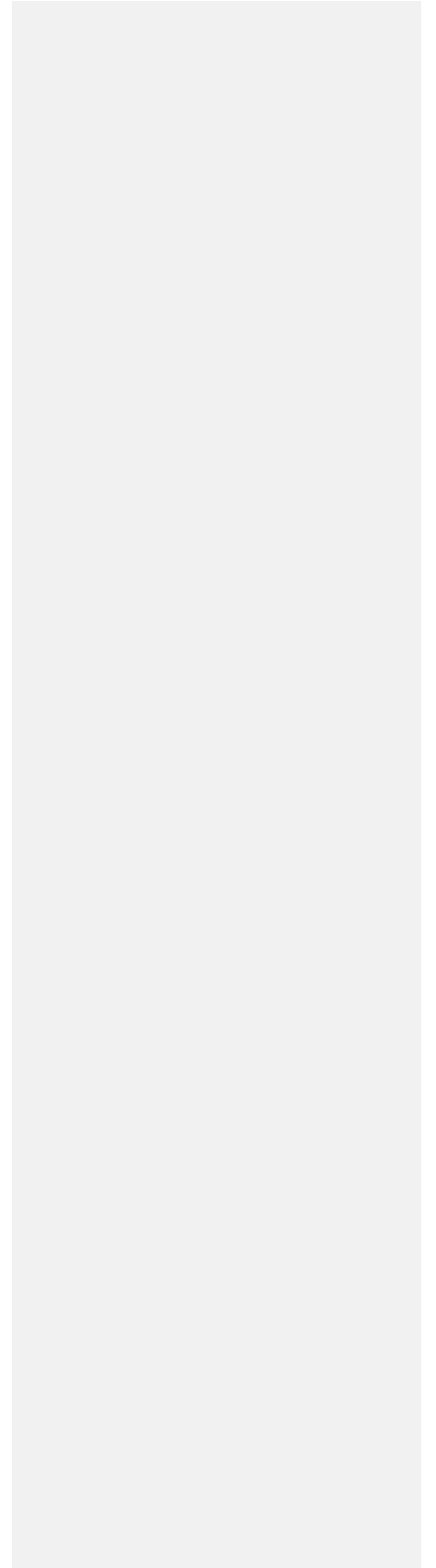
J. The County Ethics Board may also provide advisory opinions regarding the applicability or interpretation of the provisions of this Ordinance upon the request of any Elected Official, Appointed Official or County Employee.

K. On a quarterly basis, the Board of Commissioners shall be provided with a report stating the number of complaints that were submitted alleging a violation of this Ordinance.

## **SECTION 25. RIGHT OF APPEAL ~~(NEW)~~.**

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 a County Employee shall be covered by the terms of the Human Resources Handbook or collective bargaining agreement, as applicable.

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## **SECTION 26. NON-RETALIATION. ~~(NEW)~~**

A. The Board of Commissioners does not tolerate retaliation, workforce discrimination 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 of violation. Anyone who believes that they have been subject to workplace discrimination 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.

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.

## **SECTION 27. EX PARTE COMMUNICATIONS ~~(NEW)~~**

### **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, ~~or during emergencies, or~~ that do not deal with ~~substantive matters or issues on~~ 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 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, 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 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, ~~as a candidate for office,~~ the official announced how he or she would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

2. 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.

3. 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 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 party, the official shall provide a full explanation in support of his refusal to recuse himself or herself.

43. 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 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.

## **SECTION 28. 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 298. PENALTIES.**

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

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

B. a public reprimand;

C. a recommendation to the District Attorney that the violation be pursued in criminal or other proceedings; and

D. proceedings and penalties pursuant to the Santa Fe County Personnel Handbook, where appropriate.

| **SECTION ~~3029~~. REPEAL.**

Santa Fe County Ordinance No. 2004-3 is hereby repealed.

| **SECTION ~~310~~. EFFECTIVE DATE.**

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

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

By \_\_\_\_\_  
Harry B. Montoya, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**Approved as to form:**

\_\_\_\_\_  
Stephen C. Ross, County Attorney

**SANTA FE COUNTY  
LEGAL DEPARTMENT  
MEMORANDUM**

**To:** The Board of County Commissioners  
Penny Ellis Green, Interim County Manager

**From:** Stephen C. Ross, County Attorney

**Date:** August 31, 2010

**Re:** Code of Conduct for Santa Fe County

Attached is a draft of a comprehensive rewrite of the Santa Fe County Code of Conduct. This draft is largely unchanged from last month, when the draft was presented informally during the meeting of June 29.

The primary changes from existing law are clearly marked as new material. The most significant changes from current law are as follows: (i) the draft ordinance provides a very broad declaration of an intent to establish an ethical and open government, free from personal or financial influences; (ii) the draft ordinance provides that Elected Officials, appointees, employees and volunteers are required to observe the highest standards in exercising their authority for the public good, and that the public interest is the prime objective; (iii) a new section prohibits improper financial interests in County business, and broadly reformulates the conflicts of interest section of Ordinance No. 2004-3; (iv) a new section governs political activity, imposes campaign contribution limits (\$2,300), and provides important protections for employees from the political process; (v) a new section requires disclosure, through the financial interest form, of relevant conflicts of interest and financial interests; (vi) the draft ordinance creates an independent, appointed ethics board to administer the ordinance; (vii) provides new rules on *ex parte* communication in administrative adjudicatory proceedings; and (viii) and protects employees from retaliation and workforce harassment for reporting violations of the ordinance.

The language from the existing ordinance, No. 2004-3, was edited, modernized and clarified.

The question before you is whether to authorize publication of title and a general summary of the proposed ordinance.