

1-7 CODE OF ETHICS.

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

1-7.1 Title.

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

1-7.2 Statement of Policy.

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

1-7.3 Purpose and Intent.

The purposes of the Code of Ethics are:

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

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

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

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

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

(Ord. #2005-14, §3; Ord. #2011-8, §1)

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

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

1-7.5 Definitions.

As used in the Code of Ethics:

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

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

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

- (1) The public official or public employee who is to perform the official act;
- (2) Any member of his or her family;
- (3) Any business of which he or she or any member of his or her household is an owner;
- (4) Any employer, client or customer from whom the public official or public employee knows or reasonably should know that he or she or any member of his or her household or any business of which he or she is an owner has received remuneration of more than five hundred dollars (\$500.00) during the year preceding the official act;
- (5) Any civic group, labor union, or social, charitable or religious organization of which the public official or public employee or a member of his or her household is an officer or director; or
- (6) Any business or any of its owners, if the public official or public employee knows or reasonably should know that the business or any of its owners, has made

“contributions” or has directed the making of “contributions,” as that term is defined in subsection 9-2.3(I) SFCC 1987, to the public official's or public employee's campaign for elected office in an aggregate amount greater than two hundred fifty dollars (\$250.) during the two (2) years preceding the official act. A contribution made before March 18, 2014, shall not be counted toward the aggregate total.

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

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

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

Governing body means the mayor and the city council.

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

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

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

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

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

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

Subordinate of a public official or public employee means a public employee over whose work for the city the public official or public employee has direction, supervision or control. All public officials and public employees except other members of the governing body are deemed to be subordinates of each member of the governing body.

(Ord. #2005-14, §5; Ord. #2011-8, §2; Ord. #2014-12, §1)

1-7.6 Public Officials and Public Employees; Disclosure.

A. Each public official and public employee shall be given a copy of the Code of Ethics upon election, appointment or employment and shall sign a statement to the effect that the public official or public employee has received the Code of Ethics and understands that the public official or public employee shall abide by its terms and conditions. The city attorney's office shall conduct an annual review of the Code of Ethics for all public employees.

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

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

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

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

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

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

(1) An occasional meal or nonpecuniary gift with a fair market value not to exceed fifty dollars (\$50.00) valued in a manner consistent with Internal Revenue Service (IRS) rules.

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

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

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

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

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

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

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

C. *Representation of Private Interests.*

(1) A governing body member, the city manager, the city attorney and the city clerk shall not, during his or her term of office or within one (1) year after the termination

thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city or matter before the city.

(2) A public employee shall not, during his or her term of employment or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city department that the public employee is or was employed by or any matter before such city department in which the public employee has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a city employee.

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

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

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

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

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

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

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

J. *Honoraria.* A public official or public employee shall not request or receive an honorarium for a speech or service rendered in the performance of his or her duties as a public official or public employee. For the purposes of this paragraph J., "honorarium" means payment of money, or

any other thing of monetary value, but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service. However, the public official or public employee shall report all such reimbursement to the city clerk within ten (10) days of receipt.

K. *Workplace Bullying by Governing Body Members.* A governing body member shall not intentionally bully any public employee, including the city manager, city attorney or city clerk. For purposes of this paragraph, workplace bullying means intentional behavior intended to create an abusive work environment for a public employee or public employees. Bullying behavior is behavior in the workplace that a reasonable person would find hostile, offensive, and not obviously related to the city of Santa Fe's legitimate business interests. Workplace bullying includes, but is not limited to the following:

- (1) Use of disrespectful and devaluing language;
- (2) Persistent or constant criticism in front of other persons (including co-workers, vendors, contractors or members of the public) for the purpose of humiliating an employee;
- (3) Behavior or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and screaming;
- (4) Threats and intimidation, including threats to discipline or terminate a public employee.

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

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

- (1) A public official or public employee who has a conflict of interest as defined in subsection 1-7.5 SFCC 1987 shall immediately disclose the conflict in the following manner:
 - (a) In the case of a member of a governmental body, to the governmental body at a public meeting;
 - (b) In the case of the city manager, the city attorney or the city clerk, to the governing body at a public meeting, and
 - (c) In the case of a public employee, to the city manager.
- (2) A public official or public employee shall not perform an official act or attempt to influence another person to perform an official act in any matter in which he or she has a conflict of interest.

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

(Ord. #2005-14, §7; Ord. #2011-8, §4; Ord. #2014-15)

1-7.8 Reserved.

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

1-7.9 Enforcement.

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

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

1-7.10 Primacy of Collective Bargaining Agreements.

In any situation where there is a conflict between any aspect of the Code of Ethics and a collective bargaining agreement, the agreement shall control. (Ord. #2005-14, §14)

1-7.11 Annual Review.

The Code of Ethics shall be reviewed by the governing body on an annual basis not later than June 30th of each year. (Ord. #2005-14, §15)