

ETHICS AND CAMPAIGN REVIEW BOARD

CREATING AUTHORITY: Amended by Ordinance 2011-8 adopted on March 30, 2011.

APPOINTMENT: The board shall consist of seven (7) members appointed by the mayor, with the advice and consent of the city council, in the following manner: Four (4) members appointed from a list of eight (8) attorneys licensed to practice in New Mexico submitted by the First Judicial District Bar Association; Three (3) members at large. Members shall be qualified by training and experience and have the ability to exercise sound and practical judgment regarding the powers and duties of the board. Each member of the board shall be a resident of the city. No member of the board shall be a member of the governing body, the city manager, the city attorney, the city clerk or a "public employee" or a member of the "family" of any of these persons (the quoted terms being used as defined in Section 1-7.5 SFCC 1987). No member of the board shall make a contribution to or participate in the campaign of any candidate for an elected municipal office.

CHAIR AND SUBCOMMITTEES: The board shall elect a chair and a vice-chair from among its members, and may organize subcommittees or panels to conduct hearings, recommend advisory opinions or perform other delegated tasks. The board may at any time act directly on any pending matter without subcommittee action or recommendations.

TERM: Members shall be appointed for staggered terms of four (4) years beginning July 1, 2011. The initial members shall draw lots to determine which three members serve an initial term of four years, which two members serve an initial term of three years and which two members serve an initial term of two years; thereafter all members shall serve four-year terms. Members shall serve until their successors are appointed and qualified. Members may be reappointed. A member who has participated in any hearing on a pending case involving an alleged violation of the Code of Ethics, the Campaign Code or the Public Campaign Finance Code shall continue to serve as a board member for purposes of that case until the case is concluded, regardless of the expiration of that board member's term. Newly appointed board members shall not serve on cases in which hearings have already been held at the time of their appointment.

REMOVAL FOR JUST CAUSE: During a member's term, he or she may be removed only for just cause by a majority vote of the governing body.

VACANCIES: A vacancy on the board shall be filled by appointment by the mayor, with the advice and consent of the city council, and the appointee shall serve for the remainder of the unexpired term. If the vacant position was originally filled by appointment from a list of nominees submitted by a particular group or organization, the appointment to fill the vacancy shall be made in the same manner

COMPENSATION: Members of the board shall not receive any salary or compensation for services.

MEETINGS: The board shall meet at least four (4) times yearly and on an as-needed basis.

POWERS AND DUTIES:

- A. The board shall enforce the provisions of the Code of Ethics (Article 1-7 SFCC 1987), the Campaign Code (Article 9-2 SFCC 1987) and the Public Campaign Finance Code (Article 9-3 SFCC 1987) in accordance with the procedures prescribed in this Article and such rules as the board may adopt.
- B. The board shall establish reasonable rules of practice and procedure which are not in conflict with the provisions of city code or other city rules of practice and procedure, timetables and explanatory materials designed to educate the public, to encourage voluntary compliance and to ensure fair and prompt disposition of alleged violations. All such rules of practice and procedure shall be available to the public in the city clerk's office and on the city's website.
- C. The board may give advisory opinions to any person requesting an opinion as to whether his or her own future conduct would violate the Code of Ethics, the Campaign Code or the Public Campaign Finance Code. An advisory opinion rendered by the board shall be binding on the board in any subsequent proceeding on a complaint against the person or entity who requested the opinion and acted in good faith in reliance thereon, unless the person or entity omitted or misstated a material fact in requesting the advisory opinion. Advisory opinions shall be indexed and maintained on file with the city clerk and placed on the city's web site.
- D. In the exercise of its responsibilities, the board may audit campaign or other records. After each election campaign the board may contract for professional reviews or audits of campaign finance statements and shall file their results with the city clerk's office.
- E. The board shall periodically review and recommend changes to the governing body for improving the Code of Ethics, the Election Code, the Campaign Code or the Public Campaign Finance Code, particularly following a municipal election.
- F. The board shall review and make recommendations to the governing body regarding the governing body procedural rules and other procedural

matters including, but not limited to, the city's annual open meetings act compliance resolution.

DETERMINATION OF LEGAL SUFFICIENCY; SETTING A HEARING:

- A. Upon receipt of the complaint, the board shall determine the following:
 - (1) If the face of the complaint sets forth legally sufficient facts which, if true, show probable cause to believe that there was a violation;
 - (2) If the complaint was filed within one (1) year after the complainant first discovered or reasonably should have discovered the facts on which the complaint is based;
 - (3) If the complaint is frivolous or intended solely to harass or intimidate; and
 - (4) If the board lacks jurisdiction to adjudicate the complaint.
- B. The city attorney, or a qualified attorney designated by the city attorney, may file a complaint with the board on the basis of information referred by the board or obtained otherwise, upon the city attorney's independent determination that probable cause exists of a violation of the Code of Ethics, the Campaign Code or the Public Campaign Finance Code.
- C. To promote public participation, and to preserve the board's transparency, credibility, and stature, all final board determinations, including board decisions on complaints, advisory opinions, and settlements, shall be made during public meetings in compliance with the Open Meetings Act. No complaint shall be dismissed without a prior evidentiary hearing or prior board discussion in a public meeting of the reasons for the determination.
- D. If the board determines that the complaint is legally sufficient, was filed timely and is not frivolous, and that the board has jurisdiction to adjudicate the complaint, the board shall at the same meeting set a schedule for hearing the complaint. The board shall conduct a public hearing regarding the complaint in accordance with due process of law. The chair of the board has authority to order appropriate discovery and issue subpoenas for the attendance of witnesses or the production of documents. Any decision of the chair with respect to discovery or with respect to the issuance of subpoenas shall be reviewable by the board upon request of any affected person. The board may seek enforcement of administrative subpoenas or discovery requests in district court.

- E. The city clerk may require electronic posting of all documents generated pursuant to the Code of Ethics, the Campaign Code or the Public Campaign Finance Code, in an accessible and searchable format, including the proceedings of the ethics and campaign review board.

SANCTIONS:

- A. To encourage compliance and deter Campaign Code violations, the city clerk shall assess such fines as provided for in Section 9-2.10 SFCC 1987 and Section 9-2.15 SFCC 1987. The fine shall be payable within thirty (30) calendar days to the city of Santa Fe. Respondents may contest the validity of such fine by filing a written appeal to the board within five (5) calendar days of its assessment, which the board shall promptly affirm or reject.
- B. Except as set forth in paragraph C. below, if the board following a hearing determines that there has been a violation of the Code of Ethics, the Campaign Code or the Public Campaign Finance Code, it may:
 - (1) Issue a public reprimand;
 - (2) Impose a fine not to exceed five hundred dollars (\$500.00) per violation. Each day of a continuing or repetitive violation may be deemed a separate offense. The board may seek enforcement of fines in district court;
 - (3) Recommend removal or suspension from office of a public official by the governing body;
 - (4) Refer complaints against public officials, where appropriate, to the district attorney's office for investigation and prosecution; and
 - (5) In the case of a violation of the Public Campaign Finance Code, revoke a candidate's certification as a participating candidate or order repayment or refund by a candidate of any money received by the candidate from the Public Campaign Finance Fund pursuant to Section 9-3.10 SFCC 1987 or Section 9-3.13 SFCC 1987.
- C. Although public employees are subject to and bound by the provisions of the Code of Ethics, the Campaign Code and the Public Campaign Finance Code, the sanctions authorized by this Section may not be imposed on public employees unless they are public officials or exempt employees. All other public employees found to have violated the Code of Ethics, the Campaign Code or the Public Campaign Finance Code shall be subject to discipline only in accordance with the personnel rules and regulations of the city of Santa Fe and applicable collective bargaining agreements.

- D. The sanctions set forth in paragraphs A., B. and C. do not preclude the enforcement of applicable existing state and federal statutes.
- E. A respondent may submit a written waiver of hearing