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6-16 ETHICS AND CAMPAIGN REVIEW BOARD.

6-16.1 Ethics and Campaign Review Board.

A. *Creation.* There is created an "ethics and campaign review board" ("the board").

B. *Appointment.*

(1) 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:

(a) 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.

(b) Three (3) members at large.

(2) Members shall be qualified by training and experience and have the ability to exercise sound and practical judgment regarding those powers and duties of the board.

(3) Each member of the board shall be a resident of the city.

(4) 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 used as defined in subsection 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.

C. *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.

D. *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 (3) members serve an initial term of four (4) years, which two (2) members serve an initial term of three (3) years and which two (2) members serve an initial term of two (2) 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 that 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.

E. *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.

F. *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.

G. *Compensation.* Members of the board shall not receive any salary or compensation for services.

H. *Meetings.* The board shall meet at least four (4) times yearly and on an as-needed basis.
(Ord. #2005-14, §17; Ord. #2007-11, §1; Ord. #2007-21, §1; Ord. #2010-32, §1; Ord. #2011-8, §7)

6-16.2 Powers and Duties.

A. The board shall enforce the provisions of the Code of Ethics (Section 1-7 SFCC 1987), the Campaign Code (Section 9-2 SFCC 1987) and the Public Campaign Finance Code (Section 9-3 SFCC 1987) in accordance with the procedures prescribed in this section 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. Reserved.

G. Reserved.

H. 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.
(Ord. #2005-14, §18; Ord. #2007-11, §2; Ord. No. 2009-45, §1; Ord. #2011-8, §8)

6-16.3 Complaints.

Any person may make a sworn written complaint, under penalty of perjury, of a violation of the Code of Ethics, the Campaign Code or the Public Campaign Finance Code. The complaint shall state the specific provision which has allegedly been violated and the facts which the complainant believes support the complaint. The sworn complaint shall be filed with the city clerk, who shall promptly refer the complaint to the board and furnish a copy of the complaint and any supporting documentation to each respondent who is alleged therein to have violated the Code of Ethics, the Campaign Code or the Public Campaign Finance Code. The complaint shall be filed within one (1) year after the complainant first discovered or reasonably should have discovered the facts on which the complaint is based.
(Ord. #2005-14, §19; Ord. #2009-45, §2)

6-16.4 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 Code, 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.
(Ord. #2005-14, §20; Ord. #2007-11, §3; Ord. #2009-10, §1; Ord. #2009-45, §3; Ord. #2011-8, §9)

6-16.5 Reserved.

6-16.6 Investigations.

The board may conduct an investigation of allegations brought before it rather than simply hearing charges; to do this, it shall temporarily contract with qualified investigators. No such investigation shall be undertaken unless it is specifically authorized and defined by the board. All public officials and public employees shall promptly furnish the board or its investigator with requested information and records within their custody which are germane to an investigation authorized by the board. Public officials and public employees may be required to appear as witnesses in hearings concerning charges of Ethics Code, Campaign Code or Public Campaign Finance Code violations heard by the board. (Ord. #2009-14, §21; Ord. #2009-45, §4)

6-16.7 Sanctions.

A. To encourage compliance and deter Campaign Code violations, the city clerk shall assess such fines as provided for in subsection 9-2.10 SFCC 1987 and subsection 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.) 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.

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 subsection 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.
(Ord. #2005-14, §22; Ord. #2007-11, §4; Ord. #2009-45, §5; Ord. #2011-8, §10; Ord. #2011-28, §25)

6-16.8 Appeals.

An appeal from any final action may be taken to district court. Recommendations or advisory opinions by the board are not final actions and may not be appealed. (Ord. #2005-14, §23)

RULES OF ORGANIZATION AND PRACTICE

Pursuant to Section 6-16.2(B) SFCC 1987, the Ethics and Campaign Review Board ("Board") is governed by the following Rules of Organization and Practice ("Rules"):

A. Board Powers and Duties

1. The Board's mandate is to promote and enforce compliance with the Santa Fe Campaign Code, Article 9-2 SFCC 1987, the Code of Ethics, Article 1-7 SFCC 1987 and the Public Campaign Finance Code, Article 9-3 SFCC 1987.

2. The Board shall carry out its mandate in a fair, prompt, and open manner and shall promote broad public understanding and encourage voluntary compliance by providing formal or informal guidance to avert adversarial proceedings and legal conflicts.

3. The Board may publish concise educational materials to familiarize public officials, candidates for elected office and citizens with the requirements of the Code of Ethics, the Campaign Code and the Public Campaign Finance Code.

4. The Board and City Staff shall hold a January orientation session with certified candidates, along with their campaign managers and campaign treasurers, to discuss the requirements, deadlines, and sanctions of the Campaign Code and the Public Campaign Finance Code. A similar pre-election meeting to review final compliance status by all candidates shall be held by the Board and City Staff shortly preceding the March municipal election.

B. Board Organization

1. The Board consists of seven members, and shall elect a Chair, Vice-Chair and Parliamentarian.

2. A quorum to conduct the Board's business requires attendance by a majority of the Board, i.e., four members.

3. All official Board actions or determinations shall require approval by a majority of the Board members present and voting at a public Board meeting subject to the Open Meetings Act, Chapter 10, Article 15 NMSA 1978.

4. Pursuant to §6-16.1(C) and the City of Santa Fe Rules & Procedures for City Committees, the following Subcommittees may be organized to facilitate and expedite the Board's work by recommending appropriate actions by the Board. Each subcommittee shall be composed of no more than three Board members.

   a. Advisory Subcommittee -- to consider requests for advisory opinions by candidates and public officials;

b. Complaints Subcommittee -- to consider the sufficiency of complaints; and

c. Hearings Subcommittee -- to consider the factual basis and/or legal merits of complaint allegations.

5. Additional subcommittees may be appointed to serve on an ad hoc basis to facilitate and expedite the Board's mission.

6. The Board may at any time, by majority vote, determine any matter on a plenary basis, without and irrespective of any action by any subcommittee.

7. Referrals to subcommittees shall not be automatic or routine, but shall instead be made only upon motion and a finding by the Board that the benefits of the proposed referral, in terms of the anticipated saving of the Board's time or expedition in the disposition of the case, will outweigh any potential costs of the referral in terms of reduced openness of the Board's proceedings or diminished prestige of its judgments.

C. Advisory Opinions

1. 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.

2. A request for an advisory opinion shall be submitted to the City Clerk and promptly distributed to all members of the Board. The request shall state, with particularity, the material facts, history, and circumstances of the proposed action or conduct and shall specify the provisions of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code that may pertain to the proposed action or conduct.

3. After consideration of appropriate information, submittals, or presentations, including recommendations of the Advisory Subcommittee in cases where a referral to that subcommittee has been made, the Board, at an open meeting, may render an Advisory Opinion for publication or may decline to render an advisory opinion for stated reasons why no advisory opinion is deemed appropriate.

D. Board Complaint Procedures

1. Sworn complaints may be filed by any person pursuant to § 6-16.3 SFCC 1987 on a form provided by the City Clerk and immediately forwarded by the City Clerk to all Board members and to the alleged violator (the "respondent"). All complaints must state, with

particularity, the factual basis and the specific conduct alleged to violate particular provisions of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code.

2. The City Attorney, or a qualified attorney designated by the City Attorney, may, upon his or her independent determination that probable cause exists of a violation of the Code of Ethics, the Campaign Code, and/or the Public Campaign Finance Code, file a complaint with the Board on the basis of information referred by the Board or obtained otherwise.

3. A sworn response by the respondent must be filed with the City Clerk within ten business days of completed service of the complaint by certified mail or personal service, or by a shorter deadline that may be prescribed by the Board, and shall be promptly distributed by the City Clerk to all Board members and the complainant.

4. The Board shall promptly consider whether the factual allegations, if true, establish a violation of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code. The Board may consider appropriate submittals by the parties, as well as recommendations of the Complaints Subcommittee in cases where a referral to that subcommittee has been made, and shall dismiss the case if the complaint:

a. Was filed too late, i.e., more than one year after the reasonable discovery of pertinent facts;

b. Does not state a violation of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code; or

c. Was filed solely to harass or intimidate.

E. Initial Investigation

1. After the Board has voted that a valid complaint has been filed, the Board may determine, at a public meeting, whether to hire a qualified investigator to conduct a preliminary investigation as defined by the Board.

2. If the Board decides to hire a qualified investigator to conduct a preliminary investigation, such investigation shall be completed within sixty days of its initiation.

3. When the investigator has completed his/her preliminary investigation, he/she shall inform the City Attorney and the City Clerk, who shall work with the Board to schedule a Board meeting at which the investigator shall report his/her findings to the Board.

4. If, based on the pleadings or the pleadings in combination with the findings of the investigator, the Board determines that there is reason to believe that a provision of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code has been violated, it shall refer the matter for a public hearing by the Board or, upon a finding by the Board as provided in Section B.7 of these Rules, by the Hearings Subcommittee and shall set appropriate hearing dates

before the Board and/or the Hearings Subcommittee. A respondent may submit a written waiver of hearing before the Board and/or Hearings Subcommittee.

5. If, based on the pleadings or the pleadings in combination with the findings of the investigator, the Board determines that there is no reason to believe that a provision of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code has been violated, it shall immediately terminate the investigation and send written notice of the determination to both the complainant and respondent.

F. Pre-Hearing Procedures

1. Before a hearing, the complainant or respondent may request that the Board issue subpoenas for the production of documents or to compel the attendance of witnesses.

2. Before a hearing, the complainant or respondent may request that the Board authorize any reasonable discovery, including but not limited to, the names and addresses of witnesses to the extent known by the other party, statements made by any person pertaining to the subject matter of the proceeding, all writings that the other party proposes to offer into evidence, or investigative reports created in relation to the proceeding.

3. Thirty days, or less if ordered by the Board, before the hearing, both parties shall produce witness lists to each other and to the City Clerk for distribution to the Board summarizing each witness's expected testimony and copies of all exhibits that the party anticipates offering into evidence at the hearing.

G. Hearing Chronology

The chronology contained in this Section provides the basic order of proceedings during the hearing. The Chair, at his/her discretion, may modify the chronology in the interests of conducting an efficient and expedient hearing, unless such modification would prevent due process from being afforded to all parties to the hearing. The Chair, at his/her discretion, also may impose appropriate time limits on all stages of proceedings.

1. The Chair calls the matter for hearing and asks the parties and counsel to identify themselves.

2. Any party may make an opening statement. If the complainant and respondent both wish to make an opening statement, the complainant proceeds first. The respondent may reply after the complainant's opening statement or may reserve an opening statement until after the complainant concludes his/her case. Each party shall have a total of fifteen (15) minutes for their respective opening statements.

3. The complainant puts on his/her case first.

4. The respondent puts on his/her case after the complainant concludes his/her case. If there is more than one respondent, the order of presentation may be decided by mutual agreement of the respondents or, if necessary, at the discretion of the Chair.

5. After the initial presentation of evidence by both sides, the parties, beginning with the complainant, may introduce evidence in rebuttal. Such evidence should be limited to matters already raised in the presentation of the complainant's or respondent's case.

6. Each party may make a closing argument. The complainant proceeds first. The respondent proceeds after the complainant's closing argument, and the complainant may conclude the closing arguments with a rebuttal.

7. After closing arguments, the Board shall deliberate and may do so either on the record or off the record in an "executive session" in accordance with the requirements of the Open Meetings Act § 10-15-1 et. seq. NMSA 1978.

8. To find that the respondent violated a provision of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code, a majority of Board members who presided over the hearing must find that a violation has occurred by clear and convincing evidence, meaning that it is substantially more than likely that a violation has been committed.

9. When the Board reaches a decision, it shall announce its decision on the record, identifying those members who found that a violation was committed and those who did not.

10. As soon as is practicable after the hearing is adjourned, the Board shall create written findings of fact and conclusions of law to be distributed to the parties and to be made part of the record. The findings of fact and conclusions of law shall show how each presiding Board member voted and shall include the form of punishment agreed upon by the Board.

11. To encourage compliance and deter Code violations, the Board may impose, and the City Clerk shall assess, such fines or sanctions as provided by the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code. Fines shall be payable within ten calendar days to the City of Santa Fe. A respondent may contest the validity of such a fine by filing a written appeal to the Board within five calendar days of its assessment. The Board shall promptly affirm or reject any such appeal.

12. All final determinations by the Board may be appealed to the First Judicial District Court. Recommendations or advisory opinions by the Board are not final actions and may not be appealed.

H. Evidentiary Standards

1. Oral evidence shall be taken only under oath. The oath may be administered by the Chair. The oath is obtained by an affirmative response to the following question, "Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?"

2. Each party shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues, and impeach any witness.

3. A party may re-direct and re-cross any witness, subject to the limitations imposed by the Chair.

4. The complainant may call and examine any respondent as if under cross-examination even if that respondent does not first testify on his/her own behalf.

5. Any objection to the introduction of any evidence shall be overruled or sustained at the Chair's discretion.

6. The admissibility of evidence shall not be governed by the New Mexico Rules of Evidence; rather, any evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of evidence over objection in civil actions.

7. Hearsay evidence may be used if allowed by the Chair at his/her discretion, but only for the purpose of supplementing or explaining other evidence.

8. Rules of privilege shall be effective to the extent that they are applicable in a court of law in the State of New Mexico.

9. The Chair has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate an undue consumption of time.

I. Settlement Proceedings

Any formal complaint alleging a violation of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code may be resolved by a voluntary stipulation on the part of the respondent, if approved by the Board at a public meeting upon consideration of any comments by the complainant.

J. Board and Board Members' Responsibilities

1. All actions by the Board shall be in conformity with the provisions of Article 6-16 SFCC 1987 which is the enabling legislation defining the Board's powers and responsibilities.

2. All Board proceedings shall comply with the letter and spirit of the Open Meetings Act, Chapter 10, Article 15 NMSA 1978 and other applicable statutory or constitutional requirements, as well as fundamental principles of due process of law.

3. As public officials, Board members must comply with all provisions of the Code of Ethics, including those prescribing conflicts of interest, as well as New Mexico case law prohibiting participation in quasi-judicial proceedings whenever the member's actions would be

tainted by bias, prejudgment, or partiality or give rise to the actuality or the appearance of impropriety.

4. Due to the sensitivity of the Board's mission to enforce ethical standards, and the importance of public trust and confidence in the Board's integrity and impartiality, Board members should be mindful of the need for recusal in close or doubtful cases. Recusal of a member may be compelled on motion upheld by a majority vote of present and voting Board members.

5. These Rules incorporate pertinent terms and definitions of the Code of Ethics, the Campaign Code and the Public Campaign Finance Code and may be amended or supplemented by the Board whenever necessary or appropriate.

6. On the infrequent occasion of elections to consider ballot proposals, the Board shall publish pertinent supplemental Rules.

7. The foregoing Rules of Organization and Practice shall be periodically reviewed and/or revised by the Board, and the Board shall periodically review and recommend changes for improving the Code of Ethics, the Campaign Code, and/or the Public Campaign Finance Code.

Justin Miller, Chair

Roderick Thompson, Vice-Chair

Paul Biderman

Ruth Kovnat

Tara Lujan

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Adopted August 23, 2012