

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2011-7

INTRODUCED BY:

AN ORDINANCE

AMENDING VARIOUS SECTIONS OF ARTICLE 1-7 SFCC 1987 RELATING TO THE CODE OF ETHICS; REPEALING SECTION 1-7.8 SFCC 1987 OF THE CODE OF ETHICS; AMENDING VARIOUS SECTIONS OF ARTICLE 6-16 SFCC 1987 RELATING TO THE ETHICS AND CAMPAIGN REVIEW BOARD; REPEALING ARTICLE 19-6 SFCC 1987 REGARDING NEPOTISM; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 1-7.3 SFCC 1987 (being Ord. No. 2005-14 §3) is amended to read:

1-7.3. Purpose and Intent.

The purposes of the Code of Ethics [is] 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

1 violating such ethical standards;

2 [A.]B. To adopt [a] standards of behavior for public officials and employees of the city
3 of Santa Fe [tø] that insure that decisions are made without consideration of personal benefit[;] to
4 the decision-maker;

5 [B.]C. ~~[To require public officials to recuse themselves from participation in or voting~~
6 ~~on any matter in which he or she has a conflict of interest;]~~ To provide clear guidance with
7 respect to such standards by clarifying which acts are allowed and which are not;

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

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

16 **Section 2. Section 1-7.5 SFCC 1987 (being Ord. No. 2005-14, §5) is amended to**
17 **read:**

18 **1-7.5. Definitions.**

19 As used in the Code of Ethics:

20 *Business* means a corporation, partnership, sole proprietorship, firm, or other
21 ~~[organization excluding a municipal corporation or governmental entity]~~ profit-making enterprise.

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

1 1978).

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

6 (1) The public official or public employee who is to perform the official act;

7 (2) Any member of his or her [~~immediate~~] family;

8 (3) Any business [~~in~~] of which he or she or any member of his or her
9 [immediate family has an interest] household is an owner; [or]

10 (4) Any employer, client or customer from [~~which~~] whom the public official
11 or public employee knows or reasonably should know that he or she or any member of
12 his or her [~~immediate family~~] household or any business [~~in which he or she has an~~
13 ~~interest~~] of which he or she is an owner has received remuneration of more than five
14 hundred dollars (\$500.00) during the year preceding the official act;

15 (5) Any civic group, labor union, or social, charitable or religious
16 organization of which the public official or public employee or a member of his or her
17 household is an officer or director; or

18 (6) Any "contributor" who has made "contributions," as those terms are
19 defined in Section 9-2.3(G) and (H) SFCC 1987, to the public official's or public
20 employee's campaign for elected office during the two years preceding the official act of
21 more than one thousand dollars (\$1,000.00) in the aggregate for councilor position and of
22 more than two thousand five hundred dollars (\$2,500.00) in the aggregate for mayor
23 position.

24 [~~Elected public official means all members of the governing body whether elected or~~
25 ~~appointed and the municipal court judge whether elected or appointed.~~]

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

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

6 [~~Financial interest means knowingly having any interest in a business or a contractual,~~
7 ~~consulting or employment relationship. For a public official this means an interest held by the~~
8 ~~individual, his or her spouse, or minor children.]~~

9 *Governing body* means the mayor and the city council.

10 *Governmental body* means the governing body [~~or a~~] and any board, commission or
11 committee appointed by the governing body or by the mayor with the advice and consent of the
12 governing body.

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

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

18 Owner of a business means each of the business's proprietors, partners or holders of more
19 than two per cent of its outstanding stock.

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

23 *Public official* means [~~an elected public official,]~~ the city manager, the city attorney, the
24 city clerk and any member of a [~~city of Santa Fe board, commission, agency or committee]~~
25 governmental body, including the governing body.

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

5 **Section 3. Section 1-7.6 SFCC 1987 (being Ord. No. 2005-14 §6) is amended to**
6 **read:**

7 **1-7.6 Public Officials and Public Employees; [Registration;]**
8 **Disclosure.**

9 [~~A. The city of Santa Fe hereby adopts this Code of Ethics as establishing ethical~~
10 ~~standards for all public officials and public employees.~~

11 [~~B. This Code of Ethics shall prescribe standards that are appropriate to the function~~
12 ~~of municipal government.]~~

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

18 [~~D. This Code of Ethics shall govern the conduct of each public employee, and if~~
19 ~~violated, may constitute cause for disciplinary action in accordance with the Personnel Rules and~~
20 ~~Regulations of the city of Santa Fe as well as applicable collective bargaining agreements.~~

21 [~~E. This Code of Ethics shall govern the conduct of each public official and public~~
22 ~~employee and if violated constitutes cause for the filing of a complaint by any person or by the~~
23 ~~governing body under the Code of Ethics.]~~

24 [F.]B. Upon election, appointment, or employment, public officials and department
25 heads shall [~~provide information~~] disclose in writing to the city clerk [as] the information listed

1 below. This information shall be updated every July and shall be available to the public at all
2 times.

3 (1) Name;

4 (2) Address and telephone number;

5 (3) Employer, if other than the city;

6 ~~[(3)]~~(4) Professional, occupational or business licenses;

7 ~~[(4)]~~(5) Membership on board of directors of corporations, public or private
8 associations or organizations; and

9 ~~[(5) — The nature, but not the extent or amount, of the public official's or
10 department head's financial interests as defined in the Code of Ethics.]~~

11 (6) Businesses of which he or she is an owner.

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

17 **Section 4. Section 1-7.7 SFCC 1987 (being Ord. No. 2005-14 §7) is amended to**
18 **read:**

19 **1-7.7. ~~[Prohibitions; Private Benefits or] Improper Gifts; Improper Transactions;~~**
20 **~~[Personal] Representation of Private Interests; [Use of City Services; Acquiring Financial~~**
21 **~~Interest] Conflicts of Interest; and Other Prohibitions.~~**

22 ~~[A. — No elected public official or public employee shall accept anything of value to be~~
23 ~~used in the performance of official duties without disclosing in a public document, filed with the~~
24 ~~city clerk, within seven (7) days of receipt, the source and nature of that which is accepted. This~~
25 ~~applies to things of value subsequently given away by the public official or public employee. This~~

1 does not apply to things of value received from the city of Santa Fe for the performance of
2 official duties.]

3 ~~[B.]~~A. *Improper Gifts to Public Officials and Employees.* ~~[No]~~ A public official or
4 public employee shall not ~~[knowingly]~~ request or receive, directly or indirectly, a gift or ~~[loan or]~~
5 other financial benefit, including, but not limited to, travel and accommodations, from any person
6 or entity which, to the knowledge of the public official or public employee, has any prospect of
7 direct or indirect pecuniary gain or loss from any official act to be performed by the public
8 official or public employee, other than a ~~[financial]~~ gain or loss ~~[common to members]~~ shared
9 with a substantial segment of the general public; ~~[or does business with the city of Santa Fe; or~~
10 ~~which is seeking or intends to seek from the city of Santa Fe any permit, approval or license the~~
11 ~~issuance of which requires an official act by the public official or public employee.]~~

12 ~~[C.—No elected public official, the city manager, the city attorney or the city clerk nor~~
13 ~~any member of their immediate family or significant other accompanying that elected public~~
14 ~~official, city manager, city attorney or city clerk shall accept any trip with a value exceeding fifty~~
15 ~~dollars (\$50.00) except from members of their immediate family or significant other without~~
16 ~~disclosing it in a public document, to be filed with the city clerk within seven (7) days of the end~~
17 ~~of the trip. This document shall list the source of funding and the nature and value of the trip.~~
18 ~~This does not apply to trips of value received from the elected public official's, city manager's,~~
19 ~~city attorney's or city clerk's employer for the performance of duties related to that employment or~~
20 ~~to trips funded by the city of Santa Fe for the performance of official duties or trips associated~~
21 ~~with their obligations related to their professional or non-profit affiliations.]~~

22 ~~[D.]~~ provided, however, that nothing in ~~[the preceding paragraphs]~~ this paragraph A. shall
23 be deemed to prohibit any of the following:

- 24 (1) An occasional nonpecuniary gift of insignificant value, not to exceed
25 fifty dollars (\$50.00);

1 (2) An award having a market value of less than fifty dollars (\$50.00)
2 publicly presented in recognition of public service;

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

5 ~~[(3)]~~(4) A commercially reasonable loan made in the ordinary course of business
6 by an institution authorized by the laws of the state to engage in the business of making
7 loans; or

8 ~~[(4)]~~(5) Compensation for services rendered or capital invested or payment for a
9 sale of property which is ~~[-(a)]~~ normal and reasonable in amount~~[-];~~, ~~[(b)]~~ commensurate
10 with the value of the property sold or services rendered or the magnitude of the risk
11 undertaken on the investment~~[-];~~, ~~[(c)]~~ and in no way increased or enhanced by reason of
12 the recipient's position as a public official or public employee~~[-; and (d) not otherwise~~
13 ~~prohibited by law].~~

14 ~~[E. — A public official may request or receive a political campaign contribution,~~
15 ~~provided that such contribution is properly received and reported as is required by Section 9-2~~
16 ~~SFCC 1987.]~~

17 ~~[F. — No public official shall personally represent private interests before a~~
18 ~~governmental body of which the official is a member and directly or indirectly receive~~
19 ~~compensation for that representation.]~~

20 ~~[G. — No elected public official or public employee shall personally represent private~~
21 ~~interests before a governmental body of the city of Santa Fe and directly or indirectly receive~~
22 ~~compensation for that representation.]~~

23 ~~[(J)]~~B. Improper Transactions with the City. ~~[No elected]~~ A public official or public
24 employee shall not enter into a contract or transaction with the city of Santa Fe during his or her
25 term of office or employment or for a period of one (1) year following the leaving of public office

1 or public employment when the contract or transaction is a [direct] result of an official act by that
2 public official [~~], unless the contract or transaction is made as a result of competitive bidding with~~
3 ~~the city of Santa Fe] or public employee; provided, however, that nothing in this paragraph B.~~
4 shall be deemed to prohibit a present or former public official or public employee from seeking or
5 obtaining, on his or her own behalf, a city permit, license or service that is provided by the city on
6 the same terms and conditions to a substantial segment of the general public.

7 C. *Representation of Private Interests.* A public official or public employee shall
8 not, during his or her term of office or employment or within one year after the termination
9 thereof, accept monetary compensation from a third party for consulting with, representing or
10 advising that party regarding any transaction with the city or matter before the city.

11 [H]D. *Misuse of Confidential Information.* [~~N~~] A public official or public employee
12 shall not use or disclose confidential information [~~acquired by virtue of his or her public office or~~
13 ~~employment, except as required in his or her official capacity or as authorized by city officials.~~
14 ~~No public official or public employee shall use confidential information acquired by virtue of his~~
15 ~~or her public office or employment for private gain.] when he or she knows or reasonably should~~
16 know that the use or disclosure will or may result in a financial gain or the avoidance of a
17 financial loss on the part of any person or entity other than the city.

18 [F]E. *Misuse of City Resources.* [~~N~~] A public official or public employee shall not
19 use city services, personnel or equipment for personal benefit, convenience or profit, except when
20 such use is generally available to the public [~~and when consistent with policies of the governing~~
21 ~~body].~~

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

1 G. *Financial Dealings with Subordinates.* A public official or public employee shall
2 not knowingly request or authorize another person to request that any subordinate of the public
3 official or public employee engage in a financial transaction, including a loan or charitable
4 contribution, with any person other than the city unless the transaction consists only of a
5 contribution to a charitable event or fundraising activity which is the subject of sponsorship by
6 the city through official action by the governing body.

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

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

15 ~~[K.]~~J. *Honoraria.* ~~[Nø]~~ A public official or public employee ~~[may]~~ shall not request or
16 receive an honorarium for a speech or service rendered in the performance of ~~[public duties]~~ his
17 or her duties as a public official or public employee. For the purposes of this ~~[section]~~ paragraph
18 J., "honorarium" means payment of money, or any other thing of monetary value ~~[in excess of~~
19 one hundred dollars (\$100.), but does not include reasonable reimbursement for meals, lodging
20 or actual travel expenses incurred in making the speech or rendering the service ~~[except as set~~
21 ~~forth in paragraph (C) above]~~.

22 ~~[L.]~~K. *Retaliation and Whistleblower Protection.* A public official or public employee
23 ~~[who files an ethics complaint may]~~ shall not be dismissed, threatened with dismissal, or
24 otherwise singled out for retaliation for the reason that the person has filed ~~[an ethics]~~ a complaint
25 of violation of this Code of Ethics or any other violation of a legal prohibition or requirement or

1 has given evidence or participated in an investigation of any such violation. Any act in violation
2 of this ~~[subsection]~~ paragraph K. shall be deemed a violation of the Code of Ethics ~~[and subject~~
3 ~~the violator to the penalties contained in this section].~~ The outcome of the original ethics
4 complaint shall not be deemed relevant to the complaint of retaliation itself.

5 ~~[M.]L.~~ Conflicts of Interest. The following shall govern conflicts of interest:

6 (1) ~~[Any]~~ A public official or public employee ~~[having]~~ who has a conflict
7 of interest ~~[or potential conflict]~~ as defined in Section 1-7.5 SFCC 1987 shall
8 immediately disclose the conflict ~~[to his or her immediate supervisor and to each of the~~
9 ~~other members of the governmental body of which he or she is a member. The disclosure~~
10 ~~shall be recorded in the minute book of the governmental body to which it is made.]~~ in
11 the following manner:

12 (a) In the case of a member of a governmental body, to the
13 governmental body at a public meeting;

14 (b) In the case of the city manager, the city attorney or the city clerk,
15 to the governing body at a public meeting; and

16 (c) In the case of a public employee, to the city manager.

17 (2) ~~[Any]~~ A public official or public employee shall ~~[refuse himself or~~
18 ~~herself from participation in or voting on]~~ not perform an official act or attempt to
19 influence another person to perform an official act in any matter in which he or she has a
20 conflict of interest. ~~[No public official or public employee shall perform any official act~~
21 ~~with respect to which he or she has a conflict of interest unless:~~

22 (a) ~~The interest of the public official or public employee which gives~~
23 ~~rise to the conflict of interest is de minimis in amount or shared with the~~
24 ~~members of the general public, or is an interest in close corporation stock worth~~
25 ~~less than one thousand dollars (\$1,000.) at fair market value or which represents~~

1 ~~less than a five percent (5%) equity interest, or is an interest in publicly traded~~
2 ~~stock which is worth less than twenty five thousand dollars (\$25,000.) at fair~~
3 ~~market value or which represents less than two percent (2%) equity interest, or is~~
4 ~~an interest in publicly traded stock under a trading account which is disclosed~~
5 ~~under the name and address of the stockholder; or~~

6 (b) ~~In the case of a public employee, no other public official or public~~
7 ~~employee has the ability and authority to perform the official act and the public~~
8 ~~employee having the conflict of interest has obtained express permission, in~~
9 ~~writing, from his or her immediate supervisor to perform the official act~~
10 ~~notwithstanding the conflict of interest.~~

11 (3) ~~If the public official with a conflict of interest fails to recuse himself or~~
12 ~~herself, any member of the governmental body of which the official is a member may~~
13 ~~move to disqualify that public official from participation or voting on any matter in which~~
14 ~~the member has a conflict of interest. Such motion shall not be acted upon until the public~~
15 ~~official in question has been given an opportunity to respond to the motion. Such a~~
16 ~~motion requires a majority of the members of the governmental body present to pass.]~~

17 (3) If compliance with paragraph L.(2) above by a public official or public
18 employee would deprive a governmental body of a quorum for taking necessary action or
19 would render the city unable to take necessary action on any matter, the public official or
20 public employee shall be excused from such compliance when he or she has made the
21 disclosure required by paragraph L.(1) above.

22 [N. ~~No present or former public official or public employee shall at any time accept~~
23 ~~financial compensation for consulting, representing, or advising as to any city matter on which he~~
24 ~~or she has substantially acted.]~~

25 Section 5. [REPEAL] Section 1-7.8 SFCC 1987 (being Ord. No. 2005-14 §10) is

1 repealed.

2 ~~[1-7.8 Disclosure of Alleged Conflict of Interest.~~

3 A. ~~Any public official, public employee or member of the public, who believes that~~
4 ~~any other public official or public employee has a conflict of interest in any agenda item before a~~
5 ~~governmental body or in any official act to be performed by the public official or public~~
6 ~~employee, shall disclose such interest to the city clerk. The city clerk shall forward copies of such~~
7 ~~disclosure to the person who is alleged to have a conflict of interest, the ethics and campaign~~
8 ~~review board and the city attorney.~~

9 B. ~~A failure to file the above disclosure shall not bar or limit the right of any person~~
10 ~~to file or prosecute a subsequent complaint based upon an allegation that a public official or~~
11 ~~public employee has performed an official act with respect to which he or she had a conflict of~~
12 ~~interest in violation of Section 1-7.7L SFCC 1987.]~~

13 **Section 6. Section 1-7.9 SFCC 1987 (being (Ord. No. 2005-14, 12) is amended to**
14 **read:**

15 **1-7.9 Enforcement.**

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

18 **Section 7. Section 6-16.1 SFCC 1987 (being Ord. No. 2005-14, §17 as amended)**
19 **is amended to read:**

20 **6-16.1 ~~[Ethics and Campaign Review Board.]~~ Creation and Appointment.**

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

22 B. *Appointment.*

23 (1) The board shall consist of ~~[nine (9) members. Each member of the~~
24 ~~governing body shall appoint one (1) member in the month of January following the~~
25 ~~governing body member's election.]~~ seven (7) members appointed by the mayor, with the

1 advice and consent of the city council, in the following manner:

2 (a) Two members appointed from a list of four attorneys licensed to
3 practice in New Mexico submitted by the First Judicial District Bar Association;

4 (b) One member appointed from a list of three nominees submitted
5 by the _____ {name of non-profit civic organization};

6 (c) One member appointed from a list of three nominees submitted
7 by the _____ {name of non-profit civic organization};

8 (d) One member appointed from a list of three nominees submitted
9 by the _____ {name of non-profit civic organization};

10 (e) One member appointed from a list of three nominees submitted
11 by the _____ {name of non-profit civic organization}; and

12 (f) One member appointed from a list of three nominees submitted
13 by the _____ {name of non-profit civic organization}.

14 (2) Members shall be qualified by training and experience and have the
15 ability to exercise sound and practical judgment regarding [~~those~~] the powers and duties
16 of the [~~committee~~] board.

17 [~~(3)~~]—~~Due to the legal aspects of the boards' work, at all times at least two (2)~~
18 ~~of the nine (9) members shall be attorneys licensed to practice in the state of New Mexico~~
19 ~~for no less than five (5) years. If the nominations of the governing body do not include at~~
20 ~~least two (2) attorneys, the mayor shall ask the members to resubmit nominations until at~~
21 ~~least two (2) attorneys are nominated.]~~

22 [(4)](3) Each member of the board shall be a resident of the city.

23 [(5)](4) No member of the board shall be [~~an elected public official or public~~
24 ~~employee as defined in subsection 1-7.5 SFCC 1987~~] a member of the governing body,
25 the city manager, the city attorney, the city clerk or a "public employee" or a member of

1 the "family" of any of these persons (the quoted terms being used as defined in Section 1-
2 7.5 SFCC 1987). No member of the board shall make a contribution to or participate in
3 the campaign of any candidate for an elected municipal office.

4 ~~[(6) At all times, one of the attorney members of the board shall serve as~~
5 ~~parliamentarian to promote compliance with the Open Meetings Act, due process of law,~~
6 ~~and other legal requirements.]~~

7 C. *Chair and Subcommittees.* The board shall elect a chair, a vice-chair and
8 ~~[parliamentarian]~~ an ethics officer from among its members, and may organize subcommittees or
9 panels to conduct hearings, recommend advisory opinions or perform other delegated tasks. The
10 board may at any time act directly on any pending matter without subcommittee action or
11 recommendations.

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

23 E. *Removal for Just Cause.* During a member's term, he or she may be removed
24 only for just cause by a majority vote of the governing body.

25 F. *Vacancies.* ~~[Vacancies shall be filled in the same manner as the initial~~

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

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

8 H. *Meetings* [~~and Records~~]. The board shall meet at least four (4) times yearly and
9 on an as-needed basis.

10 [~~I. — Quorum. A quorum for the transaction of any official business at meetings by the~~
11 ~~board shall consist of a majority of the appointed board members then duly serving on the board.]~~

12 **Section 8. Section 6-16.2 SFCC 1987 (being Ord. No. 2005-14, §18 as amended)**
13 **is amended to read:**

14 **6-16.2 Powers and Duties.**

15 A. The board shall enforce the provisions of the Code of Ethics (Article 1-7 SFCC
16 1987), the Campaign Code (Article 9-2 SFCC 1987) and the Public Campaign Finance Code
17 (Article 9-3 SFCC 1987) in accordance with the procedures prescribed in this [~~section~~] Article
18 and such rules as the board may adopt.

19 B. The board shall establish reasonable rules of practice and procedure which are
20 not in conflict with the provisions of city code or other city rules of practice and procedure,
21 timetables and explanatory materials designed to educate the public, to encourage voluntary
22 compliance and to ensure fair and prompt disposition of alleged violations.

23 C. The board may give advisory opinions [~~regarding matters related to~~] to any
24 person requesting an opinion as to whether his or her own future conduct would violate the Code
25 of Ethics, the Campaign Code or the Public Campaign Finance Code. An advisory opinion

1 rendered by the board shall be binding on the board in any subsequent proceeding on a complaint
2 against the person or entity who requested the opinion and acted in good faith in reliance thereon,
3 unless the person or entity omitted or misstated a material fact in requesting the advisory opinion.
4 Advisory opinions shall be indexed and maintained on file with the city clerk and placed on the
5 city's web site.

6 D. At all times, one member of the board shall be designated to serve as ethics
7 officer. Contact information for the ethics officer shall be published by the city clerk on the city
8 web site and in other places as appropriate. The ethics officer shall be available to receive reports
9 from any person regarding possible violations of the Code of Ethics and to advise the person
10 regarding his or her rights to pursue the matter by means of a formal complaint or otherwise. The
11 ethics officer may at any time make a motion to the board for a reference to the city attorney
12 under Section 6-16.4(B) SFCC 1987 or the initiation of an investigation by the board under
13 Section 6-16.6 SFCC 1987 concerning the matters revealed in the report.

14 E. Reports of possible violations of the Code of Ethics received by the ethics officer
15 shall be kept confidential until such time as the matters revealed in the report become the subject
16 of a formal complaint to the board pursuant to Section 6-16.3 SFCC 1987 or a motion to the
17 board to refer the matter to the city attorney under Section 6-16.4(B) SFCC 1987 or to initiate an
18 investigation under Section 6-16.6 SFCC 1987, at which time all facts and information revealed
19 in the report shall immediately be disclosed by the ethics officer to the full board. When the
20 ethics officer has made such disclosure to the full board, he or she shall not be disqualified from
21 participating in the case as a voting member of the board.

22 [E-]E. In the exercise of its responsibilities, the board may audit campaign or other
23 records. After each election campaign the board may contract for professional reviews or audits
24 of [randomly selected] campaign finance statements and shall file their results with the city
25 clerk's office.

1 ~~D.]G.~~ The board shall periodically review and recommend changes to the governing
2 body for improving the Code of Ethics, the Election Code, the Campaign Code or the Public
3 Campaign Finance Code, particularly following a municipal election.

4 H. The board shall review and make recommendations to the governing body
5 regarding the governing body procedural rules and other procedural matters including, but not
6 limited to, the city's annual open meetings act compliance resolution.

7 **Section 9. Section 6-16.4 SFCC 1987 (being Ord. No. 2005-14, §20 as amended)**
8 **is amended to read:**

9 **6-16.4 Determination of Legal Sufficiency; Setting a Hearing.**

10 A. Upon receipt of the complaint, the board shall determine the following:

11 (1) If the face of the complaint sets forth legally sufficient facts which, if
12 true, show probable cause to believe that there was a violation;

13 (2) If the complaint was filed within one (1) year after the complainant first
14 discovered or reasonably should have discovered the facts on which the complaint is
15 based;

16 (3) If the complaint is frivolous or intended solely to harass or intimidate;
17 and

18 (4) If the board lacks jurisdiction to adjudicate the complaint.

19 B. The city attorney, or a qualified attorney designated by the city attorney, may file
20 a complaint with the board on the basis of information referred by the board or obtained
21 otherwise, upon ~~their~~ the city attorney's independent determination that probable cause exists of
22 a violation of the Code of Ethics, the Campaign Code or the Public Campaign Finance Code.

23 C. To promote public participation, and to preserve the board's transparency,
24 credibility, and stature, all final board determinations, including board decisions on complaints,
25 advisory opinions, and settlements, shall be made during public meetings in compliance with the

1 Open Meetings Act. No complaint shall be dismissed without a prior evidentiary hearing or prior
2 board discussion in a public meeting of the reasons for the determination.

3 D. If the board determines that the complaint is legally sufficient, was filed timely
4 and is not frivolous, and that the board has jurisdiction to adjudicate the complaint, the board
5 shall at the same meeting set a schedule for hearing the complaint. The board shall conduct a
6 public hearing regarding the complaint in accordance with due process of law. The chair of the
7 board has authority to order appropriate discovery and issue subpoenas for the attendance of
8 witnesses or the production of documents. Any decision of the chair with respect to discovery or
9 with respect to the issuance of subpoenas shall be reviewable by the board upon request of any
10 affected person. The board may seek enforcement of administrative subpoenas or discovery
11 requests in district court.

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

16 **Section 10. Section 6-16.7 SFCC 1987 (being Ord. No. 2005-14, §22 as amended)**
17 **is amended to read:**

18 **6-16.7 Sanctions.**

19 A. To encourage compliance and deter Campaign Code violations, the city clerk
20 shall assess such fines as provided for in [~~subsection~~] Section 9-2.10 SFCC 1987 and [~~subsection~~]
21 Section 9-2.15 SFCC 1987. The fine shall be payable within ten (10) calendar days to the city of
22 Santa Fe. Respondents may contest the validity of such fine by filing a written appeal to the board
23 within five (5) calendar days of its assessment, which the board shall promptly affirm or reject.

24 B. Except as set forth in paragraph C. below, if the board following a hearing
25 determines that there has been a violation of the Code of Ethics, the Campaign Code or the Public

1 Campaign Finance Code, it may:

2 (1) Issue a public reprimand;

3 (2) Impose a fine not to exceed five hundred dollars (\$500.00) per violation.

4 Each day of a continuing or repetitive violation may be deemed a separate offense. The
5 board may seek enforcement of fines in district court;

6 (3) Recommend removal or suspension from office of a public official by
7 the governing body;

8 (4) Refer complaints against public officials, where appropriate, to the
9 district attorney's office for investigation and prosecution; and

10 (5) In the case of a violation of the Public Campaign Finance Code, revoke a
11 candidate's certification as a participating candidate or order repayment or refund by a
12 candidate of any money received by the candidate from the Public Campaign Finance
13 Fund pursuant to Section 9-3.10 SFCC 1987 or Section 9-3.13 SFCC 1987.

14 C. Although ~~[the sanctions set forth in paragraphs A. and B. above do not apply to~~
15 ~~public employees, disciplinary actions for violations of the Code of Ethics, the Campaign Code or~~
16 ~~the Public Campaign Finance Code regarding public employees shall be]~~ public employees are
17 subject to and bound by the provisions of the Code of Ethics, the Campaign Code and the Public
18 Campaign Finance Code, the sanctions authorized by this Section may not be imposed on public
19 employees unless they are public officials or exempt employees. All other public employees
20 found to have violated the Code of Ethics, the Campaign Code or the Public Campaign Finance
21 Code shall be subject to discipline only in accordance with the personnel rules and regulations of
22 the city of Santa Fe and applicable collective bargaining agreements. ~~[For the purposes of this~~
23 ~~paragraph C, public employee is not intended to include any public official or exempt employee.]~~

24 D. The sanctions set forth in paragraphs A., B. and C. do not preclude the
25 enforcement of applicable existing state and federal statutes.

1 E. A respondent may submit a written waiver of hearing.

2 **Section 11. [REPEAL] Article 19-6 SFCC 1987 (being Ord. No. 1996-38,**
3 **§§1-4), is repealed.**

4 ~~**19-6 NEPOTISM.**~~

5 ~~**19-6.1 Short Title.**~~

6 ~~This ordinance shall be known as the "Nepotism Ordinance."~~

7 ~~**19-6.2 Purpose.**~~

8 ~~It is vital to the public image of the city to avoid the practice or appearance of nepotism~~
9 ~~in employment.~~

10 ~~**19-6.3 Restricted Employment.**~~

11 ~~A. No person shall be appointed as city manager or department head if related to the~~
12 ~~city council or mayor by consanguinity or affinity to the third degree.~~

13 ~~B. Persons shall not be employed by the city whereby they would be directly~~
14 ~~supervised by any person related to them by consanguinity or affinity within the second degree.~~

15 ~~C. The city manager, department or division directors, or any other supervisor may~~
16 ~~neither immediately supervise nor directly hire relatives as defined below.~~

17 ~~D. Supervisor and employee relationships which are in violation of this rule upon its~~
18 ~~effective date shall be exempt.~~

19 ~~**19-6.4 Definitions.**~~

20 ~~*Affinity* means one's spouse or related through one's spouse.~~

21 ~~*Consanguinity* means related by blood.~~

22 ~~*First degree* means father, mother, son, daughter.~~

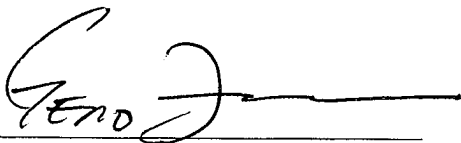
23 ~~*Second degree* means brother, sister, grandfather, grandmother, grandson, granddaughter.~~

24 ~~*Third degree* means aunts, uncles, nieces and nephews.]~~

25 **Editor's Note. A note shall be added as follows: "See Section 1-7.7F. SFCC 1987 for**

1 the city's code regarding nepotism.”

2 APPROVED AS TO FORM:

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4 _____

5 GENO ZAMORA, CITY ATTORNEY

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25 Jp/ca/jpmb/bills 2011/code of ethics request to publish