

STATE OF NEW MEXICO  
COUNTY OF SANDOVAL  
ORDINANCE NUMBER 18-\_\_\_

**AN ORDINANCE RELATING TO THE PROMOTION OF THE ETHICAL CONDUCT  
OF PUBLIC OFFICIALS WITHIN THE COUNTY  
BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANDOVAL  
COUNTY**

**Section 1 - Authority.**

This ordinance is enacted under the authority of NMSA 1978, §§ 3-17-1, 4-37-1 and 10-16-11.1, and this ordinance shall be known as the Ethics Ordinance.

**Section 2 - Declaration of policy.**

The proper operation of democratic government requires that elected and appointed officials, employees and volunteers of local governments be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office or the pursuit of public office not be used for personal gains; that the public have confidence in the integrity of its government; and, that, persons and businesses seeking to contract and contracting with the county abide by the requirements set out herein to prevent conflicts of interest and unfair contracting practices. To assist in attaining these goals, there is an established Ethics Ordinance for all elected and appointed officials, employees and volunteers of county government, including members of boards, committees and commissions (hereinafter "public servants"). The purpose of this ordinance is to establish standards of conduct for all public servants, by setting forth those acts or actions which are incompatible with the best interests of the county and by requiring such public servants to disclose personal interests, financial or otherwise, in matters affecting the county. It is the further purpose of this ordinance to protect county employees and volunteers from undue influence, threats or fear of threat or reprisal with respect to the exercise of their constitutional right to support candidates of their choice. The Ethics Ordinance is in addition to the personnel rules and regulations of Sandoval County.

This ordinance is promulgated under the county's authority to regulate the conduct of public servants under its control and contractors doing business with the county and prospective contractors. The penalties and remedies are not exclusive, and are complementary to other standards of conduct, including criminal prohibitions, and New Mexico's Governmental Conduct Act, NMSA 1978, § 10-16-1 et seq., which apply to individuals covered by this ordinance. The penalties under the Governmental Conduct Act may be more stringent than this ordinance. Nothing herein shall preempt or prevent law enforcement or other governmental jurisdictions to investigate or pursue penalties for the same course of behavior prohibited under this ordinance.

**Section 3 - Responsibility of public office.**

Public servants hold office, employment, or volunteer for the benefit of the public. They are bound to uphold the Constitution of the United States and the New Mexico Constitution; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state and county; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

Public servants have the common obligation of serving the public. In performing their duties, public servants shall treat the public and each other with respect, concern, and responsiveness, recognizing that their common goal of exceptional public service can only be achieved by working together. Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent on resolving these disputes is money not spent on important public needs.

#### **Section 4 - Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) **Business:** a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

(b) **Contract:** an agreement or transaction having a value of more than \$1,000.00 with the County of Sandoval for:

- (1) The rendition of services, including professional services;
- (2) The furnishing of any material, supplies or equipment;
- (3) The construction, alteration or repair of any public building or public work;
- (4) The acquisition, sale or lease of any land or building;
- (5) A licensing arrangement;
- (6) A loan or loan guarantee; or
- (7) The purchase of financial securities or instruments.

(c) **Contract Compliance Officer** – a person contracted by the County who accepts and processes complaints alleging misconduct in county government, and violations of this ordinance, ensures that the complaints are routed to the proper office for handling, investigation, and response; tracks and reports to the ethics board, county manager and county commission quarterly on the number of complaints, their subject matter, and their resolution; and coordinates all Ethics Ordinance training for elected and appointed officials, employees and volunteers. The Officer will be contracted through the County Manager’s office through the normal process, in agreement with the County Attorney.

(d) **Domestic partners:** two adults, capable of consent who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, where both persons have a common residence, and neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved or adjudged a

nullity. The two persons are at least 18 years of age and not related by blood in a way that would prevent them from being married to each other in this state. A "common residence" means that both domestic partners share a common residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

**(e) Elected official:** the members of the board of county commissioners, sheriff, treasurer, assessor, clerk, and probate judge.

**(f) Employee:** all persons filling an allocated position of county employment, including appointees of a county commissioner, the board of county commissioners, or any other elected official.

**(g) Employment:** rendering of services for compensation in the form of salary as an employee.

**(h) Family member:** an individual's spouse, parents, children or siblings, by consanguinity or affinity and includes an individual's domestic partner.

**(i) Financial Services:** as defined in the County's Investment and Deposit Policy, and pursuant to State law.

**(j) Financial interest or substantial financial interest:** an interest held by an individual or the individual's family that is:

- (1) An ownership interest in business or property greater than 20 percent; or
- (2) Any employment or prospective employment for which negotiations have already begun.

**(k) Gift:** any money, property, real property, personal property, service, license, permit, contract, authorization, loan, travel, entertainment, food, hospitality, gratuity, or any promise of these, or anything of value that is received or given without equivalent consideration or compensation. For purposes of this ordinance, "gift" does not include:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public;
- (2) Anything for which the elected or appointed official, employee or volunteer, or his or her spouse, or family member pays the market value;
- (3) Any (i) contribution that is lawfully made and reported in accordance with the election ordinance, or (ii) activities associated with a fundraising event in support of a political organization or candidate, unless otherwise prohibited by this ordinance;
- (4) An award, plaque, certificate, or similar personalized item given in recognition of the official's public, civic, charitable, or professional service;
- (5) An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization;
- (6) The use of a public facility or public property made available by a governmental agency for a public purpose;
- (7) Gifts provided directly or indirectly by a state, regional or national organization whose primary purpose is the promotion of the exchange of ideas between governmental

officials or employees or to provide for the professional development or training of such governmental officials or employees;

- (8) Any gift accepted on behalf of and to be used by the county for the costs of attending public meetings or conferences where elected or appointed officials or employees are attending as part of their official duties, including local events and the costs of travel and related expenses associated with attending such events outside of the county;
- (9) Any gift given by a family member for personal reasons; and
- (10) Food or beverage with a value under \$25.00 per person.

**(l) Official act:** an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.

**(m) Person:** any individual, corporation, partnership, joint venture, association or business organization.

**(n) Political activity:**

- (1) Preparing for, organizing or participating in any political meeting, political rally, political demonstration or other political event;
- (2) Soliciting contributions on behalf of a political candidate or political party including, but not limited to, the purchase of, selling, distributing, or receiving payments for tickets for any political fundraiser, political meeting or other political event;
- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a political contribution;
- (4) Soliciting votes on behalf of a candidate for elective office or a political organization;
- (5) Initiating for circulation, preparing, circulating, reviewing or filing any petition on behalf of a candidate for elective office;
- (6) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or for or against any referendum question;
- (7) Campaigning for any elective office;
- (8) Managing or working on a campaign for elective office; or
- (9) Preparation or design of any campaign materials or any form of media for a candidate for elective office.

**(o) Privileged or confidential information:** any written or oral material, or electronic data or media related to county government which had not become part of the body of public information and which is designated by statute, rule, court decision, lawful order, ordinance, resolution or custom as privileged, confidential or exempt from disclosure pursuant to the New Mexico Inspection of Public Records Act.

**(p) Public servant:** elected or appointed officials, employees and volunteers of Sandoval County as those terms are defined herein.

**(q) Restricted donor:** any person or entity who:

- (1) Is seeking official action (i) by an elected or appointed official or volunteer, or (ii) in the case of an employee by the employee or by an elected or appointed official, a county department or an employee's supervisor. Such official actions shall include, but are not limited to, the decisions regarding legislation, employment decisions, contract approval, approval of permits or development plans or any other action or decision that is discretionary with an elected or appointed official or employee;
  - (2) Does business with or seeks to do business (i) with the board of county commissioners, the county, an elected or appointed official or volunteer, or (ii) in the case of an employee, with an employee or his/her department, elected office or an employee's supervisor;
  - (3) Conducts activities regulated (i) by an elected or appointed official or volunteer, or (ii) in the case of an employee, with the employee or his/her department or the employee's supervisor.
- (r) **Standards:** the conduct required by the Ethics Ordinance.
- (s) **Volunteer:** any person who is appointed by an individual county commissioner or by a majority of the board of county commissioners to any board, committee or commission for which the individual receives no compensation.

## **Section 5 - Standards of conduct.**

- (a) General ethical standards of public service.
  - (1) Public servants shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
  - (2) Public servants shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
  - (3) Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
  - (4) No public servant may request or receive, and no person may offer any money, thing of value or promise thereof, other than any county pay received, that is conditioned upon or given in exchange for promised performance of an official act.
- (b) Improper influence. No public servant shall make, participate in making or in any way attempt to use his or her position to influence any county governmental decision or action in which he knows, he or she has reason to know, or should know that he or she has any substantial interest. No county commissioner shall make, participate in making or in any way attempt to use his or her position to influence any hiring decision or other decision regarding employment for any county employee, except for appointees of the county commissioners, the county manager and the county attorney. The prohibition does not prohibit:
  - (1) A county commissioner from being listed as a reference for an applicant seeking employment with the county; or

- (2) A county commissioner from participating in and making comments during any concurrence process related to the selection of the public information officer, human resources director and the director of the economic development office; or
  - (3) A county commissioner raising his or her concerns regarding the performance or conduct of a department director with the county manager, or stating his or her satisfaction, dissatisfaction, compliment, criticism or concern regarding the actions of a department director privately; or
  - (4) A county commissioner notifying the county manager or county attorney, in a confidential communication, of allegations of poor employee performance or employee misconduct and requesting appropriate investigation and action if found by the county manager to be warranted.
- (c) Prohibited bidding and contracting.
- (1) No public servant shall accept a bid or proposal from a person who directly participated in the preparation of the specification, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.
  - (2) No public servant shall attempt to influence the process or outcome of a competitive bid, proposal or request for a proposal, unless formally or specifically appointed to participate in the bid or proposal process; or by virtue of their job duties has the authority to advise or take action on a specific bid or proposal.
  - (3) No elected or appointed official or employee shall enter into contracts or obtain financial interests with a person or business that are, or are attempting to have business with the county.
  - (4) No public servant who participated, directly or indirectly in a county procurement process shall seek employment, be an employee, or receive any financial consideration from a person or business contracting or seeking to contract with the county.
  - (5) No public servant shall enter into contracts with, or take any action favorably affecting, any person or business that is represented in the matter by a person who has been an elected or appointed official or employee of the county within the preceding year.
  - (6) No person or business who is doing business with the county or seeking to do business with the county shall attempt to influence the outcome of a bid process by contacting any public servant about a bid or proposal process. However, contacting the county procurement officer is permissible as part of the bid or proposal process. Persons or businesses doing business or seeking to do business with the county shall be required to comply with the provisions of this Ethics Ordinance as they apply to their interactions with the county and any violation of the Ethics Ordinance requirements are hereby found to be a breach of a county contract they hold and shall be grounds for rejection of any bid or proposal.
- (d) Receiving and soliciting gifts.
- (1) Restrictions. No public servant shall intentionally solicit or accept a gift or gifts with a market value greater than \$100.00 from any restricted donor within a calendar year. No public servant shall intentionally solicit or accept a gift or gifts in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies

to and includes family members of the elected or appointed official, employee or volunteer. No restricted donor shall intentionally offer or make a gift that violates this restriction. Any public servant who accepts a gift subject to the conditions of this section shall not allow receipt of the gift to influence in any way the execution or integrity of their official actions or decisions.

- (2) Disclosure. All gifts accepted by a public servant from a restricted donor, regardless of their value, shall be reported on a quarterly basis to the county clerk on a form approved by the board of review and in compliance with any requirements imposed by the county clerk's office for the filing of reports. The report shall include the market value of the gift, the name of the person(s) providing the gift, and the date the gift was received. Gifts of food and refreshments may be reported in estimated value if above \$25.00 in market value.
- (e) County-owned property. No public servant shall engage in or permit the unauthorized use of county-owned property for any political activity or in violation of any county policy.
- (f) Use or disclosure of privileged or confidential information. No public servant shall use or disclose privileged or confidential information gained in the course of or by reasons of his or her position or employment, other than; (i) in the performance of his or her official duties; (ii) as may be required by law; or (iii) as permitted by this Ethics Ordinance.
- (g) Conflicts of interest.
  - (1) Official act for personal financial interest.
    - a. It is unlawful for public servant to take an official act for the primary purpose of directly enhancing or improving their financial interest or financial position.
    - b. A public servant shall be disqualified from engaging in any official act directly affecting their or their family members' substantial financial interest.
    - c. No elected or appointed official during the term for which elected or appointed, and employee or volunteer during the period of their service shall acquire a substantial financial interest when they believe or should have reason to believe that the new substantial financial interest will be directly affected by the officer's or employee's official act.
  - (2) No public servant shall make, or participate in making, any county governmental decisions with respect to any matter in which the public servant or their family member has any substantial financial interest.
  - (3) Any employee who has a conflict of interest as described in subsections (1) and (2) above shall advise his or her supervisor of the conflict or potential conflict in writing. The immediate supervisor may ask for guidance on the nature of the potential conflict from the contract compliance officer, county manager or county attorney, if it is determined there is a conflict the supervisor shall either:
    - a. Assign the matter to another employee; or
    - b. Require the employee to eliminate the substantial interest giving rise to the conflict and only thereafter shall the employee continue to participate in the matter.

- c. It shall not be considered a violation of this Ethics Ordinance where an employee timely discloses his or her potential conflict of interest and complies with the direction of his or her supervisor.
- (4) Any public servant, while acting in a quasi-judicial, legislative or adjudicative role, shall disclose the potential conflict of interest and shall disqualify themselves from participating in any official act, including any substantive discussion or vote. Any elected or appointed official may ask guidance on potential conflicts of interests from the county attorney, contract compliance officer or seek an advisory opinion from the board of review.
- (5) Interest in county business.
- a. No public servant shall have any substantial financial interest in his or her own name, or in the name of any other, in any contract, work or business of the county or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the county. Compensation for property taken pursuant to the county's eminent domain power shall not constitute a substantial interest within the meaning of this section if sold pursuant to a process of competitive bidding following public notice. No public servant shall have a substantial financial interest in the purchase of any property that; (i) belongs to the county; or (ii) is sold for taxes or assessment; or (iii) is sold by virtue of legal process at the suit of the county.
  - b. For purposes of subsection (a), "substantial financial interest" shall not include the interest of the spouse of a public servant which interest is related to the independent occupation, profession or employment of the spouse.
  - c. The county shall not enter into a contract with a public servant or with their family or with a business in which they or their family has a substantial interest unless the public servant has disclosed through public notice to the county clerk their substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to salary for the elected office or employee compensation by the county. A person negotiating or executing a contract on behalf of the county shall exercise due diligence to ensure compliance with the provisions of this section.
- (h) Political activity.
- (1) No public servant shall compel, coerce or intimidate any elected or appointed official, volunteer or employee to make, or refrain from making, any political contribution. No public servant shall directly solicit any political contribution from county employees or immediate family of county employees. Nothing in this subsection shall be construed to prevent any public servant from voluntarily making a contribution or receiving a voluntary contribution.
  - (2) No elected or appointed official shall accept any campaign contribution in excess of \$1,000.00, per primary, general or special election, from any restricted donor or in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes immediate family members of the restricted donor. No restricted donor shall offer or make a contribution that violates this ordinance.



No elected or appointed official shall accept a campaign contribution from an individual or group of individuals when the elected or appointed official knows, or has reason to believe, that the original source of the campaign contribution was a restricted donor.

- (3) No employee with contract management authority or property management authority shall serve as a paid political consultant or as a member of the political fundraising committee of any elected or appointed official or candidate for federal, state, city or county office.
  - (4) No employee shall be permitted to serve as a paid campaign consultant, paid campaign treasurer or paid campaign manager for a candidate for federal, state, city or county office. No employee shall be permitted to receive more than \$250.00 in reimbursement from any political campaign or political candidate, in any 12-month period.
  - (5) County employees shall not perform any political activity while at work and during any compensated time, other than annual leave, personal leave, holidays or other time off. Public servants shall not use any county property or resources for any political activity for the benefit of any campaign for elective office or any political organization.
  - (6) At no time shall any public servant solicit or require any employee to perform any political activity; (i) as part of the employee's county duties; (ii) as a condition of county employment; or (iii) during any time off that is compensated by the county (such as annual leave, personal leave or holidays).
  - (7) At no time shall any public servant; (i) threaten to deny a promotion or pay increase to a county employee who does or does not vote for certain candidates; (ii) require an employee to contribute a percentage of the employee's pay to a political fund; (iii) influence a subordinate employee to purchase a ticket to a political fundraising dinner or similar event; or, (iv) advise an employee to take part in political activity or similar activities.
  - (8) No county employee shall be directly or indirectly coerced or attempt to coerce another county employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
  - (9) A county employee shall not be awarded any additional compensation or employment benefit in the form of a salary adjustment, promotion, or continued employment in consideration for the employee's participation in any political activity.
  - (10) Nothing in this section prohibits activities that are otherwise appropriate for a county employee to engage in as a part of his official county employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.
- (i) Honoraria. No public servant may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of \$100.00, but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.
  - (j) Outside employment. Pursuant to the county personnel rules, an employee shall disclose in writing to the employee's respective office or employer all employment engaged in by the

employee other than the employment with or service to the county and must receive written approval of that outside employment.

- (k) Prohibited employment. It is unlawful for an employee who is participating directly or indirectly in the contracting process to become or to be, an employee or contractor for any person or business contracting with the county.
- (l) Prohibited sales.
  - (1) An elected or appointed official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through their family or a business in which the elected or appointed official or employee has a substantial interest, to an employee supervised by the elected or appointed official or employee. An elected or appointed official or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the elected or appointed official or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if an elected or appointed official or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under their supervision.
  - (2) An elected or appointed official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through their family or a business in which the public officer or employee has a substantial interest, to a person over whom the elected or appointed official or employee has regulatory authority.
  - (3) An elected or appointed official or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom they have regulatory authority.
  - (4) An elected or appointed official or employee shall not accept from a person over whom they have regulatory authority an offer of employment or an offer of a contract in which the elected or appointed official or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom they have regulatory authority.
- (m) Prohibited contributions; financial service contractors.
  - (1) A business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to an elected or appointed official or employee of the county who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects.
  - (2) An elected or appointed official or employee of the county that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects, shall not knowingly accept a contribution of anything of value from a business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects.

- (3) For the purposes of this section:
  - a. "Anything of value" means any gift as prohibited by the Ethics Ordinance.
  - b. "Contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.
- (n) Contracts involving former elected or appointed officials and employees.
  - (1) The county shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
    - a. Represented personally in the matter by a person who has been an elected or appointed official or employee of the county within the preceding year if the value of the contract or action is in excess of \$1,000.00 and the contract is a direct result of an official act by the elected or appointed official or employee; or
    - b. Assisted in the transaction by a former elected or appointed official or employee of the county whose official act, while in county employment, directly resulted in the county's making that contract or taking that action; or
    - c. A former public officer or employee shall not represent a person in the person's dealings with the county on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.
  - (2) For a period of one year after leaving county service or employment, a former elected or appointed official or employee shall not represent for pay a person before the county.

**Section 6 - Disclosure of certain financial interests.** All elected and appointed officials shall file a statement of economic interest with the Sandoval County Clerk subject to any conditions imposed by the county clerk's office for the filing of statements. The statement of economic interest shall be filed after swearing in of an elected or appointed official with the Sandoval County Clerk no later than the last business day in January or within 30 days of swearing in for any elected or appointed official taking office subsequent to January of any calendar year.

- (1) Form of statement. The elected or appointed official shall provide the following information to the county clerk:
  - a. Interest in land. A description of all parcels of real estate within the county in which the person owns any interest including an option to purchase.
  - b. Elected and appointed officials shall identify all corporate interests in any business organization, either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two-percent ownership interest of any other business that is doing business with the county.
- (2) Amended statements. Any person required to file a statement hereunder shall not be required to file an amended statement unless that person undergoes a change in those economic interests that are required to be disclosed by this section. Such persons shall file the amended statement in the manner prescribed above within 90 days of the date of any change in circumstances requiring filing thereof.

- (3) Compliance. All elected and appointed officials shall comply with the provisions of this section within 60 days after the requirements hereof are imposed upon such office or position.

### **Section 7 - Reporting violations of the Ethics Ordinance.**

- (a) Any person who has reason to believe the Ethics Ordinance has been violated may report the suspected violation in the following manner:
  - (1) By submitting to the contract compliance officer, a sworn and signed complaint alleging facts which, if true, would constitute a violation of the ordinance. The sworn complaint must identify the specific section(s) of the ordinance allegedly violated and the facts that support such a violation. The complaint must include the complainant's name and contact information. The mailing address, contact information and direct e-mail link to the contract compliance officer shall be posted on the county's website.
  - (2) Upon receipt of the sworn complaint, the contract compliance officer shall refer it to the chair of the ethics board within three business days.
  - (3) The chair may schedule a preliminary hearing for the board of review to determine whether the allegations in the complaint, if taken as true, would constitute a violation of the Ethics Ordinance, and the complaint is properly heard by the ethics board. In the event that a complaint involves either a de minimis violation, a matter previously decided by the board, or a matter that has been cured or resolved subsequent to the filing of the complaint, the board, pursuant to rules adopted for this purpose, may dispose of a complaint in a summary fashion either before or after conducting a preliminary hearing. Classified county employees are governed by the policies and procedures of Sandoval County. Complaints alleging a violation by a classified county employee shall be referred by the contract compliance office immediately upon receipt directly to the county manager or county attorney for disposition as an employee disciplinary matter.
  - (4) If necessary, the contract compliance officer shall also refer the complaint to the district attorney, attorney general, or appropriate law enforcement agency to review the matter for potential criminal conduct.
  - (5) The ethics board shall issue a preliminary order that:
    - a. Dismisses the complaint if it does not state a claim under the ordinance, or if it is not properly heard by the ethics board and refers the complaint to the contract compliance officer for handling outside of the ordinance; or
    - b. Holds the case in abeyance while the case is reviewed for potential criminal conduct; or
    - c. Determines that the complaint states a factual claim; schedules the case for an evidentiary hearing and establishes a prehearing schedule; or
    - d. Finds that the allegations require an independent investigation before an evidentiary hearing is held, and sends the case to the contract compliance officer with specific instructions on what investigation the board determines to be necessary.

Investigations deemed necessary shall be performed by an independent investigator selected by the contract compliance officer and county attorney.

- (b) All sworn and signed complaints, as well as the determination, are public records and shall be made available in accordance with the provisions of the Inspection of Public Records Act.
- (c) The complaints shall be served by the contract compliance officer on the respondent within three business days of receipt. Service of all documents required under this section or by the ethics board may be done by electronic delivery and return receipt.

### **Section 8 - Ethics board.**

- (a) There shall be a Sandoval County ethics board (hereinafter "ethics board") which shall consist of five members, and five alternates who shall be appointed by the board of county commissioners, with each commissioner appointing one member, and one alternate from his or her commission district. The citizen members shall not be affiliated with county government in any capacity including, but not limited to, employment (including employment for which the salary is in any way funded by or through the county), appointment or election. The members of the ethics board may not hold elected public office or office with any political party within the county. Terms of office of citizens shall be two years, subject to reappointment thereafter. An incumbent member shall serve the full term unless he/she resigns or is removed for cause under the terms of this section. When a vacancy occurs due to the expiration of the term of a member, that incumbent member shall serve until re-appointed or replaced under the terms of this section. Vacancies filled by appointment during the term of a member shall be for the unexpired term only. If the commissioner fails to make a recommendation within 60 days after the vacancy occurs, the board of county commissioners shall appoint an individual to fill that vacancy as soon as possible. On such occasions, the appointee(s) of the board shall reside within the commission district that has the vacancy.
- (b) The ethics board shall elect its own chair and vice-chair subject to the rules and procedures adopted by the ethics board. The ethics board shall sit as a quasi-judicial body when it acts upon complaints submitted to it by the contract compliance officer. The alternate members shall be called upon by the chair when a hearing is set and a member of the board is unavailable. Any member whom misses three consecutive meetings, unexcused by the chair, shall be deemed to have resigned from the board and may be replaced by the presently serving county commissioner. Members may attend non-quasi-judicial hearings by phone.
- (c) The jurisdiction of the ethics board is limited to acting within the scope of matters covered by this ordinance.
- (d) The ethics board shall adopt rules of procedure for conducting "due process" hearings. The rules of procedure shall be consistent with the rules for conducting administrative hearings in the State of New Mexico.
- (e) The ethics board shall have the power to issue administrative subpoenas compelling the attendance of witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the Thirteenth Judicial District Court.

- (f) If the ethics board finds that an unclassified employee or volunteer violated this ordinance, the ethics board, upon a majority vote of a quorum of the board, shall forward its written findings of fact and conclusions of law to the county manager for appropriate action. If the complaint involves the county manager or county attorney the board shall refer the violation and written findings of fact and conclusions of law to the board of county commissioners.
- (g) If the ethics board finds, upon a majority vote of a quorum of the board, that an elected or appointed official has violated this Ethics Ordinance, the ethics board may impose any of the following penalties after the entry of written findings of fact and conclusions of law:
  - (1) A civil fine not to exceed \$300.00 or amount currently allowed by law; or
  - (2) Proceedings or penalties pursuant to the County personnel handbook, where appropriate;
  - (3) A written finding of censure; and
  - (4) When an elected or appointed official has committed an act that the board believes could be grounds for removal from office, refer their decision to the district attorney or attorney general.
- (h) Limitations on complaints:
  - (1) Complaints filed more than one year after a violation of this ordinance is alleged to have occurred shall be dismissed as untimely;
  - (2) All complaints submitted shall be resolved, determined, or dismissed by the ethics board within 90 days from the submission of the complaint. If the complaint is not resolved within 90 days, the complaint shall be dismissed, unless delayed by order of the ethics board upon a showing of good cause; and
  - (3) Complaints regarding elected officials that are running for an elected office cannot be filed from sixty days prior to the primary election until the date of the primary election and cannot be filed from sixty days prior to the general election until the date of the general election.
- (i) All penalties contained herein are non-exclusive, and do not foreclose other remedies available by law. The county reserves the right to refer any conduct, whether covered by the Ethics Ordinance or not, to any agency or law enforcement agency with competent jurisdiction for criminal or civil prosecution.
- (j) Ethics board. Additional duties and authority:

In addition to acting on complaints and conducting due process hearings, the ethics board may also:

- (1) Recommend amendments to the Ethics Ordinance to the board of county commissioners;
- (2) Provide advisory opinions regarding the applicability or interpretation of any provision of this Ethics Ordinance upon the request of any contractor or public servant. It shall be a complete defense to any complaint where a contractor or public servant asked the ethics board for an advisory opinion prior to taking any action prohibited by this ordinance, and complied with the advice of the ethics board.
- (3) The ethics board shall meet at least once per quarter, and more often when necessary, to hear cases, act on reports, issue advisory opinions, discuss policy, and/or approve the

quarterly report. The ethics board shall provide the board of county commissioners with a quarterly report stating the number of complaints that were submitted alleging a violation of the ethics ordinance, the number of complaints submitted to the ethics board by the contract compliance officer, and a summary of the status of each complaint to include the date of the complaint date for the case to be heard, and date for possible final action. The quarterly status report must be approved by the ethics board and made available to the public on the county's website. The quarterly status reports may be provided to the board of county commissioners and their staff on an informal basis however, the ethics board and the contract compliance officer shall present a semi-annual report of the ethics board's activities at a regularly scheduled meeting of the board of county commissioners.

### **Section 9 - Right of appeal.**

Any decision of the ethics board finding a violation of this ordinance, with respect to an elected or appointed official, or volunteer may be appealed to the Thirteenth Judicial District Court. Any decision regarding an employee shall be covered by the terms of the employment rules and regulations or collective bargaining agreement, as applicable.

### **Section 10 - County contract compliance officer.**

- (a) The contract compliance officer will be a neutral, non-partisan person that will advise the ethics board. The contract compliance officer shall:
  - (1) Accept all complaints or allegations of misconduct submitted to them by citizens or public servants, whether covered by the provisions of this Ethics Ordinance or not, and monitor them to ensure that they are appropriately dealt with, log all complaints and keep record of their referral status and outcome;
  - (2) Inform the subject of the complaint about the complaint, and inform the complainant where the complaint has been referred to and inform them of the outcome of the complaint and report quarterly all non-Ethics Ordinance complaints to the board of review, keeping the complainants names confidential where legally allowed;
  - (3) Direct the complaint to the appropriate law enforcement agency, the ethics board, county manager or county attorney for review, any necessary investigation, and disposition. If appropriate for a complaint that is easily answered and is not an alleged Ethics Ordinance violation, the contract compliance officer may resolve the complaint and provide a copy of the complaint and resolution to the ethics board, county manager, and county attorney;
  - (4) For complaints alleging violations of the Ethics Ordinance, the contract compliance officer shall file the complaint and submit it to the chair of the ethics board and schedule a preliminary hearing;
  - (5) The contract compliance officer, with assistance from the county manager, shall be responsible for education of public servants on the Ethics Ordinance and the responsibilities of public service;

- (6) The contract compliance officer shall keep all non-Ethics Ordinance complaints confidential to allow the county to perform a self-critical analysis to the extent allowed by law;
- (7) The contract compliance officer shall accept requests for advisory opinions on the meaning and interpretation of the Ethics Ordinance and forward these requests to the ethics board. The ethics board will review and issue advisory opinions with the assistance of the contract compliance officer and county attorney; and
- (8) The contract compliance officer shall review the Ethics Ordinance every four years.

### **Section 11 - Nonretaliation.**

The board of county commissioners does not tolerate retaliation against any person who has reported a violation of this ordinance or of other county ordinances or state laws when made in good faith. This nonretaliation provision applies whether the complaint is ultimately determined to be well founded or unfounded. All county personnel and elected or appointed officials are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim of violation. Anyone who feels that they have been retaliated against in violation of this policy should submit a sworn complaint to the ethics board setting forth the claim of retaliation.

A complainant's report of facts may be regarded as being covered by the Whistleblower Protection Act, NMSA 1978, 10-16(c)-1, et seq., and the county shall not retaliate against a complainant for filing a complaint. However, in regard to county employees, merely filing a complaint shall not provide immunity, or protection from county actions related to the complainant's own misconduct, poor job performance, a reduction in work force or other legitimate business purpose. The county reserves the right to act in the public interest in balancing the rights of complainant to bring forward charges of misconduct while maintaining orderly and efficient operations of county government.

If the ethics board finds that a complaint for violation of the ordinance submitted by an employee is without merit and was made with an intent to harm, harass or intimidate the subject of the complaint, it shall refer the complaint to the county manager for review for proposed disciplinary action. For complaints of violations not covered by the ordinance found to be without merit, the county manager and the county attorney may determine if a complaint was made with the intent to harm, harass or intimidate the subject and may take disciplinary action.

### **Section 12 - Restrictions on employment and appointment after leaving office.**

The County shall not enter into any arrangement or agreement for remuneration for consultant work, part-time or full-time employment in any capacity with elected officials for a period of 12 months from and after the elected official has left office. Elected officials shall be able to appoint their deputies as he/she chooses and as provided by statute.



**Section 13 - Ethics Ordinance Training.**

All public servants shall attend a minimum of two hours of ethics continuing education and training biennially as conducted and coordinated by the contract compliance officer. The county manager, county attorney and contract compliance officer shall adopt ongoing education programs to advise the employees about the Ethics Ordinance.

**Section 14 - Severability.**

The provisions of this ordinance are severable, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance or their application to the persons or circumstances. It is hereby declared to be the intent of the board of county commissioners that this ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this ordinance or part thereof is inapplicable had been specifically exempted therefrom.

**Section 15 – Effective Date.**

This ordinance shall take effect thirty days after the ordinance has been recorded in the book kept by the county for that purpose.

ADOPTED BY THE GOVERNING BODY OF SANDOVAL COUNTY, NEW MEXICO THIS  
\_\_\_\_ DAY OF \_\_\_\_\_ 2018.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SANDOVAL COUNTY

\_\_\_\_\_  
Eileen Garbagni, County Clerk

\_\_\_\_\_  
David J. Heil, Chair

\_\_\_\_\_  
F. Kenneth Eichwald, Vice Chair

APPROVED AS TO FORM:

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Jay C. Block, Member

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Heather R. Smallwood,  
Assistant County Attorney

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Don Chapman, Member

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James F. Holden-Rhodes, Member

DRAFT