

ORDINANCE NO. 350-2024**DOÑA ANA COUNTY****AN ORDINANCE AMENDING CHAPTER 14
(CODE OF CONDUCT) OF THE CODE OF DOÑA ANA COUNTY**

WHEREAS on August 27, 2013, the Board of County Commissioners of Doña Ana County adopted Resolution No. 2013-81 (Codified as Chapter 14 of the Code of Doña Ana County) establishing a Code of Conduct for Doña Ana County elected officials and employees; and

WHEREAS, Resolution No. 2013-81 calls for periodic review of the Code of Conduct, the Board of County Commissioners has determined that certain changes and modification so the Resolution 2013-18 is appropriate at this time.

BE IT THEREFORE RESOLVED that Resolution No. 2013-81 is hereby repealed in its entirety, and

BE IT ENACTED BY THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1.

Chapter 14 (Code of Conduct) of The Code of Doña Ana County is hereby amended to read as follows:

Chapter 14**CODE OF CONDUCT**

- § 14-1. Purpose.**
- § 14-2. Responsibilities of public office.**
- § 14-3. Applicability.**
- § 14-4. Definitions.**
- § 14-5. Responsibilities of public service.**
- § 14-6. Avoidance of disclosure of conflicts of interest.**
- § 14-7. Procurement and contract issues.**
- § 14-8. County operations.**



§ 14-9. Code compliance.

§ 14-10 Notice of amended code review.

§ 14-1. Purpose.

- A. The purpose of this chapter is the establishment of guidelines for ethical standards of conduct for all elected officials and employees by 1) setting forth those acts or actions that violate public trust and 2) requiring elected officials and employees to disclose personal interests, financial or otherwise, in matters affecting the County. Examples of acts or actions that violate public trust may include, but are not limited to: criminal acts; egregious behavior that reflects badly on the County; attempts by Commissioners to direct the work of County employees or to influence the outcome of a personnel matter; failure to disclose a substantial conflict of interest relating to a matter of importance; and other behavior or acts of omission similar in gravity and effect.
- B. It is the further purpose of this Code of Conduct to protect County employees from undue influence, threats, or reprisal with respect to the work that they perform for the County.

§ 14-2. Responsibilities of public office.

Elected officials and employees hold office or employment for the benefit of the public. They are bound to uphold the Constitutions of the United States and of the State of New Mexico; to impartially carry out the laws of the United States, the State of New Mexico, and Doña Ana County; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that public interest must be their primary concern.

§ 14-3. Applicability.

The Code of Conduct shall apply to all elected officials and employees, as defined below.

§ 14-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANYTHING OF VALUE

Any money, property, favor, service, payment, forbearance, loan, or promise of future employment/compensation. It does not include such things as compensation and paid expenses by the state or County, expenses, incidental promotional material such as pens, pencils, notepads, or calendars, or any other thing that, in the mind of a reasonable person, is not likely to influence the judgment or conduct of individuals covered by this code.

BUSINESS

A corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business. Nonprofit entities are included in this definition.

COMMISSIONER

The individual elected from each of the five districts within Doña Ana County to represent the constituents of that district.

COMMISSIONER INTERFERENCE

Any member of the board of county commissioners taking an action that interferes with or infringes on the power, duty and authority granted to the county manager, staff or other elected official or an act that violates the prohibitions set forth herein. Commissioner interference further means any act by a commissioner that attempts to delay or override an order, directive or decision made by a majority vote of the board of county commissioners.

COMPLIANCE OFFICER

An independent county employee who accepts and processes complaints alleging county government misconduct, and violations of this code, ensures that complaints are routed to the proper office for handling, investigation, and response; tracks and reports to the review board, county manager and county commission quarterly on the number of complaints, their subject matter, and their resolution; and coordinates all code of conduct training for elected officials, employees, and volunteers. The compliance officer shall strive to be unbiased and as impartial as possible and shall conduct themselves with fairness and professionalism at all time.

CONFLICT OF INTEREST

Any business activity or other relationship with a person that compromises an elected official's or employee's loyalty to the County, and which, in the mind of a reasonable person, is likely to influence or predispose an official action or any use of authority of the office or position for personal reasons.

COUNTY MANAGER

The person retained by the Board of County Commissioners to manage the daily operations of the County. It includes the Assistant County Manager or other designee when acting at the direction of the County Manager.

ELECTED OFFICIAL

The Board of County Commissioners, County Assessor, County Clerk, County Treasurer, and Sheriff but excluding the staff of such officials and the Probate Judge, who is subject to the Code of Judicial Conduct.

EMPLOYEE

Employees, appointees, agents, and volunteers of the County. The inclusion of appointees, agents, and volunteers in this definition is intended only for the provisions of this chapter. It shall not create any employer/employee relationship from which rights of employment arise, including, but not limited to, pay, benefits, or rights under any law which may create rights or benefits for employees of Doña Ana County.

FINANCIAL INTEREST

Any interest which yields, directly or indirectly, a monetary or other material benefit to the elected official or employee or to any person employing or retaining the services of the elected official or employee. It includes benefits to a member of or employer of an elected official's or employee's immediate family.

HONORARIUM

Payment of money, or any other thing of value, in excess of \$100, 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.

IMMEDIATE FAMILY

Spouse or domestic partner, parents, children, and siblings. Included herein are those relationships established by blood, marriage (including "step" relationships), and adoption.

OFFICIAL ACT

An official decision, recommendation, approval, disapproval, or other action that involves the use of authority as granted by virtue of the County office or position.

PERSON

Any individual, corporation, partnership, sole proprietorship, joint venture, or business entity, whether nonprofit or for profit.

PRIVILEGED INFORMATION

Any written or oral material related to County government that has not become part of the body of public information and that is designated by statute, court decision, lawful order, ordinance, resolution, or custom as privileged. It includes, but is not limited to, information acquired at closed sessions of any County body.

QUASI-JUDICIAL

Of, relating to, or involving an administrative adjudicatory type hearing or process.

RELATIVE

Relative means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

§ 14-5. Responsibilities of public service.

- A. Elected officials and employees shall use the powers and resources of public office entrusted to them to advance the public interest and will not use those powers and resources to obtain personal benefits or pursue private interests incompatible or competing with the public interest.
- B. No individual member of the Board of County Commissioners has the authority to make representations, assurances, admissions, or waivers on behalf of the Board of County Commissioners without a formal grant of authority.
- C. Elected officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people of Doña Ana County and the State of New Mexico, at all times maintaining the highest degree of integrity and discharging their public responsibilities ethically.
- D. Elected officials and employees shall not request or receive anything of value, or promise of such, that is conditioned upon or given in exchange for the promised performance or forbearance of an official act.
- E. Elected officials and employees shall not request or receive an honorarium for a speech or service rendered that relates to the performance of public duties.
- F. Elected officials and employees shall not disclose or use privileged information acquired by virtue of their public office, employment, or position for their own or someone else's gain, or

to the County's detriment, unless otherwise required by law. Prior to any such disclosure, the elected official or the employee shall inform the County Attorney.

- G. Elected officials and employees shall not disclose privileged information acquired in a closed session of any County body without the explicit authorization of the County body and the County Attorney.
- H. Elected officials and employees shall not engage in any activity that would compromise the fulfillment of their responsibilities or create an appearance of impropriety when dealing with public policy.
- I. Elected officials and employees shall treat each other and the public with respect, decorum, and fairness at all times. Elected officials and employees shall not make any allegations of misconduct by elected officials or employees, unless they provide, at the time they make the allegation of misconduct or in response to requests by those responsible for the investigation, factual bases for their allegations, including information as to the source of such information.
- J. The Chairperson shall ensure that members of the public treat elected officials and employees with respect at all times, including during public discourse of conflicting views.
- K. Elected officials and employees shall protect and conserve County property and shall not use said property for other than authorized purposes.
- L. Elected officials and employees shall comply with the requirements of the Open Meetings Act.

§ 14-6. Avoidance or disclosure of conflicts of interest.

- A. Full disclosure of real or potential conflicts of interest shall be the guiding principle for determining appropriate conduct. At all times, diligent effort shall be made to avoid undue influence and abuse of office in public service.
- B. When acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act, including discussion or vote, directly affecting a financial interest or any other interest which, in the mind of a reasonable person, would impair the official's or employee's ability to decide fairly and impartially the matter before him/her. When not acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act affecting a financial interest. Elected officials and employees may not take any official action for the purpose of enhancing their financial interests and shall disqualify themselves from engaging in any official act directly affecting their financial interests.

- C. Elected officials and employees shall not acquire a financial interest in a business or other activity when they believe or have reason to believe that it will be directly affected by their official act.
- D. No County elected official shall accept or receive to their own use, or for or on account of any deputy or deputies, clerk or clerks appointed by them or employed in their office, or for or on account of expenses incurred by them or by any such deputy or deputies, clerk or clerks, or for or on account of their office, any salary, compensation, allowance, fees or emoluments in any form whatsoever for the performance of their official duties, other than as authorized by law. [NMSA § 4-44-21]
- E. Elected officials and employees with a controlling interest or a financial interest exceeding \$10,000 in a business regulated by the official acts of the County, or who do business with the County in an amount greater than \$1,000 per year, shall publicly disclose the precise nature and value of such interest. Elected officials and employees shall also disclose any known relatives that meet the same thresholds. Disclosure shall be made to the County Clerk in the manner set forth by state statute during the month of January for each year they hold office. [NMSA § 4-44-25(B)]
- F. Every employee of the County who has a financial interest which he/she believes, or has reason to believe, may be affected by the actions of the County shall disclose the precise nature and value of such interest. The disclosures shall be made to the County Clerk before entering County employment, and during the month of January for each subsequent year. The filing of said disclosure is a condition of entering upon and continuing County employment. [NMSA § 4-44-25]
- G. The County Clerk shall maintain the confidentiality of the valuations attributed to the reported interests, as filed by County officials, appointees, employees and agents, except as permitted by statute in official removal proceedings. Such valuations shall be sealed prior to filing. [NMSA § 4-44-25(C)]
- H. Any elected County official who has received an individual campaign contribution shall publicly announce said contribution prior to consideration of any official action by the Board directly relating to that contributor. Personal or professional relationships shall be similarly disclosed. The elected official shall then make a statement whether the disclosed relationship will affect his/her ability to remain fair and impartial. After a disclosure, if three members of the Board determine that a reasonable person would not be able to remain impartial under the circumstances disclosed, the member determined to have a conflict of interest shall not participate further in any discussion or proceeding relating to the item.
- I. All elected officials and County employees will each year complete the annual disclosure form and submit it to the designated office by 3:00 p.m. on the last Friday of February.

§ 14-7. Procurement and contract issues.

- A. Elected officials and employees shall not enter into contracts with Doña Ana County unless they disclose any financial interest in the business involved and receive the contract with public notice and pursuant to competitive local and state procurement laws. [NMSA § 4-44-22]
- B. Doña Ana County shall not enter into contracts involving, nor take action favorably affecting, any person or business represented by a person who has been an elected official or employee within the preceding year. This prohibition may be waived if the Board of County Commissioners, in open session, determines that an exception to this provision is in the best interest of the county.
- C. Elected officials and employees shall not accept anything of value exceeding \$25 from any person doing business with the County or any person who is reasonably anticipated to do business with the County in the future. This limitation of \$25 does not apply to meals or campaign contributions.
- D. Elected officials and employees shall be cognizant of the fact that under the New Mexico Criminal Code it is either a misdemeanor or a fourth-degree felony to commit "unlawful interest in a public contract," i.e., the receipt of anything of value, directly or indirectly, from either a seller or a seller's agent, or a purchaser or a purchaser's agents in connection with the sale or purchase by the County of securities, goods, leases, lands, or anything of value. [NMSA § 30-23-6]
- E. Elected officials and employees shall not participate directly or indirectly in any County matter when they know that they or a member of their immediate family has a financial interest in the organization seeking or obtaining a contract, absent a waiver issued pursuant to the statute. [NMSA §§ 13-1-190, 13-1-194]
- F. Elected officials and employees shall not participate directly or indirectly in a County procurement process and contemporaneously seek employment with or be an employee of the person contracting or seeking to contract with the County, absent a waiver issued pursuant to the statute. [NMSA §§ 13-1-193, 13-1-194]
- G. Doña Ana County shall not accept a bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

§ 14-8. County operations.

- A. The Board of County Commissioners employs a County Manager to handle the day-to-day business and general management of the County. It is recognized that for informational purposes dialogue between employees and Board members may be necessary. The Board

shall encourage the development, implementation, and enforcement of responsible policies and procedures for efficient operation by the County management staff. [NMSA § 4-38-19]

- B. The County Manager shall report directly to the Board of County Commissioners. No other County employee shall report to the Commission unless so determined by formal action of the Commission. Except for those employees who report directly to the Commission, the County Manager is solely responsible for assignment and direction of work by County employees in accordance with direction set by the Commissioners. The Commission will provide direction for the County Manager in the form of policies or other mutually agreed upon communications. Policies will be formalized in ordinances and resolutions.
- C. The Board of County Commissioners has adopted ordinances and resolutions that govern County personnel matters. It is recognized that these formal acts of the Board of County Commissioners and the collective bargaining agreements entered into by the Board of County Commissioners establish the only procedures for addressing personnel discipline and grievances. It is a violation of the Code of Conduct for any elected official to interfere with these procedures or attempt to influence the outcome of the processes. It is a violation of the Code of Conduct for any elected official to seek information concerning a personnel action except when it is appropriately discussed in closed session of the Board of County Commissioners. It is not a violation of the Code of Conduct for the County Assessor, County Clerk, County Treasurer, or the Sheriff to participate, as permitted by ordinance, resolution, and collective bargaining agreement, in the personnel processes when the involved personnel is an employee of the elected official's office. It is not a violation of the Code of Conduct for an elected official, if he/she desires, to appear as a witness in the personnel disciplinary or grievance processes.
- D. The Commissioner who serves as the Board's Chairperson has certain duties and authority distinct from the other Commissioners. These include: to open all meetings of the Board, call the members to order, announce all business on the agenda and put same to a vote when required; to enforce order and decorum among members of the Board; to sign documents on behalf of the Board; to administer oaths to any person concerning any matter submitted to the Board or connected with its powers and duties; and to sign all orders on the County Treasury and County documents, as authorized by a majority of the Board. [NMSA § 4-38-11] Unless specifically delegated to the Chairperson by the Board, the Chairperson has no more authority than any other member.
- E. The Board of County Commissioners shall select a Chairperson by simple majority vote at the first meeting of the Board of County Commissioners in January of each year. A Commissioner may serve as Chairperson for two succeeding terms after which a break in tenure of one year is required. In the event the Chairperson resigns, the Vice Chairperson shall serve as the Chairperson until the vacant County Commissioner seat is filled and the

Board of County Commissioners selects a new Chairperson by simple majority vote. In the event that a Commissioner is selected to fill out the term of the Chairperson for a period of less than six months, said Commissioner may be elected to fill subsequent terms in accordance with this section.

- F. The Board of County Commissioners shall select a Vice Chairperson by simple majority vote at the first meeting of the Board of County Commissioners in January of each year. A Commissioner may serve as Vice Chairperson for two succeeding terms after which a break in tenure of one year is required. The Vice Chairperson shall exercise the duties and assume the responsibilities of the Chairperson during his or her absence, disability or disqualification. In the event the Chairperson resigns from his or her elected office of Commissioner on the Board of County Commissioners, the Vice Chairperson shall serve as the Chairperson until the vacant County Commissioner seat is filled and the Board of County Commissioners selects a new Chairperson by simple majority vote. In the event of a vacancy in the position of Vice Chairperson, the Board of County Commissioners shall select a new Vice Chairperson by simple majority vote
- G. A County Commissioner may decline to serve as Chairperson or Vice Chairperson.
- H. The Board of County Commissioners shall recognize that Robert's Rules of Order sets guidelines for the conduct of all County Commission meetings.
- I. Any County Commissioner may place a matter on the agenda for the Board of County Commissioners meetings in any of its official capacities.
- J. The County Assessor, County Clerk, Sheriff, and County Treasurer shall advise the Board of County Commissioners on all matters concerning their respective offices, to include suggestions and recommendations for more efficient administration of County finances, government, or other functions. Cooperation between the various elected officials in the exercise of their respective official duties shall be the goal.
- K. Department heads, managers, and supervisors shall build and maintain a culture of responsible public service by:
 - (1) Leading by example, using their behavior as a model for all employees.
 - (2) Encouraging employees to bring forth questions, concerns, and suggestions relating to the operation of the County government.
 - (3) Ensuring that all employees receive training related to ethical issues related to their work.
 - (4) Applying appropriate and consistent disciplinary action, and

- (5) Providing affirmative and appropriate reinforcement for positive accomplishments.

L. Commissioner interference

- (1) It is the intention of this section that the board of county commissioners shall act in all matters as a body, and it is against the spirit of this division for any of its members to seek to influence the official acts of the county manager, or any employee under the jurisdiction of the county manager, or to interfere in any way with the performance of employees under the jurisdiction of the county manager in the performance of their duties.
- (2) No individual county commissioner shall order or direct the appointment of any person, except as specifically authorized by state law or county ordinance, to employment or removal therefrom by the county manager or any deputy county manager or department director.
- (3) No individual county commissioner shall give orders or directives to any subordinates of the county manager.
- (4) County commissioners shall deal with employees under the jurisdiction of the county manager solely through the county manager except:
 - (a) For matters related to a direct request from a commissioner by a constituent related to an issue related to that commissioner's district (e.g. repair of pothole or street light within the commissioner's district. In the event of this situation the commissioner may directly contact an employee under the jurisdiction of the county manager to request assistance for the constituent. However, the commissioner shall not direct the means, manner or method for resolving the dispute or demand resolution within a set timeframe). The commissioner shall inform the county manager if the corrective action is not satisfactory;
 - (b) In connection with an investigation being conducted by the board of county commissioners and the commissioner contacting an employee under the jurisdiction of the county manager has been delegated by a majority vote of the board of county commissioners to head the investigation;
 - (c) In connection with the procurement of goods or services only when the commissioner has been appointed by a majority vote of the board of county commissioners to serve on the selection committee;
 - (d) In connection with the hiring process of the county manager;

- (e) For routine requests for information and inquiries where staff is asked for information that is readily available to the general public on a regular basis (e.g. What are the library hours of operation?);
 - (f) For non-routine requests for readily available information where staff is asked to gather readily available information that may not be routinely requested by the general public (e.g. How many traffic lights are in the unincorporated area of the county?);
 - (g) Non-routine requests requiring special effort where staff is required to compile information that is not readily available or easily retrievable and/or that requests staff to express an opinion (legal or otherwise). These requests should ordinarily be directed to the county manager or county attorney, as appropriate. However, circumstances may dictate the need to contact staff directly to handle the requests and in such case the request shall be submitted by email and a copy sent to the county manager and county attorney. (e.g. How many studies were conducted last year that involved more than 500 hours of staff time? Or What is the logic behind the county's night skies ordinance?). The county manager or county attorney shall be responsible for distributing such requests to his/her staff for follow-up. Responses to such requests shall be copied to all members of the board of county commissioners and shall include the name of the member of the board making the request;
 - (h) Any request made by a commissioner to the county attorney through an attorney-client communication shall not be subject to the procedure listed in subpart g. above.
- (5) Any county employee or elected official who has information that a commissioner has, or may have, violated a provision of this division, shall report the violation to the chair of the board of review or the county compliance office who shall process the complaint pursuant to the procedures listed below and the rules and regulations of the board of review.

§ 14-9. Code compliance.

- A. The County shall inform all elected officials and employees regarding the terms and provisions of this Code of Conduct.
- B. Reporting violations of code of conduct.

(1) Any person who has reason to believe the code of conduct has been violated may report the suspected violation in the following manner:

- (a) By submitting to the compliance officer, a sworn and signed complaint alleging facts which, if true, would constitute a violation of the code. The sworn complaint must identify the specific section(s) of the code 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 compliance officer shall be posted on the county's website.
- (b) Upon receipt of the sworn complaint, the compliance officer shall refer it to the chair of the review board within three business days. For any complaint against the Chairperson, the complaint shall be referred to the Vice-Chairperson.
- (c) 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 code of conduct, and the complaint is properly heard by the review 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. Complaints alleging a violation by a classified county employee shall be referred by the compliance office directly to the county manager or county attorney for disposition as an employee disciplinary matter.
- (d) If necessary, the compliance officer shall also refer the complaint to the district attorney or appropriate law enforcement agency to review the matter for potential criminal conduct.
- (e) The review board shall issue a preliminary order that:
 1. Dismisses the complaint if it does not state a claim under the code, or if it is not properly heard by the review board and refers the complaint to the compliance officer for handling outside of the code;
 2. Holds the case in abeyance while the case is reviewed for potential criminal conduct; or
 3. Determines that the complaint states a facial claim; schedules the case for an evidentiary hearing and establishes a prehearing schedule; or
 4. Finds that the allegations require an independent investigation before an evidentiary hearing is held, and sends the case to the 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 compliance officer and county attorney.

- (2) All sworn and signed complaints are public records and shall be made available in accordance with the provisions of the Inspection of Public Records Act.
- (3) The complaints shall be served by the compliance officer on the respondent within three business days of receipt. Service of all documents required under this section or by the code of conduct review board may be done by electronic delivery and return receipt.
- (4) Given the board of county commissioners and other county elected officials' commitment to open, ethical and transparent government, reporting a good faith complaint for a known violation of the code of conduct by a public servant shall afford that person all the protections of the nonretaliation provision of this code and the protections contained in the Whistleblower Protection Act.

C. Code of conduct review board.

- (1) There shall be a Doña Ana County code of conduct review board (hereinafter "review 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 review 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. Regardless of the date of appointment, the term of any individual appointed to the review board shall expire when the commissioner making the appointment leaves office or his/her term expires, and a replacement has been duly appointed by the new commissioner.
- (2) The review board shall elect its own chair and vice-chair subject to the rules and procedures adopted by the review board. The review board shall sit as a quasi-judicial body when it acts upon complaints submitted to it by the 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 original appointing commissioner. Members may attend non-quasi judicial hearings by phone.

- (3) The jurisdiction of the review board is limited to acting within the scope of matters covered by this code.
- (4) The review 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.
- (5) The review 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 Third Judicial District Court.
- (6) If the review board finds that an unclassified employee or volunteer violated this code, the review board, upon a majority vote of a quorum of the board, shall forward its written findings of fact and Page 13 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 to the board of county commissioners.
- (7) If the review board finds, upon a majority vote of a quorum of the board, that a candidate or elected official has violated this code of conduct, the review board may impose any of the following penalties after the entry of written findings of fact and conclusions of law:
 - (a) A civil fine not to exceed \$1,000.00; or
 - (b) A written finding of censure; and
 - (c) When an elected official has committed an act that the board believes could be grounds for removal from office, refer their decision to the district attorney.
- (8) Limitations on complaints:
 - (a) Complaints filed more than one year after a violation of this code is alleged to have occurred shall be dismissed as untimely; and
 - (b) All complaints submitted shall be resolved, determined, or dismissed by the review board within 60 days from the submission of the complaint. If the complaint is not resolved within 60 days, the complaint shall be dismissed, unless delayed by order of the review board upon a showing of good cause.
- (9) 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 code of conduct or not, to any agency or law enforcement agency with competent jurisdiction for criminal or civil prosecution.

(10) Review board. Additional duties and authority:

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

- (a) Recommend amendments to the code of conduct to the board of county commissioners;
 - (b) Provide advisory opinions regarding the applicability or interpretation of any provision of this code of conduct upon the request of any candidate or public servant. It shall be a complete defense to any complaint where a candidate or public servant asked the review board for an advisory opinion prior to taking any action prohibited by this division, and complied with the advice of the review board.
 - (c) The review 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 review 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 review board by the 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 review 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 review board and the compliance office shall present a semi-annual report of the review board's activities at a regularly scheduled meeting of the board of county commissioners.
- D. Right of appeal. Any decision of the review board finding a violation of this code, with respect to an elected official, candidate or volunteer may be appealed to the Third 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.
- E. County compliance officer.
- (1) A Doña Ana County compliance officer (hereinafter "compliance officer") position is hereby created. The compliance officer will be a neutral, non-partisan county official that will be the staff person for the review board. The compliance officer shall be an unclassified employee selected by the county manager and county attorney acting jointly and may only be removed for cause. The compliance officer may also be the staff person

for other county boards and commissions as determined to be necessary by the county manager. The compliance officer shall:

- (a) Accept all complaints or allegations of misconduct submitted to them by citizens or public servants, whether covered by the provisions of this code of conduct 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;
- (b) Inform the subject of the complaint about the complaint, when legally necessary, 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 code of conduct complaints to the board of review, keeping the complainants names confidential where legally allowed;
- (c) Direct the complaint to the appropriate law enforcement agency, the review 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 code of conduct violation, the compliance officer may resolve the complaint and provide a copy of the complaint and resolution to the review board, county manager and county attorney;
- (d) For complaints alleging violations of the code of conduct, the compliance officer shall file the complaint and submit it to the chair of the review board and schedule a preliminary hearing;
- (e) The compliance officer, with assistance from the county manager, shall be responsible for education of public servants on the code of conduct and the responsibilities of public service;
- (f) The compliance officer shall keep all non code of conduct complaints confidential to allow the county to perform a self critical analysis to the extent allowed by law;
- (g) The compliance officer shall accept requests for advisory opinions on the meaning and interpretation of the code of conduct that will be reviewed and issued by the board of review with the assistance of the compliance officer and county attorney; and
- (h) The compliance officer shall maintain an open door policy and shall meet privately and confidentially with public servants or the public to answer their questions and provide them with information about the code of conduct and the obligations of candidates and public servants and resolve their issues informally if possible. These discussions shall be kept confidential except when formal complaints are filed,

probable criminal conduct may have occurred, or there are imminent threats to the health and safety of other individuals being made, or their identity must legally be disclosed in order to enforce county, state or federal law.

F. Nonretaliation.

The board of county commissioners does not tolerate retaliation against any person who has reported a violation of this code 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 officials are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim Page 15 of violation. Anyone who feels that they have been retaliated against in violation of this policy should submit a sworn complaint to the review 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 review board finds that a complaint for violation of the code 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 code 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.

§ 14-10. Notice of amended code review.

- A. The County Manager shall ensure that each newly elected official and employee is given a copy of this Code of Conduct at the time of their orientation. A receipt of receiving the code shall be logged either in paper form or in the county's Enterprise Resource Planning (ERP) such as WorkDay..
- B. A copy of this Code of Conduct shall be posted in each department, as well as published on the County's Internet website.

C. The Code of Conduct may be amended at any time at the direction of the Board of County Commissioners, and shall, at a minimum, be reviewed every four years, with the next review due by January 2028.

Section 2. Severability.

The provisions of this division 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 division or their application to the persons or circumstances. It is hereby declared to be the intent of the board of county commissioners that this division 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 division or part thereof is inapplicable had been specifically exempted therefrom.

Section 3. Effective Date.

This Ordinance shall become effective July 1, 2024.

ORDAINED this 26th day of March 2024.

**BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO**



Christopher Schaljo-Hernandez

Christopher Schaljo-Hernandez, District 1 For Against
Chair

Absent

Diana Murillo, District 2, For Against
Vice-Chair

Absent

Shannon Reynolds, District 3 For Against

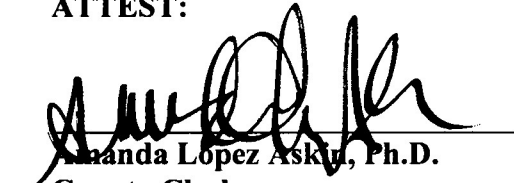
Susana Chaparro

Susana Chaparro, District 4 For Against

Manuel A. Sanchez

Manuel A. Sanchez, District 5 For Against

ATTEST:


Amanda Lopez Askie, Ph.D.
County Clerk

