



A Proposal to Reform the Ethical Culture  
of City of Albuquerque Government:

Report of the  
Albuquerque City Ethics Coalition



November 2007



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# I. Executive Summary

## **The Mission:**

The mission given to the Albuquerque City Ethics (ACE) Coalition by the Mayor and his Code of Conduct Evaluation Team was to create a positive change in the ethical culture of public service in the City of Albuquerque.

A change in culture was recognized by all to be difficult to achieve. However, it was equally recognized that merely developing a set of new rules by the administration or City Council would not by itself be successful in changing the culture.

## **The Problem:**

The Mayor and Code of Conduct Evaluation Team identified three problems:

- Continuing isolated incidents of employee misconduct;
- Public perception that this unethical behavior is pervasive and tolerated; and
- Difficulty in enforcing the rules consistently and effectively to deal with the misconduct.

## **The Solution:**

The Ethical Public Service Act (“EPSA”), (Appendix A) was created by the ACE Coalition, a group of public servants, to govern all public servants with:

- Seven positive values of ethical public service, rather than only a list of prohibitions as now exists;



- An infrastructure to perpetually promote ethical public service;
- Clear rules of behavior;
- Clear consequences for unethical behavior;
- A road map for public servants and citizens to navigate the laws and procedures governing ethical public service in Albuquerque;
- A process to hire, train and retain ethical individuals as City of Albuquerque public servants;
- A clear and impartial reporting and tracking process for ensuring all alleged ethical violations are investigated and appropriately responded to; and
- Protections against retaliation for people reporting violations and consequences for people who abuse the process and make false reports.

### **The Potential Benefits:**

- Increasing citizen trust and respect for City government and their public servants;
- Decreasing incidents of misconduct by public servants;
- Increasing economic vitality of Albuquerque; and
- A more inspired, better-trained, and more productive City workforce.



## II. The Vision of Ethical Public Service

City of Albuquerque employees, elected officials, board members, and volunteers are public servants dedicated to continually enhancing the quality of life for the citizens of the City of Albuquerque through honesty, integrity and good character in a work environment that guarantees fairness and accountability.



### III. The Mission of the ACE Coalition

The ACE Coalition will:

- Design and implement a path toward the ACE vision;
- Identify and remove barriers to ethical behavior and good government;
- Consistently model and communicate the meaning and value of ethical public service;
- Empower public servants to be good ethical decision makers; and
- Promote a culture of ethical public service that fosters career opportunities for ethical public servants.



## IV. The ACE Coalition and Consensus Decision-Making

The single most significant reason that the EPSA will create a more ethical culture of public service in Albuquerque is because it was created through consensus decision-making by the very public servants it will govern. In this regard, Albuquerque is very unique.

New codes of conduct or ethics laws are generally created by a small group of policy makers or public officials. While these efforts can successfully create new laws or codes, they typically do little to ensure an actual change of behavior and rarely create an institutional structure to alter the culture of a public organization.

This report will refer to the ACE Coalition as a consensus process and the more typical policy making process as a mandate process. The differences are obvious and very important.

In a mandate process either one or more policy makers will draft a new law or code to effect a desired change. In most instances the people affected by the new law have little input in creating the new law and are simply faced with a demand for obedience to the new mandated law.

Like most municipalities, Albuquerque has in place a well-intentioned system of ordinances and rules that have developed over a long period of time, which govern the conduct of public officials and employees. Most of the ordinances and rules were created at different times by a few policy makers with limited goals and were designed to address specific perceived problems existing at the time.

The consensus process creates an entirely new opportunity. In a consensus process a group of people with a stake in the outcome come together to problem solve and create solutions through conciliation and compromise. The solutions automatically have the support of the people who must comply with the new rules to make them work. The ACE Coalition is a consensus decision-making body.



The ACE Coalition was created by Mayor Martin Chavez based on a recommendation by the Code of Conduct Evaluation Team. The evaluation team came together in April 2004 after Mayor Chavez initiated a review of the City's Code of Conduct. A series of isolated but troubling acts of employee misconduct prompted Mayor Chavez to create the evaluation team. The evaluation team proposed a much more comprehensive solution to the problems than a mere creation of new rules. Report of the Code of Conduct Evaluation Team, (Appendix B). The evaluation team set out the goals of creating:

- A. A Culture of Ethical Public Service in the City of Albuquerque;**
- B. Clear and Meaningful Standards of Ethical Conduct; and**
- C. A System of Teaching and Learning the Culture of Public Service, and the Standards of Conduct.**

In order to reach these goals, the evaluation team proposed and the Mayor created the ACE Coalition. The team stated,

“The Code of Conduct Evaluation Team recommends the creation of an “Ethics Coalition” to create a system for both short-term solutions and a long term plan for cultural change. The model for the Ethics Coalition should be the cultural reengineering model of John Kotter’s book, *Leading Change*. *Leading Change* creates a framework that will bring about positive change in our City work force.”

The ACE Coalition was created by selecting a cross section of employees, managers, citizens and union representatives from across the City. Twenty-one members were selected. Each of the seven bargaining units selected a member, the Mayor selected two employee members, and two citizen members. Ten members were selected from all City employees based upon merit. Applications and nominations were solicited and evaluated by the evaluation team based upon the employees’ potential leadership abilities, experiences at the City and ability to accomplish complex long-term projects.





The ACE Coalition was selected and began meeting in July 2005. When the ACE Coalition came together, it sought a process to follow Kotter's model of creating institutional change in a public governmental setting. Kotter's model was created for private businesses and all of the requirements of the model did not easily translate to the public sector and the needs of the ACE Coalition.

Kotter's model anticipated the involvement of the highest level of decision makers in the organization on the guiding coalition. In Albuquerque City government that was not possible. Instead, the ACE Coalition adopted a consensus decision-making process with review and approval by the Chief Administrative Officer ("CAO") and the Mayor. The optimum of having the CAO and/or Mayor at the table working with the ACE Coalition simply was not workable given the size of the task, the length of the project, and the time involved making decisions with such a diverse group of people seeking consensus.

The ACE Coalition has met one day each week for three hours since July 2005, and met on four daylong retreats, to craft the EPSA. Members of the ACE Coalition have changed based upon retirement, resignation, workload, or an inability to stick with the time requirement and need to develop consensus.

The ACE Coalition has operated with a facilitator, Shannon Watson, the City's Alternative Dispute Resolution Coordinator. The facilitation of meetings has worked very well in moving the ACE Coalition along and garnering consensus on difficult issues.

The ACE Coalition as it exists at the time of this Report is very diverse, energetic and dedicated to creating a more ethical culture of public service. New members have been added as others left until it became clear that the ACE Coalition needed to have enough continuity to finish the project, and no new members have been added since July 2006. Some of the Unions have chosen to not regularly send representatives. The existing active members, in alphabetical order are:



Linda Allen	Supervisor, DFAS	Member at Large
Randy Autio	Deputy City Attorney, Legal	Mayor's Appointee
Patricia French	Supervisor, APD	Management Union
Steve Griego	Electrician, DMD	Blue Collar Union
Debra Jordan	Accounting Assistant, Aviation	Member at Large
Eddie Lucas	Community Member (retired employee)	Member at Large
James Mader	Manager, Senior Affairs	Member at Large
Bea Meiers	Program Specialist, Fam. Comm. Serv.	Member at Large
Patricia Miller	Director, Human Resources	Mayor's Appointee
Richard M. Rodriguez	Police Officer, Aviation	Member at Large
Paula Ramsey	Division Manager, Fam. and Comm. Serv.	Member at Large
Teresa Stringer	Legal Secretary, Legal	Member at Large

The former members who significantly contributed to the creation of the EPSA who could no longer continue with the Coalition are:

Ramona Chavez	Retired	Former Clerical Union
Peter Ennen	Fleet Safety Officer, DFAS	Member at Large
Donald Graham	Albuquerque Fire Department	Member at Large
Robert Gutierrez	Currently manager at Transit (formerly Motor Coach Operator)	NMTU Union
Joe Maestas	Records Technician, APD	Clerical Union
Kenneth Mitchell	Manager, DMD	Member at Large
Estevan Mora	Corrections Officer (Corrections left City)	AOA Union
Steve Perkins	Corrections Sergeant (Corrections left City)	Management Union
Leslie Worley	Kennel Worker, EHD (left City Employment)	Member at Large
Katherine Yuhas	Manager, Water Utility	Member at Large

## V. The National Experience of Ethics Violations and Reform

### A. What is Happening Across the Country?

As part of the effort to undertake a change in ethical culture, the ACE Coalition reviewed how corporations, governmental entities, and particularly municipalities, have dealt with legislating or mandating ethics in their organizations.

A valuable lesson was learned by the ACE Coalition from a recent effort to create an ethical corporate culture. The president of a corporation wrote to his employees:



The Code of Ethics contains commonsense rules of conduct with which the great majority of...employees routinely conform. However, I ask that you read them carefully and completely and that as you do, you reflect on your past actions to make certain that you have complied with the policies. It is absolutely essential that you fully comply with these policies in the future. If you have any questions, talk them over with your supervisors, manager, or ...legal counsel.

The president sent a message to his employees accompanying the new company Code of Ethics, which included the following inspiring goals:

Employees ...are charged with conducting their business affairs in accordance with the highest ethical standards. An employee shall not conduct himself or herself in a manner which directly or indirectly would be detrimental to the best interest of the Company or in a manner which would bring to the employee financial gain separately derived as a direct consequence of his or her employment with the Company. Moral as well as legal obligations will be fulfilled openly, promptly, and in a manner which will reflect pride on the Company's name.

The company goal of its ethics code, of all employees reflecting pride on the company name, did not quite work out as planned. The company was Enron and the president writing these stirring words to his employees was Ken Lay. These excerpts came from a letter and ethics code written in July 2000.

How can the City of Albuquerque learn from this example, not make the same mistakes, and change its ethical culture? The ACE Coalition clearly saw that a rule-based code standing alone, like Enron's, couldn't change a culture. We therefore looked nationally to see what the ethics problems have been and if there have been successful reforms efforts. The ethics reform experience across the country has been extensive and varied. Ethics reform in the private sector has received much attention since the Enron, Martha Stewart and Tyco scandals. Ethics reform is also a very popular topic in government. Recent events have led



to ethics reform efforts at the national, state and local level. The scandals occurring nationally and locally are worth reviewing through some examples.

**Nationally**, Congress sought ethics reform after former Majority Whip Tom Delay was indicted for illegal campaign practices. The kickback and corruption scandals involving lobbyist Jack Abramoff have unfolded and the Representative Tom Foley sex scandal caused his resignation.

The list of ethics scandals leaves no question about why our citizens are cynical about the idea of “ethical government”. The actual guilt of the officials is irrelevant to the issue of the public’s lack of trust. A list of examples of indicted and convicted local leaders and employees across the United States speaks volumes.

**San Jose, California:** On June 23, 2006, Mayor Ron Gonzales was indicted for bribery, and misappropriation of city funds in an alleged conspiracy to benefit a particular union, costing the city an unnecessary \$2 million per year.

**San Diego, California:** A city employee used her position in the city water department to access and steal confidential information of city residents to steal their identities and open fraudulent credit accounts. On February 2, 2006, the employee pled guilty to four felony counts of mail theft, fraud and computer crimes.

**Providence, Rhode Island:** Mayor Buddy Cianci was sentenced to five years in federal prison after a conviction of criminal conspiracy.

**Birmingham, Alabama:** On July 11, 2006, a city employee was charged with stealing \$40,000.00 worth of city computer equipment.

**Atlanta, Georgia:** Former Mayor Bill Campbell was convicted in August 2006 of tax fraud after being charged with racketeering, corruption, tax fraud and bribery while in office.



**Chicago, Illinois:** In May 2005, a foreman for the city's department of transportation pled guilty to bribery for accepting payment from a contract truck driver for the city who he paid even though the driver did not drive that day. This was the seventh conviction in the scandal.

**Chicago, Illinois:** Twenty-five City Aldermen (Councilors) were convicted of criminal charges between 1974 and the present, and Alderman Arenda Troutman was indicted in January 2007 for corruption and bribery.

**Cicero, Illinois:** Town President Betty Loren-Maltese was convicted of corruption, began serving an eight-year sentence in a federal prison in January 2003 and was required to pay restitution in the amount of \$8.4 million.

**Paxton, Illinois:** An employee in the water department took \$36,403.04 from water bill collections. She pled guilty to theft, paid restitution, and lost her job.

**Boise, Idaho:** Former Mayor H. Brent Coles pled guilty on November 3, 2003 and spent 180 days in jail as a sentence for misuse of public monies and fraud.

In **New Mexico**, we are currently faced with the Metropolitan Courthouse scandal involving indictments and pleas against a prominent State Senator, a former Albuquerque Mayor, and several state contractors.

Former New Mexico State Treasurer Robert Vigil was convicted of attempted extortion and sentenced to 37 months in federal prison.

Former Chief Judge of the New Mexico Second Judicial District Court John Brennan pled guilty in September 2004 to drug and DWI charges and retired in humiliation from the Bench after being stopped at a DWI checkpoint while intoxicated and with cocaine in his possession.



Former New Mexico Insurance Superintendent Eric Serna retired in May 2006 after facing allegations of public corruption involving a bank that the State of New Mexico does business with.

In **Albuquerque**, in 2006, a local businessman was allegedly assisted by an Albuquerque police officer and an Assistant City Attorney in getting traffic charges inappropriately dismissed. The officer has been fired and the Assistant City Attorney resigned.

In 2005, a City of Albuquerque bus driver was terminated and has pled guilty to rape after molesting a young handicapped girl on a bus, and a supervisor was investigated for failing to properly handle an earlier complaint about the driver. The supervisor later resigned. The girl and her mother sued the City.

In 2004, four City of Albuquerque street maintenance workers and their supervisor were disciplined due to routinely leaving their work site hours early while on the nightshift, and having one person stay and clock out for the rest of them. The supervisor was aware of the behavior and allowed it to continue.

In 2004, a City of Albuquerque employee was terminated for stealing and selling large quantities of City motor oil to a local bus company. He was terminated and faced criminal charges.

These examples make clear why communities are struggling to attempt to change the culture of government service. The question is, “Can we legislate ethics”? The answer is both yes and no. We can create more rules of conduct, as already exist in Albuquerque and most other cities listed above, but obviously a code does not guarantee ethical behavior. Almost all of the crimes and unethical behavior listed above were violations of existing ethics rules and laws in these communities.



## **B. National Surveys Corroborate the Scope of the Problem.**

A book published by the International City/County Managers Association (“ICMA”), *The Ethics Edge*, is a compilation of scholarly studies and reports that study ethics violations in public and private organizations and the possible solutions. The book surveys ethics reform efforts that have been conducted across the United States and internationally. One article, *Demonstrating Ethical Leadership by Measuring Ethics*, presents recent surveys that have measured the frequency of ethics violations in public and private organizations, employees’ perceptions of the ethics of their organizations, and how leaders of organizations can make them more ethical (Appendix C).

The surveys support the conclusions that:

1. There are many employees observing unethical behavior in their organizations and not reporting it;
2. Ethical leadership can reduce the number of unethical incidents and the number of employees ignoring unethical acts; and
3. Organizational weaknesses arise when employees are not disciplined consistently, employees feel uncomfortable seeking advice from management, and employees feel they will be retaliated against if they report offenses.

The authors conclude that organizations ignore the ethical climate of their workplace at their own risk. Most of the violations listed above could have been avoided. In order to create an ethical organization, leaders must look at the realities around them. They must create an environment where ethical concerns can be discussed, discipline for violations can be fair, reporting violations is accepted and retaliation never occurs.

We must move away from a rule-oriented code like the one created by Enron, which failed to prevent one of the worst corporate





corruptions scandals the country has ever seen. The ACE Coalition has addressed each of these concerns and sought realistic solutions.

### **C. A Reported Success from Another City.**

Most of the ethics reforms across the country that are breaking new ground or trying new approaches have not been implemented for a significant enough amount of time to produce reportable results. One city undertook ethics reform five years ago, when it became consolidated with its surrounding county government. Kansas City, Kansas had experienced many years of political corruption and employee misconduct prior to consolidation. The new Kansas City consolidated government undertook ethical reform to get a meaningful fresh start. (ICMA's *The Ethics Edge*, 2006).

Five years after the passage of the ethics reform in 2001, Kansas City political leaders report significant growth, economic gains, more efficient delivery of city services at a lower cost, neighborhoods more focused on the quality of life and growing reinvestment in the community. A large part of the success is attributed to the establishment of the ethics program and the priority the community placed on integrity and trust in honest and effective government. The leaders report that public trust and confidence in government has dramatically increased.

The Kansas City ethics program included a new code of ethics, an ethics-training program, and a confidential reporting process. The program also included an independent and autonomous ethics administrator and commission not appointed by or subject to discharge by elected officials. The Kansas City officials conclude that confidentiality in handling and investigating complaints must be maintained and that trust between the public, elected officials, employees, and unions is critical.

The ACE Coalition considered this reported success and reviewed the components of the program Kansas City established.





#### **D. Rule-Based Code vs. Value-Based Code.**

The ACE Coalition agreed with the assessment of the Mayor and the Code of Conduct Evaluation Team that,

“The goal of a set of rules for ethical conduct is to provide a set of guidelines to influence behavior. All employees have to learn the rules and be part of a culture wherein the rules of ethical behavior are part of their everyday considerations instead of an afterthought.”

(Evaluation Team Report Appendix B). Therefore, the ACE Coalition focused on the creation of a set of ethical values that could guide behavior, rather than simply a list of rules of what behavior was considered “unethical”.

Nationally, there was widespread support for our focus of creating an ethical guide. One of the most comprehensive ethics reform efforts is taking place in California. The California Institute for Local Self Government published a series of papers to assist local governments in creating ethical government cultures. In *Developing A Local Agency Ethics Code: A Process-Oriented Guide*, the Institute created a guide that we used as a reality check on where we were going and whether a change of culture was a realistic goal.

One of the real motivations for governments undertaking ethics reforms is the public’s general lack of trust in government and government officials. But as we have stated, the question is, “Do ethics laws work to increase public trust in government”? The California Institute for Local Self Government found that based upon a Brookings Institute study, public trust in federal government institutions has not been increased by the creation of the many ethics rules that govern federal employee behavior. Instead the studies found that government instead needs to focus on teaching new public servants the values related to being an ethical public servant. The study goes on to find that legalistic law-based ethics policies, like the ones now in place in Albuquerque, are rooted in a culture of mistrust and therefore



actually diminish public trust in government. The public hears that there are rules of ethics, but then witnesses unethical acts by public servants that occur despite the existence of rules.

The Institute for Local Self Government concludes, as the ACE Coalition did, that a positive value based code could help avoid the problems of traditional rule based codes. A new value based ethics law can help Albuquerque improve the public's perception of local government.

### **E. Using What Works from Across the Country.**

In our effort to create a workable structure to change a culture, we analyzed and adopted the best of what we found happening in the rest of the country. As stated above, the California Institute of Local Self Government proved a valuable resource. We next made sure we included solutions gathered from the ICMA's *The Ethics Edge*. The ACE Coalition also worked with the materials provided by *City Ethics.org*. This organization has established a national initiative to develop resources for local governments to create meaningful codes of ethics. The focus is changing the culture through value-based codes. Next, we reviewed and relied on the ethical guidelines created by the ICMA and the American Society for Public Administration ("ASPA"). We also looked to new and old ethics laws in many cities including New York, New York; Denver, Colorado; King County (Seattle), Washington; Jacksonville, Florida; Los Angeles, California; Santa Clara, California; and numerous others. For specific examples of language and approaches to create a new code we looked to the International Municipal Lawyers Association Model Ordinance on Ethics, and the *City Ethics.org* model ethics code.

We also utilized a paper, *Municipal Government Codes of Ethics: A Content Analysis*, that analyzed the key elements of what public administration scholars believe should be in local ethics codes. Another valuable source was the Ethics Resource Center that publishes the *Ethics Toolkit*, that provides a guide, like the California Institute Guide discussed above, to help create ethics guidelines in both public and private institutions.



## **F. Applying the Lessons Learned Nationally.**

After the review of what has been attempted across the country, the ACE Coalition concluded that the Mayor and Evaluation Team's goals were appropriate and attainable. Once again, the goals are:

1. A culture of ethical public service in the City of Albuquerque;
2. Clear and meaningful standards of ethical conduct; and
3. A system of teaching and learning the culture of public service, and the standards of conduct.

The ACE Coalition did not find a "model ethics law" that standing alone achieved the goals set for the ACE Coalition. However, we found many good ideas and processes that we believe can work in Albuquerque. The City already has in place a framework of ethics laws and structures that the ACE Coalition analyzed to determine the best way forward.

## **VI. Albuquerque's Current Ethics Rules**

The City of Albuquerque has a rule-based system of ethics laws like many of the cities across the country that we reviewed. The City of Albuquerque is a home rule municipality that was created by a Charter Commission in its current government form in 1971.

### **A. The City Charter.**

The City of Albuquerque Charter Code of Ethics regulates ethics and conduct for City of Albuquerque "Officials", Article XII, Code of Ethics (Appendix D). Officials are defined as the Mayor, City Councilors, members of boards and commissions, committees, all heads of Departments, their deputies or directors of divisions and sections, the CAO and deputy CAOs, the Director of Council Services, and employees directly appointed by the Mayor or CAO.



The Code of Ethics creates a “Board of Ethics and Campaign Practices” composed of seven members who must be “qualified Electors of the City of Albuquerque”, and who cannot be City officials or employees. The Board has jurisdiction to consider violations of the Code of Ethics. The Code of Ethics regulates a very narrow set of issues.

The Code regulates: Conflicts of interest, acceptance of gifts by public officials, use of public property and misuse of City employees in campaigns. The Board may investigate alleged violations, and if the Board votes that there is a violation it can fine (\$500.00), reprimand or recommend removal from office to the City Council. By two-thirds vote of the Council, an official can be removed from office. Disclosure is required by any official of private financial interests they have in any matter pending before the governmental body.

The City Charter Election Code appears at Article XIII of the Charter. The Election Code regulates elections in the City through contribution and disclosure requirements and requires campaign finance reporting. The Board of Ethics regulates compliance with the Election Code as well as the Ethics Code.

A recent City Charter amendment approved by the Voters created the Open and Ethical Elections Code, Article XVI of the Charter, that created a voluntary publicly financed campaign system for Albuquerque. The EPSA does not further regulate City Elections but instead integrates the requirements of the Charter with the new Act.

## **B. The Conflict of Interest Ordinance.**

The Conflict of Interest Ordinance, Section 3-3-1 et. seq. ROA 1994, (Appendix E), is a very short rule-based ethics ordinance that governs City employees and excludes elected officials. The Ordinance regulates gifts and defines gifts differently than they are defined in the Charter. The Conflict of Interest Ordinance also regulates conflicts of interest for present and former employees, prohibits false statements, nepotism, and regulates outside



employment. Finally, the Ordinance requires that a Code of Conduct be created and authorizes a Code of Conduct for particular Departments if approved by the CAO. The EPSA will replace the Conflict of Interest Ordinance, and incorporate its prohibitions.

### **C. The Accountability in Government Ordinance.**

The goals of the Accountability in Government Ordinance are to, "...promote accountability, enhance the effectiveness of government services to its citizens and increase the public's confidence in their government." Section 2-10-2 ROA 1994, (Appendix F).

The Accountability Ordinance creates an Office of Internal Audit and Investigations which is authorized to conduct audits and investigations; ensure that the due process rights of employees created by the Merit System Ordinance are protected; prevent and detect fraud, waste and abuse in City activities; increase the City's legal and fiscal ethical accountability; and, deter criminal activity through independent audit, investigation and interdiction.

The Accountability in Government Ordinance does not create separate or additional rules of conduct but only creates a mechanism to help ensure compliance with existing rules and laws.

### **D. Whistleblower Policy.**

The Whistleblower Ordinance was adopted in 2004 and governs the reporting of improper governmental action. Section 3-7-1 et. seq. ROA 1994, (Appendix G). The Whistleblower Ordinance creates a process for handling reports of improper actions, their investigation and non-retaliation provisions. The Whistleblower Ordinance does not create rules or standards of behavior.



## **E. Merit System Ordinance/Personnel Rules and Regulations.**

The Personnel Rules and Regulations of the City are authorized by the Merit System Ordinance, created by the CAO and administered by the Director of Human Resources. The Rules and Regulations contain what is entitled a “Code of Conduct”, which is essentially a rule-based list of “employee shall and shall nots”. Personnel Rules and Regulations Section 300 and Section 3-1-3 et. seq. ROA 1994, (Appendix I). This Code of Conduct is contained in the middle of the Rules and Regulations, and meets the requirement of the Conflict of Interest Ordinance for the creation of a Code of Conduct. The Personnel Rules and Regulations list other “prohibited behaviors” throughout the Rules. The Merit System Ordinance itself does not create any rules of conduct, but establishes a process for discipline, outlines the requirement for just cause and sets out the process for classified employees to appeal discipline. Section 3-1-23 ROA 1994, (Appendix H). The EPSA confirms and embraces the Merit System Ordinance requirements for due process.

## **F. Administrative Instructions.**

The CAO has created many Administrative Instructions that establish appropriate behavior and create prohibited behaviors. The Instructions do not create a “Code of Conduct”, but supplement and add to the Personnel Rules and Regulations list of prohibited conduct.

## **G. A New Set of Rules?**

Considering this fractured and diverse combination of ethics rules and layers of process, the ACE Coalition had to make a choice:

1. Create an entirely new ethics code and process from the ground up and discard everything that is now in place; or
2. Create a new value-based code and structure to change the culture and retain as much of the current ethics laws, rules and process as possible.



We chose the latter course. When change is attempted, there are always unintended consequences and unforeseen problems. We chose to create a value-based code and structure and keep in place as much of the underlying ethics rules and process as possible to minimize the chances for adverse results that could not be anticipated.

In choosing the more conservative approach, one of the most important considerations was that the structure put in place to change the culture has a mechanism designed to continually update and change the ethical system if it is not effective in changing the culture. We believe we have taken the best of both options. We change as little as possible now, but build in a process to allow for continuing change to meet the needs of the City based upon the experiences under the new value-based code and structure.

## VII. The Ethical Public Service Act

The ACE Coalition has taken a step that may be considered radical by some and simple “back to the basics” logic by others. We are proposing adoption of a value-based Code of Conduct called the Ethical Public Service Act, or “EPSA” (Appendix A). The title of the EPSA says it all. We are proposing that the mission is public service, and that the mission will be accomplished ethically. The radical departure from our current form of operation is that we currently have no discernable ethical code, no defined values and no concept of what public service should mean.

### A. Value-Based.

What values do we believe should govern our conduct as public servants? The key to the success of the EPSA will be that it is based not upon rules or prohibited behaviors or “shall nots”, but instead it is based on setting out what our values of public service are. Public service is a privilege, carrying obligations, responsibilities and benefits. We establish in the EPSA what values we hold above all others as public servants for the citizens of Albuquerque.





## **B. Applies to All Public Servants.**

All people being paid by the citizens to perform services for them, or who are volunteering for the citizens' benefit, are considered public servants. For the first time, all Albuquerque public servants will be accepting the same standards of public service and aspiring to uphold the same values. Public servants are defined as all employees, elected officials, board members, and volunteers. The values that form the basis for ethical public service apply equally to every public servant, from top to bottom and bottom to top.

It was very apparent in our work that one of the strongest causes of cynicism from both the public and City employees is the belief that different rules apply to different people in the City organization. Therefore, for purposes of the EPSA, all public servants share the same obligations and same benefits of public service.

## **C. Duty to the Public and to Fellow Public Servants.**

The EPSA clearly defines that a public servant's first obligation is to the citizens of the City of Albuquerque. Second, the EPSA identifies the duty of all public servants to treat each other with respect and compassion, and to be responsive to the needs of others. The EPSA specifically states that the duty of public servants is to ensure that if disputes arise between public servants they should be resolved at the lowest level possible in order to not waste public resources in endless internal disputes.

## **D. The Seven Core Values of Ethical Public Service.**

The cornerstone of the EPSA is the creation of seven core values of ethical public service. The values of the City of Albuquerque will be:





1. **Honesty;**
2. **Fairness;**
3. **Respect;**
4. **Compassion;**
5. **Responsibility;**
6. **Accountability; and**
7. **Loyalty.**

The ACE Coalition held a retreat and looked at a long list of values that we felt would best change City ethical culture. We decided on these seven core values as the most important to emphasize for our organization. We chose to encourage ethical decision making by providing models of ethical behavior for each value. For each value we stated, “**As a public servant for the citizens of Albuquerque, I will be \_\_\_\_\_. In practice \_\_\_\_\_ looks like:**” We then provide examples of the value and standard. For example, the EPSA states:

**As a public servant for the citizens of Albuquerque, I will be HONEST. In practice honesty looks like: a) I am truthful, act with integrity and have moral courage”, and b) I do not lie, cheat or steal or tolerate those who do...”**

For each value we specifically define, through examples, what the value means.

For **Honesty**, we provide the examples of honest behavior of being truthful, trustworthy, having integrity and moral courage; never lying, cheating or stealing; not accepting, bribes, or unlawful gifts; performing duties free from political influence; not exceeding one’s authority; and, not using one’s position with the City for personal benefit or financial gain.

For **Fairness**, we describe the concepts of respect for people’s differences and non-discrimination; making decisions based on



facts, not personal bias; performing duties with impartiality; and, the application of fair and consistent standards.

**Respect** emphasizes treating all people with courtesy, dignity and honor; treating all people you deal with as valuable and important; and, solving disputes without making them personal.

The value of **Compassion** focuses on doing no harm to others when it can be avoided; recognizing the consequences your actions have on others; and, maximizing benefits to the public and minimizing harm.

**Responsibility** targets learning and performing your duties; admitting mistakes and accepting the consequences; and, not ignoring ethical violations you witness.

An **Accountable** public servant is one who performs their duties openly and honorably; makes proper use of City time, funds and property; and, answers for their conduct.

Finally, what is a **Loyal** public servant? Loyalty means being loyal to the public above all others; being loyal to fellow public servants; making all information open to the public, except when there are confidences that must be kept as part of a public servant's job; and, a commitment to the principles of being a public servant set forth in the EPSA.

## **E. Building on a Foundation of Ethical Values.**

### **1. Benefits to the Public and Public Servants.**

After establishing the ethical values for City of Albuquerque public servants, the EPSA then clearly outlines the benefits to the public and to public servants of behavior guided by these values.

- a. Public service will be more efficient and cost effective since less tax dollars will be spent dealing with the adverse consequences of unethical and illegal acts of



public servants. In turn, the public will develop a new basis for trust in City Government;

- b. Public servants will gain respect and a more fulfilling career through accepting and working according to these seven core values; and
- c. Public servants will benefit from a new work environment that fosters fairness and accountability.

## **2. Providing Real Consequences for Unethical Behavior.**

One of the primary missing ingredients needed for an effective Code of Conduct in the City is a lack of clear consequences. Given the fractured nature of our ethics laws, no one knows where to look for guidance on what the rules are, what happens if they are violated, and what actions will constitute a violation.

The EPSA bridges this gap. After creating the seven values, the ACE Coalition believed that the values would remain without life or meaning if there were no clear consequences for unethical or illegal behavior. The primary goal of the EPSA is to work toward a culture where ethical behavior is the accepted standard, and unethical behavior is rare, and not tolerated. This can only be accomplished if every public servant violating laws or our ethical standards suffers fair, but appropriate and consistent consequences. Elected officials, board members, employees and volunteers must all be equally accountable for violations of the law or our ethical standards.

The ACE Coalition chose to combine the value-based standards of conduct, with minimum standards of conduct that a public servant cannot fall below. In Section VI. C., we outline the consequences for all public servants for violations of law or the prohibited behavior section of the EPSA. Section VI. of the EPSA codifies the prohibited behaviors for all public servants. The EPSA outlines all



prohibited behaviors, and establishes a clear set of consequences for employees, officials, and volunteers. Although not public servants, contractors are paid public funds and therefore, also carry an obligation to the public. The EPISA creates specific conflict of interest and disclosure requirements for public contractors.

### **3. Real Progressive Discipline.**

The ACE Coalition recognized that one of the greatest obstacles to creating an ethical culture of public service was the perception of a lack of accountability and fairness in the disciplinary process for unclassified and classified employees. This problem was solved by:

- a. Making the prohibited behaviors clear and meaningful; and
- b. Providing fair, appropriate and clear consequences.

Unclassified employees are subject to termination for serious offenses. For the first time, classified employees will know with a high degree of certainty what acts are a violation of the rules and what the consequences are (Section VI. C.). Classified employees will be terminated for grievous offenses. They may get a second chance if it is a less serious first offense or due to the particular circumstances of the case. A second serious offense within five (5) years of the first serious offense requires termination. Minor offenses are handled through a “three strikes and you are out” rule. The same procedures and due process safeguards provided by the Merit System Ordinance that exist today will continue.

No longer will unethical employees need to be retained because the process of progressive discipline is too complicated and long running. The citizens and public servants should not have to tolerate working with or paying the salary of unethical public servants. The Personnel



Hearing Officers or arbitrators reviewing these disciplines will have clear guidance and boundaries on what discipline is appropriate.

#### **4. Rehabilitation Not Just Discipline.**

The system also allows for reform and rehabilitation of public servants who deserve a second chance. For the first time an employee will not only serve a disciplinary suspension, but is required to attend mandatory rehabilitation as deemed appropriate for the particular violation (Section VI. C5.). If an employee can become an ethical public servant, everyone wins. If they cannot be rehabilitated they will no longer be a burden on the taxpayer and their coworkers. They will be terminated.

#### **F. The Living Structure of Ethical Public Service.**

Seven established values of ethical public service and clear and meaningful prohibited behaviors with fair, appropriate and consistent consequences are the beginning point. Where most ethics reform attempts fail is in the execution. No one is given responsibility to teach the ethical values and ethical decision making; ensure the hiring and retention of ethical people; report and correct violations; and change the system if it is broken.

The structure created by the EPSA solves these problems and has a greater chance of success than systems that create no mechanism or individuals responsible for changing the culture. Specific individuals within the bureaucracy will have the responsibility to ensure success. For each of the pieces of the process there is a person who is responsible for performing the required duties. Each part of the structure is necessary to accomplish the goal of creating an ethical culture of public service.



## **1. The ACE Coalition.**

The ACE Coalition brought together an incredibly diverse cross section of public servants who have witnessed unethical behavior. Many municipalities have created Boards of Ethics or commissions to establish and maintain a system of ethical public service. These boards typically do not allow public servants to be members. The ACE Coalition has developed a unique approach to change a culture by including public servants in the Coalition.

### **a. Self-critical analysis.**

It has proven extremely effective in our service on the ACE Coalition to have the people who work “in the trenches” creating the plan to fix the problems they have witnessed. It is extremely helpful in the area of ethics to have the people who are going to be following the rules, create the rules. The structure we created is realistic, and designed to overcome the cynical attitude of the public and other public servants.

### **b. Change in each individual public servant.**

Members of the ACE Coalition have reported the change that has taken place within them. Each member has learned to see their duties and responsibilities in a new light. We are looking at our service to the public through the seven values that guide the conduct of all public servants. This experience of change can be transmitted through the City structure by the EPSA. Obviously, not everyone will change; however, if enough individuals follow the lead of the ACE Coalition, the organizational culture can evolve.



### **c. Makeup and Duties of the ACE Coalition.**

The ACE Coalition has spent over two years creating this effort to change a culture. After the EPSA is enacted, the ACE Coalition will change.

- i. The ACE Coalition will become the Ethics Leadership Council (“ELC”). The ELC will also have twenty-one members, but membership will change. The new membership will be broadened to include key personnel from the Board of Ethics; the Director of the Office of Internal Audit and Investigations; a person from the finance operations of the City; and, a City Council representative; and
- ii. Meetings will be monthly and be focused on creating the remaining structure, overseeing the implementation of the education, reporting, and complaint systems, and recommending any changes necessary in ethics personnel and the EPSA.

## **2. The City Clerk and Ethics Resource Center.**

No system succeeds without individuals being responsible for accomplishing particular duties. Most private companies have entrusted ethics reforms to ethics officers. In the public sector there have been three solutions: a board or commission; an ethics officer; or, assigning all management in general to ensuring ethical behavior. In the system created under the EPSA there are many individuals and several organizations with particular duties overseeing ethics in the City. At the center of the organization, orchestrating each part, is the City Clerk. The Albuquerque City Clerk will take on a new role under the EPSA, and will become an independent officer subject to removal only for cause.



The City Clerk and the Ethics Resource Center, managed by the City Clerk, shall be responsible for:

- a. Creating the educational programs required under the EPSA;
- b. Handling complaints and inquiries and ensuring they are forwarded to the appropriate office, and appropriately resolved;
- c. Drafting advisory opinions;
- d. Supporting the ELC;
- e. Supervising the Department Ethics Advisor's ethics functions;
- f. Supporting the Departments in changing their unique cultures; and
- g. Assisting the Human Resources Director in their duty to hire and retain ethical public servants and develop mandatory training programs to modify the behavior of disciplined employees not terminated.

### **3. Department Ethics Advisors.**

Each Department in the City will have an Ethics Advisor. Each City Department has a unique culture. Change will not occur in these Departments unless someone from within participates in creating the training and institutional changes necessary to create an ethical culture. The ELC will assist in selecting a person to be the Ethics Advisor for each Department who is a natural leader in the workplace and capable of leading ethical change by example.

Some Departments will need several Ethics Advisors, since many Departments have several unique and independent divisions, or are divided into different units at different





geographic locations throughout the City. Each part of a Department that has substantial independence from the rest of the Department needs its own Ethics Advisor. If an employee has an ethical question or issue, they need to have someone they can trust to talk to about it.

The Ethics Advisors will not be involved in investigating complaints and will not get involved in the disciplinary process. Their role is to be a counselor and advisor on ethical issues and to help create training programs and to assist in training. If there are complaints, they will be referred to the City Clerk for a determination on whether it is a question that can be simply answered or whether it is a complaint that must be referred to either the Department, the Inspector General, or a law enforcement agency to investigate.

## VIII. The Road Forward

There is nothing easy or quick about true change. The way it always begins is with the first modest step. In April 2004, Mayor Martin Chavez asked the question, “What can we do about misconduct by City public servants?” This question resulted in the next step of the Mayor forming the ACE Coalition. The ACE Coalition has provided a definitive answer. All public servants must come together to build better government for the citizens of the City of Albuquerque based on honesty, fairness, respect, compassion, responsibility, accountability and loyalty to the citizens. The EPSA is the vehicle to begin this better government.

This report was prepared by the ACE Coalition for the Mayor and CAO. Their review, input, advice, and guidance has been essential to the ACE Coalition accomplishing this first step on the road to a more ethical system of public service in Albuquerque.

With the approval of the EPSA by the Mayor and CAO the next steps are:



- Introduce and obtain passage of the EPSA by the City Council;
- After introduction to Council obtain the review and acceptance of the EPSA by the Mayor's executive staff, Department Directors, and the original Code of Conduct Evaluation Team; and
- Obtain the review, comment and acceptance of the citizens of Albuquerque, the public servants, and the unions.

Upon the passage of the EPSA the real work will begin. After all, we do not want to repeat our past mistakes. A set of rules standing alone will not work. We must work together as a community to create an ethical culture of public service for the citizens of Albuquerque.

# Appendix A

# The Ethical Public Service Act



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# THE ETHICAL PUBLIC SERVICE ACT

## **I. Vision, Mission and Values of Albuquerque Public Servants.**

Public service is a public trust. The Ethical Public Service Act is created to enhance the public's trust in City of Albuquerque government.

City of Albuquerque employees, elected officials, board members and volunteers are public servants dedicated to continually enhancing the quality of life for the citizens of the City of Albuquerque through honesty, integrity and good character in a work environment that guarantees fairness and accountability.

### **A. Purposes of the Ethical Public Service Act.**

The purposes of the Ethical Public Service Act are to:

1. Create and promote a culture of ethical public service in City of Albuquerque government for all public servants, regardless of their position;
2. Establish clear standards of conduct that represent the values of City of Albuquerque public servants and clear consequences for violations of the standards;
3. Promote public trust and confidence in Albuquerque's government;
4. Provide for the consideration and resolution of potential ethical problems before they arise; and,
5. Promote individual responsibility for ethical decision-making in all public servants.



## B. Duty to the Public.

The first obligation of public servants in carrying out their duties and responsibilities is to the citizens of the City of Albuquerque.

Public servants at all levels shall serve the public with respect, concern, courtesy and responsiveness, recognizing that service to the public is the reason for their employment.

## C. Duty to Fellow Public Servants.

Public servants at all levels share the common obligation of serving the citizens of Albuquerque. If public servants are divided in their service, the citizens suffer.

In performing their duties, public servants shall treat each other with respect, concern, and responsiveness, recognizing that each and every public servant can only achieve their common goal of exceptional public service by working together.

Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent resolving these disputes is money not spent for important public needs.

## D. Values of Albuquerque Public Servants.

Public servants shall perform their duties following the highest ethical values. Public servants shall continually strive to improve their conduct by accepting personal responsibility for their actions, performing their duties to the public with honor and integrity, and leading by example.

The following values of ethical public service shall guide the conduct of all public servants.



## **ETHICAL PUBLIC SERVICE REQUIRES ACTIONS THAT MEET THE FOLLOWING VALUES:**

1. As a public servant for the citizens of Albuquerque, I will be **HONEST**. In practice, honesty looks like:
  - a. I am truthful, act with integrity, and have moral courage.
  - b. I do not lie cheat or steal, or tolerate those who do.
  - c. I am trustworthy, do what I say I will do, and am known as a person of my word.
  - d. I accept no bribes, or unlawful gifts; perform my duties free from political influence; am careful not to exceed my authority; and, I do not use my position with the City for personal benefit or financial gain.
  
2. As a public servant for the citizens of Albuquerque, I will be **FAIR**. In practice, fairness looks like:
  - a. I serve the public and work with fellow public servants regardless of their race, belief, gender, sexual orientation, political affiliation or ethnicity.
  - b. I exercise my authority with open-mindedness and make decisions and judgments after I seek out all of the facts and all perspectives.
  - c. I make decisions and perform my duties with impartiality and objectivity and distribute benefits and burdens according to consistent and fair standards.
  - d. I handle all personnel and contract matters on the basis of merit so that all decisions are governed by fairness and impartiality.





3. As a public servant for the citizens of Albuquerque, I will be **RESPECTFUL**. In practice, respect looks like:
  - a. I treat all citizens and fellow public servants with courtesy, dignity and honor.
  - b. I treat every person, regardless of his or her position or status, as valuable and important.
  - c. I listen carefully to others and value their opinions.
  - d. I handle the disputes that arise while conducting City business professionally based on the facts of the dispute and without making it personal.
  
4. As a public servant for the citizens of Albuquerque, I will be **COMPASSIONATE**. In practice, compassion looks like:
  - a. I do no harm to others in the conduct of my duties, when there is a way to meet my obligations without causing that harm.
  - b. I recognize the consequences my actions have on others and am concerned for the well being of all those I affect.
  - c. I am committed to performing my duty to the public by maximizing benefits to them and minimizing harm.
  - d. I do everything in my power to aid the public without violating my obligations as a public servant.
  
5. As a public servant for the citizens of Albuquerque, I will be **RESPONSIBLE**. In practice, responsibility looks like:
  - a. I learn the duties of my job and strive to perform my duties to the best of my ability.
  - b. I do not ignore the situation if I observe a fellow public servant failing to perform their duties or failing to follow these ethical standards.
  - c. I conduct myself on and off duty so that I avoid the appearance of improper behavior that is unacceptable for a public servant.



6. As a public servant for the citizens of Albuquerque, I will be **ACCOUNTABLE**. In practice, accountability looks like:
  - a. If I make a mistake in the performance of my duties, or fail to follow these standards of ethical conduct, I will admit my error and accept the consequences.
  - b. I perform my duties in service to the public openly, efficiently, equitably and honorably.
  - c. I make proper use of City funds, property, work time and equipment within my control.
  - d. I will handle all potential violations of these ethical standards by following the process created by the Ethical Public Service Act.
  
7. As a public servant for the citizens of Albuquerque, I will be **LOYAL** to the citizens of Albuquerque. In practice, loyalty looks like:
  - a. I am loyal to the public and my fellow public servants and the trust that they place in me.
  - b. I place the interest of the public above all other conflicting interests while performing my duty to the public.
  - c. I make open to the public all information used or created to perform my job that is not confidential and keep the confidences required in my position as a public servant.
  - d. I am committed to the principles of being a public servant as set forth in the Ethical Public Service Act.

## **II. Definitions.**

- A. “Administrative Instructions” are regulations created by the Chief Administrative Officer.



- B. “Boards” are City of Albuquerque committees, boards, or commissions whose particular authority is defined by City ordinance, resolution, or regulation.
- C. “Board Member” means any non-employee member of a City board, committee, or commission.
- D. “Business Dealings” or "Business Dealings with the Governmental Body" includes circumstances where a person is:
1. Presently a party to a contract with the City;
  2. Presently a subcontractor under a subcontract with a party under contract with the City;
  3. Bidding, proposing or applying for contracts with the City;
  4. A party in litigation with the City;
  5. A party before a quasi-judicial administrative proceeding conducted by a City board, commission, committee or hearing officer; or,
  6. A party to an appeal of a decision of a City Department, quasi-judicial administrative board, commission, committee or hearing officer.
- E. “City Process” means any City employment, contract or administrative action taken by public servants in the course and scope of their duties.
- F. “Close Personal Relationship” means an intimate personal relationship and/or a sexual relationship. This definition applies regardless of the sexual orientation of the persons involved.
- G. “Confidential Information” means information which by law or practice is not available to the public.
- H. “Conflict or a Conflict of Interest” means a situation in which regard for a private interest or relationship interferes with or compromises a public duty or interest.



- I. “Consideration” means something of value or a written promise to pay or otherwise provide something of value, which is enforceable through the courts.
  
- J. “Contract with the City” means a written contract to:
  - 1. Purchase real property from the City;
  - 2. Sell real property to the City;
  - 3. Rent real or personal property to or from the City; or,
  - 4. Provide services and/or goods to the City.

A contract with the City shall also include all subdivision improvement agreements for the private development of public infrastructure and associated easements and revocable permits. Contracts excluded from this definition are those for services provided by the City such as water, wastewater or solid waste collection; intergovernmental agreements such as a joint powers agreement or a memorandum of understanding. Permits and licenses issued by the City shall not be deemed contracts with the City for purposes of the Ethical Public Service Act.

- K. “Contract Manager” means the City employee who is directly responsible for the oversight and review of a City Contract.
  
- L. “Contractor” means any person who is a party to a contract with the City.
  
- M. “Direct Interest”, “Private Interest” or “Private Financial Interest” means any interest that yields, directly or indirectly, any monetary or other material benefit to a public servant or their spouse or minor children. It shall not include a city employee or elected official’s city salary or other compensation authorized by law. It shall also include an interest concerning:



1. A partnership, limited liability partnership, or limited liability company in which an official has invested capital or otherwise owns an interest;
2. A corporation in which a public servant owns:
  - a. Ten percent (10%) or more of the outstanding capital stock; or,
  - b. Capital stock with a cumulative value of \$25,000 or more; or,
  - c. A corporation, partnership, limited liability partnership, or limited liability company in which the official is an officer, director, or agent.

Direct Interest, Private Interest or Private Financial Interest does not mean an interest in stock owned indirectly through a mutual fund, retirement plan, or other similar commingled investment vehicle, the individual investments of which the elected official or employee does not control or manage.

- N. “Disclosure” means written notice given to the City Clerk, and other persons required to receive any disclosure pursuant to the Ethical Public Service Act, or other ordinance, of the facts relating to a conflict of interest or a potential conflict of interest of the public servant.
- O. “Elected Official,” means the Mayor and City Councilors.
- P. “Employee” means any public servant who is a compensated classified or unclassified employee of the City of Albuquerque.
- Q. “Gift” or “Valuable Gift” means that which is accepted by an official or employee, or by another on the official or employee's behalf, or that which is paid or given to another for or on behalf of an official or employee, directly, indirectly, or in trust for the official or employee's benefit, or by any other means, for which consideration equal to or greater than fair market value is not given by the official or employee within ninety (90) days of the



official or employee's receipt of such gift, including, but not limited to:

1. Real property;
2. The use of real property;
3. Tangible or intangible personal property;
4. The use of tangible personal property;
5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is neither a government rate nor a rate available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin;
6. Forgiveness of an indebtedness;
7. Transportation, other than that provided to an official or employee by a governmental agency in relation to approved government business, lodging or parking;
8. Food or beverage;
9. Membership dues, other than dues paid by a City agency;
10. Entrance fees, admission fees, or tickets to events, performances, or facilities;
11. Plants, flowers, or floral arrangements;
12. Services provided by persons pursuant to a professional license or certificate;
13. Other personal services for which a fee is normally charged by the person providing the services; or,
14. Any other similar service or thing having an attributable value not already provided for in this section.

Gift does not include:

1. Salary, benefits, services, fees, commissions, returns on an investment, a loan, interest incurred on a bond, or expenses associated primarily with the official or employee's employment, business or service as an officer or director of a private corporation or organization;



2. Contributions reported as campaign contributions pursuant to the Election Code and the City Charter Code of Ethics;
3. An honorarium or an expense related to an honorarium event paid to an official or employee or the official or employee's spouse;
4. An award, plaque, certificate, or similar personalized item given in recognition of the official or employee'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. Transportation provided to an official or employee by a governmental agency in relation to official or employee approved governmental business;
8. 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, provided that such organization has a membership that is primarily composed of elected or appointed public officials or employees;
9. The use of a City facility by an official or employee; or,
10. All non-pecuniary things or services donated in any twelve (12) month period from a single donor that have a cumulative fair market value of one hundred dollars (\$100.00) or less.

R. "Immediate Family" or "Immediate Family Member" includes spouse, child, stepchild, mother, father, grandparents, grandchild, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son-in-law and daughter-in-law, first cousins, nieces, nephews, uncles and aunts. The term also includes a domestic partner and their immediate family as defined above.



- S. “Indirect Interest” or “Indirect Private Financial Interest” means any interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the official or employee or the official’s or employee’s immediate family. Indirect interest shall include a pecuniary or competitive advantage that exists or could foreseeably accrue as a result of the act or inaction of the official or employee.
- T. “Off Duty Conduct” means any conduct of a public servant that occurs when they are not in the process of performing services for the City of Albuquerque.
- U. “Official” means the Mayor; all members of the Council; all members of boards, commissions and committees; all directors and the equivalent thereof for each Department, division or section; assistant, associate or deputy department, division or section directors and the equivalent thereof; the Director of Council Services; the Chief Administrative Officer; Deputy or Assistant Chief Administrative Officers and the equivalent thereof and all other City employees appointed directly by the Council, Mayor or Chief Administrative Officer.
- V. “Official Act” means an official decision, vote, approval, disapproval or other action which involves the use of discretionary authority.
- W. “On Duty Conduct” means any conduct of a public servant that occurs when they are in the process of performing services for the City of Albuquerque.
- X. “Person” means any individual, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, profit or nonprofit organization, official or other entity.





- Y. “Personal Interest” means any interest arising from immediate family, or close personal relationships, or from close business dealings, whether or not any financial interest is involved.
- Z. “Potential Conflict of Interest” means a situation in which regard for a private interest or relationship may outweigh a public duty or interest.
- AA. “Public Servant” means any person who is an elected official, employee, board member or volunteer of the City of Albuquerque.
- BB. “Volunteer” means any person who performs any services for the City of Albuquerque without compensation.
- CC. “Work Unit” means those City employees with whom an employee works on a regular and/or frequent basis.

### **III. Requirements of the Ethical Public Service Act.**

Each of the following requirements of the Ethical Public Service Act shall be implemented with the utmost diligence. Each of the requirements of the Ethical Public Service Act shall be implemented no later than six (6) months from the time the Ethical Public Service Act becomes effective.

- A. Every public servant is responsible for making good ethical decisions, and learning and following the requirements of the Ethical Public Service Act, the applicable laws of the United States, the State of New Mexico and the City of Albuquerque.
- B. The Ethics Leadership Council is hereby created in Subsection VII. A., as a continuing part of Albuquerque City Government responsible for promoting and ensuring a culture of ethical public service for all public servants.



- C. The City Clerk shall be responsible for assisting the Ethics Leadership Council and for ensuring that the goals of the Ethical Public Service Act are met as described in Subsection VII. B.
- D. Department Ethics Advisors shall be appointed by every City Department to help lead their Departments toward the vision and goals of the Ethical Public Service Act as described in Subsection VII. C.
- E. Education.

All public servants shall participate in training to learn their responsibilities as public servants under the Ethical Public Service Act within two (2) weeks of the time they begin their service as public servants and at a minimum of annually thereafter. The initial and annual training for City employee supervisors shall include training on how to be ethical leaders of public servants.

- F. Volunteers.

- 1. Volunteer Conflict of Interest.

Volunteers, unless expressly authorized by a public servant empowered to grant such authorization, are prohibited from acting as volunteers in any matter in which they have or may have a personal financial interest or in connection with which they expect or hope to receive any personal benefit.

- 2. Duty as a Public Servant.

Any person who serves as a volunteer on behalf of the City shares in receiving the public trust, and shares in the responsibility for contributing, creating and maintaining an ethical work environment. Volunteers serve without the expectation of receiving any compensation from the City and it is



improper for any volunteer to seek any compensation from any person served by the volunteer. Prior to serving as a volunteer, each volunteer shall sign an agreement, which includes a provision that binds the volunteer to comply with the applicable provisions of the Ethical Public Service Act.

#### G. City Contractors.

##### 1. Contractor Conflict of Interest.

No contractor or person seeking a contract with the City shall offer bribes or gifts as defined by this Ordinance nor enter into a contract with the City where the City contract manager is an immediate family member or close personal relation of the contractor, or the contractor's employee or agent.

##### 2. Duty of a Contractor.

Although not Public Servants, contractors doing business with the City are being paid with public funds. All contracts with the City, for provision of goods or services, or for the purchase or sale of real or personal property, paid for by public funds, shall contain a requirement that clearly describes the contractor's obligations as a public contractor; and, wherein material violations of the contractual obligations of a public contractor shall constitute a breach of the contract that may result in termination of the contract by the City.

##### 3. Disclosure.

Public contractors shall disclose to the City Clerk and the Chief Administrative Officer, or if necessary, the Office of Internal Audit and Investigations, any violations of law or their contractual obligations as a public contractor, by them, their employees or any public servant, at the time the contractor becomes aware of the suspected violation.



4. Contractual Language.

The contractual language created to comply with these obligations shall be reviewed and approved by the City Clerk and the City Attorney. The individual contract documents must contain the approved language but need not be reviewed and approved individually by the City Clerk.

5. Contract Manager Duties and Disclosure.

The City Purchasing Officer and any individual who is a manager of a City contract shall ensure that all City contracts contain the applicable contractual obligations described above. A Contract Manager who has a financial or personal interest in any contract shall disclose such interest to the City Clerk and their Department Director prior to their participation in any official act involving the contract.

6. Conflict with Other Laws.

The obligations placed on City contractors by the Ethical Public Service Act shall be in addition to the requirements of other laws, but if a conflict arises, the Ethical Public Service Act shall be read to give effect to both laws and not be in conflict. If a conflict arises between the Ethical Public Service Act and the Public Purchases Act, the Public Purchases Act shall prevail.

#### **IV. Consequences of Acting Ethically.**

If public servants perform their service based on the seven ethical values, the citizens of the City of Albuquerque and public servants will benefit.



A. Benefit to the Public.

The public benefit of a culture of ethical public service in City of Albuquerque government is more accountable, efficient and cost effective service, so that tax dollars can be spent on the important services the public deserves rather than on the results of unethical conduct of public servants.

B. Benefit to Public Servants.

The benefit to ethical public servants is the ability to personally grow in their careers with the respect of their peers, supervisors, and the public in a work environment that fosters fairness and accountability.

**V. Consequences for Not Acting Ethically.**

- A. The seven (7) values of ethical public service, contained in Subsection I. D., govern all actions of public servants. The seven values are guidelines for behavior, and do not by themselves create a basis for discipline or other consequences.
- B. For violations of the seven (7) values that are not prohibited by a specific law or the prohibited behavior section of the Ethical Public Service Act, the consequences are the loss of personal respect and the diminished reputation of all public servants.
- C. The consequences for violations of law or the prohibited behavior section of the Ethical Public Service Act are provided for in a number of established rules or laws, which include the following:
1. Fines and or imprisonment for all public servants where the conduct is criminal in nature;



2. For the Mayor and City Councilors, dismissal from office through recall, or a failure to be re-elected; and, fines and removal from office as specifically provided by the City Charter Code of Ethics;
3. For members of boards, commissions and committees, removal from office, and as specifically provided by the City Charter Code of Ethics, and the Boards and Commissions Ordinance;
4. For unclassified or probationary employees, termination, as specifically provided by the City Charter Code of Ethics, and the Merit System Ordinance;
5. For classified employees, termination, demotion or other discipline, and as specifically provided by the Merit System Ordinance and Section VI. below; and,
6. For volunteers, release from duty.

## **VI. Prohibited Behaviors.**

The seven values of ethical public service in Section I. D. of this Act establish a level of behavior for which all public servants should strive. However, if these values are not being followed, a minimum level of acceptable behavior for public servants must be established.

The prohibited behaviors in the following Subsections A. and B. apply to all City of Albuquerque public servants, except as specifically limited. Prohibited behaviors for City employees in Subsections A. and B. below may be more particularly described and defined through the Personnel Rules and Regulations and Administrative Instructions from the Chief Administrative Officer.



## A. **On Duty Conduct.**

The following behaviors represent illegal or unethical on duty conduct that fall below the minimum level of behavior established in this Act.

1. Theft.
  - a. The stealing or taking of public or private property for personal gain or benefit, or for the benefit of third persons;
  - b. The misuse of City work time or unauthorized absence from work; or,
  - c. The misuse of public or private funds or property.
2. Dishonesty.
  - a. Lying, cheating, false statements and fraud; or,
  - b. Concealing violations of rules, laws, or misconduct.
3. Violence or Abuse.
  - a. Violent or abusive behavior directed toward any person;
  - b. Intimidation or verbal threats made toward any person; or,
  - c. The abuse, loss, damage or misuse of City property.
4. Harassment.
  - a. Sexual harassment;
  - b. Racial harassment; or,
  - c. Dangerous or offensive practical jokes, horseplay, and roughhousing.



## 5. Conflicts of Interest.

A conflict of interest arises for a public servant when a private interest or relationship interferes with, or compromises, a public duty or interest.

Conflicts of interest shall be disclosed to the City Clerk and the Chief Administrative Officer at the time the conflict arises.

No public servant shall participate in any official act for the City when they have a conflict of interest in the matter.

Conflicts of interest arise in the following circumstances:

### a. Bribery.

No person seeking appointment to, or promotion in the service of the City, or a contract with the City shall, knowingly, either directly or indirectly, give, render or pay any money, service, or other valuable thing to any public servant for, or on account of, or in connection with, a test, appointment, proposed appointment, promotion, or any personnel action, or contract. Payments to licensed employment agencies are exempted.

### b. Gifts.

No public servant shall knowingly accept any valuable gift, whether in the form of service, loan, thing, or promise, from any public servant, any employee of, or applicant for employment with the City of Albuquerque or from any person, firm, or corporation which to the public servant's knowledge is interested directly or indirectly in any manner whatsoever, in business dealings with the City including for elected officials, donors who are unidentified; provided, however, that this subsection shall not be read as prohibiting





an incumbent candidate for any elective office from receiving duly disclosed campaign contributions in accordance with the provisions of Article XIII of the City Charter or an elected official or board member who is a candidate for a non-City office from receiving campaign contributions for that non-City office.

c. Employee Financial or Personal Interest.

It shall be a conflict of interest for any City official or employee to participate directly or indirectly in managing a City contract or participating in a City process when the employee, any member of the employee's immediate family, or close personal relation, has a financial or personal interest pertaining to the contract or City process.

d. Employee Relationships.

No official or employee shall:

- i. Directly supervise, appoint, hire, promote, control, influence, or advocate the appointment, employment, promotion or advancement in or to any position, any immediate family member or person with whom they have or have had a close personal relationship or affect the affairs of the organizational unit in which the immediate family member or close personal relation is employed;
- ii. Officials and employees, acting as supervisors, are prohibited from having close personal relationships with their subordinates. If any such relationship does occur, it must be immediately disclosed by the supervisor to the City Clerk, and Department Director so that immediate steps can be taken to resolve a conflict with this provision;



iii. Employees are prohibited from having close personal relationships with their supervisors and must disclose them to the City Clerk and Department Director if they occur; and,

iv. All officials and employees are discouraged from having close personal relationships with co-workers in their work units because of the conflicts of interest that may arise.

e. Disclosure of Conflicts.

Every person who has an existing or potential financial interest or other conflict of interest, or who has an immediate family member, or close personal relation, who has a presently existing or potential financial or other personal interest in a City process, with which that person is affiliated, shall disclose that interest in writing to the City Clerk and to the Department Director with whom that person is negotiating or dealing, immediately upon knowing that such a conflict exists or upon having knowledge that a conflict may potentially come into being.

f. Disclosure of Gifts Given to the City or an Official.

Any person seeking employment or a contract with the City shall disclose any gifts given to the City or City official within the last eight (8) years.

g. Representation Against City Interests.

No public servant shall represent any other person's private interests in any action or proceeding before the City Council, or other board or commission of the City or any appeal of a decision of such body unless they receive prior approval of



the Chief Administrative Officer and their interests are personal or unless the public servant is a necessary party to the matter.

h. Disqualification.

A public servant is disqualified from participating in a matter when:

- i. The public servant benefits financially from a direct or indirect interest with a person whom the public servant knows has an interest in an enterprise or interest that would be affected by the public servant taking any action;
- ii. The public servant benefits financially from a direct interest with a person who is lobbying for the purpose of influencing any action;
- iii. The public servant solicits, accepts, or agrees to accept a loan, other than a loan from a commercial lender in the normal course of business, from a person who would be affected by or has an interest in an enterprise which would be affected by the public servant's participation in any action; or,
- iv. The public servant has another conflict of interest in the matter as defined by this Ordinance.

i. Public Purchases.

Conflicts of interest in public purchases are prohibited as regulated in the Public Purchases Act, §5-5-22 et. seq. ROA 1994.

j. Political Activities.

No public servant shall engage in political activity that diminishes the integrity, efficiency or discipline of the City



service. No employee or official will participate in the following types of activity:

- i. Using his or her position or employment with the City to influence employees of the city to support, for or against, any candidate, issue or Measure Finance Committee or other similar organization in any election or pre-election activity; provided, however, that nothing herein shall deny the right of an official of the City to express his or her views on any issue;
- ii. Accepting and/or soliciting campaign contributions for any candidate or Measure Finance Committee or other similar organization in any election or pre-election activity, during working hours, at a City workplace or in the scope of their City employment;
- iii. Accepting and/or soliciting contributions for the benefit of a City employee or official for political purposes during working hours, at a City workplace or in the scope of his or her City employment;
- iv. This section shall not apply to electioneering communications, provided that no electioneering communications may be sent to a City employee at his or her place of work by leafleting, mail, phone, e-mail or by other electronic communication;
- v. No adverse employment action shall be taken against any employee for reporting to the City Clerk and the Board of Ethics and Campaign Practices any violation of this section, including but not limited to direct solicitation; and,



vi. No City employee shall be a candidate for or hold an elective office in the State of New Mexico or any of its political subdivisions.

k. Hatch Act Provisions.

City employees whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants made by the United States or a Federal agency are required to comply with the provisions of the Hatch Act.

These employees may not:

- i. Use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- ii. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or,
- iii. Be a candidate for public elective office in a partisan election.

l. Former Employees.

A former employee shall not within one (1) year after the date of termination from employment represent any person or business in connection with a matter in which the former employee has performed an official act, unless the Chief Administrative Officer consents to such representation. No person or business with which the former employee is associated may knowingly undertake or continue a private representation in such a matter unless:



- i. The former City employee is screened from participation in the matter and is apportioned no part of the compensation therefrom; and,
- ii. Written notice is promptly given to the Chief Administrative Officer.

Nothing in this section shall prohibit a former employee from entering into a contract to represent the City in any matter, however all such contracts must be approved by the Chief Administrative Officer.

m. Disclosure of Confidential Information.

No public servant shall knowingly disclose or use confidential information concerning the property, government or affairs of the City without proper authorization, in order to advance the direct or indirect private financial or other interests of said public servant or others.

n. Outside Employment.

No employee shall engage in outside employment without prior approval of the Chief Administrative Officer, or a designee of the Chief Administrative Officer. No employee shall continue outside employment if such employment has a negative impact on his or her job performance at the City of Albuquerque. A determination that such employment has a negative impact on an employee's job performance is not the subject of a grievance. No employee who is receiving Worker's Compensation benefits shall engage in outside employment, without approval of the Director of Human Resources.



o. Use of Public Property.

No public servant shall use property, owned by the City or purchased with City funds, for personal benefit, convenience or profit.

6. Drug and Alcohol Impairment, Possession or Consumption.

As regulated by the Personnel Rules and Regulations and Substance Abuse Policy.

7. Neglect of Duties or Abuse of Authority by Officials and Employees.

- a. Failure to perform job duties;
- b. Failure to execute supervisory responsibilities;
- c. Misuse or abuse of authority; or,
- d. Failure to report unethical, illegal, or prohibited behaviors.

8. Insubordination of an Employee.

An act of deliberately disobeying or defying a lawful order or directive given by the employee's chain of command. Intent can be determined by an affirmative act or by inaction.

9. Special Consideration.

A public servant may not grant or receive, directly or indirectly, any special consideration, treatment, or advantage from the City beyond what is generally available to City residents.



## B. On or Off Duty Conduct.

The following illegal or unethical behaviors, whether committed on or off duty, fall below the minimum level of behavior required and will be grounds for the imposition of consequences:

1. Commission of any felony or misdemeanor related to the position held by the public servant; or, conviction of a crime involving moral turpitude;
2. Conduct that calls into question the employee's ability to perform assigned duties or job functions;
3. Conduct that harms public respect for City employees or confidence in the operation of City services; or,
4. Conduct that would impair the operation or efficiency of any City Department.

## C. Discipline for Employees.

The discipline to be imposed for commission of the prohibited behaviors for classified City employees, pursuant to the terms and processes provided for in the Merit System Ordinance, the Labor Management Relations Ordinance, and applicable collective bargaining agreements, shall be:

### 1. Terminable Offenses.

A terminable offense is the commission of one of the prohibited behaviors that is an act so grievous that a reasonable person would conclude that the public servant should no longer work for the City and should be terminated. Examples of terminable violations are:





- a. An intentional or grossly negligent act causing physical harm to a person or property in violation of law, the Prohibited Behavior Section of this Act, City Rules and Regulations, the Violence in the Work Place Policy, or the Sexual Harassment Policy;
- b. An intentional theft or misuse of property of significant value;
- c. Lying or cheating which results in significant loss of City funds or significant harm to a person or property;
- d. An intentional theft or misuse of City work time of significant value;
- e. An intentional or grossly negligent act that does, or could likely result in, harm to co-workers or the public;
- f. Accepting a bribe to perform an official act; or,
- g. The abuse of official authority or position to exploit, retaliate or intimidate an employee or a member of the public.

## 2. Serious Offenses.

A serious offense is the commission of a prohibited behavior or violation of a work rule that is terminable, but a reasonable person would conclude that on the first offense the public servant deserves a second chance based on the employee's good work record or the particular facts of the case. Training to modify the employee's behavior is mandatory with any discipline. For serious offenses an employee may be demoted or receive at least a suspension of thirty (30) days or more.

## 3. Minor Offenses.

A minor offense is the commission of a prohibited behavior or a violation of a work rule that is not as serious as a terminable offense, and that a reasonable person would believe that the employee should be allowed the



opportunity to receive progressive discipline and training to modify their behavior. For minor violations, employees shall receive the appropriate discipline. Examples of minor violations are:

- a. A dangerous or offensive practical joke, comment, or horseplay in the workplace that does not result in harm to a person or property;
- b. A negligent loss of or misuse of property of minor value;
- c. Neglect of duty that if continued would result in a loss of City funds or property; or,
- d. A negligent or careless use of City work time of minor value.

#### 4. Progression of Discipline.

The following progression of discipline shall be followed:

- a. An employee shall be terminated for a second serious offense received within five (5) years of a prior serious offense;
- b. The commission of any second minor offense within three (3) years of a previous minor offense may result in demotion or suspension of thirty (30) days or more. The commission of a third minor offense within three (3) years of two (2) prior minor offenses shall result in termination;
- c. The commission of a minor offense when an employee already has any combination of a minor and a serious offense within the past three (3) years shall result in termination; and,
- d. The time that the offense remains in the employee's personnel records runs from the date that discipline is imposed.



## 5. Responsibilities of Disciplined Employees.

An employee receiving discipline for either a serious or minor offense shall attend mandatory training as designated by the City Clerk to address the offense committed. With successful completion of training, and expiration of the three (3) or five (5) year period, the discipline shall be removed from the employee's personnel record.

## **VII. Structure.**

In order to create a culture of ethical public service, the values of this Act shall be put into action through the following structure.

### A. The Ethics Leadership Council.

The Ethics Leadership Council is hereby established. The Ethics Leadership Council is not a policy making body. The Ethics Leadership Council shall assist the City Clerk, Mayor, Council, administration, and citizens in creating and ensuring a culture of ethical public service.

#### 1. Membership of the Ethics Leadership Council.

The Ethics Leadership Council shall have a membership of twenty-one (21) people: seven (7) union employee members, one (1) from each bargaining unit; seven (7) at large employee members; one (1) member selected by the Mayor; one (1) member selected by the City Council; the Director of the Office of Accountability; the President of the Board of Ethics; and three (3) non-employee citizens of the City of Albuquerque. The City Clerk, the City Attorney, or an Assistant City Attorney, and a facilitator, shall staff the Ethics Leadership Council.



## 2. Selection.

The ACE Coalition members who drafted this Act shall serve on the Ethics Leadership Council for an implementation period of two years. New members shall be chosen through the following process:

- a. The Ethics Leadership Council shall select five (5) of the seven (7) at large employee members and the three (3) community members. Each bargaining unit shall select their union member representative following the Ethics Leadership Council selection process and meeting the qualifications of this section. The number of union members will be based on the number of approved bargaining units within the City of Albuquerque;
- b. Two (2) of the seven (7) at large employee members shall be the Director of Human Resources, and a high-ranking City finance official;
- c. The two (2) designated management members, the Director of the Office of Accountability and the President of the Board of Ethics, shall serve on the Ethics Leadership Council while they hold their respective offices and the Mayor and Council appointees shall serve four (4) year terms at the pleasure of the appointing authority;
- d. The eight (8) members selected by the Ethics Leadership Council will serve four (4) year terms. The terms shall be staggered each two (2) years. At the time of the initial selection, four (4) members shall initially serve only two (2) year terms and four (4) members shall serve four (4) year terms. Whenever the staggered terms need to be established or reestablished, the length of terms shall be selected by the drawing of lots;



- e. The eight (8) members selected by the Ethics Leadership Council shall be selected from a pool of applicants that are solicited thirty (30) days prior to the start of the selection process;
- f. The City Clerk shall be responsible for staffing and administering the selection process;
- g. The selection process may be commenced by City employees designated by the Ethics Leadership Council, with the final selection being made by the Ethics Leadership Council;
- h. Upon the resignation or removal of a member by the Ethics Leadership Council, the member will be replaced through these selection procedures. A member may be removed for failure to participate, or good cause shown; and,
- i. Every effort shall be made throughout the selection process to obtain Ethics Leadership Council members who, in addition to meeting all of the qualifications, represent as broad a segment as possible of City government, unions, Departments, job responsibilities, and community backgrounds as possible.

### 3. Qualifications.

Each Ethics Leadership Council member shall:

- a. Be a person who demonstrates integrity, ethics, and honor;
- b. Pass a pre-selection and an annual background check;
- c. Have been an employee with the City of Albuquerque for a period of five (5) years, or for citizen members selected by the selection committee, or Mayor, or Council, been a resident of the City of Albuquerque for five (5) years;
- d. Not ever have been convicted of or entered a plea to a felony, or a misdemeanor involving moral turpitude; and, not have been convicted or pled to any other misdemeanor for the last five (5) years; and,



- e. Be able to facilitate change in public service in the City of Albuquerque resulting in the ethical culture envisioned by the Ethical Public Service Act.

#### 4. Duties of the Ethics Leadership Council.

- a. Function and operate through consensus decision-making using the facilitation services of the City Alternative Dispute Resolution Office. Each member is an equal member and there shall be no president or officers;
- b. Promote an environment of ethical public service within City of Albuquerque government;
- c. Assist the Mayor, administration, Council, City Clerk and Department Ethics Advisors to create and maintain an ethical culture as envisioned by the Ethical Public Service Act;
- d. Provide direction to the City Clerk, and, if necessary, recommend discipline of the City Clerk to the Mayor, and review and approve formal advisory opinions of the City Clerk;
- e. Select the Department Ethics Advisors in cooperation with the City Clerk and Department Directors;
- f. Assist the City Clerk in the performance of his/her duties and advocate for the Ethics Leadership Council, City Clerk, the Ethics Resource Center and Department Ethics Advisors to have the resources necessary to carry out their duties under the Ethical Public Service Act;
- g. Recommend to the Mayor and City Council any changes necessary to City ethics laws, or in the processes created to implement those laws that the Ethics Leadership Council deems necessary;
- h. Prepare and present to the Mayor and City Council an annual report on the status of the mission of the Ethics Leadership Council of creating an environment of ethical public service within the City of Albuquerque;



- i. Conduct periodic reviews as necessary to determine whether the City Clerk and Ethics Resource Center are meeting the goals of this Act; and,
- j. Hold meetings, at least monthly, to perform its duties.

B. The City Clerk.

The City Clerk shall be responsible for ensuring that the goals of the Ethical Public Service Act are met.

1. Selection.

The City Clerk shall be selected, and appointed through a competitive hiring process conducted by the Mayor and the Ethics Leadership Council, with the advice and consent of the City Council. The Ethics Leadership Council shall recommend the three (3) most qualified candidates to the Mayor. The Mayor shall select the City Clerk from the recommended candidates or request that the Ethics Leadership Council continue the selection process and recommend a new candidate or candidates to the Mayor.

The Interim City Clerk, upon the passage of the Ethical Public Service Act, shall continue to serve in office for the period of time it takes the Ethics Leadership Council to begin functioning as required by this Act. The Interim City Clerk will be replaced by a City Clerk selected pursuant to this Act no later than six (6) months from the date of the enactment of the Ethical Public Service Act.

2. Termination.

The City Clerk may only be removed from office for cause. The Ethics Leadership Council shall investigate any alleged violations of the Ethical Public Service Act by the City Clerk or other allegations that could lead to the Clerk's removal from office. The Mayor may remove the City Clerk only at the conclusion of



an investigation authorized by the Ethics Leadership Council. The Ethics Leadership Council may recommend removal or discipline of the City Clerk to the Mayor and the Mayor may then impose the appropriate discipline or remove the City Clerk from office.

### 3. Qualifications.

The City Clerk shall:

- a. Be a person of the highest integrity, ethics, and honor;
- b. Pass a pre-employment, and an annual background and credit check;
- c. Have a minimum of a college degree; preferably a master's degree, in public administration, business administration, or a Juris Doctorate;
- d. Have held a position(s) with a public governmental entity for a minimum of seven (7) years;
- e. Not ever have been convicted of or entered a plea to a felony, or a misdemeanor involving moral turpitude; and not have been convicted of or entered a plea to any other misdemeanor for the last five (5) years;
- f. Be able to help facilitate change in public service in the City of Albuquerque resulting in the ethical culture envisioned by the Ethical Public Service Act; and,
- g. While serving as the City Clerk, follow and uphold the requirements of the Ethical Public Service Act, and not hold any other position that could interfere with the performance of their duties under this Act.

### 4. Duties.

The City Clerk, in addition to all of the duties called for by the City Charter and Ordinances, shall:





- a. Establish and manage an Ethics Resource Center physically located separately from the City Clerk's Office. The Ethics Resource Center shall be staffed by classified, confidential employees hired by the City Clerk;
- b. Be a non-voting member of the Ethics Leadership Council and report to the Ethics Leadership Council monthly on the actions of the City Clerk, the Ethics Resource Center, and the Department Ethics Advisors;
- c. Create a system that will educate public servants on the requirements of the Ethical Public Service Act; prior to, or within two weeks of, the public servants' first day of service, and continuing thereafter at least annually;
- d. Publish educational materials pertaining to ethical issues that are available to all public servants and citizens which include answers to the most frequently asked questions about ethical public service and have clear and concise directions for reporting suspected unethical or illegal acts;
- e. Render, with review and approval of the Ethics Leadership Council, formal advisory opinions on ethical questions from public servants and citizens, and publish and maintain the opinions. The City Clerk shall not render opinions on issues governed by the Board of Ethics;
- f. Provide direction to the Department Ethics Advisors and facilitate, if necessary, the balance between their duties as Department Ethics Advisors under this Act and their primary duties as public employees;
- g. Establish and oversee a system to assist citizens and public servants in the reporting and resolution of ethical and/or criminal complaints that are made against public servants;
- h. Coordinate the resolution of ethical and/or criminal complaints made against public servants with the appropriate City Departments, agencies, and/or law



enforcement, as is appropriate and necessary under applicable laws and ordinances;

- i. Maintain the confidentiality of complainants and witnesses unless law requires the release of their identity;
- j. Help prevent, in coordination with City Departments, the Office of Accountability and the City Employee Equity Office, either the abuse by employees of their status as a complainant, or retaliation against employees for making a complaint of illegal or unethical behavior;
- k. Create, maintain, and compile statistical records and gather data regarding ethical complaints, and their resolution, and make recommendations to the Ethics Leadership Council for changes to City policy or ordinances based on the complaints;
- l. Establish and maintain a system to train and modify the behavior of public servants who have received discipline, short of termination, for violations of the Ethical Public Service Act; and,
- m. Provide Resources and support for the Human Resources Director to strive to recruit, hire, and retain ethical public servants.

#### C. Department Ethics Advisors.

Each City Department shall have a Department Ethics Advisor. For large Departments, with multiple divisions, additional Department Ethics Advisors may be selected by the Ethics Leadership Council. Departments are responsible for working with the City Clerk and their Department Ethics Advisor(s) to ensure that Department Ethics Advisors are provided sufficient time to perform their duties under this Act. Department Ethics Advisors shall help lead their Departments toward the vision and goals of the Ethical Public Service Act.



## 1. Selection and Qualifications.

The Department Ethics Advisors shall be selected by the Ethics Leadership Council with the cooperation of the Department. The Ethics Leadership Council shall solicit applicants from all employees from the Department for the advisor positions one (1) month prior to beginning the selection process. The qualifications for Department Ethics Advisors are:

- a. All of the qualifications of the City Clerk except:
  - i. There is no educational requirement; and,
  - ii. Five (5) years of service with a governmental entity is required.
- b. An ability to communicate effectively is especially necessary.

## 2. Duties.

Department Ethics Advisors will be regular employees of their Departments who will continue to perform their normal duties, and in addition shall:

- a. Lead their Departments toward meeting the vision and goals of the Ethical Public Service Act;
- b. Report to the City Clerk on all of their responsibilities under the Ethical Public Service Act;
- c. Participate in the development and implementation of annual ethical public service training for their Department, as well as ongoing activities that promote the values set forth in this Act and meet the unique needs of their Departments;
- d. Counsel and advise Department employees on their ethical questions and concerns and resolve them if



- possible. Refer any complaints requiring investigation or as otherwise required by law to the City Clerk;
- e. The Department Ethics Advisors are responsible for working with the City Clerk and their Departments to ensure that they are provided sufficient time to perform their duties under this Act; and,
  - f. Provide statistical information as required by the City Clerk.

# Appendix B

## **Report of the Code of Conduct Evaluation Team**

### **I. Public Employment in 2004 in the City of Albuquerque**

The vast majority of public employees are honest and hardworking. The good employees deserve to work in a culture where their efforts to serve the public in an honest and fair manner do not go unrecognized. Because of the nature of public perception, the failures of a few public employees are seen to be representative of all public employees. As a City we must strive to recognize our numerous achievements for the public, and lessen the number of, and impact of, the few employees who choose to act dishonestly and unethically.

The Code of Conduct Evaluation Team has come to a consensus that fundamental institutional change in City employment practices is needed to create a culture of honest, ethical public service. Public service in Albuquerque City government has all too often become a very decentralized, impersonal competition between adversarial parties, who are more interested in self-preservation than the good of the citizens we serve. However, placing blame for past failures will only serve to divide us as public employees rather than bring us together.

### **II. Goals**

- A. A Culture of Ethical Public Service in the City of Albuquerque**
- B. Clear and Meaningful Standards of Ethical Conduct**
- C. A System of Teaching and Learning the Culture of Public Service, and the Standards of Conduct**

The Evaluation Team quickly concluded in our initial meeting that the Code of Conduct was neither the beginning point nor end point of how to create a culture of ethical behavior in the City. Obviously we need a system of rules to follow, but the creation of those rules alone has not had the desired effect up to now, and standing alone, will not in the future. The current Code of Conduct provides appropriate ethical guidelines but they lack an effective means of implementation in the work force. The goal of a set of rules for ethical conduct is to provide a set of guidelines to influence behavior. All employees have to learn the rules and be part of a culture wherein the rules of ethical behavior are part of their everyday considerations instead of an afterthought.

We firmly believe that to create institutional change in our City to better focus on ethical behavior three changes must take place: cultural change; new standards of conduct; and, every City employee learning the culture and rules. These are the three legs of a “Public Service Stool,” remove any one of them and the whole system will fail.

### **III. Implementation of Change Through an Ethics Coalition**

The first step in creating an ethical work force is to create a framework for change. The Code of Conduct Evaluation Team recommends the creation of an “Ethics Coalition” to create a system

for both short-term solutions and a long term plan for cultural change. The model for the Ethics Coalition should be the cultural reengineering model of John Kotter's book, *Leading Change*. *Leading Change* creates a framework that will bring about positive change in our City work force.

For acceptance of change to occur the **Ethics Coalition must:**

- A. Create a **sense of urgency** and need for change;
- B. Create a **belief system of honorable public service** for employees and a belief in their trustworthiness and self worth in the organization;
- C. Give all **employees a voice in the process** of creating a solution;
- D. **Overcome the cynicism** that exists at every level of public employment in the City;
- E. **Be made up of all of the stakeholders** in City employment who have an interest in making the City a success. The members need to include people from positions of power, and all members need expertise, credibility, and leadership;
- F. Have **membership** of 21 people, proportionally divided between bargaining unit members, employees, mid-level supervisors, upper level management and members of the public. The coalition must be staffed with Human Resource, Legal and clerical support;
- G. Be **empowered to make the necessary organizational and cultural** changes, everything must be on the table;
- H. Include the **Chief Administrative Officer or designee**, so that the creation of the system of change will become institutional policy instead of simply a recommendation;
- I. Obtain **participation from all City employees** through surveys, forums and similar outreach efforts;
- J. Be empowered as the **policy-recommending body**, presenting a mechanism for change for adoption by the Chief Administrative Officer; and,
- K. Become a **permanent organization** that is structured to continue fostering the growth of an ethical work environment and continue from administration to administration.

#### **IV. Creation of Standards of Ethical Conduct Rather than a Punitive Model**

One of the first orders of business of the Ethics Coalition will be to create a change in the Code of Conduct to create a set of standards to aspire to rather than a set of violations that are only used to set up disciplinary action. The most successful models of standards of conduct from around the country create a system whereby the code is an integral part of what each employee must do. We must create a culture of informing each employee that, **“This is the standard of conduct the citizens of our community expect of their employees working for them at the City, and we will live within the standards as long as we are employees of the City.”**

**The new standards will not tolerate lying, cheating or stealing.** They will be:

- Concise;**
- User Friendly;**
- Instructive;**
- Integrated** - with all City regulations and rules;
- Supported** - adhered to at all levels of City Government;
- Emphasized** - through training, modeling, and learning opportunities at all levels of the organization; and,
- Implemented** as a new City initiative to focus employee’s attention.

#### **V. Sustained Change in the Way the City Teaches and the Creation of New Learning Opportunities for Employees**

Along with an amendment of the standards of conduct, the City must implement better learning opportunities for all employees of the organization from the elected officials to the entry-level employees. We have an incredible number of “strong links” in our organization, but we must reach the weakest links and create a system for them to learn the expected behavior or be terminated from City Employment. Discipline should be the last resort. Our management system should be designed to maximize learning opportunities for employees who are not meeting standards, and only turn to “adverse consequences” when it is clear they are refusing to learn and implement the desired behavior.

We must educate all City employees through the following steps.

- A. **New Employee Standards of Conduct Education:** “Who am I now that I am a City employee, and what is expected of me as a public representative.” This initial ethical education should be mandatory for all new employees as well as elected officials and appointed unclassified employees.
- B. **Continuing Education:** Formal and informal educational opportunities that are mandatory. Education should be offered by both immediate supervisors and through organized Citywide initiatives.



- C. **Maintenance and Reinforcement:** Standards of Conduct must be reinforced on a daily basis by supervisors, managers and directors in the work place. Suggestions include awards, incentives, “that a boys”, posted “character counts” type of promotions, references on pay checks, computer log ins, I.D. cards, weekly meetings with tutorials, City newsletter with examples of over achieving City employees; and health-tip type of reinforcements.
- D. **A Code of Conduct Web Page in Quick Place for Education and Reporting for all City Employees:** Use new technology on the City network to provide tools for employees to deal with ethical dilemmas, including a mechanism to deal with violations by themselves, coworkers or supervisors. Employees need the assurance that there will be no retribution for raising an ethical issue. One of the hardest issues to deal with is an employee who feels there are ethical violations by their own management.
- E. **Continuing Review and Amendment of the Educational Process:** The Team was unanimous in its belief that change will not take place if a new Code of Conduct is created without the creation of an Ethics Coalition responsible for stewarding the new City employee culture through the continuing education of all City employees.

**VI. Process and Resources:**

- A. The Ethics Coalition should be created and empowered by the Chief Administrative Officer after recommendations on membership of the Coalition from the Code of Conduct Evaluation Team.
- B. The first order of business for the Coalition will be to create a structure for the Coalition and the establishment of goals.
- C. The Coalition should create subcommittees to create a new standard of conduct, educational process and to begin cultural change.
- D. The Coalition must be adequately staffed with clerical, human resource and legal support and be given a trained facilitator.
- E. The Administration should give all City employee members the freedom to participate meaningfully in the Coalition through directions to the employee’s departments that the Coalition assignment takes precedence over other duties.
- F. Continuing short-term goals should be established to foster continued growth of the culture of ethical public service and to review the actual experience with the new organizational changes, standards and education developed by the Coalition.

The Code of Conduct Evaluation Team strongly encourages the creation of an Ethics Coalition to begin the process of changing the culture of City employment to a culture of Honesty, Integrity and Public Trust.

Presented by The Code of Conduct Evaluation Team, June 17, 2004

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# Appendix C

# *Demonstrating Ethical Leadership by Measuring Ethics*

## *A survey of U.S. public servants*

Muel Kaptein, Leo Huberts, Scott Avelino, and Karin Lasthuizen

“The most frustrating thing about the recent scandals is that I was not aware of what was going on. I thought we were in control. In reality, the organization was decaying at its core, and many of my managers and employees knew this. But no one told me.” These are the words of the director of a large Dutch public organization in the wake of a much-publicized debacle that shocked Dutch society.<sup>1</sup> This manager is no exception. Managers are often in the dark about the scale of unethical conduct in their organizations until it is too late (Punch 1996). In many cases, however, there are signs of unethical conduct and employees who try to draw management’s attention to the issue (Perry 1993), but management either does not pay attention or does not recognize the warning signs for what they are. Or, perhaps more troubling, sometimes employees express concern about a certain matter but one or more managers look the other way, sweep it under the rug, or shoot the messenger (Bird 1996).

It is risky to subscribe to the view that “no news is good news” (Cohan 2002). From a moral and legal point of view, managers are increasingly held responsible not only for what they know, but also for what they could and should have known (Kaptein and Wempe 2002). As one manager of a Dutch government department remarked: “It’s not what I know that scares me—it’s what I don’t know.”

Without an understanding of the ethical quality of the organization, management cannot determine whether it is in control or at risk, and whether current oversight activities are effective or other measures are needed. It is therefore of great importance for the management of an organization to be aware of the organization’s ethical quality, and

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Muel Kaptein, Leo Huberts, Scott Avelino, and Karin Lasthuizen

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this raises the question of how management can measure organizational ethics. To date, there has been little research on this subject (e.g., Kaptein 1998; Petrick and Quinn 1997; Rosthorn 2000; Treviño and Weaver 2003). The present article distinguishes and discusses a number of aspects relevant to obtaining an overview of the ethical quality of an organization. The focus is on the survey technique as instrument for measuring ethics because of its potential to generate valuable information. Involving employees in the measurement of organizational ethics also demonstrates ethical leadership.

## ■ Methodology

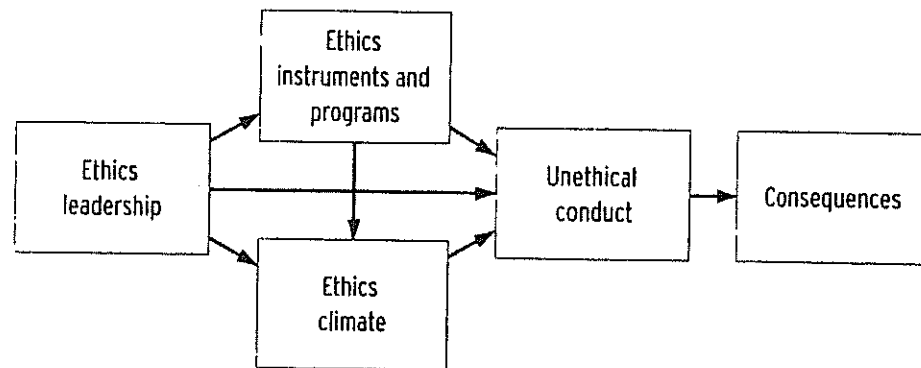
There have been many empirical studies on unethical conduct within organizations. Most of these focus on only one form of unethical conduct. For instance, Cherrington and Cherrington (1985) examined theft in the workplace, and Chappell and Di Martino (2000) investigated violent behavior at work. Other studies consider several different forms of unethical conduct but include only one or a few organizations in their sample. Weaver, Treviño, and Cochran (1999), for instance, investigated the ethical quality of six organizations, and Vardi and Weitz (2004) investigated misconduct in a few Israeli organizations. To date, there has been almost no empirical research on the ethical quality of a cross-section of U.S. public organizations. One exception is the recent study by Feldheim and Wang (2004), who conducted a national survey of ethical behavior of civil servants in early 2000. They mailed a survey to the chief administrative officer in every U.S. city with a population larger than 50,000.

The Feldheim and Wang study made the central assumption that the person who completed the survey would have insight into the kind of unethical conduct that took place in the organization. However, perceptions of the ethics of an organization may differ from one level to the next, and thus the perceptions of top management may not be representative of the organization as a whole. It therefore seemed desirable to complement the findings of Feldheim and Wang with a survey of U.S. public servants that would present a picture of organizational ethics as perceived from the bottom up. The following research methodology was employed to gather this information.

In 2000, KPMG commissioned one of the largest database firms in the world, National Family Opinion, to create a representative database on U.S. employee perceptions and behavior with respect to integrity in the workplace. A questionnaire with 133 data-collection points was sent to a representative sample of the working population consisting of 3,075 adults. This sample was obtained from a panel of the U.S. population, consulted frequently by the National Family Opinion for all types of surveys and carefully composed to be representative of the workforce. With a return of 2,390 completed questionnaires, a response rate of 78 percent was achieved. Almost 15 percent of the respondents ( $n = 344$ ) worked in the public sector. Of the respondents, 57 percent were male and 43 percent were female. Thirty percent performed a supervisory function.

Figure 1 depicts the structure of the questionnaire. First, different types of unethical conduct were listed and the respondents indicated their frequency. Second, the respondents were asked to identify the potential consequences of each type of misconduct for the organization, its employees, and its external stakeholders. In order to manage ethics effectively, it is crucial to know the extent to which the organization encourages ethical conduct. For this reason, the questionnaire included items pertaining to three organiza-

Figure 1. Research model.



tional factors: the existence and content of ethics programs, the ethical climate of the organization, and the ethics of management. The results are presented below, starting with the design and implementation of pertinent programs.

### Design and implementation of ethics programs

For many organizations, the first step in managing ethics is to establish a code of conduct, or a document of some kind that articulates the organizational values, principles, and standards. In the Netherlands, for example, almost all national government departments and 47 percent of the 100 largest local governments have codes of conduct (Ethicon 2004). Of the U.S. local governments surveyed by Feldheim and Wang (2004), 68.5 percent said they had a code of ethics.

To implement a code of conduct, ethics and compliance programs can be rolled out consisting, for example, of employee training, communication programs, security measures, hotlines, disciplinary and enforcement mechanisms, and response protocols (Kaptein 1998, 2002; Lawton 1998; Paine 1994; Preston and Sampford 1998; Weaver et al. 1999). The study by Feldheim and Wang (2004) shows that 28.2 percent of the local governments said that ethics training was required for all their managers, and 31.9 percent said that they regularly conducted workshops in which ethics was discussed.

As for determining the effectiveness of these efforts, the answer remains elusive for some organizations, and others prefer not to know the answer at all. Only 33.1 percent of the respondents in the Feldheim and Wang study (2004) said that the ethics of the organization and its employees was reviewed on a regular basis. The approaches to measurement vary from superficial checkboxes to meaningful organizational analysis. To begin with, organizations could look at design indicators, such as whether each department or unit has a code of conduct, an ethics hotline, or provides ethics training. Although monitoring design indicators is worthwhile, it says little about the extent to which these measures are actually "alive." Therefore, organizations should also consider the implementation of these instruments, such as the percentage of employees who have received

the code, the number of calls to the hotline, the number of disciplinary cases handled over the year, and the opportunities for employees to gain knowledge of the organization's standards. Eighty-five percent of the respondents indicated that their organization provided them with information that clarified the organization's code of conduct as well as its overall principles and values. Sixty-three percent of the respondents acquired their knowledge of the organization's standards from policy and procedure manuals, 49 percent from internal memos (including e-mail), 34 percent from internal training sessions provided by the organization, 25 percent from posters and bulletin boards, and 18 percent from remarks and speeches by senior managers.

The results show that most organizations inform their employees about their ethical responsibilities. However, training and coaching are also important in creating awareness and improving the moral skills of employees to deal with ethical issues (Paine 2003). If just one-third of the respondents receives ethics training or attends workshops, there is certainly room for improving the implementation of ethical programs. Monitoring participation in ethics programs and employee satisfaction with them is a first step to increase awareness about the effectiveness of organizational efforts. However, as will be shown in the following sections, more information needs to be obtained to truly understand institutional ethics.

### **Frequency of unethical conduct**

Next to design and implementation indicators, organizations could also proactively monitor actual compliance levels—for instance, by investigating whether there is evidence of corruption or misuse of confidential information. In the survey, respondents were asked to indicate on a five-point scale, from “never” to “always,” how often in the last twelve months they had observed ethical infringements in their work environment. Table 1 shows the percentage of respondents in the public sector that observed at least one infringement. The results for business organizations ( $n = 1,529$ ) are also included for the sake of comparison.

The questionnaire included eighteen types of ethical infringements. It was found that the frequency at which these different types of violations occur differed widely among public organizations. The implications, from a probability standpoint, can be unsettling. In a public sector organization with 1,000 employees, it is likely that in the past year some 340 employees have observed instances of sexual harassment or conduct creating a hostile work environment, 260 employees have witnessed false or misleading information being given to the public or media, and 110 employees have witnessed an offer of improper gifts, favors, or entertainment to influence others.

While there are some differences, the frequencies of the selected types of behavior are comparable in public and private organizations. The types of unethical conduct found in public sector organizations are apparently not sector-specific. This is evidenced by a 40 percent observance rate of employment discrimination in the public sector compared to 36 percent in the private sector, and a 38 percent and 36 percent observance rate of violation of employee rights to privacy in the public and private sector respectively. These similarities suggest that public and private organizations might benefit from sharing information on these violations and strategies to curb them.

A number of differences are also worth noting. Public sector organizations are characterized by a greater number of “activities posing a conflict of interest,” instances of



**Table 1. Rate of observed misconduct in one year (n = 344).**

	<i>Public sector</i>		<i>Private sector</i>
Employment discrimination	40%	(11%)	36%
Violation of workplace health and safety rules	39%	(6%)	37%
Violation of employee rights to privacy	38%	(10%)	36%
False/misleading promises to customers/clients	36%	(7%)	39%
Carelessness with confidential/proprietary information	35%	(8%)	31%
Sexual harassment or hostile work environment	34%	(6%)	34%
Activities posing a conflict of interest	27%	(5%)	21%
False/misleading information to public or media	26%	(7%)	18%
Environmental breaches	18%	(4%)	17%
Alcohol and drugs abuse in and around the workplace	16%	(4%)	19%
Falsification/improper manipulation of financial data	15%	(4%)	11%
Making false/misleading statements to government regulators	15%	(4%)	9%
Unfair competition/antitrust	11%	(3%)	19%
Offering improper gifts, favors, or entertainment to influence others	11%	(3%)	14%
Dishonesty/unfair treatment of suppliers	10%	(2%)	13%
Embezzling funds or stealing from the organization	9%	(1%)	10%
Improper political contribution to domestic officials	4%	(<1%)	4%
Trading company shares based on insider information	2%	(<1%)	5%

*Notes:* The items are measured on a five-point scale of 1 (never), 2 (rarely), 3 (sometimes), 4 (often), and 5 (always). The cumulative percentages of 2, 3, 4, and 5 are listed in the table, with the cumulative percentages of 4 and 5 in parentheses

“giving false/misleading information to the public or media,” and “making false/misleading statements to government regulators.” The frequency with which these three types of behavior occur in the public and private sectors differs by more than 5 percent.

In the absence of research on unethical behavior, managers may be less likely to be aware of ethical violations within their organizations. In view of the prevalence of misconduct, management should be suspicious if no incidents are reported in their organization. A police organization, for example, was confounded by the fact that relatively many incidents occurred in some regional departments and none in other departments (Kaptein and Van Reenen 2001). An in-depth analysis revealed an inverse relationship between the number of incidents reported to the board and the number of incidents employees had knowledge of in their departments. The departments that had not reported any incidents had the most observed instances of unethical conduct. It turned out that the number of

incidents reported, rather than being a reflection of the actual number of incidents, indicated the willingness of management to deal with ethical issues openly and transparently.

In view of the results, which show a high prevalence of different types of misconduct, managers should bear in mind that such violations may also be occurring in their organization. They will therefore periodically examine the level of ethical misconduct in their organization in order to establish whether it is acceptable. In assessing the seriousness of the different types of ethical infringements, it is advisable to reflect on their potential consequences. This is discussed below.

### **Consequences of unethical conduct**

To avoid paying a disproportionate amount of attention to relatively immaterial ethical issues and neglecting the serious ones, organizations should balance their efforts on some sort of risk assessment, such as the likelihood and consequences of each type of violation (Davies 2000; Lasthuizen, Huberts, and Kaptein 2002). A single case of large-scale fraud, for instance, can have a much greater impact than a hundred cases of petty inventory theft. Moreover, ten incidents of sexual harassment can be more damaging than a hundred illegitimate expense claims. The more serious the consequences, the more stringent the prevention measures required. Sixty percent of the respondents from the public sector said that their organization would lose significant public trust if the infraction they had observed were to find its way into the media. This holds true for all organizations (49%) but even more so for public organizations (60%).

Just as unethical conduct has negative effects for an organization (Cooper 2001; Fijnaut and Huberts 2002), ethical conduct has positive consequences (Feldheim and Wang 2004; Kaptein 2005). The results of the survey show, for example, that a reputation for sound ethical practice enhances the ability of organizations to attract and retain good employees. On average, 79 percent of the public sector employees surveyed would recommend their organization to prospective employees. Among those who believe that ethical misconduct is widespread, only 19 percent would recommend their organization.

### **Causes, climate, and leadership**

Organizations should not only obtain insight into the scope of unethical conduct and its potential consequences, they should also examine its causes. The occurrence of unethical conduct cannot be explained merely in terms of the deviance of a few ill-inclined individuals, sometimes referred to as the proverbial rotten apples. The barrel itself, the organizational context, can also be the source of unethical conduct (Bowman 1990; della Porta and Vannucci 1999; Hoffman and Moore 1990; Klockars, Ivkovic, and Haberfeld 2004; Treviño and Youngblood 1990). Being attuned to the organizational context allows management to detect whether and where the organization is at risk. Knowing and understanding the organizational context is an important point of departure in improving the ethical conduct of management and employees (Kaptein and Wempe 2002; Paine 2003; Treviño and Nelson 1995).

Ethical transgressions in organizations are attributable to a diverse range of factors that includes unclear standards, pressure to perform, and intolerance of criticism (Huberts 1998; Jackall 1988; Punch 1996). In an ethics survey of the federal government in the Netherlands, Kaptein (1998) found that leakage of confidential information to the media

Table 2. Perceived ethical leadership in public organizations ( $n=344$ ).

	<i>Rate of observance</i>
Employees feel comfortable reporting an observed violation to their supervisor	77%
Management is fully committed to upholding the organizational standards of conduct	73%
Management would respond appropriately if they become aware of improper conduct	60%
Employees will bring observed violations to the attention of their supervisor	58%
Management sets reasonable performance goals	59%
Managers are positive role models	56%
Employees believe that management is approachable if they have questions or need to deliver bad news	48%
Management know what type of behavior goes on in the organization	46%
Employees who report a violation to management will not experience retaliation	43%
Employees feel comfortable seeking advice from senior management if they have a question/concern about standards	43%
Offenders will be disciplined consistently and fairly by management	36%

*Note:* The items are measured on a five-point scale of 1 (strongly disagree), 2 (disagree), 3 (unsure/no opinion), 4 (agree), and 5 (strongly agree). The cumulative percentages of 4 and 5 are listed.

was strongly related to inadequate opportunities for civil servants to discuss conflicting views on solving socio-political problems. In order to get political support for their views, they passed on confidential information to journalists and political representatives. Instead of making more rules and imposing heavier sanctions, the department decided to give civil servants more opportunities to discuss their views with their supervisors and the board.

The presence or absence of strong leadership and role models also has an impact on the organizational climate and the way employees behave (Treviño and Weaver 2003). In addition to measuring the ethical climate of the organization, it is particularly important for management to focus on employee perceptions of the ethical quality of leadership. Table 2 depicts a number of leadership qualities identified by respondents in public organizations.

Seventy-seven percent said they felt comfortable reporting a violation to their supervisor, but the results were less reassuring for other aspects of the ethical leadership climate. Management was a positive role model for 56 percent of the respondents, while 48 percent reported that management is approachable if they had questions or needed to deliver bad news. In addition, 43 percent reported that they felt comfortable seeking advice from senior management if they had a question or concern about ethical values and principles.

Only 36 percent of the respondents held the opinion that management would discipline offenders fairly and consistently.

Based on these results, one may conclude that a large number of U.S. public organizations do not always send the right messages on ethical conduct to their employees. In light of this, management would be well advised to regularly ask itself whether it is clearly explaining the meaning of responsible conduct to employees, giving them sufficient support to act responsibly, and encouraging open discussion of ethical dilemmas. It must also consider whether it is able to detect and address unethical conduct, and how it deals with reports of alleged misconduct. Information of this kind can be obtained by means of a questionnaire. An overview of the advantages and risks of employing an ethics survey is provided below.

### **Ethics review**

The results of the survey of U.S. public servants clearly show that public organizations face the risk of unethical behavior undermining their performance, credibility, and legitimacy. Managers can only manage organizational ethics if they have a clear idea of the effectiveness of current efforts (e.g., codes of conduct and compliance programs) aimed at preventing unethical behavior and stimulating ethical behavior. Because management is not omniscient and organizational hierarchies may prevent employees from freely communicating violations, it is advisable to conduct ethics audits to determine whether management's view of the organization is a true reflection of the state of affairs.

In order to implement an effective ethics or compliance program and take adequate measures to prevent unethical conduct, it is important that managers have insight into the nature, scope, and seriousness of existing problems. Examining the causes of and interdependencies between different forms of ethical misconduct enables management to put measures in place to prevent similar behavior in the future. Ethical risks differ from organization to organization because their organizational activities, cultures, and environments are not the same. In consequence, each organization needs to review its ethics in view of its particular situation.

An ethics review can also be used to assess the effectiveness of implemented policies and to benchmark them. Schiphol Airport in the Netherlands, for example, conducted a survey of its ethical climate before and after developing a code of conduct. Based on these surveys, the organization concluded, eighteen months later, that the extent to which ethical dilemmas were discussable had improved by 21 percent, clarity of standards had increased by 19 percent, and the number of employees who believed that management set a good example had increased by 17 percent (Kaptein and Wempe 1998). An integrity review, in itself, is an instrument that promotes effectiveness. If managers know that the ethics of their department will be evaluated periodically, they have even more reason to work on ethical issues (Blanchard and Peale 1988).

There are several reasons for conducting an ethics review among employees. First, by involving employees, the organization shows not only that ethics receives managerial attention, but also that employee opinions count. Second, consulting employees stimulates their awareness of ethical issues in their own functions. Third, conducting an ethics review fosters support among employees for tackling ethical issues. Furthermore, employees may be aware of types of unethical conduct that their managers know nothing about.

A final important argument for consulting employees is that the ethics of an organization is strongly influenced by how employees experience the organizational context. As noted above, this perception is their reality and affects their behavior.

### **Survey**

Several methods are available for assessing the ethics of organizations (Kaptein and Wempe 2002). Together with more objective data (e.g., cases of theft, number of complaints, incidence of bribery), an opinion survey can generate information to determine the ethical quality of the organization. The main advantages are efficiency, confidentiality, comparability, and the opportunity to use advanced statistical methods to analyze the results. Employing a questionnaire to measure the perceptions of managers and employees can be helpful in predicting and explaining misconduct as well as estimating the risks and impacts of different types of misconduct. The information becomes more valuable if used to track an organization's progress over time and draw comparisons with similar organizations. Comparing differences and similarities in the patterns and causes of unethical conduct in similar organizations often generates interesting questions and also may yield useful answers. These answers might be found in the empirical data on the organizational climate and the perception of ethical leadership in this field.

Of course, measuring ethics by means of a survey has some pitfalls. If respondents fear that their anonymity might be compromised, they will give socially desirable answers or even refrain from filling out the questionnaire (Randall and Fernandes 1991). The same holds true for situations where management commitment is inadequate and respondents doubt that reviews will be followed up. Another risk arises if the results indicate that management's ethics is one of the main problems and management refuses to take the results seriously, ignores them, or even trashes the report. Table 3 summarizes the major advantages and risks of an ethics survey. To minimize these risks, an ethics survey can be presented and employed as a tool for moving forward instead of looking backward—that is, as a tool for taking pro-active and preventative measures instead of merely identifying offenders and taking reactive or repressive measures. Respondents should perceive the survey as non-threatening—a common responsibility to enhance the integrity of the organization, and not a means to tattle on colleagues or management.

### **Conclusions and implications**

This article has presented a number of reasons for paying attention to ethics management in public organizations and has illustrated the usefulness of questionnaires in measuring the ethics of an organization with reference to the outcome of a survey of public servants. The results show that they face different types of unethical conduct with different frequencies. The infringements that occur most frequently include employment discrimination, violation of workplace health and safety rules, violation of privacy, false and misleading promises to clients and citizens, and carelessness with confidential information. These problems could have disastrous consequences. Sixty percent of the respondents indicated that their organization would lose a significant amount of public trust if the infraction they had knowledge of was published. The results also show that although most organizations provide their employees with information that clarifies the code of conduct and the overall principles and values, the organizational climate is not always conducive to ethical

**Table 3. Advantages and risks of an ethics survey.**

<i>Advantages</i>	<i>Risks</i>
<ul style="list-style-type: none"> <li>• Management communicates the importance of ethics</li> <li>• Management communicates that employee opinions are important</li> <li>• Survey creates awareness among respondents about the ethics of their work environment</li> <li>• Survey creates support among respondents to develop the ethics of the organization</li> <li>• Employees and management may have different opinions and perceptions about organizational ethics</li> <li>• Confidentiality</li> <li>• Efficiency</li> <li>• Comparability and benchmarking</li> <li>• Use of advanced statistical methods to analyze data</li> </ul>	<ul style="list-style-type: none"> <li>• Respondents may have no trust in management commitment to develop its own ethics and the ethics of the organization</li> <li>• Survey seen as an intrusion on the trust of management in employees, of employees in management, or between employees</li> <li>• Respondents fear anonymity will be compromised</li> </ul>

conduct. The most noticeable organizational weaknesses are (1) managers do not discipline offenders fairly and consistently, (2) employees feel uncomfortable seeking advice from senior management, and (3) employees feel they will be retaliated against if they report an offense.

Two of the major challenges to the ethics of public agencies are (1) heightening management's awareness of irregularities within the organization, and (2) enhancing management's appreciation of the impact of the organizational climate on ethical conduct. In order to assess ethical risks, management must develop skills and methods for identifying unethical conduct proactively, obtain insight into possible causes, and establish whether incidents are the result of an unlucky coincidence or reflect a more systematic organizational failure. These challenges point to the importance of having a system in place that monitors the ethics of the organization on a regular basis. In this respect, employing a questionnaire to measure the opinions of managers and employees can be helpful in predicting and explaining misconduct as well as estimating the risks and impacts of different types of problems. The information generated can be used to track organizational progress over time and to compare the agency's performance with similar organizations.

Although relevant research is progressing, there is as yet very little scientific knowledge about the structural and cultural causes of ethics violations (Treviño and Weaver 2003). This is also true for the relationship between dimensions of leadership, on the one hand, and unethical behavior, on the other (Van Wart 2003). Therefore, more work needs to be

done on the relationship between leadership, the ethics climate, and unethical behavior. Empirical data, such as the data gathered through surveys, can be used to test this relationship using correlation and regression procedures. They can also be employed to help identify the leadership characteristics that encourage or prevent different types of offenses. Another important question asks which mix and type of leadership, climate, and ethics program leads to the lowest rate of ethical violations and the least damaging consequences. Still another type of question concerns the reliability of ethics surveys. Our survey found a great number of violations in the work environment of the respondents. But to what extent do employee perceptions correspond with the actual number of violations, what factors distort their perceptions, and to what extent does a questionnaire in itself influence perceptions and survey outcomes? The topic of ethical leadership and the use of questionnaires to measure ethics should both be given a more prominent place in the fields of organizational ethics, integrity, and leadership.

### Note

1. This interview took place on 14 October 2003 during an ethics and integrity workshop at a large Dutch public organization in the province of South Holland. The confidentiality of the interview prohibits us from naming the person or organization represented.

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# Appendix D



## Albuquerque Code of Ordinances

### CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS

## ARTICLE XII. CODE OF ETHICS

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### CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 1. DECLARATION OF POLICY.

#### Section 1. DECLARATION OF POLICY.

The proper administration of democratic government requires that public officials be independent, impartial, and responsible to the people; that government decisions and policy be made in the best interest of the people, the community and the government; and that the public have confidence in the integrity of its government. In recognition of these goals, the following Code of Ethics shall apply to all officials of the city.

### CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 2. DEFINITIONS.

#### Section 2. DEFINITIONS.

(a) "Board" means the Board of Ethics and Campaign Practices established pursuant to Article XII of this Charter.

(b) "Business Dealings" or "Business Dealings With The Governmental Body" includes circumstances where a person is (1) presently a party to a contract with the city, (2) presently a subcontractor under a subcontract with a party under contract with the city, (3) bidding, proposing, or applying for contracts with the city, (4) a party in litigation with the city, (5) a party before a quasi-judicial administrative proceeding conducted by a city board, commission, committee or hearing officer or (6) a party to an appeal of a decision of a city department, quasi-judicial administrative board, commission, committee or hearing officer.

(c) "Candidate" means any individual who has (1) obtained a nominating petition from the City Clerk pursuant to Section 4(c)1.D. of the Election Code for the office of Mayor or Councillor, (2) filed an affidavit on a form approved by the City Clerk, stating that he or she is a candidate for either the office of Mayor or City Councillor or (3) filed as a candidate for elected

## Albuquerque Code of Ordinances

office as required by law, whichever first occurs.

(d) “Consideration” means something of value or a written promise to pay or otherwise provide something of value which is enforceable through the courts.

(e) “Contract with the City” means a written contract to (1) purchase real property from the city, (2) sell real property to the city, (3) rent real or personal property to or from the city, or (4) provide services and/or goods to the city. A contract with the city shall also include all subdivision improvement agreements for the private development of public infrastructure and associated easements and revocable permits. Contracts excluded from this definition are those for services provided by the city such as water, wastewater or solid waste collection; intergovernmental agreements such as a joint powers agreement or a memorandum of understanding. Permits and licenses issued by the city shall not be deemed contracts with the city for purposes of the Ethics Code.

(f) “Direct Interest”, “Private Interest” or “Private Financial Interest” means an interest concerning; (1) a partnership, limited liability partnership, or limited liability company in which an official has invested capital or otherwise owns an interest; (2) a corporation in which an official owns (i) ten percent (10%) or more of the outstanding capital stock or (ii) capital stock with a cumulative value of \$25,000 or more; or (3) a corporation, partnership, limited liability partnership, or limited liability company in which the official is an officer, director, or agent. Direct Interest, Private Interest or Private Financial Interest does not mean an interest in stock owned indirectly through a mutual fund, retirement plan, or other similar commingled investment vehicle the individual investments of which the Official does not control or manage.

(g) “Gift” or “Valuable Gift” means that which is accepted by an official or by another on the official's behalf, or that which is paid or given to another for or on behalf of an official, directly, indirectly, or in trust for the official's benefit or by any other means, for which consideration equal or greater than fair market value is not given by the official within 90 days of the official's receipt of such gift, including, but not limited to (1) real property, (2) the use of real property, (3) tangible or intangible personal property, (4) the use of tangible personal property, (5) a preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is neither a government rate nor a rate available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin, (6) forgiveness of an indebtedness, (7) transportation, other than that provided to an official by a governmental agency in relation to approved government business, lodging or parking, (8) food or beverage, (9) membership dues, other than dues paid by a city agency, (10) entrance fees, admission fees, or tickets to events, performances, or facilities, (11) plants, flowers, or floral arrangements, (12) services provided by persons pursuant to a professional license or certificate, (13) other personal services for which a fee is normally charged by the person providing the services and (14) any other similar service or thing having an attributable value not already

## Albuquerque Code of Ordinances

provided for in this section.

Gift does not include (1) salary, benefits, services, fees, commissions, returns on an investment, a loan, interest incurred on a bond, or expenses associated primarily with the official's employment, business or service as an officer or director of a private corporation or organization, (2) contributions reported as campaign contributions pursuant to the Election Code and the Code of Ethics, (3) an honorarium or an expense related to an honorarium event paid to an official or the official's spouse, (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) transportation provided to an official by a governmental agency in relation to official approved governmental business, (8) 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, provided that such organization has a membership that is primarily composed of elected or appointed public officials or employees, (9) the use of a city facility by an official, and (10) all non-pecuniary things or services donated in any twelve (12) month period from a single donor that have a cumulative fair market value of one hundred (\$100.00) or less.

(h) "Governmental Body" means the City of Albuquerque and any of its boards, commissions and committees.

(i) "Immediate Family" or "Immediate Family Member" means spouse, children, step-children, parents, grandparents, grandchildren, siblings, first cousins, nieces, nephews, uncles and aunts.

(j) "Indirect interest" or "indirect private financial interest" means any interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the official or the official's immediate family. Indirect interest shall include a pecuniary or competitive advantage that exists or could foreseeably accrue as a result of the act or inaction of the official.

(k) "Official" means the Mayor, all members of the Council, all members of boards, commissions and committees; all directors and the equivalent thereof for each department, division or section; assistant, associate or deputy department, division or section directors and the equivalent thereof; the Director of Council Services; the Chief Administrative Officer; Deputy or Assistant Chief Administrative Officers and the equivalent thereof and all other city employees appointed directly by the Council, Mayor or Chief Administrative Officer.

(l) "Person" means any individual, cooperative association, club, corporation,

## **Albuquerque Code of Ordinances**

company, firm, partnership, joint venture, syndicate, profit or nonprofit organization, or other entity.

(Amended by Ordinance Nos. 35-1975, 91-1980, 24-1981, and 34-2006; Amended at Regular Municipal Election, October 3, 1989, as part of Proposition #4.)

### **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 3. BOARD OF ETHICS AND CAMPAIGN PRACTICES.**

#### **Section 3. BOARD OF ETHICS AND CAMPAIGN PRACTICES.**

(a) The Board shall be made up of seven members, who shall be chosen as follows: The Council shall appoint three members and the Mayor shall appoint three members. The six members so appointed shall select a seventh person to serve as Chairperson of the Board. The appointment of a Board member by one appointing authority shall not be approved or disapproved by the other two appointing authorities. Each member shall be a qualified elector of the city, and no member shall be an official or employee of the city or the spouse, parent or child of an official or city employee. There shall be a public comment period for any individual proposed for membership on the Board of Ethics and Campaign Practices by the Mayor, the Council and for the seventh member selected by the Board. The name and resume of any individual proposed for membership shall be posted on the city's website at least two weeks prior to the date when final action is taken to appoint that individual. Any person shall be allowed to submit comments about the proposed member by written submission, electronically or otherwise, to the City Clerk. The members of the Board of Ethics and Campaign Practices shall receive at least six hours of training prior to acting in the capacity of a Board member. The training shall be provided by the City Attorney and shall cover the ethical responsibility of Board members and the content of the Code of Ethics and the Election Code as those codes relate to the duties of the Board. The training requirement shall not apply to any current Board member, who shall continue to serve their unexpired term, or to any Board member reappointed at the end of a term.

(b) All members shall serve terms of four years, and be eligible for reappointment for additional terms. Terms are staggered and shall continue with the same term cycle as currently exists. Any vacancy shall be filled for an unexpired term by the same authority who made the original selection and appointment of the member vacating his or her position.

(c) No violation of the Code of Ethics shall be found by the Board of Ethics and Campaign Practices except upon the concurrence of a majority of the Board.

(d) The Board shall have the authority to issue administrative subpoenas to compel witnesses to testify and produce documentation before the Board. The Board may promulgate

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rules and regulations establishing procedures for issuance of subpoenas. The Board may request the City Attorney to enforce such subpoenas in a court of proper jurisdiction.

(e) The Board may issue to candidates and officials advisory opinions concerning the Code of Ethics and the Election Code. A request for an advisory opinion and the opinion approved by the Board shall become public records at the time the Board votes on such opinion. Advisory opinions shall only concern prospective matters. Specifically, no advisory opinion shall be issued with respect to an event that has already occurred. Advisory opinions shall only be issued with respect to conduct in which the requestor of the opinion intends to engage. No advisory opinion shall be given unless approved by four members of the Board. Approved opinions shall be kept as permanent records by the City Clerk. The Board may promulgate rules and regulations establishing procedures for issuing advisory opinions and limitations on the use of advisory opinions as a defense to violations of the Code of Ethics or the Election Code. The Board may issue consent orders and may promulgate rules and regulations establishing procedures of issuance of consent orders.

(f) A Board member who has participated in any hearing on a case concerning a complaint alleging a violation of the Code of Ethics or the Election Code shall continue to serve as a Board member on such case until the completion of the case, regardless of the expiration of that Board member's term, but only when the Board has voted on a matter concerning the case or accepted evidence in the case prior to the expiration of the term of such Board member. A replacement Board member shall not serve on such cases.

(g) Board members shall not hear complaints involving candidates or Measure Finance Committees to which they have contributed or have participated in their campaign activities nor shall they hear cases involving complaints concerning candidates and Measure Finance Committees who are in opposition to the candidates or Measure Finance Committees to which the Board member contributed or participated in their campaign activities.

(Am. Ord 35-1975; Am. Ord. 77-1978; Am. Ord. 91-1980; Am. Ord. 24-1981; Am. Ord. 34-2006)

### **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 4. CONFLICT OF INTEREST.**

#### **Section 4. CONFLICT OF INTEREST.**

(a) No official of the city shall knowingly:

1. Disclose or use confidential information concerning the property, government or affairs of the governmental body by which that official is employed or of which

## Albuquerque Code of Ordinances

the official is a member without proper authorization in order to advance the direct or indirect private financial or other private interests of said official or others;

2. Vote or otherwise participate in the negotiation or the making of any contract with any business or entity in which the official has a direct or indirect private financial interest;

3. Represent private interests in any action or proceeding before the governmental body by which the official is employed or of which the official is a member or any appeal of a decision of such body;

4. Accept any valuable gift, whether in the form of service, loan, thing or promise, from any employee of or applicant for employment with the City of Albuquerque or from any person, firm or corporation which to the official's knowledge is interested directly or indirectly in any manner whatsoever, in business dealings with the governmental body by which the official is employed or of which the official is a member, including donors who are unidentified; provided, however, that this subsection shall not be read as prohibiting an incumbent candidate for any elective office from receiving duly disclosed campaign contributions in accordance with the provisions of Article XIII of this Charter or an official who is a candidate for a non-city office from receiving campaign contributions for that non-city office.

(b) No member of the City Council shall:

1. During the term for which he or she was elected, be appointed to or selected for any paid office or employment with the city, nor shall he or she within one year thereafter be appointed to any paid city office or employment which the city created, or the emoluments of which first were established or were increased during such term; nor shall any member of the City Council during the term for which he or she was elected nor within one year thereafter, be interested directly in any contract with the city, which was authorized by any law passed during such term;

2. During their term of office participate in any debate or vote on any matter which will likely result in any benefit to the member which benefit is greater than the benefit to the public in general. A benefit for purposes of this paragraph shall mean a financial benefit or a benefit conferred by the City Council member's employer as a direct result of the member's participation in the matter.

(c) *Disqualification.* An official is disqualified from participating in a matter when: (1) the official has or is in the process of acquiring a direct interest in an enterprise which would be affected by the official's vote on proposed legislation, unless the interest is common to all members of a profession or occupation of which the official is a member or the general public or a large class of the general public, (2) the official benefits financially from a direct or indirect interest with a person whom the official knows has an interest in an enterprise or interest that

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would be affected by the official taking any action, (3) the official benefits financially from a direct interest with a person who is lobbying for the purpose of influencing any action, or (4) the official solicits, accepts, or agrees to accept a loan, other than a loan from a commercial lender in the normal course of business, from a person who would be affected by or has an interest in an enterprise which would be affected by the official's participation in any action.

(Am. Ord 35-1975; Am. Ord. 29-1976; Am. Ord. 91-1980; Am. Ord. 23-1988; Am. Ord. 33-1989; Am. Ord. 34-2006)

### **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 5. DISCLOSURE.**

#### **Section 5. DISCLOSURE.**

(a) An official of the city who shall have any private financial interest in any contract or other matter pending before or within the governmental body of which the official is employed or of which the official is a member, shall disclose such private financial interest to the governmental body.

(b) Any Councillor who has a direct or indirect interest in any matter pending before the Council shall disclose such interest on the records of the Council. The existence of a direct or indirect private financial interest on any matter coming before the Council, including approval of a contract, shall disqualify a Councillor from debating and voting on the matter. A majority of the remaining members of the Council shall determine whether a Councillor has a direct or indirect interest and whether the Councillor shall be allowed to participate in the decision making process related to the matter and vote on the matter. A Councillor who has a conflict of interest may voluntarily decline to participate in the decision making process related to the matter and vote on such matter.

(c) The Mayor and each City Councillor, during their term of office, shall file disclosure statements on January 15, April 15, July 15, and October 15 of each year setting out all contributions and expenditures, as defined in the City Election Code, during the previous quarter, raised or spent in connection with any campaign or pre-campaign activity for any elected office. Expenditures of public funds in the regular course of the Mayor or Councillor's official duties are not contributions and expenditures subject to such disclosure under this section. The Mayor and Councillors are not required to file a quarterly statement if there have been no campaign or pre-campaign contributions or expenditures during the previous quarter by or for the particular Mayor or Councillor. These reporting requirements shall be in addition to the reporting requirements of the Election Code, provided that any information filed with the City Clerk pursuant to City Charter Article XIII, Section 4(c) need not be included in the subsequent

## **Albuquerque Code of Ordinances**

quarterly reports required in this section. The contributions and expenditures identified in quarterly statements that are to be applied to a campaign for election to a city office shall be included in the first campaign disclosure report that the candidate files pursuant to the Election Code.

(d) All elected officials shall file with the City Clerk an annual statement listing all of the changes or additions to the disclosure information provided by the elected official at the time of filing his or her declaration of candidacy, pursuant to Section 3 of the Election Code. If no changes have occurred, the elected official shall so state in the annual statement. The annual statement shall be due on the first city work day of July and shall be submitted on a form approved by the City Clerk. The annual statement shall be a public record.

(Am. Ord. 35-1975; Am. Ord. 91-1980; Am. Ord. 24-1981; Am. Ord. 13-2003; Am. Ord. 34-2006) (Amended at Regular Municipal Election, October 2, 2001, as Proposition #10.)

### **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 6. USE OF PUBLIC PROPERTY.**

#### **Section 6. USE OF PUBLIC PROPERTY.**

No official of the city shall use property, owned by any governmental body or funds of any governmental body, for personal benefit, convenience or profit, except in accordance with policies promulgated by the Council. This prohibition includes the use of city property or funds to advertise or promote the campaign of any official, except as provided in this section. Use of city property to promote a campaign is limited to areas made available to all candidates for public office, including public areas, areas used for public meetings and such city facilities that are designated as meeting space that is available to all candidates for public office. No campaign activities shall be conducted in those portions of city facilities that are dedicated as work areas for city employees. Officials are prohibited from using any method of communication paid for with city resources, including but not limited to public service announcements, signage, official websites or mail during the three months prior to their election date, if such advertising states or implies personal responsibility of the official for any city accomplishment. Officials are prohibited from using any method of communication paid for with city resources, including but not limited to public service announcements, signage, official websites or mail if such communication is in a form that would be reasonably mistaken for the campaign materials of the official because of the similarity of design, content or graphics being used in the campaign.

(Am. Ord. 34-2006)



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**CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS /  
Section 7. MISUSE OF CITY EMPLOYEES IN CAMPAIGNS.**

**Section 7. MISUSE OF CITY EMPLOYEES IN CAMPAIGNS.**

No official shall participate in the following types of political activity:

(A) Using his or her position or employment with the city to influence support of employees of the city for or against any candidate, issue or Measure Finance Committee or other similar organization in any election or pre-election activity; provided, however, that nothing herein shall deny the right of an official of the city to express his or her views on any issue.

(B) Accepting and/or soliciting campaign contributions for any candidate or Measure Finance Committee or other similar organization in any election or pre-election activity, during working hours, at a city workplace or in the scope of their city employment.

(C) Accepting and/or soliciting contributions for the benefit of a city employee or official for political purposes during working hours, at a city workplace or in the scope of his or her city employment.

(D) This section shall not apply to electioneering communications, provided that no electioneering communications may be sent to a city employee at his or her place of work by leafleting, mail, phone, e-mail or by other electronic communication.

(E) No adverse employment action shall be taken against any employee for reporting to the Board of Ethics and Campaign Practices any violation of this section, including but not limited to direct solicitation.

(Ord. 34-2006)

**CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS /  
Section 8. ENFORCEMENT[; VIOLATION; PENALTY; REMOVAL FROM OFFICE;  
APPEAL].**

**Section 8. ENFORCEMENT[; VIOLATION; PENALTY; REMOVAL FROM OFFICE;  
APPEAL].**

(a) Any charge of violations of this Code of Ethics shall be brought before the Board of Ethics and Campaign Practices. Any private citizen may initiate such a charge in accordance

## **Albuquerque Code of Ordinances**

with regulations established by the Board of Ethics and Campaign Practices.

(b) Should the Board find, after due hearing, that a violation has occurred, it may make a public reprimand or impose a fine of not to exceed \$500 for each violation or do both.

(c) In addition to imposing such sanctions, or as an alternative thereto, the Board may recommend to the Council that an appointed or employed official be suspended or removed from office or that an elected official be removed from office.

(d) The Council may, upon the recommendation of the Board of Ethics and Campaign Practices, and after due hearing of the charge, order the suspension or removal of an appointed or employed official, or the removal of an elected official; provided, however, that no official shall be removed or suspended except upon the concurrence of two-thirds of the Councillors qualified to vote thereon.

(e) An appeal may be taken from any findings and action of the Board pursuant to Subparagraph (b) of this Section, and from any order of the Council pursuant to Subparagraph (d) of this Section, to the District Court of the 2nd Judicial District, by filing Notice of Appeal in the said District Court within 5 days of the date of the action or order appealed from, and by filing with said District Court within 30 days a true transcript and record of the proceedings upon which said action or order is based. The hearing in the District Court shall be held on the said transcript and record only, and new testimony shall not be taken.

(Am. Ord. 35-1975; Am. Ord. 24-1981; Am. Ord. 34-2006; Amended at a Special Election held in conjunction with a Regular Municipal Election, October 5, 1999, as Question #12.)

### **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 9. INVESTIGATION.**

#### **Section 9. INVESTIGATION.**

(a) The Board may choose to ask for an investigation of allegations brought before it rather than simply hearing charges; to do this, it may temporarily employ or contract with investigators and require investigation by city staff assigned to the Board or by the Office of Internal Audit and Investigations upon acceptance of the complaint after holding a preliminary hearing. The Board shall direct and limit the scope and nature of all such investigations. No such investigation shall be undertaken unless it is specifically authorized and defined by the Board. For the purposes of this section, the term "allegations" means both any formal charges filed with the Board or initiated by the Board and other information raising a substantial question related to compliance with the Code of Ethics or the Election Code, which information at least four members of the Board vote to investigate. Such investigation may relate to violation of the

## **Albuquerque Code of Ordinances**

### **Code of Ethics or the Election Code.**

(b) In retaining an investigator, the Board of Ethics and Campaign Practices shall not be bound by procedures of the City of Albuquerque which would otherwise apply to selecting a contractor or employee. The Board shall adopt its own procedures, consistent with good administrative practices.

(c) All officials and contractors of the City of Albuquerque shall furnish the Board of Ethics and Campaign Practices or its investigator with requested information and records within their custody which are germane to an investigation authorized by the Board. Officials and contractors may be required to appear as witnesses in hearings concerning ethics or campaign practices charges heard by the Board.

(Ord. 31-1989; Am. Ord. 34-2006)

## **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 10. NON-WAIVER OF PENALTIES.**

### **Section 10. NON-WAIVER OF PENALTIES.**

Nothing herein set forth shall be construed to affect or otherwise diminish any penalties otherwise provided by law for violation of the matters set forth in this Code of Ethics, or shall prevent the Board of Ethics and Campaign Practices from bringing to the attention of the proper authority any alleged violation coming to its attention which may be subject to such other penalties.

(Am. Ord. 24-1981; Am. Ord. 31-1989; Am. Ord. 34-2006)

## **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 11. REGULATIONS.**

### **Section 11. REGULATIONS.**

The Board of Ethics and Campaign Practices shall have the authority to establish reasonable rules and regulations for its conduct and for explanation and interpretation of the Code of Ethics.

(Am. Ord. 24-1981; Am. Ord. 31-1989; Am. Ord. 34-2006)

## **Albuquerque Code of Ordinances**

### **CHARTER OF THE CITY OF ALBUQUERQUE / ARTICLE XII. CODE OF ETHICS / Section 12. AMENDMENTS.**

#### **Section 12. AMENDMENTS.**

The above Code of Ethics may be amended without requiring compliance with Article VI of this Charter by ordinance adopted by a majority of the entire membership of the Council plus two additional members thereof voting in favor of such amendment or amendments and said ordinance being otherwise governed by Article XI of this Charter.

(Article XII adopted at Special Election, February 26, 1974 as part of Proposition #1) (Am. Ord. 35-1975; Am. Ord. 29-1976; Am. Ord. 77-1978; Am. Ord. 91-1980; Am. Ord. 24-1981; Am. Ord. 31-1989; Am. Ord. 34-2006)

# Appendix E

**Albuquerque Code of Ordinances**

**CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST**

**ARTICLE 3: CONFLICT OF INTEREST**

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Section

3-3-1	Short title
3-3-2	Definitions
3-3-3	Employee conduct; standards
3-3-4	Gifts and donations prohibited
3-3-5	Conflict of interest; employees
3-3-6	Confidential information
3-3-7	Conflicts of interest; former employees
3-3-8	False statements prohibited
3-3-9	Nepotism prohibited
3-3-10	Outside employment
3-3-11	Code of conduct
3-3-12	Violation by employees
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**CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-1  
SHORT TITLE.**

**§ 3-3-1 SHORT TITLE.**

This article may be cited as the "Conflict of Interest Ordinance."

('74 Code, § 2-3-1) (Ord. 31-1985)

**CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-2  
DEFINITIONS.**

**§ 3-3-2 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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**BUSINESS.** A corporation, partnership, sole proprietorship, firm, organization or other legal entity carrying on business.

**CONFIDENTIAL INFORMATION.** Information which by law or practice is not available to the public.

**CONTROLLING INTEREST.** A financial interest in a business which is greater than twenty percent.

**EMPLOYEE.** Every appointed classified or unclassified officer or employee of the city who receives compensation in the form of a salary or who is eligible to receive per diem and mileage. The term employee shall not include elected officials of the city.

**FINANCIAL INTEREST.** Any interest which shall yield, directly or indirectly, any monetary or other material benefit to a city employee or to the city employee's spouse or minor children. The term "financial interest" shall not include the employee's salary or other compensation authorized by law.

**OFFICER.** All members of boards, commissions and committees, the Chief Administrative Officer, and all department directors, division directors and section chiefs.

**OFFICIAL ACT.** An official decision, vote, approval, disapproval or other action which involves the use of discretionary authority.

('74 Code, § 2-3-2) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-3 EMPLOYEE CONDUCT; STANDARDS.**

#### **§ 3-3-3 EMPLOYEE CONDUCT; STANDARDS.**

Employees must in all instances maintain their conduct at the highest standards. No employee shall continue in his or her city employment with pay when he or she engages in activities which are found to more than likely lead to the diminishing of the integrity, efficiency, or discipline of the city service.

('74 Code, § 2-3-3) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-4 GIFTS AND DONATIONS PROHIBITED.**

## Albuquerque Code of Ordinances

### § 3-3-4 GIFTS AND DONATIONS PROHIBITED.

(A) No reward, favor, gift, emolument, or other form of remuneration in addition to regular compensation and employee benefits shall be received by any employee for the performance or non-performance of his or her duties from any vendor, contractor, individual or firm doing business with the city or who can be reasonably anticipated to do business with the city in the future, or from any other source having or proposing to have any relationship with the city.

(B) Nothing in this section shall be construed to prohibit an occasional, non-pecuniary gift, insignificant in value; an award publicly presented in recognition of public service, acts of heroism or for solving of crimes; a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the State to engage in the business of making loans.

('74 Code, § 2-3-4) (Ord. 31-1985)

### CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-5 CONFLICT OF INTEREST; EMPLOYEES.

#### § 3-3-5 CONFLICT OF INTEREST; EMPLOYEES.

(A) An employee shall disqualify himself or herself from participating in any official act directly affecting a business in which he or she has a financial interest. No employee shall acquire a financial interest at a time when he or she believes or has reason to believe that it will be directly affected by his or her official act.

(B) Every employee who has a financial interest which he or she believes or has reason to believe may be affected by an official act taken within the scope of his or her employment shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter. Additionally, it shall be the duty of an employee to inform his or her department head of such a financial interest at the time he or she acquires it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City Clerk for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in city employment.

(C) The city shall not enter into any contract with a business in which an employee



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has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief Administrative Officer has made a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the city.

(D) Any purchase order or contract entered into by the city with a business in which an employee of the city has a controlling interest is void if the employee failed to comply with the provisions of this Section prior to the city entering into such contract or purchase order.

('74 Code, § 2-3-5) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-6 CONFIDENTIAL INFORMATION.**

#### **§ 3-3-6 CONFIDENTIAL INFORMATION.**

No employee or former employee shall disclose or use confidential information acquired by virtue of his or her municipal employment or office without prior written approval of the Chief Administrative Officer. Nothing in this subsection shall prohibit a former employee from entering into a contract to represent the city in a confidential capacity.

('74 Code, § 2-3-6) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-7 CONFLICTS OF INTEREST; FORMER EMPLOYEES.**

#### **§ 3-3-7 CONFLICTS OF INTEREST; FORMER EMPLOYEES.**

(A) A former employee shall not within one year after the date of termination from employment represent any person or business in connection with a matter in which the former employee has performed an official act, unless the Chief Administrative Officer consents to such representation. No person or business with which a former employee is associated may knowingly undertake or continue a private representation in such a matter unless:

(1) The disqualified former employee is screened from participation in the matter and is apportioned no part of the compensation therefrom; and

(2) Written notice is promptly given to the Chief Administrative Officer.

(B) Nothing in this section shall prohibit a former employee from entering into a

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contract to represent the city in any matter.

('74 Code, § 2-3-7) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-8 FALSE STATEMENTS PROHIBITED.**

#### **§ 3-3-8 FALSE STATEMENTS PROHIBITED.**

(A) No person shall willfully or corruptly make any false statement, certificate, mark, rating, or report in regard to any test, certification, appointment, or investigation, or in any manner commit any fraud, conceal any wrong-doing or knowingly withhold information about wrongdoing in connection with employment with the city or in connection with the work-related conduct of any city employee.

(B) No person seeking appointment to, or promotion in the service of the city, shall either directly or indirectly give, render, or pay any money, service, or other valuable thing to any person for, or on account of, or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion; provided, however, that this provision shall not apply to payments made to duly licensed employment agencies.

('74 Code, § 2-3-8) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-9 NEPOTISM PROHIBITED.**

#### **§ 3-3-9 NEPOTISM PROHIBITED.**

No relative of a city employee, by blood or marriage, may be employed in any position with the city in which the employee may be able directly to supervise, control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed.

('74 Code, § 2-3-9) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-10 OUTSIDE EMPLOYMENT.**

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### **§ 3-3-10 OUTSIDE EMPLOYMENT.**

No employee shall engage in outside employment without prior approval of the Chief Administrative Officer, or a designee of the Chief Administrative Officer. No employee shall continue outside employment if such employment has a negative impact on his or her job performance. A determination that such employment has a negative impact on an employee's job performance is not the subject of a grievance as defined in § 3-1-24 of this chapter. No employee who is receiving Worker's Compensation benefits shall engage in outside employment.

('74 Code, § 2-3-10) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-11 CODE OF CONDUCT.**

#### **§ 3-3-11 CODE OF CONDUCT.**

(A) The Director of the Personnel Services Department shall, subject to the prior approval of the Chief Administrative Officer, promulgate a Code of Conduct for all employees.

(B) In addition to the Code of Conduct promulgated by the Director of Personnel Services, a city department director may promulgate a Code of Conduct for all employees of his or her department which prescribes standards in addition to those set forth in this article and the Code of Conduct promulgated by the Director of Personnel Services which are peculiar and appropriate to the function and purpose for which the department was created or exists. Such codes, upon approval of the Chief Administrative Officer, shall further govern the conduct of employees and if violated, shall constitute cause for dismissal, demotion or suspension.

('74 Code, § 2-3-11) (Ord. 31-1985)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-12 VIOLATION BY EMPLOYEES.**

#### **§ 3-3-12 VIOLATION BY EMPLOYEES.**

Violation of any of the provisions of this article by any employee is grounds for disciplinary action, including dismissal, in accordance with the provisions of §§ 3-1-1 et seq., the Merit System Ordinance.

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('74 Code, § 2-3-12) (Ord. 31-1985)

**CHAPTER 3: CITY EMPLOYEES / ARTICLE 3: CONFLICT OF INTEREST / § 3-3-13  
VIOLATION BY FORMER EMPLOYEE.**

**§ 3-3-13 VIOLATION BY FORMER EMPLOYEE.**

Violation of any of the provisions of this article by a former employee is a misdemeanor, and, upon conviction the former employee shall be subject to the penalty set forth in § 1-1-99.

('74 Code, § 2-3-13 (part)) (Ord. 31-1985)

# Appendix F

## Albuquerque Code of Ordinances

### CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT

#### ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT

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##### Section

- 2-10-1 Short title
- 2-10-2 Findings; purpose; goals
- 2-10-3 Definitions
- 2-10-4 Creation of the Office of Internal Audit and Investigations; resources; staff
- 2-10-5 Creation of Committee; duties; powers; membership
- 2-10-6 Selection of Director
- 2-10-7 Director's duties; responsibilities; authority; administrative subpoena power
- 2-10-8 Professional standards
- 2-10-9 Public records; confidentiality
- 2-10-10 Audit Division; scope of audits
- 2-10-11 Annual audit plan
- 2-10-12 Special audits; audit reports
- 2-10-13 Reports to the Committee
- 2-10-14 Reporting
- 2-10-15 Contract auditors, investigators, consultants, and experts
- 2-10-16 Penalty; cooperation; retaliation prohibited

### CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-1 SHORT TITLE.

#### § 2-10-1 SHORT TITLE.

Sections 2-10-1 through 2-10-16 may be cited as the "Accountability in Government Ordinance".

(Ord. 1-2005)

### CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-2 FINDINGS; PURPOSE; GOALS.

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### § 2-10-2 FINDINGS; PURPOSE; GOALS.

(A) The Council finds that good governance, transparency and accountability are critical in the public sector for the effective and credible functioning of a healthy democracy, and in fulfilling the government's responsibility to citizens and taxpayers. Transparent and reliable reporting and effective auditing in government serve to promote accountability, enhance the effectiveness of government services to its citizens, and increase the public's confidence in their government.

(B) The Mayor and City Council share a duty to insure that the actions of public officials, employees and contractors of the city are carried out in the most responsible manner possible and that city policies, budgets, goals and objectives are fully implemented. To accomplish this end, the city requires the services of an independent organization to perform internal audits, conduct management studies and investigate claims of waste, fraud and mismanagement.

(C) The Director's goals are to:

(1) Conduct audits and investigations in an efficient, impartial, equitable and objective manner;

(2) Prevent and detect fraud, waste and abuse in city activities including all city contracts and partnerships;

(3) Propose ways to increase the city's legal, fiscal and ethical accountability through the use of audit and management studies to insure that tax payers' dollars are spent in a manner that improves the economy of operations; and

(4) Deter criminal activity through independence in fact and appearance, audit, investigation and interdiction.

(Ord. 1-2005; Am. Ord. 45-2006)

### CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-3 DEFINITIONS.

#### § 2-10-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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**AUDITEES.** Auditees are the city related departments, programs, activities, agencies, vendors, contractors or other city related entities affected by an audit or investigation.

**COMMITTEE.** The Accountability in Government Oversight Committee.

**CONTRACTORS.** All city contractors.

**DIRECTOR.** The Director of the Office of Internal Audit and Investigations.

**EMPLOYEE.** All city employees.

**EXPANDED SCOPE AUDIT.** An audit whose original scope is modified by the Director or the Committee based on circumstances and findings uncovered during the audit.

**OFFICIAL.** The Mayor and Councilors.

**PUBLISHED.** An audit report is published when it is approved by the Committee and distributed in final form to the auditees, to the Mayor and Chief Administrative Officer, and to the City Council. A published audit report is available on request to the public.

**SPECIAL AUDITS.** Exigent audits not included in the annual audit plan, because the need for the audits was not foreseen when the audit plan was adopted.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-4 CREATION OF THE OFFICE OF INTERNAL AUDIT AND INVESTIGATIONS; RESOURCES; STAFF.**

#### **§ 2-10-4 CREATION OF THE OFFICE OF INTERNAL AUDIT AND INVESTIGATIONS; RESOURCES; STAFF.**

(A) The Office of Internal Audit and Investigations is created as an independent office of city government. The Office of Internal Audit and Investigations is not part of the city's executive branch or the City Council. The Director shall report to the Committee.

(B) The Director shall hire the Internal Auditor. The Internal Auditor shall be able to manage a professional audit staff, analyze financial and property records and evaluate operations for economy, efficiency and program results.

(C) The Director shall hire the Inspector General. The Inspector General shall be able to manage a staff of professional investigators, coordinate his investigations with the Internal Auditor and prepare a file for use by a prosecutorial agency.



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(D) The Office of Internal Audit and Investigations shall be funded from the General Fund.

(E) The Director shall establish the organizational structure appropriate for carrying out the responsibilities and functions of the Office of Internal Audit and Investigations.

(F) The Director shall select and hire his employees for the efficient and effective administration of the Office of Internal Audit and Investigations.

(G) The Office of Internal Audit and Investigations shall provide staff support to the Committee.

(H) Neither the Director nor any employee of the Office of Internal Audit and Investigations shall engage in any partisan political activities or the political affairs of the city.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-5 CREATION OF COMMITTEE; DUTIES; POWERS; MEMBERSHIP.**

#### **§ 2-10-5 CREATION OF COMMITTEE; DUTIES; POWERS; MEMBERSHIP.**

(A) The "Accountability in Government Oversight Committee" is created. The Committee shall consist of five members from the community at large. The Mayor and one Councilor appointed annually by the Council President shall be nonvoting ex officio members. The Mayor and the appointed Councilor may send designees to the Committee meetings. At least one Committee member shall be a CPA, at least one Committee member shall have a law enforcement or law background and at least one Committee member shall be a professional management consultant.

(B) As vacancies on the Committee occur, the Council and Mayor shall alternatively appoint new members with the Council making the first appointment. All appointments shall be subject to Council approval. The existing Committee members may make recommendations to the Mayor and Council for candidates to fill vacancies on the Committee. If either the Mayor or Council fails to name a replacement Committee member within 45 days of the vacancy, then the other body shall make the appointment. The Committee members shall be appointed for staggered terms of three years unless an appointment is to fill a vacancy. An appointment to fill a vacancy shall be for the unexpired term. Terms shall begin on the first day of September. The Committee members shall elect the Committee Chair annually.

(C) The Committee shall meet monthly or upon the call of the Chair or a majority of

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its members.

(D) Committee members shall not receive compensation for their service. Voting members of the Committee shall not serve on any other city board, commission or task force.

(E) The Chief Administrative Officer and the Director of Council Services or their designees may attend all Committee meetings.

(F) If an Official is the subject of an investigation, then the ex officio members, their designees, the Chief Administrative Officer and the Director of Council Services shall be recused from all meetings where that particular investigation is being discussed and they shall not have access to the investigative file during the pending investigation.

(G) The Committee is a management committee and not a public board, commission or committee as specified by §§ 2-6-1-1 et seq. and not subject to the Open Meetings Act. The Committee is not formed to formulate public policy nor is authority to formulate public policy delegated to the Committee.

(H) The Committee may remove the Director by a majority vote. Within five days of the Director's removal, the Committee shall report the reasons for removal to the Mayor and the Council.

(I) The Committee shall annually recommend a budget to the Mayor and Council that may include a salary adjustment for the Director.

(J) The Committee shall provide the Director with guidance, priorities and potential areas for investigation. The Committee may also lend advice to the Director regarding technical issues that may arise.

(K) The Committee shall coordinate the work of the Office of Internal Audit and Investigations with the Mayor's and Council's needs.

(L) The Committee shall not prohibit the Director from initiating, carrying out or completing any audit, investigation or review. If a majority of the Committee members finds that an audit, investigation or review is questionable, then the Committee shall issue a cautionary statement to the Director.

(M) The Committee shall review and approve all audit and investigatory reports at each meeting.

(N) The Committee shall prepare a job description, specify qualifications for applicants, work with the Director of the Human Resources Department to advertise for the position and develop the applicant search procedure and make recommendations to the Council on the selection of the Director.

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(O) Any discipline of the Director, as provided by § 3-1-6 ROA 1994, shall be by the Committee. The Director shall report to the Committee for approval of vacation, sick, emergency and city business leave.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-6 SELECTION OF DIRECTOR.**

#### **§ 2-10-6 SELECTION OF DIRECTOR.**

(A) The Committee, through its staff, shall receive applications from candidates, interview candidates and shall submit to Council the names of the three candidates that it finds to be the best qualified to be Director indicating its ranking and the Council shall select the Director from the three by adoption of a resolution. The Committee's recommendation to Council shall be based on the candidates' integrity, capability for strong management and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration or other closely related fields.

(B) No former or current official or employee, except for a person who held the position of Director, Internal Auditor or Inspector General may be appointed Director within four years of that person's period of service.

(C) The Director shall be certified as a Certified Inspector General or obtain that certification within two years of his appointment. Other professional certifications, such as certified public accountant, certified internal auditor and certified fraud examiner are recommended.

(D) Prior to the final selection of the Director, the candidate shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the Committee to obtain the candidate's Federal Bureau of Investigation record. Records and related information shall be privileged and shall not be disclosed to anyone other than Committee members. The city shall pay for the cost of obtaining the Federal Bureau of Investigation records.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-7 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY; ADMINISTRATIVE SUBPOENA POWER.**

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### **§ 2-10-7 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY; ADMINISTRATIVE SUBPOENA POWER.**

(A) If the Director detects apparent or potential violations of law or apparent instances of misfeasance or nonfeasance by an official or auditee, he shall report the irregularities in writing to the Committee. If the irregularity is criminal in nature, the Director shall immediately notify the appropriate prosecuting authority. If the irregularity is found in response to a complaint filed under the provisions of the Whistleblower Ordinance, the Director shall notify the appropriate city department pursuant to the Whistleblower Ordinance. If the irregularity warrants an audit, then the Director shall refer the matter to the Internal Auditor. The Director shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(B) The Director shall receive and investigate complaints referred to him by the Board of Ethics and Campaign Practices. In addition, the Director shall receive and evaluate complaints referred to him by any official, employee, contractor or the public and initiate an investigation when he deems it appropriate. The Director may also initiate an investigation. The Director shall determine whether the complaint should be referred to the Internal Auditor or to the Inspector General.

(C) Upon request of the Mayor or City Council, the Director shall assist or provide resources to assist city departments in the review of state and federal legislation, city ordinances, resolutions, rules, regulations and policies pertaining to that particular city department or office.

(D) The Director shall promulgate regulations to establish procedures for the Office of Internal Audit and Investigations.

(E) The Director shall have the power to subpoena witnesses, administer oaths and require the production of records subject to the New Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena issued to any person, the Director may make application to any District Court in the state that shall have the jurisdiction to order the witness to appear before the Director and to produce evidence if so ordered, or to give testimony touching on the matter in question.

(F) The Director shall maintain a complete file of each audit report and each report of other examinations, investigations, surveys and reviews made under legislative or special Committee authority for at least six years. The file should include audit work papers and other supportive material directly pertaining to the report. Records may be retained in electronic format at the Director's election.

(G) The Director shall accept appointment as an investigator pursuant to Article XII,

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Section 8 of the Charter and shall investigate any alleged violation of the Code of Ethics or the Elections Code that the Board of Ethics and Campaign Practices directs him to investigate.

(H) The Director shall not investigate complaints that are under the jurisdiction of the Police Oversight Commission or the Internal Affairs Division of the Albuquerque Police Department nor shall he access any Internal Affairs' files.

(I) In cases where the Director deems it appropriate because of an audit or investigation, he may refer opportunities for increased efficiency to the Office of Management and Budget to work with respective departments on management and process improvement.

(Ord. 1-2005; Am. Ord. 45-2006)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-8 PROFESSIONAL STANDARDS.**

#### **§ 2-10-8 PROFESSIONAL STANDARDS.**

(A) The Inspector General's investigations and inspections shall conform to the Association of Inspector General's professional standards.

(B) The Internal Auditor shall adhere to generally accepted government auditing standards in conducting its work and will be considered independent as defined by those standards.

(C) The Office of Internal Audit and Investigation's audits, investigations, inspections and reviews shall be subject to quality assurance reviews by an appropriate professional non-partisan objective group every three to five years. A copy of the written report resulting from this review shall be furnished to the Committee.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-9 PUBLIC RECORDS; CONFIDENTIALITY.**

#### **§ 2-10-9 PUBLIC RECORDS; CONFIDENTIALITY.**

(A) The Director shall maintain the confidentiality of any public records that are made confidential by law and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

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(B) During the course of audit and investigation activities, all records shall be considered deliberative in process and not available for outside review.

(C) Prior to publishing a report, the Director may share selected information with other city departments if the information is needed for decision-making purposes; otherwise, reports remain confidential until published, at which time they become public record.

(D) The names and identities of persons making complaints and providing information shall not be disclosed without the written consent of the person unless otherwise required by law or judicial processes.

(E) Published reports shall be public records except that the Director shall delay the publication of reports when criminal conduct is found and the appropriate law enforcement authority is pursuing an investigation and release of the report might jeopardize further investigation. An audit whose release has been delayed shall be published promptly at the end of the condition giving rise to the delay.

(F) The Director may release a preliminary draft of an audit of anyone other than a city department or agency to the auditee for review and comment if the auditee agrees to restrict its use and to maintain the confidentiality of the information.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-10 AUDIT DIVISION; SCOPE OF AUDITS.**

#### **§ 2-10-10 AUDIT DIVISION; SCOPE OF AUDITS.**

(A) The Director shall establish an Internal Audit Division. The head of the Internal Audit Division shall be the Internal Auditor.

(B) The Internal Audit Division shall conduct audits, forensic audits and Expanded Scope Audits of all auditees to independently determine whether:

(1) The city, state or federal law authorizes implemented activities and programs;

(2) The objectives intended by city, state or federal law are efficiently and effectively accomplished in the implementation of activities and programs;

(3) The expenditure of funds complies with applicable laws;

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- (4) The revenues are properly collected, deposited and accounted for;
- (5) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;
- (6) Financial and other reports fairly and fully disclose all information as required by law necessary to evaluate and ascertain the nature and scope of programs and activities;
- (7) Management established operating and administrative procedures and practices, accounting internal control systems and internal management controls are adequate and functioning as intended; and
- (8) City policies, budgets, goals and objectives are fully implemented.

(C) At an official's request, the Director shall perform financial and management studies, as special audits pursuant to § 2-10-12, of the causes of proposed, actual over or under expenditures of the annual adopted budget, or other failures to comply with the annual adopted budget.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-11 ANNUAL AUDIT PLAN.**

#### **§ 2-10-11 ANNUAL AUDIT PLAN.**

(A) Prior to the beginning of each fiscal year, the Director shall submit an annual audit plan to the Committee for review and comment. As part of these deliberations, the officials shall be invited to recommend areas for inclusion in the plan. The plan shall include the auditees scheduled for audit during the year, a statement of the scope of the audit and the estimated time required to complete the audit.

(B) The Director shall review city expenditures and encumbrances at the end of the second through fourth quarters of each fiscal year for each fund, department and program strategy. Based on historic spending patterns, the Director shall identify funds, departments and program strategies that are projected to exceed or under spend their appropriated budgets for that fiscal year by \$100,000 or five percent of the line item authority, whichever is lower. For each item, the Chief Administrative Officer shall identify the cause of the over or under spending and a plan to bring the item into compliance with the adopted budget for that fiscal year. The Internal Audit Division shall submit a budget implementation report for each of the second through fourth quarters of the fiscal year to the Council, including its projected over and under expenditures by

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fund, department and program strategy and the Chief Administrative Officer's comments regarding the causes of the over or under expenditures and plans to bring the items into compliance with the adopted budget for that fiscal year.

(C) The annual audit plan shall be transmitted to the Council for final approval as a resolution.

(D) This plan may be amended by resolution during the year after review with the Committee.

(E) In the selection of audit areas, the determination of audit scope and the timing of audit work, the Director should consult with federal and state auditors and independent auditors so that the desirable audit coverage is provided and audit effort may be properly coordinated.

(F) The Director shall make reports at least quarterly to the Committee on the status of the work plan.

(Ord. 1-2005; Am. Ord. 45-2006)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-12 SPECIAL AUDITS; AUDIT REPORTS.**

#### **§ 2-10-12 SPECIAL AUDITS; AUDIT REPORTS.**

(A) The Director may initiate a special audit without outside approval if expediency is necessary for an adequate audit response.

(B) If the Director does not expect a special audit to consume more than 2% of his budgeted audit hours, no authorization is required.

(C) If the Director expects a special audit to consume more than 2% of his budgeted audit hours, but not consume as much as 10% of his budgeted audit hours, the Committee shall approve the special audit as quickly as possible by telephonic or electronic vote; if the Committee declines approval, the Director shall terminate the special audit immediately.

(D) In all other cases, a special audit shall promptly be submitted for approval by the Council as an amendment to the annual audit plan. The Committee shall make a recommendation on the special audit to the Council. If the Council declines approval, that special audit shall immediately terminate.

(E) In all cases, the Director shall, within 48 hours of implementation, notify the Committee that a special audit is being undertaken.



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(F) A preliminary draft of the audit report shall be forwarded to the auditees and the Chief Administrative Officer for review and comment before it is provided to the Committee for pre-publication review. The auditees, including departments whose assistance is needed in order to accomplish a recommendation, shall respond to the Director, in writing, within 14 days of receipt of the audit report.

(G) The auditees' written response shall specify agreement with each of the audit findings and recommendations or reasons for disagreement with findings or recommendations. The auditees' written responses shall include auditees' plans for implementing solutions to identified problems including timetables to complete such activities.

(H) Auditees' comments to the preliminary draft may be utilized to amend the report if appropriate. If the preliminary audit report is amended, the auditees will be given a copy of the amended draft, and the auditees will be given seven to 14 days, as determined by the Director and the auditees, to respond to the amended draft of the audit report.

(I) The Director shall include the auditees' responses in the audit report.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-13 REPORTS TO THE COMMITTEE.**

#### **§ 2-10-13 REPORTS TO THE COMMITTEE.**

(A) Each investigation, audit and special audit shall result in a written final report.

(B) The Director shall submit five copies of each report to the Committee and shall retain a copy as a permanent record.

(C) If appropriate, the report shall contain the professional opinion of the Director or the contract auditor concerning the financial statements issued by the auditees, or if the audit is an expanded scope audit or a management audit, the report shall contain the professional conclusions of the auditor regarding the management activities audited.

(D) The Internal Auditor's audit reports shall include:

- (1) A precise statement of the scope encompassed by the audit;
- (2) A statement that the audit was performed in accordance with generally accepted government auditing standards;
- (3) A statement that an examination for compliance with applicable laws,

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policies and regulations was conducted, and a presentation of the findings associated with that examination;

(4) A statement of significant audit findings, including a statement of the underlying causes, evaluative criteria used and the current and prospective significance of the findings;

(5) A statement that internal control systems were examined and a report of any material weaknesses found in the internal control systems;

(6) Statements of response submitted by the auditees relevant to the audit findings;

(7) A concise statement by the auditees of the corrective actions previously taken or contemplated as a result of the audit findings and a timetable for their accomplishment; and

(8) Recommendations for additional necessary or desirable action.

(E) The Inspector General's report shall include:

(1) Specific citations to the law or policy that was allegedly violated;

(2) An assessment of the validity of the allegations under investigation, including whether the allegations are criminal or civil in nature;

(3) A list of the employee or official's supervisors;

(4) A description of any corrective action or discipline to date;

(5) If the case of a criminal violation, an evaluation of the likelihood of successful prosecution;

(6) A summary of all of the direct and circumstantial evidence supporting the allegations; and

(7) A description of which prosecutorial agencies may be contacted, have been involved or may be contacted.

(Ord. 1-2005)

## **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-14 REPORTING.**

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### § 2-10-14 REPORTING.

(A) The Director shall annually report to the Council and the Mayor regarding his activities and investigations.

(B) Within 60 days of the end of each fiscal year, the Director shall issue a published report to the Committee that separately lists audit reports, review reports and other investigative or assistance efforts completed during the fiscal year.

(C) The Director shall notify members of the media and the public of the issuance of the published report. The Office of Internal Audit and Investigations shall provide copies of the published report upon request.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-15 CONTRACT AUDITORS, INVESTIGATORS, CONSULTANTS, AND EXPERTS.**

#### **§ 2-10-15 CONTRACT AUDITORS, INVESTIGATORS, CONSULTANTS, AND EXPERTS.**

Upon approval of the Committee, the Director may obtain the services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors or other professional experts necessary to perform the functions of the Office of Internal Audit and Investigations. Contractors performing an audit or investigation shall not have any financial interest in the affairs of the auditees, officials or employees. The Director shall coordinate and monitor auditing and investigations performed by persons under contract to the Director.

(Ord. 1-2005)

### **CHAPTER 2: GOVERNMENT / ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT / § 2-10-16 PENALTY; COOPERATION; RETALIATION PROHIBITED.**

#### **§ 2-10-16 PENALTY; COOPERATION; RETALIATION PROHIBITED.**

(A) All city officials, employees and contractors shall promptly notify the Director of

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every instance of theft or other disappearance of cash, check, or property, of misfeasance or nonfeasance, defalcation, improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

(B) All city officials, employees and contractors shall provide the Director full and unrestricted access to all city offices, employees, records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, electronic data, property, equipment and facilities and any other materials within their custody. At the Director's request, an official, employee or contractor shall prepare reports and provide interviews. If an official, employee, vendor or contractor fails to produce the requested information, the Director shall notify the Committee and make written request to the Chief Administrative Officer for his assistance in causing a search to be made and germane exhibits to be taken from any book, paper or record excepting personal property. The Chief Administrative Officer shall require the officials, employees, vendors or contractors to produce the requested information.

(C) Every city contract, bid, proposal, application or solicitation for a city contract and every application for certification of eligibility for a city contract or program shall contain a statement that the individual understands and will abide by all provisions of the Accountability in Government Ordinance.

(D) No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the Director in the performance of his office.

(E) Each and every violation of this article is a criminal violation subject to the provisions of § 1-1-99 ROA 1994.

(F) Any official or employee who violates the Accountability in Government Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.

(Ord. 1-2005)

# Appendix G

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### CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY

## ARTICLE 7: WHISTLEBLOWER POLICY

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### Section

3-7-1	Short title
3-7-2	Findings and intent
3-7-3	Definitions
3-7-4	Procedures for reporting
3-7-5	Disclosure of information
3-7-6	Investigations
3-7-7	Confidentiality
3-7-8	Retaliation
3-7-9	Reservation of authority
3-7-10	Notice of whistleblower protections
3-7-11	Reports to the City Council

### CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-1 SHORT TITLE.

#### § 3-7-1 SHORT TITLE.

This article may be known and cited as the "Whistleblower Ordinance."  
(Ord. 2-2004)

### CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-2 FINDINGS AND INTENT.

#### § 3-7-2 FINDINGS AND INTENT.

The public health, safety and welfare are better protected by instituting a procedure for reporting improper governmental action, encouraging such reporting and protecting those who properly report such action from retaliation. Proper reporting will provide the opportunity to minimize any adverse impacts of improper governmental actions.  
(Ord. 2-2004)

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### CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-3 DEFINITIONS.

#### § 3-7-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ALLOWABLE COMPLAINT.** A complaint that may be filed pursuant to this article alleging an improper governmental action and meets all other requirements of this article. An allowable complaint does not include a complaint that is frivolous or that discloses information (1) that the complainant knows to be false, (2) with disregard for the truth or falsity thereof or (3) that is a confidential record.

**COMPLAINANT'S DEPARTMENT.** The director of the department in which the city employee filing a complaint is assigned. If the complainant works for an agency of the city that is not designated as a department, then **COMPLAINANT'S DEPARTMENT** shall mean the highest ranking official of such agency.

**CONFIDENTIAL RECORDS.** Any record that is confidential under any provision of law, any record that is closed to public inspection pursuant to law, and records that are advisory in nature and preliminary to any final determination of policy or action. **CONFIDENTIAL RECORDS** do not include records that are purely factual materials and do not disclose the names of complainants or witnesses.

**DIRECTOR.** The Director of the Office of Internal Audit and Investigations created by the Accountability in Government Ordinance, or its successor agency, and any investigators designated by the Director.

**EMPLOYEE.** Every appointed classified or unclassified employee of the city who receives compensation in the form of a salary. **EMPLOYEE** shall not include elected officials of the city.

**FRIVOLOUS COMPLAINT.** Any complaint or portion of a complaint that has no basis, or does not pertain to an improper governmental action, or is made for some purpose other than identifying an improper governmental action, such as complaints made for the purpose of retaliation or harassment.

**GRIEVABLE** and **GRIEVANCE.** These terms shall have the same meaning as provided in § 3-1-24 ROA 1994.

**GROSS WASTE OF PUBLIC FUNDS.** An unnecessary or unauthorized expenditure of

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a substantial amount of money or a series of unnecessary or unauthorized expenditures of smaller amounts of money cumulatively amounting to a substantial amount of money.

***IMPROPER GOVERNMENTAL ACTION.*** Any action by a city employee, an appointed member of a board, commission or committee or an elected official of the city that is undertaken in the performance of such person's duties with the city that is in violation of a federal, state or local government law or rule, an abuse of authority, of substantial and specific danger to the public health or safety, or a gross waste of public funds that is in violation of city policy or rules. The action need not be within the scope of the employee's, elected official's or board, commission or committee member's official duties to be subject to a claim of improper governmental action. ***IMPROPER GOVERNMENTAL ACTION*** does not include city personnel actions, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining agreements or the merit system ordinance, §§ 3-1-1 et seq. ROA 1994.

***INTERNAL AUDITOR.*** The Internal Auditor and the office of the Internal Auditor as created by the Internal Audit Act, or its successor agency, and any investigators designated by the Internal Auditor.

***INTERNAL AUDITOR INVESTIGATION.*** A special audit conducted by the Office of Internal Audit and Investigations based on a complaint filed pursuant to this article.

***RETALIATION or RETALIATORY ACTION.*** Any disciplinary action taken because (1) an employee lawfully disclosed information or filed an allowable complaint pursuant to this article, (2) an employee testified or assisted or is scheduled to testify or assist in any investigation, action or proceeding relating to the lawful disclosure of information by another employee pursuant to this article, or (3) the supervisor who imposed the disciplinary action believed the employee receiving the disciplinary action was involved in the activities described in parts (1) and (2) of this paragraph and such belief was the primary reason for the disciplinary action.

(Ord. 2-2004; Am. Ord. 1-2005)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-4 PROCEDURES FOR REPORTING.**

#### **§ 3-7-4 PROCEDURES FOR REPORTING.**

(A) *Complaints filed with the department.* The complainant shall submit a written



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report to the complainant's department stating in detail the factual basis for the complainant's reasonable belief that an improper governmental action has occurred. Upon receipt of a complaint, the complainant's department shall take prompt action to investigate the report of improper governmental action. Upon completion of the investigation, the complainant's department shall provide to the complainant a summary of the results of the investigation. Summaries of investigations shall not include personnel disciplinary actions taken as a result of the investigation. Summaries shall be provided to the complainant within 15 city business days of the receipt of the written complaint by the complainant's department or at such additional time beyond 15 days, but only when the complainant's department has good cause for extending the investigation and notifies the complainant when the summary of results will be provided and the reason for the extension of time. No extension shall be longer than an additional 15 city business days.

(B) *Alternative filing.* If the complainant's department director or the highest ranking official of a city agency is the subject of the complaint, then the complaint shall be filed with the Chief Administrative Officer or a member of his staff designated to receive such complaints. If the office of the chief administrative office is the subject of the complaint, the complaint shall be filed with the Mayor or his designee.

(C) *Complaints filed with the Director of the Office of Internal Audit and Investigations.* If a complainant files a complaint with the Director of the Office of Internal Audit and Investigations but does not file a complaint with complainant's department, the Director of the Office of Internal Audit and Investigations shall determine whether the complaint shall first be investigated by the complainant's department, pursuant to the procedures required in subsections (A) or (B) of this section, or the Office of Internal Audit and Investigations.

(D) *Complaints to be accepted by the Director of the Office of Internal Audit and Investigations.* The Director of the Office of Internal Audit and Investigations shall proceed with an investigation when (1) a complaint has been filed pursuant to subsections (A) or (B) of this section and the summary of the investigation is not provided to the complainant within 15 business days or the extension thereof, (2) after receipt of the summary of the investigation the complainant alleges that there is a reasonable basis for believing that insufficient action has been taken by the city to address the improper governmental action, (3) for other specified reasons, the improper governmental action is likely to recur or (4) a complaint alleges immediate harm. When applicable, a complaint filed with the Director of the Office of Internal Audit and Investigations shall have attached to it the written complaint submitted to the complainant's department. The complaint filed with the Director of the Office of Internal Audit and Investigations shall contain a statement explaining at least one of the following: (1) that the complainant's department did not provide a summary of the investigation, (2) the basis for the complainant's belief that the action taken by the city in response to the complaint is insufficient or (3) the basis for the complainant's belief that the improper governmental action is likely to

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recur or (4) the nature of the immediate harm and the basis for the complainant's belief that immediate and substantial harm may occur. When applicable, the complaint shall include a copy of all summaries of investigation provided to the complainant by the complainant's department. The Director shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(E) *Immediate harm.* Complainants shall file a complaint of improper governmental action with the office of the Director of the Office of Internal Audit and Investigations if the complainant believes that immediate and substantial harm to people or property will occur if immediate action is not taken. The complainant shall notify the Director of the Office of Internal Audit and Investigations in the complaint as to whether the complainant has filed the same complaint with the complainant's department and, if applicable, attach a copy of such complaint. If the complaint has not been filed with complainant's department, the Office of Internal Audit and Investigations shall determine if the complaint shall first be investigated by the complainant's department, pursuant to the procedures required in subsection (A) of this section, or the Director of the Office of Internal Audit and Investigations. The Director shall immediately notify the complainant's department if the Director of the Office of Internal Audit and Investigations determines that a threat of immediate harm may exist.

(F) Employees who fail to follow the procedures in this article in reporting improper governmental action shall not receive the protections provided in this article.

(G) If the complaint of improper governmental action includes allegations concerning the Director of the Office of Internal Audit and Investigations, or anyone with supervisory authority over the Director of the Office of Internal Audit and Investigations pursuant to the Accountability in Government Ordinance, the complaint shall be filed with the City Attorney.

(H) If the Department Director, the Chief Administrative Officer, the Mayor or the Director of the Office of Internal Audit and Investigations (the appropriate office conducting the investigation) determines that the complaint involves allegations of criminal activity, the complaint may be referred to a law enforcement agency of proper jurisdiction. The party conducting the investigation may coordinate any further investigation with such law enforcement agency. If criminal charges are formally filed, the party conducting the investigation may suspend its investigation until completion of criminal action.

(Ord. 2-2004; Am. Ord. 1-2005)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-5 DISCLOSURE OF INFORMATION.**

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### § 3-7-5 DISCLOSURE OF INFORMATION.

(A) *Criminal activity.* Nothing in this article shall be construed to prohibit an employee from disclosing information to an appropriate law enforcement agency.

(B) *False information, frivolous complaints and confidential records.* The protections to employees provided by this article shall not apply to any complainant who files a frivolous complaint or who discloses information (1) that the complainant knows to be false, (2) with disregard for the truth or falsity thereof or (3) that is a confidential record.

(Ord. 2-2004)

### CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-6 INVESTIGATIONS.

#### § 3-7-6 INVESTIGATIONS.

(A) The Director of the Office of Internal Audit and Investigations shall conduct a preliminary investigation based on complaints filed pursuant to this article. Such preliminary investigation shall begin within 30 days of the receipt of the complaint by the Director of the Office of Internal Audit and Investigations. The preliminary investigation shall determine if the complaint merits further investigation. If the Director of the Office of Internal Audit and Investigations finds that the complaint has no merit or that proper corrective measures have been taken by the city, the Director of the Office of Internal Audit and Investigations shall notify the complainant and the complainant's department of the decision and such decision shall be a final report. If the Director of the Office of Internal Audit and Investigations finds that a further investigation is required, the Director of the Office of Internal Audit and Investigations shall notify the complainant and the complainant's department of that decision. Decisions made pursuant to this subsection shall be public record only upon delivery of the decision to the complainant and the complainant's department.

(B) All employees, board, commission and committee members and elected city officials shall assist the Director of the Office of Internal Audit and Investigations in the investigation of complaints filed pursuant to this article, including but not limited to providing records and making statements. Interviews shall be outside the presence of the complainant's and the witness' supervisor. Employees shall be interviewed without loss of pay and may have an employee representative present at the interview. The Director of the Office of Internal Audit and Investigations shall give reasonable written notice to the person being interviewed of the time for the interview. Except as otherwise provided in this article, all records of interviews shall

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be kept confidential until the Director issues a final report concerning the complaint.

(C) If the Director of the Office of Internal Audit and Investigations determines that the complaint (1) was made in bad faith, (2) is frivolous, (3) was made for purposes of harassment or in retaliation, (4) contains information that the complainant knows to be false or the complainant disclosed information with disregard for the truth or falsity thereof, (5) contains information that is confidential by any provision of law or (6) contains information from records which are closed to public inspection pursuant to law, such determination shall be included in a report to the complainant, the complainant's department and the Chief Administrative Officer. The report shall be a public record, state the basis for such determination and be filed in complainant's personnel file. The Chief Administrative Officer shall determine if disciplinary action concerning the complainant is appropriate based on the Director of the Office of Internal Audit and Investigations' report and notify the complainant's department.

(D) The Director of the Office of Internal Audit and Investigations may decline to investigate a complaint or portions of a complaint alleging improper governmental action if the same allegations have previously been investigated or have been adjudicated in any court. The Director of the Office of Internal Audit and Investigations may consolidate investigations when complaints allege the same or similar improper governmental action.

(E) Upon completion of a full investigation, a final written report containing the findings and conclusions of the investigation shall be delivered to the complainant and complainant's department. The report shall be public record upon delivery to the complainant and complainant's department. If the report concludes that improper governmental action occurred and that corrective measures have not taken place or are insufficient to prevent reoccurrence of the improper governmental action the report shall also be delivered to the Mayor and the City Council president.

(Ord. 2-2004; Am. Ord. 1-2005)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-7 CONFIDENTIALITY.**

#### **§ 3-7-7 CONFIDENTIALITY.**

The complainant's identity shall be kept confidential when a complaint is filed with the complainant's department until such time that the summary of the investigation is provided to the complainant. If a complaint is filed with the Director of the Office of Internal Audit and Investigations, the complainant's identity shall be kept confidential until such time that the Director of the Office of Internal Audit and Investigations delivers a final report as provided in

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this article. Nothing in this article shall preclude the Director of the Office of Internal Audit and Investigations from disclosing the identity of a complainant or witness or other information to the extent necessary to conduct the Director of the Office of Internal Audit and Investigations' investigation or from disclosing all information related to the complaint, including the identity of the complainant, to law enforcement agencies of proper jurisdiction.

(Ord. 2-2004; Am. Ord. 1-2005)

### CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-8 RETALIATION.

#### § 3-7-8 RETALIATION.

(A) *Retaliation prohibited.* Elected city officials and city employees are prohibited from taking retaliatory action against an employee because the employee participated in an action protected under this article.

(B) *Discipline.* It shall be a defense to any discipline that the disciplinary action was initiated in retaliation of the employee having filed an allowable complaint or participated in an action protected pursuant to this article.

(C) *Grievances.* Complaints of retaliation not involving discipline shall be submitted pursuant to the grievance resolution procedure provided in § 3-1-24 ROA 1994.

(D) *Proof of retaliation.* In order to establish retaliation as a defense to a disciplinary action, the complainant must demonstrate that the complainant's activity under this article was protected activity and was the primary reason for the action the employee is grieving or appealing. The city may rebut this defense if it demonstrates that it would have taken the same action regardless of the complainant's participation in the activity protected under this article, and that the disciplinary action was taken for legitimate business reasons.

(E) *Limitations.* Retaliation shall not be a defense to a disciplinary action unless the disciplinary action was initiated within two years of the date the complainant filed the complaint with the complainant's department or the Director of the Office of Internal Audit and Investigations. The failure to raise a claim of retaliation in a grievance or an appeal shall bar any subsequent cause of action based on retaliation prohibited by this article arising out of the same set of facts at issue in the related grievance or appeal.

(F) *Remedies.* When retaliation is found to have occurred, either the remedies allowed pursuant to §§ 3-1-24 and 3-1-25 ROA 1994 of the Merit System Ordinance may apply or adverse materials relating to the retaliatory action in the employee's personnel file may be

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expunged, or both may apply.

(G) *Retaliation.* If a supervisor is found to have retaliated against an employee in violation of this article, one or more of the following remedies may be ordered by the supervisor's department: (1) placement of information describing the violation of this article in the supervisor's personnel file, (2) reprimand, (3) suspension without pay, (4) demotion or (5) termination of employment.

(H) When there is no finding of retaliation, such record shall be placed in the personnel file of each supervisor accused of retaliation and in the personnel file of the employee who made a claim of retaliation pursuant to this article.

(I) Retaliation shall not be a defense to a disciplinary action or grounds for a grievance if the complainant's complaint is found (1) to have been made in bad faith, (2) frivolous, (3) to have been made for purposes of harassment or in retaliation, (4) to have contained information that the complainant knew to be false, (5) to have disclosed information without regard for the truth or falsity thereof, (6) to have contained confidential records. (Ord. 2-2004; Am. Ord. 1-2005)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-9 RESERVATION OF AUTHORITY.**

#### **§ 3-7-9 RESERVATION OF AUTHORITY.**

Nothing in this article shall interfere with the power of the city to take action with respect to any employee, provided that such action is justified on facts separate from activity protected under this article.

(Ord. 2-2004)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-10 NOTICE OF WHISTLEBLOWER PROTECTIONS.**

#### **§ 3-7-10 NOTICE OF WHISTLEBLOWER PROTECTIONS.**

The Director of the Office of Internal Audit and Investigations shall prepare and each city department shall post a notice of allowable activities under this article.

(Ord. 2-2004; Am. Ord. 1-2005)

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### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 7: WHISTLEBLOWER POLICY / § 3-7-11 REPORTS TO THE CITY COUNCIL.**

#### **§ 3-7-11 REPORTS TO THE CITY COUNCIL.**

The Director of the Office of Internal Audit and Investigations shall provide an annual report to the City Council which shall include (1) the number of complaints received, (2) the nature of each complaint, (3) the number of full investigations conducted, (4) findings or recommendations on policies or practices resulting from investigations, (5) the number of complaints found as valid claims and (6) the number of complaints found to be frivolous or without merit.

(Ord. 2-2004; Am. Ord. 1-2005)

# Appendix H



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### CHAPTER 3: CITY EMPLOYEES / ARTICLE 1: MERIT SYSTEM; PERSONNEL POLICY / § 3-1-23 DISCIPLINARY ACTIONS.

#### § 3-1-23 DISCIPLINARY ACTIONS.

(A) (1) Employees may be disciplined by written reprimand, suspension, demotion or dismissal. Just cause for discipline is any behavior significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the city. Just cause shall also include prohibited retaliation as defined in the Whistleblower Ordinance and the Accountability in Government Ordinance and the filing of frivolous complaints or complaints based on false or confidential information pursuant to the Whistleblower Ordinance and the Accountability in Government Ordinance. The Chief Administrative Officer may enumerate in Personnel Rules and Regulations examples of behaviors that constitute just cause.

(2) The Chief Administrative Officer, a Deputy Chief Administrative Officer, a department director or an acting department director may impose any discipline. Division heads may issue reprimands and suspend an employee for five days or less after informing the department head. An employee's immediate supervisor may issue a reprimand after informing the division head or department head.

(3) Prior to passage of any year-end appropriation clean-up bill, the Chief Administrative Officer shall review expenditures of each City program strategy and determine which program strategies overspent their annual appropriations in excess of five percent or \$100,000, whichever is lower, prior to Council appropriation of the amount overspent. This level of overexpenditure constitutes a violation of §§ 2-11-12 and 2-11-16 ROA 1994. Because management of program finances to conform to City ordinances is a primary responsibility of all City program directors, the Chief Administrative Officer shall place a written reprimand in the personnel file of any program director whose program is overspent by five percent or \$100,000, whichever is lower, prior to Council appropriation. A program director who receives three reprimands for overspending his or her budget prior to the passage of any year-end appropriation clean-up bill by the Council during a five-year period demonstrates a lack of financial management skills critical to fulfilling the duties of a program director and, therefore, shall be demoted one grade and transferred to a position without financial management responsibility.

(4) As a requirement of assuming office, each department director shall execute an employment contract with the City, one of the provisions of which shall be that he or she will not allow their department to overspend their appropriated budget nor allow any program strategy to overspend its appropriated budget prior to the passage of any year-end appropriation clean-up bill by the Council. Department directors responsible for departments that overspend their budget prior to the passage of any year-end appropriation clean-up bill in two years during a

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period of four years shall be terminated. The Chief Administrative Officer shall place a written reprimand in the personnel file of any department directors in the event that a program in the department under the responsibility of the director similarly overspends its budget appropriation.

(B) No person except the Chief Administrative Officer shall discipline heads of departments. Only the Accountability in Government Committee may discipline the Director of the Office of Internal Audit and Investigations. In addition, only the Director of Council Services may discipline other employees of the Department of Council Services, and only the Director of the Office of Internal Audit and Investigations may discipline other employees of the Office of Internal Audit and Investigations.

(C) Before discipline is imposed, the employee shall be notified of the reasons for which discipline is contemplated, a summary of the evidence against the employee, and the employee's right to respond to the proposed action. After giving the employee the notice of contemplated action and before the employee makes any written or oral response, the supervisor contemplating the discipline shall request review by the City Employee Mediation Program Coordinator of the circumstances on which the contemplated action is based in an effort to avoid the discipline. Mediation shall occur if it is deemed appropriate by the Coordinator. After this review or if mediation is unsuccessful, the supervisor may continue with the contemplated disciplinary procedure by giving the employee the right to respond to the notice of contemplated action.

(D) Suspensions shall not exceed 90 calendar days for any offense. The Chief Administrative Officer or department head has the option on a suspension of five days or less to prohibit the employee from attending the work place or to allow the employee to work through the suspension with pay. Suspensions may be held in abeyance for a stated period of no longer than six months.

(E) The Chief Administrative Officer shall promulgate rules of procedure concerning disciplinary actions.

(F) Any disciplinary action shall be noted in the employee's personnel file.

('74 Code, § 2-9-24) (Ord. 52-1978; Am. Ord. 48-1988; Am. Ord. 30-1989; Am. Ord. 55-1989; Am. Ord. 29-1998; Am. Ord. 13-2001; Am. Ord. 9-2002; Am. Ord. 2-2004; Am. Ord. 1-2005)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 1: MERIT SYSTEM; PERSONNEL POLICY / § 3-1-24 THE GRIEVANCE RESOLUTION PROCEDURE.**

#### **§ 3-1-24 THE GRIEVANCE RESOLUTION PROCEDURE.**

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(A) **PURPOSE.** The Grievance Resolution Procedure provides a means for reconciling complaints concerning minor disciplinary actions and working conditions or departmental rules. The purpose of this grievance procedure is to promote harmonious relations among employees, supervisors and managers; to encourage the settlement of disagreements informally at the employee-supervisor level; to provide an orderly procedure to handle grievances through the various supervisory levels when necessary; to resolve grievances as quickly as possible; and to discourage the filing of unfounded grievances.

(B) **SCOPE.** This grievance procedure applies to all permanent classified employees who are not covered by labor agreements providing an alternate grievance procedure.

(C) **DEFINITIONS.** For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**EMPLOYEE.** Includes all permanent classified city employees.

**GRIEVANCE.** A formal complaint regarding disciplinary suspensions of five days or less, letters of reprimand and the application of existing rules, regulations, or policies.

**GRIEVANCE COMMITTEE.** A neutral ad hoc committee composed of four permanent city employees (two supervisory and two nonsupervisory) randomly selected by the Chief Administrative Officer to investigate and recommend solutions to an employee grievance.

**GRIEVANT.** The employee who files a grievance.

**REPRESENTATIVE.** An individual duly authorized by an employee to act on the employee's behalf.

(D) **GRIEVABLE AND NONGRIEVABLE ISSUES.**

(1) To be reviewable under the grievance procedure an issue must:

- (a) Concern matters or specific incidents that have occurred, and
- (b) Result from an act or omission by management regarding aspects of employee-employer relations over which the department director has control, and
- (c) Arise out of a specific situation or act that has resulted in inequity or damage to the employee.

(2) An issue is not reviewable under this grievance procedure if it is a matter which:

- (a) Is subject to those management rights (specified elsewhere in this article and in the Labor-Management Relations Ordinance) which are necessary to exercise

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control and discretion over the organization and efficiency of the operations of the city;

(b) Would require modification of a policy established by the City Council, State or Federal law;

(c) Has been reviewed via another grievance procedure (as authorized in an agreement with a labor organization);

(d) Is reviewable under the Personnel Rules and Regulations or another administrative procedure;

(e) Is subject to the provisions of the Labor-Management Relations Ordinance.

(3) The Chief Administrative Officer or designee shall decide whether the issue is grievable as defined in this article. This decision is final. The Chief Administrative Officer or his designee may not determine that a claim of retaliation pursuant to the Whistleblower Ordinance is not grievable.

(E) STEPS IN THE GRIEVANCE PROCEDURE. An employee must take the following steps to submit a grievance pursuant to this policy. If at any step the employee fails to take action within the allotted time, the grievance procedure will be concluded. If at any step a city representative, the Chief Administrative Officer or a grievance committee fails to take action within the allotted time, the procedure shall move to the following step.

(1) Step One. The employee initiates the grievance by submitting a written request for review of the dispute by the City Employee Mediation Program within ten calendar days from the date of the act or from the point that the employee became aware of the occurrence. If the 10th day is a weekend or holiday, the following day of business becomes the "10th day". Within seven calendar days, the Coordinator of the City Employee Mediation Program will determine if mediation of the dispute is appropriate. If so, mediation will be held according to the guidelines for the City Employee Mediation Program.

(2) Step Two. If the Coordinator determines that mediation would not be appropriate or if mediation is conducted and the dispute is not resolved, within seven calendar days after the mediation or the decision of the Coordinator, the employee shall submit a written grievance to his or her department director. The written grievance shall contain the employee's name, department, position, and immediate supervisor; the date of the alleged incident; a statement of the problem and the employee's suggested solution. Either the employee or the director may request a meeting, but it is the director's option to respond only in writing. Within seven calendar days from receipt of the grievance or a meeting, whichever is later, the department director must submit a written response to the employee.

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(3) Step Three. If the employee is not satisfied with the Department Director's decision, the employee may submit the written grievance described in Step Two to the Chief Administrative Officer who will convene a grievance committee to investigate the dispute and recommend a resolution. The committee will recommend a resolution of the grievance to the Chief Administrative Officer. The Chief Administrative Officer will review the Committee's recommended resolution, provide a final written resolution to the grievance and forward it to the employee and the Department Director. The Chief Administrative Officer's decision is the final step in the administrative process.

### (F) GENERAL PROVISIONS.

(1) Grievances may be initiated only by the employee concerned and may not be pursued without the affected employee's consent.

(2) Once a grievance has been investigated and denied, repeated filing of grievances on the same issue will not be permitted.

(3) While the grievant may designate a representative at any step of the grievance procedure, labor unions do not have representation rights for nonbargaining unit employees. A grievance committee is not required to recognize more than one representative for any grievance.

(4) If the grievance involves a group of employees or if several employees file separate grievances on the same matter, the grievances may be handled as a single grievance.

(5) The City Clerk's office will act as facilitator for the Grievance Committee to ensure that the Committee has access to all information necessary to conduct the investigation. The Committee will have the authority to call witnesses and to review all necessary records and reports.

(6) Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved.

### (G) ADDITIONAL GUIDELINES.

(1) Employees and supervisors are strongly encouraged to request mediation at any step in this process.

(2) Any grievance will be considered resolved at the completion of any step if all parties are satisfied or if the employee concerned chooses not to present the matter to the next step of the procedure within the prescribed period.

(3) As a condition of employment, employees shall be required to appear as witnesses in grievance resolution hearings when requested by the grievant or by the members of

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the city administrative staff. In addition, refusal to appear or participate in the grievance resolution procedure at any stage by a grievant shall result in forfeiture by the grievant of any further right to use of the grievance resolution procedures to resolve the grievance.

(4) The Director of Human Resources shall develop written guidelines for the operation of the Grievance Committee, addressing such issues as confidentiality of information revealed to the Committee and bias or interest of Committee members, and operating procedures.

(5) Following completion of the grievance process, department managers shall ensure the grievant experiences no retaliation for having pursued the grievance. Any Chief Administrative Officer direction associated with the grievance resolution is to be carried out as quickly as possible.

('74 Code, § 2-9-25) (Ord. 52-1978; Am. Ord. 6-1987; Am. Ord. 48-1988; Am. Ord. 30-1989; Am. Ord. 46-1995; Am. Ord. 29-1998; Am. Ord. 2-2004)

### **CHAPTER 3: CITY EMPLOYEES / ARTICLE 1: MERIT SYSTEM; PERSONNEL POLICY / § 3-1-25 APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE.**

#### **§ 3-1-25 APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE.**

(A) A nonprobationary employee who has been suspended without pay for more than five days, demoted for disciplinary reasons, or discharged may appeal the discipline to the Personnel Board within ten calendar days of the occurrence of the disciplinary decision. The appeal shall be in writing and shall be submitted to the Chief Administrative Officer with a copy to the employee's department head. The Chief Administrative Officer shall promptly refer the request to the Personnel Board for a hearing on the matter.

(B) The written appeal shall include:

- (1) The employee's name, department, position, and immediate supervisor;
- (2) The discipline imposed and a brief summary of the offense for which the discipline was imposed; and
- (3) The reason the employee disagrees with the discipline.

(C) The Personnel Board shall refer the appeal to a Personnel Hearing Officer to conduct an evidentiary hearing. The Hearing Officer shall prepare and submit to the Board and the parties a report containing a summary of the evidence taken at the hearing and proposed findings of fact. The city and the employee may submit exceptions to the Hearings Officer's

## Albuquerque Code of Ordinances

report and written argument within the time allowed by the Board's procedural rules.

(D) The Board shall render a decision that shall include findings of fact and conclusions of law consistent with the evidence. The proceedings before the Personnel Board shall be limited to consideration of the Hearing Officer's Report, any written submissions of the parties, and, at the Board's option, oral argument by the parties concerning the evidence admitted at the hearing. The Board shall not hear any testimony. A tie vote upholds the recommendation of the Hearing Officer.

(E) The Board may take one of the following actions:

(1) Accept the recommendation of the Hearing Officer by accepting the Hearing Officer's Proposed Findings of Fact and entering conclusions of law consistent with the findings;

(2) Reverse or modify the recommendation of the Hearing Officer by making its own Findings of Fact consistent with the evidence and entering conclusions of law consistent with the findings; or

(3) Remand the matter to a Personnel Hearing Officer for further hearing.

(F) The employee or the city may appeal the decision of the Personnel Board to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision shall be affirmed unless the decision is found to be:

(1) Arbitrary or capricious and unsupported by substantial evidence;

(2) In violation of applicable constitutional provisions or otherwise illegal; or

(3) In excess of the statutory authority or jurisdiction of the Board.

(G) The Personnel Board shall promulgate rules of procedure for hearings before Personnel Hearing Officers and its own meetings.

(H) The Personnel Hearing Officers have the power to administer oaths, subpoena witnesses and compel the production of documents pertinent to any hearing authorized by this article. As a condition of employment, employees may be required to appear as witnesses in hearings. Refusal to testify in an appeal hearing under this article is grounds for disciplinary action. An employee who files an appeal and refuses to appear or participate in the appeal process at any formal stage forfeits any further right to continue that appeal.

(I) An employee who appeals a disciplinary action shall be free from discrimination, restraint, coercion or reprisal by any supervisor or employee. However, appealing or showing an intention to appeal does not relieve any employee in any way of his or her responsibility to

**Albuquerque Code of Ordinances**

perform his or her assigned duties promptly, efficiently and completely.

(Ord. 29-1998)



# Appendix I

Personnel Rules and Regulations

**300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT**

301. CODE OF CONDUCT

**300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.1 Duty to the Public**

301.1 Duty to the Public

The City of Albuquerque is a service institution. In carrying out their assigned duties and responsibilities, employees must always remember their first obligation is to the general public. This obligation must be carried out within the framework of federal, state and local laws.

Employees shall serve the public with respect, concern, courtesy and responsiveness, recognizing service to the public is the reason for their employment. Telephone calls, correspondence or other communications should be answered promptly or referred to appropriate individuals for timely action.

It is recognized it is not always possible to fulfill all of the requests of the general public, however, employees are required to handle all requests and inquiries courteously, fairly, impartially, efficiently and effectively.

**300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.2 Professional Excellence**

301.2 Professional Excellence

Employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional competence, efficiency and effectiveness.

**300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.3 Standards of Conduct**

301.3 Standards of Conduct

## Personnel Rules and Regulations

Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

Employees shall not use insulting, abusive or offensive language or actions toward the public or co-workers. Ethnic or sexist jokes, slurs and other comments or actions that might embarrass or offend others are prohibited. Employees shall not harass others by making sexual advances or by creating an intimidating or offensive working environment or by making false accusations regarding such conduct. Display of visual materials that may be sexually or racially offensive is also prohibited.

Employees shall not have in their possession during assigned work hours, including lunch periods, in any facility, vehicle or work site, illegal drugs, alcohol, drug paraphernalia, weapons or explosives, unless directly related to their city responsibilities. Additionally, employees may not use any product for other than its intended manufactured use.

Employees are responsible for notifying their immediate supervisor in writing of a conviction, entry of a "no contest" plea or imposition of a sentence if the infraction relates to the position held by the employee. Misdemeanor convictions will be considered based on job relatedness.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.4 Equal Employment Opportunity**

#### **301.4 Equal Employment Opportunity**

Employees shall comply with the provisions of Title VII of the United States Civil Rights Act of 1964, as amended, the State of New Mexico Human Rights Act, as amended, the City of Albuquerque Human Rights Ordinance and the City of Albuquerque Affirmative Action Plan. While not all inclusive, these laws and the Affirmative Action Plan legitimize the concept of merit, qualifications and performance in selection and career advancement and prohibit discrimination on the basis of race, color, religion, sex, national origin or ancestry, age, physical or mental disability and Vietnam Era or disabled veteran status, sexual orientation and medical condition.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.5 Violence in**

## Personnel Rules and Regulations

### the Workplace

#### 301.5 Violence in the Workplace

Workplace violence by employees is prohibited. Violent behavior directed toward a City employee by a member of the general public shall not be tolerated.

Prohibited workplace behavior includes intimidation, verbal threats, physical assault, vandalism, arson, sabotage, the unauthorized display, possession or use of weapons in the workplace, jokes or comments regarding violent acts which are reasonably perceived to be a threat, or any other behavior reasonably perceived to be a threat of imminent harm against an employee or member of the general public.

An employee who witnesses or is the subject of prohibited behaviors must report the incident to their immediate supervisor unless the supervisor is the one exhibiting the prohibited behavior, in which case the employee shall report the behavior to the next highest person within the organization.

A supervisor receiving the complaint must conduct an investigation of the incident and initiate appropriate action to eliminate the prohibited behavior. The supervisor shall prepare a written response to the employee reporting the incident. This response shall include an acknowledgment of the employee's complaint, a description of the investigation conducted, and the action that was initiated to eliminate the prohibited behavior.

Employees engaging in any prohibited behavior may be subject to mandatory referral for psychological/psychiatric evaluation, counseling or mediation, arrest and prosecution, and/or disciplinary action up to and including termination from City employment. Refer to applicable Administrative Instructions for further guidance.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.6 Report of Abuse**

#### 301.6 Report of Abuse

During the course of business, employees may become aware of instances of abuse of equipment, facilities, programs or other areas of official City business. As employees become aware of these instances they are to

## Personnel Rules and Regulations

report these events to their immediate supervisor or directly to their department director. If an employee fails to report such events and it is determined later through an investigation that an employee had knowledge of the situation, the employee may be subject to disciplinary action up to and including termination.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.7 Weapons**

#### **301.7 Weapons**

It is strictly prohibited for any employee, other than sworn law enforcement officers, to possess firearms (including handguns, regardless of any authorized permit); explosives or dangerous weapons on City premises, in City property or at City sponsored events. City premises include worksites and vehicles (owned, rented or leased), parking garages and parking lots.

The City may conduct searches when there is a reason to believe that a person is in possession of a firearm including handguns, (regardless of any authorized permit), explosives or any other weapon, device, instrument or substance, which in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.

Any violation of this policy, including a refusal to consent to a search, will subject an employee to disciplinary action up to and including termination of employment.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.8 Safety**

#### **301.8 Safety**

Employees are responsible for performing assigned duties in the safest possible manner, using all available safety measures and devices to prevent injury to themselves, coworkers or the general public and to report unsafe equipment, materials, or conditions to their supervisor and the Risk Management Division.

Because human dignity and the personal safety of each employee are of utmost importance, dangerous practical jokes, horseplay, and roughhouse activities are prohibited in the workplace.

## Personnel Rules and Regulations

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.9 False Statements/Fraud**

#### 301.9 False Statements/Fraud

No employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.10 Bribery, Gifts and Donations**

#### 301.10 Bribery, Gifts and Donations

No individual seeking appointment to, or promotion in the service of the City shall, either directly or indirectly, give, render or pay any money, service or other valuable thing to any person for, or on account of, or in connection with, a test, appointment, proposed appointment, promotion or any personnel action. Payments to licensed employment agencies are exempted.

No reward, favor, gift, or other form of payment in addition to regular compensation and employee benefits shall be received by any employee for the performance or nonperformance of their duties from any vendor, contractor, individual or firm doing business with the City or who can reasonably anticipate doing business with the City in the future, or from any other source having or proposing to have any relationship with the City of Albuquerque.

Nothing in this section shall be construed to prohibit an occasional, nonpecuniary gift, insignificant in value; an award publicly presented in recognition of public service, participation in community events, acts of heroism or for solving of crimes; nor does it apply to a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the State to engage in the business of making loans.

## Personnel Rules and Regulations

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.11 City Funds**

#### **301.11 City Funds**

Employees are personally accountable for City money over which they have possession or control. All employees who are in control of City funds must maintain accurate and current records of all such funds. Employees must comply with all policies, practices, and procedures promulgated by the Department of Finance and Administrative Services and approved by the Chief Administrative Officer and in accordance with Generally Accepted Accounting Principles regarding the receipt, recording and disbursement of public monies.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.12 City Property**

#### **301.12 City Property**

Employees are responsible for preventing loss, damage, abuse, misuse or theft of City property or property entrusted to the City including, but not limited to: artifacts, vehicles, equipment, tools, supplies and City records. All City property should be used only for City business. City property may not be used for personal gain or profit.

Office furniture, fixtures, vehicles and equipment including lockers and storage units are the property of the City or contain property of the City. The City has the right of access to such items at any time as determined necessary by the supervisor.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.13 City Records and Accounting**

#### **301.13 City Records and Accounting**

All City records, including reports, vouchers, requisitions, payroll and personnel records must be prepared factually and accurately. It is the personal obligation of the employee completing such records as well as the supervisor to ensure that such records are accurate and comply with federal, state, and City record-keeping and accounting requirements.

## Personnel Rules and Regulations

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.14 Telephone Usage**

#### **301.14 Telephone Usage**

City telephones are for official business use only and will be used in a professional manner. Abusive, threatening or obscene phone calls are strictly prohibited. Use of City telephones for personal calls during office hours is discouraged. A supervisor may permit the employee to make occasional calls if they do not interfere with the work duties and responsibilities of the employee, departmental operations, performance or services to the public.

Personal use of City telephones for toll or long distance calls is strictly prohibited unless the call is charged to the employee's personal credit card or home telephone. Employees are responsible for ensuring that toll or long distance calls made for legitimate business purposes are appropriately and accurately documented.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.15 Automated Systems**

#### **301.15 Automated Systems**

All automated systems, including electronic mail; Internet usage, software and hardware are for official City business. All users will conduct themselves in a legal, professional and ethical manner. All automated systems are valuable and must be protected from misappropriation, abuse, misuse, theft, fraud, loss and unauthorized use or disposal.

Misappropriation of computer time, hardware or software includes, but is not limited to, using a computer to create or run unauthorized jobs, operating a computer in an unauthorized mode or intentionally causing any kind of operational malfunction or failure.

Employees are required to terminate processing from their terminals/PCs using standard log-off procedures when not in use to prevent unauthorized use of such equipment. Employees are required to report violations or suspected violations to their department director or, if the computer is under the control of the Information Systems Division (ISD), to the Chief



## Personnel Rules and Regulations

Information Officer.

Employees shall not use City computer time, hardware or software for any personal gain or profit. Employees are required to comply with all policies, practices, and procedures promulgated by the Department of Finance and Administrative Services and approved by the Chief Administrative Officer regarding the use and security of automated systems.

As used in this section, automated system and/or computer shall mean the City's mainframe computer and peripheral equipment, any terminal or desktop computer, which communicates with a computer, network or mainframe and any standalone personal computers.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.16 Privileged Information**

#### 301.16 Privileged Information

Employees shall protect privileged information to which they have access in the course of their official duties. Employees or former employees shall not disclose or use confidential information acquired through their employment with the City for the employees or another's personal gain or profit.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.17 Supervision of Employees**

#### 301.17 Supervision of Employees

Employees with supervisory duties or responsibilities shall, in all instances, ensure that all supervisory actions comply with the provisions of the Merit System Ordinance, Labor-Management Relations Ordinance, Personnel Rules and Regulations, applicable legislation, and relevant judicial/administrative decisions.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.18 Sales by Employees**

## Personnel Rules and Regulations

### 301.18 Sales by Employees

Employees are required to direct their attention to their duties and responsibilities during work hours. No employee shall conduct or operate a personal business, which includes promotion, sales, scheduling or any related activity during work hours. This includes the sale of goods or services for profit. Employees may be allowed to conduct limited sales for fund raising activities during their lunch period or breaks.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.19 Community Activities**

#### 301.19 Community Activities

As private citizens, employees may participate in public affairs and community oriented projects as a means of enhancing City governments' contribution to the well being and quality of life of the citizens of Albuquerque. Employees are responsible for complying with leave policies for activities that occur during scheduled work hours.

### **300. CONDITIONS OF EMPLOYMENT / 301. CODE OF CONDUCT / 301.20 Direct Deposit**

#### 301.20 Direct Deposit

All newly hired employees and reinstated employees are required to receive all employment wages through direct deposit. An employee may not begin work prior to complying with this requirement.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS**

#### 311. PROHIBITIONS

Violation of any of the following sections is considered just cause for disciplinary action up to and including termination.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.1 Alcohol/Drug Possession and Consumption**

## Personnel Rules and Regulations

### 311.1 Alcohol/Drug Possession and Consumption

As a condition of employment, consumption, possession, sale, purchase and/or transfer of illegal drugs or drug paraphernalia by City employees are strictly prohibited. Consumption of alcohol by City employees is prohibited in any facility, vehicle or work site (owned, leased or rented) during assigned work hours including lunch periods and breaks.

- A. If an employee uses prescription drugs it must be as directed by their physician while nonprescription drugs should be used in accordance with the recommended dosage. All employees, especially safety sensitive, must advise their supervisor if the use of such drugs may affect their ability to perform work duties safely and effectively. In this instance employees shall be required to provide proof of lawful prescription and/or a statement from the employee's personal physician indicating the employee's ability to perform the essential job functions while under the influence of the prescribed drug(s). Observation by the supervisor of abnormal behavior may result in a reasonable suspicion alcohol/drug test.
- B. Employees are responsible for notifying their immediate supervisor in writing of a conviction, entry of a "no contest" plea or imposition of sentence, including the loss of a driver's license, for illegal drugs or alcohol offenses.
- C. No employee will report to work, perform work, visit a City work site, City office or City facility (owned, rented or leased) while under the influence of alcohol or the presence of illegal drugs in their system. Employees suspected of being under the influence of alcohol or illegal drugs during assigned work hours shall be subject to a reasonable suspicion alcohol/drug test.

Violation of these provisions shall be grounds for denial, suspension or revocation of any City-issued driver's permit to operate a motor vehicle or hazardous machinery and is considered just cause for disciplinary action up to and including termination. Refusal to undergo any test required under this regulation or applicable City policy is considered a positive test and a direct act of insubordination and will result in termination.

## Personnel Rules and Regulations

### Relatives

#### 311.2 Employment of Relatives

City employees may not directly supervise, control or influence the work or employment status of a relative or the affairs of the organizational unit in which the relative is employed. The term "**relative**" includes spouse, child, stepchild, mother, father, grandparents, grandchild, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son-in-law and daughter-in-law. The term also includes a domestic partner and the mother, father, brother, sister, child, stepchild, grandparents or grandchild of the domestic partner.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.3 Political Activities**

#### 311.3 Political Activities

No person shall engage in political activity that diminishes the integrity, efficiency or discipline of the City service. No employee will participate in the following types of activity:

- A. Use of one's position or status to influence the support of other officials or employees of the City for or against any candidate or issue in any election or use of political activity to influence the employee's position or status within City government; provided, however, that nothing herein shall deny the right of officials or employees of the City to express their views on any issue.
- B. Be a candidate for or hold an elective office of the State of New Mexico or any of its political subdivisions.

Employees should refer to applicable Administrative Instructions for additional prohibited and permitted politically related activities.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.4 Hatch Act Provisions**

#### 311.4 Hatch Act Provisions

City employees whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants made by the

## Personnel Rules and Regulations

United States or a Federal agency are required to comply with the provisions of the Hatch Act.

These employees may not:

- A. Use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- B. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes;
- C. Be a candidate for public elective office in a partisan election.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.5 Union Activity**

#### **311.5 Union Activity**

Employees are free to choose any representative employee organization or union. No employee shall be intimidated, coerced, threatened or pressured into joining or not joining any organization or union. No union representative may interrupt or interfere with the normal conduct of City business. Arrangements must be made with the employee in advance to meet during lunch periods or breaks. Formal requests for on-site visits must be cleared through the supervisor or work site manager.

If the provisions of fair share are met as required in the City regulations, employees covered by a collective bargaining agreement will be required to pay an agency fee.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.6 Sales Representatives**

#### **311.6 Sales Representatives**

Because City employees must direct their attention to their work responsibilities during work hours, no sales representatives shall solicit or provide information to City employees on City property during work hours concerning any product or service unconnected with the employee's work responsibilities. No City employee shall make arrangements for or with

## Personnel Rules and Regulations

sales representatives to solicit or provide information to City employees as private customers. No employee shall accept any gratuity from a sales representative or make arrangements for or with a sales representative to solicit or provide information to other City employees as private customers.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.7 Conflict of Interest**

#### 311.7 Conflict of Interest

No employee shall violate any provision of the City Conflict of Interest Ordinance (3-3-5, R.O., 1994) or Code of Conduct promulgated pursuant to that Ordinance, including, but not limited to, the following:

- A. Employees shall disqualify themselves from participating in any official act directly affecting a business in which they have a financial interest. Employees shall not acquire a financial interest at a time when they believe or have reason to believe that it will be directly affected by their official act.
- B. All employees who have a financial interest which they believe, or have reason to believe, may be affected by an official act taken within the scope of their employment, shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter.

Additionally, it shall be the duty of employees to inform their department director of such financial interest at the time they acquire it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City Clerk for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in City employment.

- C. The City shall not enter into any contract with a business nor should the contractor be allowed to subcontract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief

## Personnel Rules and Regulations

Administrative Officer has issued a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the City.

- D. A purchase order or contract entered into by the City with a business in which an employee of the City has a controlling interest is void if the employee failed to comply with the provisions of this section prior to the City entering into such contract or purchase order.
- E. A former employee shall not within one (1) year after the date of termination from employment represent any person or business in connection with a matter in which the former employee has performed an official act, unless the Chief Administrative Officer consents to such representation. No person or business with which the former employee is associated may knowingly undertake or continue a private representation in such a matter unless:
  - 1. The former City employee is screened from participation in the matter and is apportioned no part of the compensation therefrom; and
  - 2. Written notice is promptly given to the Chief Administrative Officer.

Nothing in this section shall prohibit a former employee from entering into a contract to represent the City in any matter, however all such contracts must be approved by the Chief Administrative Officer.

Violation of any of the provisions of the Conflict of Interest Ordinance by any employee is grounds for disciplinary action, up to and including termination. Violation of any of the provisions of the Conflict of Interest Ordinance by a former employee is a misdemeanor, and, upon conviction the former employee may be sentenced to imprisonment for not more than ninety (90) days or fined not more than \$500.00 or both such imprisonment and fine.

### **300. CONDITIONS OF EMPLOYMENT / 311. PROHIBITIONS / 311.8 Occupying Two City Positions**

#### **311.8 Occupying Two City Positions**

## Personnel Rules and Regulations

City employees are prohibited from holding two (2) city positions simultaneously.