

CITY OF HOBBS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REPEALING RESOLUTION 5329 CODE OF ETHICS/RELATED PARTY POLICY FOR THE CITY OF HOBBS AND ADOPTING AN ORDINANCE AMENDING CHAPTER 2 OF THE HOBBS MUNICIPAL CODE WHICH SHALL BE THE CITY OF HOBBS CODE OF CONDUCT

WHEREAS, on June 1, 2009, the City of Hobbs adopted Resolution 5329 titled Code of Ethics/Related Party Policy to serve as the ethics laws that governed the City of Hobbs; and

WHEREAS, on or about July 1, 2011, the New Mexico Legislature made the State ethics statute, commonly referred to as the Governmental Conduct Act NMSA 1978, § 10-16-1, et seq., applicable to municipalities; and

WHEREAS, the City of Hobbs wishes to implement many of the requirements of the Governmental Conduct Act as the ethics laws that govern the City of Hobbs, as the same applies to municipalities; and

WHEREAS, NMSA 1978, §10-16-11.1, allows a municipality to implement rules and standards that are more stringent than those required by the Governmental Conduct Act; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Resolution 5329 is hereby repealed in its entirety; and

BE IT FURTHER ORDAINED that Chapter 2 of the Hobbs Municipal Code shall be amended to include the City of Hobbs Code of Conduct as is more specifically described as follows:

## Chapter 2.01 – Code of Conduct

### 2.01.010 - Purpose.

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 City of Hobbs Code of Conduct shall apply to all Public Officers and Employees.

### 2.01.020 – Definitions.

The following definitions shall apply to the City of Hobbs Code of Conduct:

“Anything of value” means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day;

“Business” means a corporation, partnership, sole proprietorship, firm organization or individual carrying on a business;

“Confidential information” means information that by law or practice is not available to the public;

“Contract” means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with the City of Hobbs for:

- (a) The rendition of services, including professional services;
- (b) The furnishing of any material, supplies or equipment;
- (c) The construction, alteration or repair of any public building or public work;
- (d) The acquisition, sale or lease of any land or building;
- (e) A licensing agreement;
- (f) A loan or loan guarantee; or the purchase of financial securities or instruments;

“Contribution” means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration;

“Employment” means rendering of services for compensation in the form of salary as an employee;

“Family” means an individual’s spouse, parents, children or siblings, by consanguinity or affinity;

“Financial interest” means an interest held by an individual or the individual’s family that is:

- (a) An ownership interest in business or property; or
- (b) Any employment or prospective employment for which negotiations have already begun;

“Honorarium” means payment of money, or anything of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making a speech or rendering a service, or payment or compensation for services rendered in the normal course of a private business pursuit.

“Official act” means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

“Public officer or employee” means any elected or appointed official or employee of the City of Hobbs who receives compensation in the form of salary or is eligible for per diem or mileage;

“Substantial interest” means an ownership interest that is greater than twenty percent.

2.01.030 – Public Trust.

- A. A public officer or employee shall treat the public officer's or employee's government position as a public trust and as such shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- B. A public officer or employee shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

2.01.040 – Improper Influence and Gifts.

- A. A public officer or employee shall not request or receive, and no person may offer a public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. A violation of this section, pursuant to NMSA 1978, §10-16-3, may constitute a fourth degree felony under the laws of the State of New Mexico.
- B. A business that contracts with the City of Hobbs to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects.
- C. A public officer or employee that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects, shall not knowingly accept a contribution of anything of value from a business that contracts with the City of Hobbs to provide financial services involving the investment of public money or issuance of bonds for public projects.

2.01.050 – Conflicts of Interests.

- A. A public officer or employee shall not take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. A violation of this section, pursuant to NMSA 1978, §10-16-4, may constitute a fourth degree felony under the laws of the State of New Mexico.
- B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.
- C. A public officer during the term for which elected and a public employee during the period of employment shall not acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.
- D. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee.

This section does not apply if the employee is not supervised by the public officer or employee that is otherwise the seller.

- E. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. This section does not apply if the employee is not supervised by the public officer or employee that is the recipient of the commission or profit.
- F. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over who the public officer or employee has regulatory authority.
- G. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.
- H. The City of Hobbs shall not enter into a contract with a public officer or employee, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process.

This subsection does not apply to a contract of official employment with the City of Hobbs. A person negotiating or executing a contract on behalf of the City of Hobbs shall exercise due diligence to ensure compliance with the provisions of this section.

- I. A public officer or employee shall not use or disclose confidential information, acquired by virtue of the public officer's or employee's position with the City of Hobbs, for the public officer's or employee's or another person's private gain.
- J. A public employee who is participating directly or indirectly in the contracting process shall not become, while such an employee, the employee of the outside person or business contracting with the City of Hobbs.
- K. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.
- L. A public officer or employee shall not request or receive an honorarium for a speech or service rendered that relates to the performance of public duties.
- M. The City of Hobbs shall not accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of the City of Hobbs shall exercise due diligence to ensure compliance with this section.

2.01.060 – Former Public Employees.

- A. The City of Hobbs shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
  - 1. represented personally in the matter by a person who has been a public officer or employee of the City of Hobbs within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by that former public officer or employee; or
  - 2. assisted in the transaction by a former public officer or employee of the City of Hobbs whose official act, while in employment with the City, directly resulted in the City making the contract or taking the action.
- B. A former public officer or employee shall not represent a person in the person's dealings with the City of Hobbs on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.
- C. A former public officer or employee shall not represent for pay a person before the City of Hobbs, including any City division, for a period of one year after leaving public service or employment with the City.

2.01.070 – Political Activity.

- A. A public officer or employee shall not directly or indirectly coerce or attempt to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose.
- B. A public officer or employee shall not threaten to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities.
- C. A public officer or employee shall not use the property of the City of Hobbs for their benefit as it relates to any political purpose.

2.01.080 – Implementation.

- A. The City of Hobbs Code of Conduct shall be reviewed at least once every four years from the time of its adoption.
- B. Within thirty (30) days after the City of Hobbs Code of Conduct is adopted, a copy shall be given to and reviewed with all public officers and employees. All new public officers and employees shall review the City of Hobbs Code of Conduct prior to or at the time of assuming office (public officer) or being hired (employee).
- C. The City Manager shall adopt ongoing education programs to advise public officers and employees about the City of Hobbs Code of Conduct.
- D. Nothing in the City of Hobbs Code of Conduct shall relieve any member of the City Commission or the Mayor from the obligations imposed by Section 2.04.060(H) of the Hobbs Municipal Code.

2.01.090 – Required Disclosures.

- A. Every public officer shall complete a “Public Officer Disclosure Form,” as the same may be amended from time to time, upon taking office or within thirty (30) days of adoption of the City of Hobbs Code of Conduct, whichever is applicable. The public officer shall be required to file the same with the Office of the City Clerk for the City of Hobbs.
- B. Every public officer shall complete a “City of Hobbs Financial Disclosure Form,” as the same may be amended from time to time, upon taking office or within thirty (30) days of adoption of the City of Hobbs Code of Conduct, whichever is applicable. The public officer shall be required to file the same with the Office of the City Clerk for the City of Hobbs.
- C. Every public employee shall complete an “Employee Disclosure Form,” as the same may be amended from time to time, upon hire or within thirty (30) days of adoption of the City of Hobbs Code of Conduct, whichever is applicable. The public employee shall be required to return the same to the Human Resources office for the City of Hobbs.
- D. Every public employee shall complete a “City of Hobbs Financial Disclosure Form,” as the same may be amended from time to time, upon hire or within thirty (30) days of adoption of the City of Hobbs Code of Conduct, whichever is applicable. The public employee shall be required to return the same to the Human Resources office for the City of Hobbs.
- E. Every public officer and employee shall be required to complete and file/return the forms outlined herein every December of every year thereafter.
- F. Every public officer and employee has a duty to update their individual forms outlined herein as their individual circumstances may change.
- G. The forms outlined herein shall constitute “Public Records” for the purposes of the Inspection of Public Records Act (NMSA 1978, §§14-2-1, et seq.).

2.01.100 – Enforcement.

- A. It shall be the responsibility of every individual public officer and employee to adhere to the City of Hobbs Code of Conduct.
- B. A violation of the City of Hobbs Code of Conduct by any public officer may be referred to the State of New Mexico’s Attorney General’s Office or the District Attorney’s Office for investigation and/or legal action.
- C. A violation of the City of Hobbs Code of Conduct by any public employee is grounds for discipline, including suspension, demotion or dismissal.
- D. Any violation of the City of Hobbs Code of conduct may be subject to the enforcement procedures outlined in NMSA 1978, §§10-16-14, 10-16-17, and 10-16-18, which include both criminal and civil penalties in a court of competent jurisdiction in the State of New Mexico if the same is determined to have been a violation of the Governmental Conduct Act.
- E. Any individual, other than an individual suspected of committing a violation, who cooperates as a fact witness or reporting party in an investigation of a violation of the City of Hobbs Code of Conduct shall not be dismissed, threatened with dismissal, or otherwise retaliated against by any public officer or employee on the basis of their cooperation.

PASSED, ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk