

TORRANCE COUNTY
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 2019-04



TORRANCE COUNTY CODE OF CONDUCT

WHEREAS, it is the desire of the Torrance County Commission to earn and maintain the trust of the public they serve; and,

WHEREAS, an effective and ethical government is critical to the securing public trust; and,

WHEREAS, the public expects and deserves to be treated with respect and the conduct of County employees should represent the highest of ethical standards and fair dealing when accomplishing their daily tasks; and,


WHEREAS, the Commission has the responsibility to clearly define for County employees their expectations for ethical conduct.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF TORRANCE COUNTY, NEW MEXICO that the attached document entitled the Torrance County Code of Conduct is hereby adopted.

DONE THIS 11th DAY OF SEPTEMBER, 2019.


APPROVED AS TO FORM ONLY:

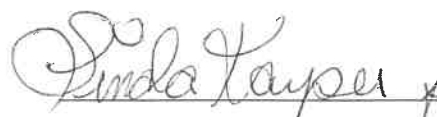
BOARD OF COUNTY COMMISSIONERS

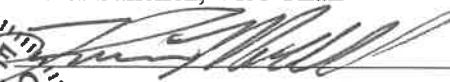
 9/11/19
County Attorney Date


Ryan Schwebach, Chair

ATTEST:


Javier Sanchez, Vice Chair


Linda Jaramillo, County Clerk


Kevin McCall, Member

Date: 9-11-19



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Torrance County

Code of Conduct



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SECTION 1 – DECLARATION OF POLICY

The proper operation of county government requires that candidates, elected officials, employees, and volunteers of the county be independent, impartial and responsible to the people; that county decisions and policy be made in proper channels of the governmental structure; that public office or the pursuit of public office not be used for personal gain; that the public have confidence in the integrity of its county government; and, that, persons and businesses seeking to contract and contracting with the county abide by the requirements set out herein to prevent conflicts of interest and unfair contracting practices. To assist in attaining these goals, there is established a code of conduct for all candidates, elected officials, employees and volunteers of county government, including members of boards, committees and commissions (hereinafter "candidates and public servants").

The purpose of this code is to establish standards of conduct for all candidates for elected office, public servants, and employees by setting forth those acts or actions which are incompatible with the best interests of the county and by requiring candidates, and public servants to disclose personal interests, financial or otherwise, in matters affecting the county. It is the further purpose of this code to protect county employees and volunteers from undue influence, threats or fear of threat or reprisal with respect to the exercise of their constitutional right to support candidates of their choice.

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

SECTION 2 – RESPONSIBILITY OF PUBLIC OFFICE

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

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

SECTION 3 – DEFINITIONS

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

Business means a corporation, partnership, sole proprietorship, firm, joint venture, association, organization or individual carrying on a business.

Candidate means any person who has filed a declaration of candidacy for the position of County Commissioner, Sheriff, Treasurer, Assessor, Probate Judge or Clerk, including the period of time from the filing of the declaration of candidacy through being sworn into the elected office.

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

Contract means an agreement or transaction having a value of more than \$1,000.00 with the County of Torrance for:

1. The rendition of services, including professional services.
2. The furnishing of any material, supplies or equipment.
3. The construction, alteration or repair of any public building or public work.
4. The acquisition, sale or lease of any land or building.
5. A licensing arrangement.
6. A loan or loan guarantee.

Domestic partners Domestic partners means two adults, capable of consent who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, where both persons have a common residence, and neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved or adjudged a nullity. The two persons are at least 18 years of age and not related by blood in a way that would prevent them from being married to each other in this state. A "common residence" means that both domestic partners share a common residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

Elected official means the members of the Board of County Commissioners, sheriff, treasurer, assessor, and clerk, but does not include the probate judge.

Employee means all persons filling an allocated position of county employment, including appointees of a County Commissioner, the Board of County Commissioners, or any other elected official.

Employment means rendering of services for compensation in the form of salary as an employee.

Family member means an individual's spouse, parents, children or siblings, by consanguinity or affinity and includes an individual's domestic partner.

Financial interest means an interest held by an individual or the individual's family that is:

1. An ownership interest in business or property.
2. Any employment or prospective employment for which negotiations have already begun.

Gift means any money, property, real property, personal property, service, license, permit, contract, authorization, loan, travel, entertainment, food, hospitality, gratuity, or any promise of these, or anything

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of value that is received or given without equivalent consideration or compensation. For purposes of this division, "gift" does not include:

1. Opportunities, benefits, and services that are available on the same conditions as for the general public.
2. Anything for which the elected official, employee or volunteer, or his or her spouse, or family member pays the market value.
3. Any (i) contribution that is lawfully made and reported in accordance with the election code, or (ii) activities associated with a fundraising event in support of a political organization or candidate, unless otherwise prohibited by this code.
4. An award, plaque, certificate, or similar personalized item given in recognition of the official's public, civic, charitable, or professional service.
5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
6. The use of a public facility or public property made available by a governmental agency for a public purpose.
7. Gifts provided directly or indirectly by a state, regional or national organization whose primary purpose is the promotion of the exchange of ideas between governmental officials or employees or to provide for the professional development or training of such governmental officials or employees.
8. Any gift accepted on behalf of and to be used by the county for the costs of attending public meetings or conferences where elected officials or employees are attending as part of their official duties, including local events and the costs of travel and related expenses associated with attending such events outside of the county.
9. Any gift given by a family member for personal reasons.
10. Food or beverage with a value under \$45.00.

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

Person means any individual, corporation, partnership, joint venture, sole proprietorship, firm, association or business.

Political activity means:

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

7. Campaigning for any elective office.
8. Managing or working on a campaign for elective office.
9. Preparation or design of any campaign materials or any form of media for a candidate for elective office.

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

Public servant means elected officials, employees and volunteers of Torrance County as those terms are defined herein.

Restricted donor means any person or entity as defined by the New Mexico Gift Act NMSA 1978 § 10-16B-1 et seq. and includes, but is not limited to, anyone who:

1. Is seeking official action (i) by an elected official or volunteer, or (ii) in the case of an employee by the employee or by an elected official, a county department or an employee's supervisor. Such official actions shall include, but are not limited to, the decisions regarding legislation, employment decisions, contract approval, approval of permits or development plans or any other action or decision that is discretionary with an elected official or employee.
2. Does business with or seeks to do business (i) with the Board of County Commissioners, the county, an elected official or volunteer, or (ii) in the case of an employee, with an employee or his/her department, elected office or an employee's supervisor.
3. Conducts activities regulated (i) by an elected official or volunteer, or (ii) in the case of an employee, by the employee or his/her department or the employee's supervisor.
4. Restricted donor shall not include persons or entities where a direct financial transfer from the entity or person who holds the contract with the county to an elected official or candidate cannot be established.

Standards mean the conduct required by the code of conduct.

Substantial financial interest is an ownership interest greater than 20 percent.

Volunteer means any person who is appointed by an individual County Commissioner or by a majority of the Board of County Commissioners to any board, committee or commission for which the individual receives no compensation.

SECTION 4 – STANDARDS OF CONDUCT

A. *General ethical standards of public service.*

1. Public servants shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
2. Public servants shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high

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responsibilities of public service.

3. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
4. No public servant may request or receive, and no person may offer any money, thing of value or promise thereof, other than any county pay received, that is conditioned upon or given in exchange for promised performance of an official act.

B. *Improper influence.* No public servant shall make, participate in making or in any way attempt to use his or her position to influence any county governmental decision or action in which they know, he or she has reason to know, or should know that he or she or any person within the second degree of relations has any substantial interest. No County Commissioner shall make, participate in making or in any way attempt to use his or her position to influence any hiring decision or other decision regarding employment for any county employee, except for appointees of the County Commission which include the County Manager, the County Attorney, and the Fire Chief. It shall be considered improper influence for a Commissioner to participate in the creation of a job description for any county position unless they are specifically appointed to do so by the Board of County Commissioners through a resolution presented at a public meeting of the board. This prohibition does not prohibit:

1. A County Commissioner from being listed as a reference for an applicant seeking employment with the county.
2. A County Commissioner from participating in and making comments during any concurrence process.
3. A County Commissioner raising his or her concerns regarding the performance or conduct of a Deputy County Manager or department director with the County Manager, or stating their satisfaction, dissatisfaction, compliment, criticism or concern regarding the actions of a deputy County Manager or department director publicly.
4. A County Commissioner notifying the County Manager or County Attorney, in a confidential communication, of allegations of poor employee performance or employee misconduct and requesting appropriate investigation and action if found by the County Manager to be warranted.

C. *Prohibited bidding and contracting.*

1. No public servant shall accept a bid or proposal from a person who directly participated in the preparation of the specification, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.
2. No public servant shall attempt, directly or indirectly, to influence the process or outcome of a competitive bid, proposal or request for a proposal, unless formally or specifically appointed to participate in the bid or proposal process.

3. No public servant shall obtain financial interests or compensation from a person or business that is, or is attempting to have business with the county where the public servant has influence or decision-making authority.
4. No public servant who participated, directly or indirectly in a county procurement process shall seek employment, be an employee, or receive any financial consideration from a person or business contracting or seeking to contract with the county.
5. No public servant shall enter into contracts with, or take any action favorably affecting, any person or business that is represented in the matter by a person who has been an elected official or employee of the county within the preceding year.
6. No person or business who is doing business with the county or seeking to do business with the county shall attempt to influence the outcome of a bid process by contacting any candidate or public servant about a bid or proposal process unless the public servant contacted is formally or specifically appointed to participate in the bid or proposal process and such communication is a part of the bid or proposal process and is documented by the purchasing department in the bid or proposal file. Persons or businesses doing business or seeking to do business with the county shall be required to comply with the provisions of this code of conduct as they apply to their interactions with the county and any violation of the code of conduct requirements shall be a breach of a county contract they hold and shall be grounds for rejection of any bid or proposal. Any public servant who is contacted by a person or business seeking assistance in influencing the outcome of a bid or proposal shall report that contact immediately, or as soon as practicable, to the procurement officer.

D. *Receiving and soliciting gifts.* No candidate, or public servant shall intentionally solicit or accept a gift or gifts with a market value greater than \$100.00 from any restricted donor within a calendar year. No candidate or public servant shall intentionally solicit or accept a gift or gifts in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes family members of the candidate, elected official, employee or volunteer. No restricted donor shall intentionally offer or make a gift that violates this restriction. Any candidate or public servant who accepts a gift subject to the conditions of this section shall not allow receipt of the gift to influence in any way the execution or integrity of their official actions or decisions.

E. *County-owned property.* No public servant shall engage in or permit the unauthorized use of county-owned property for any political activity or in violation of any county policy. No public servant shall receive county property at their personal residence or private place of business. The County Manager shall establish a policy regarding the tracking and storage of all county-owned property.

F. *Use or disclosure of privileged information.* No public servant shall use or disclose privileged or confidential information gained in the course of or by reasons of his or her position or employment, other than: (i) in the performance of his or her official duties; (ii) as may be required by law; or (iii) as permitted by this code of conduct.

G. *Conflicts of interest.*

1. Official act for personal financial interest.

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- a. It is unlawful for public servant to take an official act for the primary purpose of directly enhancing or improving their financial interest or financial position.
 - b. A public servant shall be disqualified from engaging in any official act directly affecting their or their family members' substantial financial interest.
 - c. No elected official during the term for which elected, nor any employee or volunteer during the period of their service shall acquire a substantial financial interest when they believe or should have reason to believe that the new substantial financial interest will be directly affected by the public servant's official act.
2. No public servant shall make, or participate in making, any county governmental decisions with respect to any matter in which the public servant or their family member has any substantial financial interest.
3. Any employee who has a conflict of interest as described in subsections (1) or (2) above shall advise his or her supervisor of the conflict or potential conflict in writing. The immediate supervisor may ask for guidance on the nature of the potential conflict from the County Manager or County Attorney. If it is determined there is a conflict, the supervisor shall either:
 - a. Assign the matter to another employee.
 - b. Require the employee to eliminate the substantial interest giving rise to the conflict and only thereafter shall the employee continue to participate in the matter.
 - c. It shall not be considered a violation of this code of conduct where an employee timely discloses his or her potential conflict of interest and complies with the direction of his or her supervisor, so long as that direction is in compliance with New Mexico Law and this Code of Conduct.
4. Any public servant, while acting in a quasi-judicial, legislative or adjudicative role, shall disclose the potential conflict of interest and shall disqualify themselves from participating in any official act, including any substantive discussion or vote. Any elected official may ask guidance on potential conflicts of interests from the County Attorney.
5. ***Interest in county business.***
 - a. No public servant shall have any substantial financial interest in his or her own name, or in the name of a family member, in any contract, work or business of the county or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the county. It shall not be considered a violation of this section where the County is lawfully exercising its eminent domain powers and the public servant who has a financial interest in the property does not participate in the identification, selection or approval of the taking. No public servant shall have a substantial financial interest in the purchase of any property that: (i) belongs to the county; or (ii) is sold for taxes or assessment unless the sale is subject to a competitive bidding process following public notice.

- b. For purposes of subsection (a) "substantial financial interest" shall not include the interest of the spouse of a public servant which interest is related to the independent occupation, profession or employment of the spouse.
- c. The county shall not enter into a contract with a public servant or with their family or with a business in which they or their family has a substantial interest unless the public servant has disclosed through public notice to the county clerk their substantial interest and unless the contract is awarded pursuant to a competitive process and the public servant does not take part in any decision-making process; provided that this section does not apply to salary for the elected office or employee compensation by the county. A person negotiating or executing a contract on behalf of the county shall exercise due diligence to ensure compliance with the provisions of this section.

H. Political activity.

- 1. No candidate or public servant shall compel, coerce or intimidate any elected official, volunteer or employee to make, or refrain from making, any political contribution. No candidate or public servant shall directly solicit any political contribution from county employees or immediate family of county employees. Nothing in this subsection shall be construed to prevent any candidate or public servant from voluntarily making a contribution or receiving a voluntary contribution.
- 2. No candidate or elected official shall accept any campaign contribution for a county office in excess of \$1,000.00, per primary, general or special election, from any restricted donor or in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes immediate family members of the restricted donor. No restricted donor shall offer or make a contribution that violates this Code of Conduct. No candidate or elected official shall accept a campaign contribution from an individual or group of individuals when the candidate or elected official knows, or has reason to believe, that the original source of the campaign contribution was a restricted donor.
- 3. No employee with contract management authority or property management authority shall serve as a paid political consultant or as a member of the political fundraising committee of any elected official or candidate.
- 4. No employee shall be permitted to serve as a paid campaign consultant, paid campaign treasurer or paid campaign manager for a candidate for federal, state, city or county office.
- 5. No employee shall be permitted to receive more than \$250.00 in reimbursement from any political campaign or political candidate, in any 12-month period.
- 6. County employees shall not perform any political activity while at work and during any compensated time, other than annual leave, personal leave, holidays or other time off. Public servants shall not use any county property or resources for any political activity for the benefit of any campaign for elective office or any political organization.

7. At no time shall any public servant solicit or require any employee to perform any political activity: (i) as part of the employee's county duties; (ii) as a condition of county employment or placement on any board, committee, or commission; or (iii) during any time off that is compensated by the county (such as annual leave, personal leave or holidays).
 8. At no time shall any public servant: (i) threaten to deny a promotion or pay increase to a county employee who does or does not vote for certain candidates; (ii) require an employee to contribute a percentage of the employee's pay to a political fund; (iii) influence a subordinate employee to purchase a ticket to a political fundraising dinner or similar event; or, (iv) advise an employee to take part in political activity or similar activities.
 9. No county employee shall be directly or indirectly coerced or attempt to coerce another county employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political activity as defined by this Code of Conduct.
 10. A county employee shall not be awarded any additional compensation or employment benefit in the form of a salary adjustment, promotion, or continued employment in consideration for the employee's participation in any political activity.
 11. Nothing in this section prohibits activities that are otherwise appropriate for a county employee to engage in as a part of their official county employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.
- I. **Honoraria.** No public servant may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of \$100.00, but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.
- J. **Outside employment.** Pursuant to the county personnel ordinance, an employee shall disclose in writing to the employee's respective office or employer all employment engaged in by the employee other than the employment with or service to the county and must receive written approval of that outside employment.
- K. **Prohibited employment.** It is unlawful for an employee who is participating directly or indirectly in the contracting process to become or to be, an employee or contractor for any person or business contracting with the county.
- L. **Prohibited Sales.**
1. An elected official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through their family or a business in which the elected official or employee has a substantial interest, to an employee supervised by the elected official or employee. An elected official or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the elected official or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if an elected official or employee, in good faith, is not

aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under their supervision.

2. An elected official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through their family or a business in which the elected official or employee has a substantial interest, to a person over whom the elected official or employee has regulatory authority.
3. An elected official or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom they have regulatory authority.
4. An elected official or employee shall not accept from a person over whom they have regulatory authority an offer of employment or an offer of a contract in which the elected official or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom they have regulatory authority.

M. *Prohibited contributions; financial service contractors.*

1. A business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to an elected official or employee of the county who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects.
2. An elected official or employee of the county that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects, shall not knowingly accept a contribution of anything of value from a business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects.
3. For the purposes of this section:
 - a. "Anything of value" means any gift as prohibited by the code of conduct.
 - b. "Contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

N. *Contracts involving former elected officials and employees.*

1. The county shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
 - a. Represented personally in the matter by a person who has been an elected official or employee of the county within the preceding year if the value of the contract or action is in excess of \$1,000.00 and the contract is a direct result of an official act by the elected official or employee.

- b. Assisted in the transaction by a former elected official or employee of the county whose official act, while in county employment, directly resulted in the county's making that contract or taking that action.
2. For a period of one year after leaving county service or employment, a former elected official or employee shall not represent for pay a person before the county.

O. *Commissioner interference.*

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

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

SECTION 5 – REPORTING VIOLATIONS OF THE CODE OF CONDUCT

- A. Any person who has reason to believe the code of conduct has been violated may report the suspected violation in the following manner:
 1. By submitting to the County Manager or County Attorney, a sworn and signed complaint alleging facts which, if true, would constitute a violation of this code. The sworn complaint must identify with particularity the specific section(s) of the code allegedly violated and the facts that support such a violation. The complaint must include the complainant's name and contact information. Complaints will be handled in the following manner:
 - a. If the complaint involves allegations against a county employee, the County Manager, County Attorney, and human resources director shall investigate the complaint to determine if there is enough evidence to support the allegation(s). The County Manager may, at their discretion, hire an independent licensed investigator to review the allegations. Violations of this code by county

employees shall be considered violations of the County's Personnel Ordinance and subject to discipline up to and including termination per the Personnel Ordinance.

- b. If the complaint involves allegations against a county elected official other than a Commissioner, the County Manager and County Attorney shall investigate the complaint to determine if there is enough evidence to support the allegation(s). The County Manager may, at their discretion, hire an independent licensed investigator to review the allegations. If the allegation(s) are found to be supported by a preponderance of the evidence, the County Manager shall present the findings to the Board of County Commissioners at the board's next regular meeting.
 - c. If the complaint involves allegations against a County Commissioner, the County Manager and County Attorney shall convene a review board of three (3) officials with government ethics, legal, management, or human resources experience to review the complaint. The review board shall have the authority to dismiss the complaint or to order an independent investigation by a licensed investigation firm. If the allegation(s) are found to be supported by a preponderance of the evidence, the investigator shall present the findings to the Board of County Commissioners at the board's next regular meeting.
- B. The complaints that are not dismissed shall be served by the County Manager on the respondent within three business days after the determination not to dismiss the complaint has been made. Service of all documents required under this section may be done by electronic delivery and return receipt.
- C. Given the Board of County Commissioners and other county elected officials' commitment to open, ethical and transparent government, reporting a good faith complaint for a known violation of the code of conduct by a public servant shall afford that person all the protections of the non-retaliation provision of this code and the protections contained in the Whistleblower Protection Act.

SECTION 6 – RIGHT OF APPEAL

Any decision of a violation of this code, with respect to an elected official, candidate or volunteer may be appealed to the Seventh Judicial District Court. Any decision regarding an employee shall be covered by the terms of the county's Personnel Ordinance.

SECTION 7 – NON-RETALIATION

The Board of County Commissioners does not tolerate retaliation against any person who has reported a violation of this code or of other county ordinances or state laws when made in good faith. This non-retaliation provision applies whether the complaint is ultimately determined to be well founded or unfounded. All public servants are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim of violation. Anyone

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who feels that they have been retaliated against in violation of this policy should submit a sworn and signed complaint to the County Manager or County Attorney setting forth the claim of retaliation.

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

If after an independent investigation, the County Manager finds that a complaint for violation of the Code of Conduct submitted by an employee is without merit and was made with an intent to harm, harass or intimidate the subject of the complaint, the employee shall be subject to discipline up to and including termination per the Torrance County Personnel Ordinance. The County Manager is authorized to remove any volunteer or County board member for violations of this Code of Conduct or if the volunteer or County board member's complaint has been found to be without merit and used to harm, harass, or intimidate another public servant. For complaints of violations not covered by the Code of Conduct found to be without merit, the County Manager and the County Attorney may determine if a complaint was made with the intent to harm, harass or intimidate the subject and may take disciplinary action.

SECTION 8 – SEVERABILITY

The provisions of this Code of Conduct are severable, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, unconstitutional, facially or in application, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Code of Conduct or their application. It is hereby declared to be the intent of the Board of County Commissioners that this Code of Conduct would have been adopted as if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, or alternatively held exempted from or inapplicable to a specific person or circumstance.

SECTION 9 – FIRST AMENDMENT

Nothing in this Code of Conduct shall be construed to in any way restrict or abridge a public servant's freedom of speech as guaranteed by the United States Constitution's First Amendment during non-work hours or when not conducting official County business.