



**CITY OF RIO RANCHO
ORDINANCE**

ORDINANCE NO. 22

ENACTMENT NO. 16-19

AN ORDINANCE ENACTING A CODE OF CONDUCT FOR THE CITY OF RIO RANCHO EMPLOYEES, ELECTED OFFICIALS, AND APPOINTED OFFICIALS

government position as a public trust; and

WHEREAS: the public officer or employee 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; and

WHEREAS: public officers and employees 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 responsibilities of public service; and

WHEREAS: the City seeks to foster and maintain transparency while conducting City business, creating policy and undertaking the day to day operation of the City; and

WHEREAS: in order for the public to maintain confidence in the integrity of government, this ordinance establishes minimum standards of ethical behavior and sets forth explicit standards of conduct by requiring Elected Officials, Appointed Officials, and Employees to disclose personal interests, financial or otherwise, in matters of the City, and to remove themselves from decision making when such interests exist.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

SECTION 1. SHORT TITLE. This Ordinance may be cited as the "City of Rio Rancho Code of Conduct."

SECTION 2. DECLARATION OF POLICY. The City of Rio Rancho seeks to foster and maintain transparency while conducting City business, creating policy and undertaking the day to day operation of the City. This Ordinance establishes minimum standards of ethical behavior and sets forth explicit standards of conduct by requiring Elected Officials, Appointed Officials, and Employees to disclose personal interests, financial or otherwise, in matters of the City and to remove themselves from decision making when such interests exist.

SECTION 3. RESPONSIBILITY OF PUBLIC OFFICE AND EMPLOYMENT. Elected Officials, Appointed Officials, and Employees of the City are bound to uphold the Constitution of the United States, the New Mexico Constitution, and federal, state and local laws; to adhere to the highest standards in the exercise of powers and duties of

1 office or employment; to impartially carry out their duties; to discharge their duties of
2 office regardless of personal considerations; and to recognize that public interest must
3 be the prime objective.

4
5 **SECTION 4. DEFINITIONS.**

6
7 **A. Administrative Action** - action based upon the application, or interpretation
8 of a City Ordinance or state statute, or a proceeding involving a license permit,
9 franchise or development use.

10
11 **B. "Anything of Value," "benefit," or "thing of value;"** includes all matters,
12 whether tangible or intangible, that could reasonably be considered to be of
13 advantage or worth, use or service to the person to whom they are conferred.
14 This includes; money; products or merchandise; works of art or collectibles;
15 stocks, bonds, notes or options; real property or an interest in real property;
16 contracts or a promise of future interest in a contract; an interest or a promise of
17 a future interest in a business; non-alcoholic beverages; a meal with a total value
18 exceeding fifty dollars (\$50) or meals from a single person or entity with a
19 cumulative total value exceeding five hundred dollars (\$500) annually; excluding
20 meals provided in connection with an event produced by a non-profit charitable
21 organization, government entity, public school or a public event where the person
22 attending is serving in an official capacity; transportation and related travel
23 expenses not to exceed seventy-five dollars (\$75) per trip or transportation and
24 related travel expenses from a single person or entity for trips with a cumulative
25 total value exceeding five hundred dollars (\$500) annually; lodging; services
26 including loaned employees; loans, loan guarantees or cosigning; loans at below
27 market interest; forgiveness of a debt; discounts or rebates not extended to the
28 public generally, and this does not include general discounts that are offered to
29 all government employees at all levels of government; preferential treatment;
30 tickets of admission; excluding tickets or admission provided in connection with
31 an event produced by a non-profit charitable organization, government entity,
32 public school or a public event where the person attending is serving in an official
33 capacity; paid compensation not commensurate with fair and reasonable value of
34 services rendered; free or discounted use of office equipment and facilities;
35 intentional overpayment or knowing duplicate payments for expenses or costs;
36 radio or television time which is not paid at fair market value; promise or offer of
37 present or future employment; use of autos, boats, apartments, or other
38 recreational or lodging facilities; intangible rights such as a cause of action;
39 licenses, patents intellectual property, copyrights, or an interest in them; and any
40 other item, tangible or intangible, having economic value. "Anything of value,"
41 "benefit," or "thing of value," does not include political endorsements, support in a
42 political campaign or a promise of an endorsement, political activities, or political
43 support. Nothing in this section shall be construed to prohibit an occasional, non-
44 pecuniary gift, insignificant in value or an award publicly presented in recognition
45 of public service.

46
47 **C. Appointed Official** - a person who is not an Elected Official or City Employee
48 and has been appointed by the Governing Body to serve on a City Board,
49 Commission, Committee, or other body established by the Governing Body, or to
50 perform other functions at the request of the Governing Body.

1
2 **D. Governing Body or City Council** - means the Governing Body of the City of
3 Rio Rancho.

4
5 **E. Confidential Information** - information that has been classified as
6 confidential by law and/ or information contained on City owned and/or operated
7 equipment, including but not limited to; electronic correspondence, diagrams,
8 charts, all components of electronic files, data, records, pictures, documents;
9 visual, voice and electronic recordings; and any other data or information stored
10 or maintained on computer memory or device.

11
12 **F. Conflict of Interest** - a situation in which a person exercising a duty has an
13 interest, financial or otherwise, that potentially conflicts with the exercise of the
14 duty or that may be perceived as conflicting with the exercise of the duty.

15
16 **G. Contract** - an agreement between two or more parties, whether express or
17 arising by operation of law.

18
19 **H. Contract Ethics Official** - an attorney contracted by the City who will perform
20 independent reviews of complaints, conduct investigations, gather information,
21 draft reports and make recommendations in accordance with this ordinance. The
22 Official will be contracted through the City Attorney's office through normal
23 process, in agreement with the City Manager.

24
25 **I. Employee** - a non-elected person who is employed, in any capacity, by the
26 City of Rio Rancho.

27
28 **J. Elected Official** - a member of the Governing Body, including City Councilor,
29 Mayor, and the Municipal Court Judge.

30
31 **K. Ex Parte Communication** - a direct or indirect communication with a party or
32 the party's representative outside the presence of the other parties concerning a
33 pending adjudication that deals with substantive matters or issues on the merits
34 of the proceedings. Ex parte communications do not include statements that are
35 limited to providing publicly available information about a pending adjudication or
36 solely related to the status of the proceeding.

37
38 **L. Family** - means an individual's spouse, domestic partner, parent, child, sibling,
39 and like in-laws, by consanguinity or affinity, and persons, related or unrelated,
40 living within the household.

41
42 **M. Financial Interest** - any interest of an Elected Official, an Employee, or an
43 Appointed Official that is: (i) an ownership interest or other interest in any
44 contract or prospective contract with the City; (ii) an interest in the sale of real or
45 personal property to or from the City; (iii) a financial relationship with a person or
46 business whose interests may be affected by the City; (iv) any employment or
47 prospective employment for which negotiations have already begun where the
48 prospective employer has an interest in the sale of real or personal property from
49 the City; or (v) any other interest that may be affected by the City. For the
50 purposes of this Ordinance, an interest shall be one either as owner, part owner,

1 partner, or shareholder, in which such individual owns more than two (2) percent
2 of the outstanding stock or more than two (2) percent of the ownership interest of
3 any other business that is doing business with the City in an amount in excess of
4 \$7,500 annually. An interest held by the Elected Official's spouse or minor
5 children shall be considered an interest of the Elected Official, Appointed Official,
6 or Employee for the purposes of this Ordinance.
7

8 **N. Frivolous** - A determination made by the Ethics Panel when two or more
9 complaints made by an individual or entity have been determined to be
10 unsubstantiated and contain allegations that are found to have no factual basis.
11

12 **O. Harassment** - Harassment consists of knowingly pursuing a pattern of
13 conduct that is intended to annoy, alarm, bully or intimidate another person and
14 that serves no lawful purpose. The conduct must be such that it would cause a
15 reasonable person to suffer substantial emotional distress.
16

17 **P. Immediate Family** - a spouse, domestic partner, child, child of a sibling, a
18 parent, a grandparent, a grandchild, like in-laws, and like step-children.
19

20 **Q. Non-public Information** - information that is obtained in the course of an
21 Elected Official's, Appointed Official's, or Employee's duties and is subject to
22 public inspection under state law, but that, because of its nature, is not readily
23 accessible to the public; and if used or disclosed, a personal benefit or
24 advantage is likely to result.
25

26 **R. Party** - a person who has submitted to the City an application seeking
27 affirmative relief; a person who has filed a formal complaint or protest; a person
28 who is the subject of a formal complaint or investigation; and members of the
29 general public who participate in a pending adjudication.
30

31 **S. Pending Adjudication** - any application, petition, complaint, protest,
32 investigation, or other administrative adjudicatory proceeding requiring decision
33 or action by the Governing Body, the Planning and Zoning Board, the Utilities
34 Commission, Development Services Department, or any other board
35 or commission established by the Governing Body.
36

37 **T. Personal Benefit** - the obtaining or promise of obtaining anything of value.
38

39 **U. Political Action** - conduct in which Elected Officials or Appointed Officials use
40 their official positions to exercise influence on City Employees, Elected Officials
41 or Appointed Officials; the phrase includes intervention on behalf of constituents
42 with a governmental agency, and endorsement, pledging support, or actively
43 supporting a City governmental matter, a nominee or a candidate for public
44 office.
45

46 **V. Substantiated Claim** - a violation of the Ordinance verified by competent
47 facts and that substantial evidence exists to support.
48

49 **W. Unsubstantiated Claim** – a claim that is not supported by competent facts or
50 substantial evidence or existent of facts and/or an allegation that is not a per se

1 violation of the Ordinance.
2

3 **SECTION 5. NON-PARTISANSHIP.** All actions, decisions and votes on matters relating
4 to City government shall be on the merits. Decisions shall be made objectively, without
5 party or partisanship considerations, and without facts which are not directly and
6 properly related to the matter requiring action.
7

8 **SECTION 6. PUBLIC TRUST.**
9

10 A. Elected Officials, Appointed Officials, and Employees shall act according to
11 the highest principles of representative democracy to ensure that City
12 government is worthy of public respect, trust and support.
13

14 B. Elected Officials, Appointed Officials, and Employees shall not engage in
15 conduct that they know or reasonably should know is likely to create in the minds
16 of reasonable, objective, fair-minded observers, the perception that they have
17 used their public positions improperly, unethically or otherwise have not
18 conducted themselves in accordance with the standards of conduct of this
19 Ordinance.
20

21 C. Elected Officials, Appointed Officials, and Employees shall not provide or
22 disseminate to the public, any information or data which they should reasonably
23 know to be untrue, inaccurate or misleading. It is incumbent upon Elected
24 Officials, Appointed Officials, and Employees to correct such information as
25 quickly as reasonably possible.
26

27 D. It is a violation of this Ordinance for Elected Officials and Appointed Officials
28 to knowingly violate their own rules of procedure or any other law or ordinance.
29

30 **SECTION 7. CONDUCT AVOIDING IMPROPRIETY.**
31

32 A. Elected Officials, Appointed Officials, and Employees shall avoid conduct that
33 creates the appearance of impropriety or that is otherwise unbecoming a public
34 official. An impropriety can mean misconduct or behavior that demonstrates an
35 unethical process or improper influence.
36

37 B. Elected Officials, Appointed Officials, and Employees shall not knowingly
38 engage in conduct that violates the rights of others to be treated fairly.
39

40 C. Elected Officials, Appointed Officials, and Employees shall refrain from
41 engaging in conduct, even if lawful, where personal gain or advantage is involved
42 in a way that creates a reasonable inference that such office has been used for
43 private benefit.
44

45 **SECTION 8. PROHIBITED FINANCIAL INTEREST IN CITY BUSINESS.**
46

47 A. No Elected Officials, Appointed Officials, or Employees may have a Financial
48 Interest if the Elected Official, Appointed Official, or Employee, is in a decision
49 making capacity with respect to the Financial Interest.
50

1 B. Elected Officials, Appointed Officials, and Employees who have any Financial
2 Interest shall disclose such interest by filing a Disclosure of Interest and
3 recording the same with the City Clerk and by disclosing the interest as otherwise
4 provided in this Ordinance or by law, and shall thereafter be disqualified from
5 participating in any debate, decision or vote relating thereto.
6

7 **SECTION 9. CONFLICT OF INTEREST, DISCLOSURE.**
8

9 A. Elected Officials, Appointed Officials, and Employees shall strictly avoid
10 transactions and relationships that create a conflict of interest. Where a conflict of
11 interest is unavoidable, the Elected Official, Appointed Official, or Employee shall
12 disclose the conflict of interest and shall subordinate the conflicting interest to the
13 public interest, and the disclosure shall be recorded by the Clerk as part of the
14 minutes of the meeting at which the disclosure is made.
15

16 B. Elected Officials, Appointed Officials, and Employees shall exercise their
17 duties, powers and prerogatives without prejudice or favoritism to hire, promote,
18 or simply to reward family members, relatives, friends, or political supporters, or
19 to hinder or punish enemies and opponents.
20

21 C. Elected Officials, Appointed Officials, and Employees shall assure that
22 constituents and others who may be affected by decisions of the City have a fair
23 and reasonable opportunity to express their concerns, grievances, and ideas
24 without regard to their willingness or ability to provide benefits or political support
25 to the Elected Official, Appointed Official, or Employee.
26

27 D. Elected Officials, Appointed Officials, and Employees shall not engage in any
28 conduct that could create in the mind of a reasonable observer the belief that
29 persons will receive better or different services if gifts, personal benefits or
30 political or charitable contributions are provided.
31

32 E. Elected Officials, Appointed Officials, and Employees shall not solicit or
33 receive gifts, personal benefits, favors, gratuities or political or charitable
34 contributions, or Anything of Value under circumstances that create a reasonable
35 belief that special access, services, favors, or official or unofficial actions will be
36 provided as a result. Nor may Anything of Value be solicited or received from a
37 person or business doing business with the City, contracting with the City,
38 regulated by the City, has an application pending before the City, or whose
39 interests may be affected by the City.
40

41 F. Elected Officials, Appointed Officials, and Employees shall not accept
42 Anything of Value from a person, business, or other entity when the Elected
43 Official, Appointed Official, or Employee knows or reasonably should know that
44 said person, business, or entity does any business with the City, desires to do
45 business with the City, contracts with the City, is regulated by the City, has an
46 application pending before the City, or whose interests may be affected by the
47 City.
48

49 **SECTION 10. CONFIDENTIAL INFORMATION AND MISUSE OF NON-PUBLIC**
50 **CONFIDENTIAL INFORMATION.** No Elected Official, Appointed Official, or Employee

1 shall disclose or use Confidential Information maintained by the City without proper
2 authorization, and such information shall not be used to advance the financial or other
3 private interests of said person. No Elected Official, Appointed Official, or Employee
4 shall use Confidential Information for personal benefit.

5
6 **SECTION 11. USE OF POSITION TO OBTAIN INFORMATION.** No Elected Official,
7 Appointed Official, or Employee shall use their position to obtain information from
8 another entity or individual for their personal benefit. Neither shall an Elected Official,
9 Appointed Official, or Employee obtain, or attempt to obtain, information from an
10 individual or entity on behalf of the City when the information will be used for their
11 personal interest or benefit.

12
13 **SECTION 12. MISUSE OF CITY PROPERTY AND RESOURCES FOR PRIVATE**
14 **GAIN OR PERSONAL ADVANTAGE.**

15
16 A. An Elected Official, Appointed Official, or Employee shall not use public
17 property for any private purpose or nongovernmental purpose except as
18 specifically provided by law. Public property includes public funds, time, facilities,
19 property, equipment, mailing lists, computer data, services or any other
20 governmental asset or resource. This section does not prohibit the occasional
21 and limited use of City property and resources for personal purposes if:

- 22 1. the use does not interfere with the performance of public duties;
- 23 2. the cost or value related to the use is so nominal that reimbursement
24 procedures would not be justified; and
- 25 3. the use does not create the appearance of improper influence.

26
27 B. No Elected Official, Appointed Official, or Employee shall seek, accept, use,
28 allocate, grant or award public funds for a purpose other than that authorized by
29 law or make a false statement in connection with a claim, request or application
30 for compensation, reimbursement or travel allowances from public funds.

31
32 C. Unless authorized by the City of Rio Rancho Personnel Policies and Work
33 Rules, no City Employee shall be asked or permitted to perform personal
34 services for an Elected Official or Appointed Official. An Elected Official or
35 Appointed Official shall not require a City Employee to perform personal services
36 or assist in a private activity except in unusual and infrequent situations where
37 the person's service is reasonably necessary to permit the Elected Official or
38 Appointed Official to perform official duties.

39
40 **SECTION 13. MISUSE OF CITY PROPERTY OR RESOURCES FOR POLITICAL**
41 **PURPOSES.**

42
43 A. Public resources, including funds, facilities and personnel, may not be used to
44 further partisan campaign purposes or to influence the outcome of an election,
45 except for an election on a question proposed by the City such as whether a tax
46 should be imposed or a debt contracted for in which case public resources may
47 be used for the limited purpose of educating voters about the details of the
48 question.

49
50 B. An Elected Official shall not use or authorize the use of public funds, time,

1 facilities, equipment, mailing lists, computer data, services or other government
2 assets or resources for the purpose of political fundraising, campaigning, or
3 influencing an election. This section does not prohibit the use of mailing lists,
4 computer data or other public information lawfully obtained from a government
5 agency and available to the general public for nongovernmental purposes.
6

7 C. A Candidate, an Elected Official, another person on behalf of a Candidate or
8 Elected Official, or campaign committee of a Candidate or Elected Official, shall
9 not solicit or accept or authorize the solicitation or acceptance of a campaign
10 contribution in a facility or office ordinarily used to conduct City government
11 business. This provision applies to telephone conversations, personal meetings,
12 and solicitations by mail. If such a contribution is offered, it shall be refused or
13 returned promptly. If an unsolicited contribution is received in the mail, or a
14 lawfully solicited contribution is misdirected to an office ordinarily used to conduct
15 City business, if otherwise lawful, it may be accepted, but it may not be
16 processed in that office, and it shall be delivered promptly to an appropriate
17 location.
18

19 D. An Elected Official, a Candidate, or a campaign committee or another person
20 on behalf of an Elected Official Candidate, shall not distribute or post literature,
21 placards, posters, or other communications intended to influence the election of a
22 candidate in an election in a facility or office ordinarily used to conduct City
23 government business.
24

25 **SECTION 14. USE OF CONFIDENTIAL INFORMATION FOR PRIVATE GAIN.** An
26 Elected Official, Appointed Official, or Employee or a former Elected Official, Appointed
27 Official, or Employee who terminated City service within one year, shall not use or
28 disclose Confidential Information to obtain a benefit for the Elected Official, Appointed
29 Official, Employee, or former Elected Official, Appointed Official, Employee or another
30 person, including a person with whom the Elected Official, Appointed Official, or
31 Employee or former Elected Official, Appointed Official, or Employee is associated or
32 has negotiated prospective employment. This section does not allow the disclosure of
33 information made confidential by law.
34

35 **SECTION 15. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN
36 OR PERSONAL ADVANTAGE.**
37

38 A. An Elected Official, Appointed Official, or Employee shall not use, induce,
39 cause, or encourage others to use the authority, title, official letterhead or
40 prestige of the Elected Official's, Appointed Official's, or Employee's office or
41 service for his or her own private gain or personal advantage.
42

43 B. An Elected Official, Appointed Official, or Employee shall not solicit or accept
44 Anything of Value under terms and conditions where the compensation is not
45 commensurate with the services performed or where a reasonable person would
46 believe that the authority, title or prestige of office had been exploited. Nothing in
47 this section prohibits the use of official title of an Elected Official, Appointed
48 Official, or Employee as part of a political campaign or political endorsement.
49

50 **SECTION 16. POLITICAL ACTIVITY.**

1
2 A. No Elected Official, Appointed Official, or Employee shall compel, coerce or
3 intimidate any Elected Official, Appointed Official, or Employee to make, or
4 refrain from making, any political contribution. No Elected Official, Appointed
5 Official, or Employee shall solicit or obtain by coercion any political contribution
6 from Employees. Nothing in this subsection shall be interpreted to provide that an
7 Elected Official, Appointed Official, or Employee is precluded from voluntarily
8 making a contribution or receiving a voluntary contribution.

9
10 B. No Employee with contract management authority, property management
11 authority or land use authority shall serve as a paid political consultant, a
12 campaign treasurer, or as a member of the political fundraising committee of any
13 Candidate for Federal, State, City or County office, or Elected Office.

14
15 C. No elected officer of the City shall hold any other City office or be employed by
16 the City during the term for which the member was elected.

17
18 D. Nothing in this section shall be construed to prohibit the Governing Body from
19 selecting any current or former mayor or city councilor to represent the City
20 before any other governmental entity.

21
22 E. Employees shall not perform any political activity when on duty. This does not
23 include time used while on paid vacation in accordance with City Personnel
24 Policy and Work Rules.

25
26 F. An Elected Official, Appointed Official, or Employee shall not require an
27 Employee to perform political activity: (i) as part of the Employee's duties; (ii) as a
28 condition of City employment; or (iii) during any time off that is compensated by
29 the City.

30
31 G. An Employee shall not be required to participate in any political activity.

32
33 H. An Employee shall not be awarded additional compensation or employment
34 benefit in any form to engage in as a part of the Employee's official City
35 employment duties or activities that are undertaken by an Employee on a
36 voluntary basis as permitted by law.

37
38 I. Nothing in this section prohibits an Employee from engaging in political activity
39 on behalf of the City, or engaging in voluntary political activities of the
40 Employee's choosing when not on duty.

41
42 J. No Elected official or Appointed Official shall engage in any conduct that
43 would, to an objective third party, constitute an undue threat to an Employee's
44 continued employment.

45
46 K. Employees that receive compensation or reimbursement from an Elected
47 Official or political campaign on behalf of an Elected Official in excess of \$250
48 shall be required to report such compensation or reimbursement to the City
49 Manager, which shall include disclosure of the nature of the compensation or
50 reimbursement.

1
2 L. Any City Employee who becomes a candidate for municipal elective office of
3 the City of Rio Rancho shall, upon filing a declaration of candidacy, take a leave
4 of absence without pay, use accrued vacation time, or both, not later than thirty
5 (30) days prior to the date of the municipal election. If a leave of absence is
6 requested, it shall be granted.
7

8 M. No former mayor or city councilor shall be employed by the City until one year
9 after the expiration of the term for which the member was elected.
10

11 **SECTION 17. DISCLOSURE.**
12

13 A. Within ten (10) days after swearing in of any Elected Official or Appointed
14 Official, the Elected Official or Appointed Official shall file a statement of
15 economic interest with the City Clerk on a form provided by the City. Amended
16 statements of economic interest shall be filed on an annual basis on or before the
17 15th of January of each year.
18

19 B. The following information shall be provided:

20 1. A description of all parcels of real estate within the City in which the
21 person owns any interest including an option to purchase;

22 2. All interests in any business organization, either as owner, part owner,
23 partner, or shareholder, in which such individual owns more than two
24 percent of the outstanding stock or more than two percent of the
25 ownership interest of any other business that is doing business with the
26 City in an amount in excess of \$7,500 annually.
27

28 C. Any person required to file a statement hereunder shall not be required to file
29 an amended statement unless that person undergoes a change in those
30 economic interests that are required to be disclosed by this section. Such
31 persons shall file the amended statement in the manner prescribed above within
32 ninety (90) days of the date of any change in circumstances requiring
33 filing thereof.
34

35 D. All persons required to file a statement hereunder shall comply with the
36 provisions of this section within thirty (30) days after the requirements hereof are
37 imposed upon such office or position.
38

39 **SECTION 18. COERCION.**
40

41 A. An Elected Official shall not, directly or by authorizing another to act on his or
42 her behalf, state or imply that the Elected Official's willingness to meet with a
43 person or organization is dependent on the person or organization making a
44 campaign contribution, donating to a cause favored by the Elected Official or
45 providing a thing of value to the Elected Official.
46

47 B. An Elected Official shall not directly, or by authorizing another to act on the
48 Elected Official's behalf:

49 1. agree or threaten to take or withhold any City governmental action, as a
50 result of a person's decision to provide or not provide a political

- 1 contribution; or
- 2 2. state or imply that the Elected Official will perform or refrain from
- 3 performing a lawful constituent service as a result of a person's decision to
- 4 provide or not provide a political contribution; or
- 5 3. agree to or participate in a scheme or plan intended to evade the
- 6 requirements of any applicable state ethics statutes, this Ordinance, or
- 7 another financial disclosure provision of state or City law; or
- 8 4. knowingly accept a contribution given or offered in violation of any
- 9 applicable state ethics statutes or this Ordinance.

10
11 **SECTION 19. REPORTING, INVESTIGATING, AND MAKING DETERMINATIONS**
12 **PERTAINING TO VIOLATIONS OF THIS ORDINANCE.**
13

14 A. Any Elected Official, Appointed Official, Employee, entity, or member of the
15 public, may submit a complaint of unethical conduct to the City Ethics Panel by
16 delivering to the City Attorney's Office a sworn complaint alleging facts which, if
17 true, would constitute a violation of this Ordinance. The City Attorney's office will
18 forward all such sworn complaints to the City's Contract Ethics Official (Ethics
19 Official) The Ethics Official shall refer all matters regarding employees to the
20 City's Human Resources Department.

21
22 B. The Ethics Official shall investigate all applicable sworn complaints forwarded
23 to them and make one of the following recommendations regarding the
24 complaint:

- 25 1. Unsubstantiated Claim under this Ordinance; or
- 26 2. Substantiated Claim under this Ordinance

27
28 C. If Unsubstantiated Claim is the recommendation made by the Ethics Official,
29 he or she shall produce a report reflecting their finding and detail of the
30 investigation. An Unsubstantiated Claim shall not be forwarded to the Ethics
31 Panel unless necessary for the determination of a frivolous claim.

32
33 D. Upon the completion of an investigation, the Ethics Official may determine that
34 a claim is Substantiated. At such time, the Ethics Official will produce a report
35 which contains his or her findings and recommendations. The Ethics Panel shall
36 conduct a public hearing of all Substantiated Claims and shall decide, by majority
37 vote, if a provision(s) under this Ordinance has been violated. Penalties shall be
38 determined pursuant to Section 20 of this Ordinance. The Ethics Official shall be
39 present at the public hearing in order to respond to questions from the Ethics
40 Panel regarding his or her findings and recommendations. The Complaining party
41 and the Respondent to the complaint shall be provided notice via certified mail, to
42 any and all hearings. The Respondent and/or a legal representative shall be
43 afforded the opportunity to respond to the complaint at public hearing.

44
45 E. If an individual or entity files two (2) or more Unsubstantiated complaints
46 directed at the same individual for the purpose of harassment or to otherwise
47 cause the individual public shame or embarrassment, the Ethics Official may
48 make a recommendation to the Ethics Panel. If the Ethics Official recommends a
49 public hearing, notice shall be provided to the Complaining party no later than
50 fourteen (14) calendar days prior to the scheduled public hearing. The Ethics

1 Panel shall conduct the public hearing in order to determine if the complaints are
2 frivolous and if the complaints were intended to annoy, harass or otherwise
3 cause the targeted individual public shame or embarrassment. If the Ethics Panel
4 determines, by majority vote that the complaints are frivolous and intended to
5 annoy, harass or otherwise cause the targeted individual shame or
6 embarrassment, they may prescribe a penalty in accordance with Section 20 of
7 this Ordinance that may be appealed to the Thirteenth Judicial District Court.
8

9 **SECTION 20. CITY ETHICS PANEL.**

10
11 A. There shall be created a City of Rio Rancho Ethics Panel that shall consist of
12 three (3) members plus one alternate. It is desired that two Panel members
13 (excluding alternate) will be licensed attorneys. At a minimum one member of the
14 Panel (excluding alternate) shall be a licensed attorney. The members of the
15 Panel shall be appointed by the City Manager subject to confirmation by the
16 Governing Body. The members of the Panel shall not be affiliated with City
17 government in any capacity, including, but not limited to, employment (including
18 employment for which the salary is in any way funded by or through the City),
19 appointment, or election. The members of the Ethics Panel may not hold elected
20 public office or office with any political party within the City. Each member shall
21 serve a term of three years, subject to reappointment thereafter.
22

23 B. The Ethics Panel shall annually elect its own chair. If any member of the
24 Ethics Panel petitions the Panel for a hearing and advice regarding his or her
25 own conduct or the conduct of others, such member shall not be eligible to sit in
26 such cases, and the alternate member shall be seated when the need arises.
27

28 C. The jurisdiction of the Ethics Panel is limited to acting within the scope of
29 matters covered by this Ordinance, but may periodically review and recommend
30 amendments to this Ordinance.
31

32 D. The Ethics Panel shall adopt rules of procedure for conducting hearings
33 pursuant to this Ordinance. The rules of procedure shall be consistent with the
34 rules for conducting administrative hearings in Rio Rancho and shall be reviewed
35 by the City Attorney.
36

37 E. The Ethics Panel shall have the power to issue administrative subpoenas
38 compelling attendance of witnesses at hearings and the production of
39 documents, and the authority to seek enforcement of those subpoenas by the
40 Thirteenth Judicial District Court.
41

42 F. If the Ethics Panel finds, by a preponderance of evidence and upon a majority
43 vote, that an Elected Official or Appointed Official has violated this Ordinance,
44 the Ethics Panel may impose any of the following penalties after the written
45 findings of fact and conclusions of law:

- 46 1. a civil fine not to exceed \$500; or
- 47 2. a written finding of censure; or
- 48 3. a referral to the District Attorney or appropriate governmental office for
49 commencement of criminal or other proceedings; or
- 50 4. a recommendation to the District Attorney that proceedings to remove

1 the person from elected office be commenced pursuant to NMSA 1978 §
2 10-4-1 et.seq. (as amended)

3
4 G. No action may be taken by the Ethics Official or Ethics Panel on any
5 complaint that is filed later than one (1) year after violation of this Ordinance is
6 alleged to have occurred or that is filed more than six (6) months from the date of
7 the discovery of the alleged violation, upon due diligence by the complaining
8 party, of facts constituting a violation, whichever event occurs later.

9
10 H. No sworn complaints can be submitted, or will be accepted by the City
11 Attorney's Office, between the fifty-sixth day preceding the City's March regular
12 election and the date of the March regular election or, in case of a required run-
13 off election, the date of the corresponding run-off election.

14
15 I. The Ethics Panel may also provide advisory opinions regarding the applicability
16 or interpretation of the provisions of this Ordinance upon the request of any
17 Elected Official, Appointed Official, or City Employee, and may confer or request
18 legal interpretation from the City Attorney. The City Attorney may refer such
19 requests to the Ethics Official.

20
21 J. On an annual basis the Governing Body shall be provided with a report stating
22 the number and type of complaints that were submitted alleging a violation of this
23 Ordinance, as well as the number of hearings and their outcomes.

24
25 K. A member of the Ethics Panel may be removed by the Governing Body at any
26 time.

27
28 L. A vacancy on the Ethics Panel shall be filled in the same manner as the initial
29 appointment and the appointment shall continue for the remainder of the
30 unexpired term of the departing Panel member.

31
32 M. Members of the Ethics Panel shall not receive any salary or compensation for
33 services.

34
35 **SECTION 21. RIGHT OF APPEAL.** Any decision of the Ethics Panel finding a violation
36 of this Ordinance may be appealed to the Thirteenth Judicial District Court pursuant to
37 NMSA 1978, § 39-3-1.1 (1998, as amended).

38
39 **SECTION 22. NON-RETALIATION.** The Governing Body does not tolerate retaliation,
40 workforce discrimination or harassment of any kind against any person who has
41 reported a violation of this Ordinance. This non-retaliation provision applies whether the
42 complaint is ultimately determined to be Unsubstantiated or Substantiated. All Elected
43 Officials, Appointed Officials, or Employees are specifically prohibited from taking any
44 adverse employment action, engaging in workplace discrimination or harassment of any
45 kind, or other retaliatory action against anyone for reporting a claim of violation. Anyone
46 who believes that they have been subject to workplace discrimination or harassment of
47 any kind or that has been retaliated against in violation of this Ordinance should submit
48 a complaint of unethical conduct to the Ethics Panel by delivering to the City Attorney's
49 Office a sworn complaint.

1 **SECTION 23. EX PARTE COMMUNICATIONS.**

2
3 **A. EX PARTE COMMUNICATIONS PROHIBITED.**

4 1. An Elected Official or Appointed Official designated to hear an
5 administrative adjudicatory matter pursuant to the City's Development
6 Code, Zoning Code, Building Code, or any other City Ordinance, shall not
7 initiate, permit or consider a communication directly or indirectly with a
8 party or the party's representative outside of the hearing and outside of the
9 presence of all other interested parties concerning the pending matter. A
10 pending matter does not include an Ordinance on first or second reading.

11 2. An administrative adjudicatory matter is one that involves the use of a
12 discretionary standard, as specified in the Development Code or other City
13 Ordinance, to an application for discretionary approval.

14 3. Notwithstanding the provisions of Subsection 1, above, ex parte
15 communications for procedural or administrative purposes, during
16 emergencies, or that do not deal with the merits of the application, shall
17 not be prohibited if the Elected Official or Appointed Official reasonably
18 believes that no party will gain an advantage as a result of the ex parte
19 communication and promptly notifies all other parties of the substance of
20 the ex parte communication.

21 4. An Elected Official or Appointed Official who receives or who makes or
22 knowingly causes to make a communication prohibited by this Ordinance
23 shall disclose the communication to all parties and give other parties an
24 opportunity to respond.

25
26 **B. RECUSAL.**

27 1. An Elected Official or Appointed Official shall recuse himself or herself
28 in any pending administrative adjudicatory matter in which the official is
29 unable to make a fair and impartial decision or in which there is a
30 reasonable doubt about whether the official can make a fair and impartial
31 decision, including:

32 a. when the official has a personal bias or prejudice concerning a
33 party or its representative or has prejudged a disputed evidentiary
34 fact. For the purposes of this paragraph, "personal bias or
35 prejudice" means the predisposition toward a person based on a
36 previous or ongoing relationship, including a professional, personal,
37 familial or other intimate relationship, that renders the official unable
38 to exercise his or her functions impartially; or

39 b. when the official has a pecuniary or Financial Interest in the
40 outcome of the proceeding; or

41 c. when, during the previous employment, the official served as an
42 attorney, advisor, consultant or witness in the matter of controversy
43 (previous employment is employment during the previous twelve
44 (12) months); or

45 d. when the official announced how he or she would rule on the
46 adjudicatory proceeding or a factual issue in the adjudicatory
47 proceeding.

48
49 2. An Elected Official or Appointed Official shall not be required to recuse
50 herself or himself in any pending administrative adjudicatory matter merely

1 because the official possesses and discusses general viewpoints on public
2 policy that an application may raise. Similarly, an Elected Official shall not
3 be required to recuse herself or himself in any pending administrative
4 adjudicatory matter merely because the Elected Official made
5 representations during a political campaign on viewpoints on public policy
6 that an application may raise.
7

8 3. The Elected Official or Appointed Official recusing himself or herself
9 shall disclose the specific reason for a recusal contemporaneous with the
10 recusal.
11

12 4. If, prior to the hearing, an Elected Official or Appointed Official fails to
13 recuse herself or himself when it appears that grounds exist, a party shall
14 promptly notify the Elected Official or Appointed Official of the grounds for
15 recusal. If the Elected Official or Appointed Official declines
16 to recuse himself or herself upon request of a party, the official shall
17 provide a full explanation in support of his refusal to recuse himself or
18 herself.
19

20 5. If, during the hearing, an Elected Official or Appointed Official fails to
21 recuse himself or herself when it appears that grounds exist, a party shall
22 promptly notify the Chair of the grounds for recusal. If the Elected Official
23 or Appointed Official declines to recuse herself or himself, the Chair may
24 entertain a motion to excuse the official from further participation in the
25 matter. If the motion is successful, the official shall be excused from
26 further participation in the matter.
27

28 **SECTION 24. RESTRICTIONS ON THE GOVERNING BODY; ADMINISTRATION OF**
29 **THE PERSONNEL SYSTEM, MANAGEMENT.** The Governing Body shall not perform,
30 collectively or individually, general executive management functions in the
31 administration of City government; these functions shall be delegated to the City
32 Manager including administration of the personnel system. This paragraph shall not
33 apply to matters of policy, the responsibility and authority of the Governing Body to
34 approve budgets and expenditures, contracts outside the Signature authority of the City
35 Manager, and matters that, in the discretion of the Governing Body, while they may
36 involve management issues, are of Citywide importance.
37

38 **SECTION 25. SEVERABILITY CLAUSE.** If any section, paragraph, clause, or
39 provision of this Ordinance, or any section, paragraph, clause, or provision of any
40 regulation promulgated hereunder shall for any reason be held to be invalid, unlawful, or
41 enforceable, the invalidity, illegality, or unenforceability of such section, paragraph,
42 clause, or provision shall not affect the validity of the remaining portions of this
43 Ordinance or the regulation so challenged. If any portion of this ordinance conflicts or is
44 otherwise inconsistent with an existing City ordinance, the more stringent ordinance
45 shall rule.
46

47
48 **SECTION 26. COMPILING CLAUSE.** This Ordinance shall be incorporated in and
49 compiled as part of the Revised Ordinances of the City of Rio Rancho, (R.O. 2003).
50

1 **SECTION 27. EFFECTIVE DATE.** This Ordinance shall become effective ten days
2 after adoption.

3
4 ADOPTED THIS 8TH DAY OF JUNE, 2016.

5
6
7
8

Greggory D. Hull, Mayor

9
10
11 ATTEST:

12
13
14

Stephen J. Ruger, City Clerk
15 (SEAL)
16