

## CMA # 5311

### CODE OF ETHICS AND ANTI-FRAUD

[Effective Date: May 4, 1999 (Revised: October 1, 2001; Revised: October 1, 2003; Revised: May 1, 2009; Revised: May 11, 2010; Revised: June 3, 2016; Revised: March 27, 2019)]

#### § 5311-1. Purpose.

The purpose of this Instruction is to provide for the implementation of a Code of Ethics Procedure authorized by the County Manager as well as an Anti-Fraud Procedure.

#### § 5311-2. Concept.

**Code of Ethics:** It is the policy of the County to ensure that all employees conduct their employment duties in a manner which is free from any conflicts of interest. Additionally, the standards of conduct as outlined by the Florida Commission on Ethics and the Collier County Ethics Ordinance as amended from time to time shall be guidelines, and in particular instances, requirements for County employees. Violation of the Code of Ethics may be subject to disciplinary action, up to and including discharge.

- A. No County employee shall disclose confidential information gained by reason of their official position, nor shall they otherwise use such information for their personal gain or benefit.
- B. If an employee of the County is an officer, director, agent, or member of, or owns controlling interest in any corporation, firm, partnership, or other business entity which is subject to the regulation of, or which has substantial business commitments with the County or other political subdivision of the State of Florida, they must file a sworn statement to this effect with the Circuit Court of Collier County and give a copy of the statement to the Department Head and the County Manager.
- C. No County employee shall transact any business, during working hours for the County, in his/her official capacity with any business entity of which he/she is an officer, director, agent, or member, or in which he/she owns a controlling interest.
- D. No County employee shall have personal investments in any enterprise, which will create substantial conflict between his/her private interest and the public interest.
- E. No County employee shall purchase any County tax certificate or tax deed. The intent of this rule is to avoid any appearance of a conflict of interest on the part of either the County or the employee.
- F. No employee shall accept, or agree to accept, either directly or indirectly, any favor, gift, loan, fee, service or other item of value, in any form whatsoever, from any organization or individual, if the employee knows or reasonably should know that it is intended to reward or influence the employee in the performance or nonperformance of his or her appointed duties. Violations of this standard shall be considered a very serious breach of the Code of Ethics/Standards of Conduct and it is presumed that the appropriate discipline for violation(s) of this standard shall be discharge, absent compelling mitigating circumstances.

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- G. No County employee shall solicit a contribution for another person for a gift to a Supervisor, make a donation as a gift to a Supervisor, or accept a gift from an employee he or she supervises.
- H. Nothing in this section shall prohibit voluntary donations or the exchange of gifts of nominal commercial value between or amongst County employees or with public officials on special occasions or established holidays. A special occasion, as contemplated in this section, includes those times when it has been regarded as customary to give a gift, such as a birthday, a wedding, the birth of a child or a grandchild, adoption, a graduation, a promotion, permanent departure from the workplace or community, hospitalization, the loss of a loved one, retirement, or other similar occurrences.
- I. Nor does this section prohibit County employees from participating in fundraising activities for charitable purposes or the receipt of unsolicited advertising or promotional materials, of nominal commercial value, from an individual or entity that is not currently in a contractual relationship nor likely to be in a contractual relationship with Collier County.
- J. No County employee shall participate in the selection of a vendor or the approval of a contract if that employee has received a gift, directly or indirectly, from someone representing the vendor or a contracting party, including relatives.
- K. Nominal commercial value means anything with a value of less than \$50 in the marketplace.
- L. No County employee shall serve on Board of County Commissioners' Advisory Boards or Committees, to reduce any potential perceptions of conflict of interest by the public.
- M. Employees may not serve in a decision-making capacity for any entity that receives funding (either directly or indirectly) from the Board of County Commissioners, including grant funding. Prior to an entity making a request for funding from the Board of County Commissioners, any employee serving the agency in a decision-making capacity must resign from that position. The Board may, with good cause shown, waive this restriction upon a super majority vote.

**Anti-Fraud Procedure:** The County Manager's Office Anti-Fraud Procedure ("Procedure") is hereby established to facilitate the development of controls that will aid in the detection and prevention of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty that causes abuse of the County's financial resources, property, information and other assets, as more fully described herein; to provide for the investigation of suspected or actual fraud or abuse, or gross waste of public funds; and to provide for consequences for engaging in any manner of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty. It is the intent of the County Manager to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations involving allegations of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty. The County Manager will not tolerate the commission or concealment of acts involving suspected or actual fraud or abuse, gross waste of public funds. Allegations of such acts will be

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fully investigated, which may result in legal action if warranted. All employees are responsible for reporting suspected instances of Procedure in accordance with this CMA.

#### **Section A: Scope**

This Procedure applies to any suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty committed by an employee, volunteers, consultants, vendors, contractors, and/or any other parties or entities that have a business relationship with the County.

Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position, title, or relationship to the County or any elected official, consultant, vendor, contractor, volunteer, or employee.

Matters concerning an employee's actions or conduct will be resolved by the management of that employee's Department/Division and/or the Human Resources Division.

If there is any question as to whether an action constitutes a violation of this Procedure, please contact the County Manager's Office for guidance.

In the event of any conflict between this Procedure and the Collier County Ethics Ordinance (Ord. 03-53, as amended), the terms of the Ethics Ordinance will control. In the event of any conflict between this Procedure and any other policies set forth in the CMA's, this Procedure will control.

#### **Section B: Practice**

All levels of Management including Department Heads, Division Directors, Managers, and Supervisors are responsible for the effectiveness and efficiency of County operations, including protection of County assets from gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty. Management has the primary responsibility for implementing internal controls to deter and detect fraud, and ensure the enforcement of federal and state laws, county ordinances, and CMAs.

##### 1) Definitions

- a) Abuse: Abuse means the excessive or improper use of something, or the use of something in a manner contrary to the natural or legal rules for its use; the intentional destruction, diversion, manipulation, misapplication, maltreatment, or misuse of resources owned or operated by the County.
- b) Fraud: There are two basic categories of wrongdoing which would constitute fraud: (i) the intentional misstatement of financial information; and (ii) the misappropriation of assets (or theft). Fraud consists of an illegal act (the intentional wrongdoing) and/or the concealment of such act and deriving a benefit from such acts.
- c) Gross Mismanagement: Gross mismanagement means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

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- d) **Gross Waste:** Gross waste means the thoughtless or careless expenditure, consumption, mismanagement, use or squandering of resources owned or operated by the County to the substantial detriment of the County.
- e) **Gross Neglect of Duty:** Gross neglect of duty means willful misconduct in substantial disregard of the County's interests, which could result in substantial damage to the County's interests.

Not all instances of gross waste and abuse necessarily constitute fraud, but all will be investigated and eliminated through due process and procedures. Each member of management for the County will be responsible for knowing, while systematically and periodically checking for the types of improprieties that might occur within his/her area of responsibility and be alert for any indication of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty.

#### 2) Actions Constituting Suspected or Actual Fraud or Abuse, Gross Waste

The terms fraud or abuse and gross waste include, but are not limited to:

- a) Any illegal, or dishonest action that impedes investigation or hides facts of fraud, planning and or implementation of a fraudulent act;
- b) Embezzlement, or misappropriation of funds, securities, equipment, supplies, or other assets;
- c) Impropriety in the handling or reporting of money or financial transactions in accordance with BCC guidelines or within each department and division's procedures;
- d) Profiteering as a result of insider knowledge of County activities;
- e) Forgery or alteration of documents (checks, contracts, purchase orders, invoices, etc.);
- f) Accepting or seeking anything of material value (gift, loan, fee, service or other item), if the employee knows or reasonably should know that it is intended to reward or influence the employee in the performance or nonperformance of his or her appointed duties, from contractors, vendors, or persons providing services/materials to the County;
- g) Destruction, removal, or illegal use of records, furniture, fixtures, materials, supplies, vehicles, machinery, tools, and equipment;
- h) Misrepresentation of information on documents (employment history, timesheets, leave records, travel reimbursement requests, financial records, etc.) to cover missed time, or attain unearned income;

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- i) Authorizing or receiving payment for goods not received or services not performed;
  - j) Vendor kickbacks, collusion, or corruption;
  - k) Misuse of authority for personal gain;
  - l) Any computer related activity involving the alteration, destruction, forgery, or manipulation of data for fraudulent purposes; and
  - m) Any violation of Federal, State, or local laws related to dishonest activities in preparation of or the act of fraud.
- 3) Reporting
- a) Any gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty that is detected or suspected shall be reported immediately to the County Manager's Office.
  - b) Anyone who receives a report of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty shall immediately notify the County Manager's Office.
  - c) Law Enforcement, external auditors and/or other professionals may also be involved as appropriate.
  - d) The County Manager's Office will establish a Whistleblower Procedure in accord with Federal, State, and local laws that will provide a confidential method to file complaints.
  - e) It shall be a violation of this Procedure for any person to make any allegation of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty that is known to be false.

#### **Section C – Prohibition Against Retaliation**

It is the intent of this Procedure that no retaliatory action will be taken against an employee who makes a report with respect to violations of law on the part of the County that creates a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of this Procedure that no retaliatory action will be taken against any person who discloses information alleging improper use of governmental office, gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty on the part of any public officer or employee of the County. The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false.

This provision shall not be construed as an exemption from any other County policies, rules or

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regulations.

**Section D – Reporting Procedures**

Due diligence must be taken in the investigation of suspected fraud or abuse, or gross waste so as to ensure legal compliance and avoid false accusations or to alert suspected individuals that an investigation is under way which could jeopardize the integrity of the investigation.

Any employee, including regular and temporary workers, consultant, contractor, vendor, or volunteer of Collier County who discovers or suspects fraud or abuse or gross waste shall promptly notify the County Manager’s Office and should not attempt to personally conduct investigations or interviews/interrogations related to any suspected fraud or abuse or gross waste. The reporting individual may remain anonymous and file a complaint via the County website. All inquiries concerning the activity under investigation from the suspected individual, his/her attorney or representative, or any other inquirer should be directed to the County Manager’s Office. The proper response to any inquiries concerning the status of an investigation is: “I am not at liberty to discuss this matter.” Absent special circumstance, no reference should be made to “the suspicion,” “the allegation,” “the crime,” “the fraud,” “the forgery,” “the misappropriation,” or any other specific reference.

The County Manager or his/her designated representative shall advise the complainant as to the outcome of the investigation.

**ALL RECORDS REQUESTS RELATED TO AN INVESTIGATION WILL BE REVIEWED, REJECTED, OR PROCESSED, COMPLIED WITH THROUGH A PROCESS APPROVED BY THE COUNTY ATTORNEY’S OFFICE AND COUNTY MANAGER’S OFFICE.**

Team Leaders, Supervisors, Managers, Division Directors, Department Heads, and the Human Resource Director have a responsibility to immediately notify the County Manager’s Office of fraudulent activity identified or reported to them.

**IT IS POSSIBLE THAT ACTION MAY BE NECESSARY BEFORE REPORTING**

The reporting individual shall be informed of the following:

- 1) Alerting or contacting the suspected individual in an effort to determine facts, demand restitution, or warn them is forbidden;
- 2) Absent special circumstances, discussion of the case, facts, suspicions, or allegations with anyone unless specifically asked to do so by the County Manager or his or her designee is forbidden; an individual may be considered an accessory or conspirator in the planning or act of fraud if unsanctioned actions are taken.

**Section E – Investigation Responsibilities**

The County Manager, or his/her designee, has the primary responsibility for conducting the preliminary investigation of all suspected acts as defined in the Procedure.

If the preliminary investigation indicates that the complaint is frivolous or does not indicate that gross

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mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty has occurred, no further investigation will be conducted, and the file will be noted with the finding that the complaint is frivolous or does not indicate that gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty has occurred.

If the preliminary investigation or assessment of the situation indicates that gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual fraud or abuse, or gross neglect of duty may have occurred or is occurring, the County Manager or his/her designated representative will contact law enforcement, the external auditors, or any other professional as deemed appropriate. These parties may be asked to issue reports to appropriate designated personnel and, if appropriate, to the Board of County Commissioners.

Decisions to prosecute or refer the investigation results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with the County Attorney and the County Manager, as will final decisions or recommended actions.

The County Manager and Human Resources Division shall treat all information received confidentially to the extent permitted by law.

#### **Section F – Sanctions**

Employees found to have violated this Procedure shall be subject to disciplinary action up to and including dismissal. The type of discipline administered will depend on the severity of the conduct as well as any other factors presented in the particular circumstances, and will be administered in accordance with prevailing County policy on Discipline, CMA 5351, or as provided for in a Collective Bargaining Agreement, where applicable.

The contractual or other business relationship of individuals or entities associated with the County found to have violated this Procedure shall be subject to review, with the possible modification or termination of such contractual or business relationship.

#### **Section G – Authorization for Investigating Suspected Fraud or Abuse or Gross Waste**

The County Manager, Human Resources Director and their designees shall have:

- 1) Free and unrestricted access to all County records and premises, whether owned or rented;
- 2) The authority to examine, copy, and/or remove all or any portion of the contents of files, desks, cabinets, computer, digital and/or electronic storage and communication devices, and other storage facilities on the premises without prior knowledge or consent of any individual who might use or have custody of any such items or facilities when it is within the scope of their investigation.

#### **§ 5311-3. Currency.**

The Human Resources Division is responsible for maintaining the currency of this Instruction.

#### **§ 5311-4. Reference.**

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Collier County Personnel Ordinance, Ordinance No. 2000-05, as amended: Code of Ethics: It is the policy of the County to ensure that all employees conduct their employment duties in a manner which is free from any conflicts of interest. Additionally, the standards of conduct as outlined by the Florida Commission on Ethics, Chapter 112, Fla. Stat., Part III, and, as may be applicable, County Ordinance No. 99-22, as amended, shall be guidelines for County employees.