



**Torrance County
Board of County Commissioners**

Resolution No. 2008 - 25

**Relating to Administration, Adopting a Volunteer Firefighter Policy; Setting forth
Volunteer Firefighter Rules and Regulations Establishing Consistent, Basic Policies and
Practices Concerning Relations between the County and its Volunteer Firefighters**

WHEREAS, NMSA 1978, Section 3-18-1 provides that counties pursuant to NMSA 1978, Section 4-37-1, have the power to “protect generally the property of its county and its inhabitants” and to “preserve peace and order”; and,

WHEREAS, the, Torrance County Fire Department Bylaws provide that the “The Board of County Commissioners shall, through resolution, approve or disapprove any and all Rules and Regulations” promulgated by the Fire Marshal; and,

WHEREAS, the Internal Revenue Service contends that Torrance County volunteer firefighters are “employees” of Torrance County for federal employment tax purposes; and,

WHEREAS, Torrance County intends that Torrance County volunteer firefighters be considered as volunteer firefighter for all purposes with the sole and exclusive exception of federal and state employment tax purposes; and,

WHEREAS, Torrance County wishes to memorialize the volunteer status of its volunteer firefighters by adoption of this Resolution.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners adopts the following Rules and Regulations establishing consistent, basic policies and practices concerning relations between the County and its volunteer firefighters:

**SECTION I
DEFINITIONS**

AT-WILL. An individual who may be dismissed at any time, with or without cause.

STIPEND. A non-mandatory payment to a volunteer firefighter, in a nominal amount, intended to defray the costs of equipment, uniform cleaning, meals and transportation incidental to volunteer duties, regardless of the source of the funding for said payment.

SECTION II STATUS OF VOLUNTEER FIREFIGHTERS

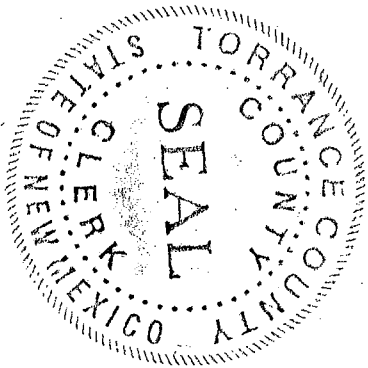
- 2.1 **VOLUNTEER STATUS.** All active nonsalaried firefighters within a Torrance County volunteer fire department recognized by the state fire marshal and Torrance County shall be considered as bona fide volunteers, not employees, for purposes of the federal Fair Labor Standards Act, the New Mexico Volunteer Firefighters Retirement Act, the New Mexico Occupational Health and Safety Act, the federal Occupational Safety and Health Act of 1970, or the Torrance County merit system, as they may be amended from time to time, and for any and all other purposes, regardless of payment to the firefighter of any stipend or other reasonable expenses, reasonable benefits or nominal fee. Volunteer firefighters are terminable "at will" and not entitled to the grievance procedures or protections set forth in the County's personnel rules and regulations.
- 2.2 **STATUS FOR FEDERAL AND STATE EMPLOYMENT TAXATION PURPOSES.** Notwithstanding the provisions of Section 2.1, and for the purposes of federal and state employment taxation purposes only, and solely and exclusively for said purposes, volunteer firefighters shall be considered as "employees", whereby Torrance County will calculate required withholding and reduce the volunteer's stipend amount by the required withholding, as required by federal and state law, and will report the amount of the stipend and any withholding as required on a W-2 form.

SECTION III GENERAL PROVISIONS

- 4.1 **OTHER RULES NOT AFFECTED; REPEALER; CONFLICT.** The duty adopted by-laws of any individual department, or other rules or policies duly adopted by the Fire Marshal or County not dealing with the subjects treated by this Resolution shall remain in full force and effect so long as such rules are consistent with this Resolution, as amended. All prior resolutions or policies of the County pertaining to the subjects treated by this Resolution shall be deemed repealed from and after the effective date of this Resolution. Notwithstanding the foregoing, if any provision of this Resolution is in conflict with a written or verbal policy, rules or by-laws applicable to a Volunteer Firefighter, this Resolution shall control.
- 4.2 **SAVINGS CLAUSE.** If any article, section, paragraph, clause, word or phrase, of this Resolution is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.
- 4.3 **AMENDMENT.** The County reserves the right to amend this Resolution at its discretion, by subsequent Resolution of the Board of County Commissioners. The Fire Marshal may

issue interpretative memoranda or Administrative Instructions, not inconsistent with these Rules, which further detail the interpretation of these Rules.

PASSED, ADOPTED AND APPROVED this 9th day of April 2008.



Jim Frost
Jim Frost, District 1

Tito Chavez
Paul M. "Tito" Chavez, District 2

Leroy M. Candelaria
Leroy M. Candelaria, District 3

Attest:

Linda Kayser by Chavez
Linda Kayser, County Clerk