



CITY OF TRUTH OR CONSEQUENCES  
BOARD OF **CITY** COMMISSIONERS  
ORDINANCE *N* 719

**An Ordinance Relating to Administration, Adopting a Personnel Policy; Setting forth Personnel Rules and Regulations Establishing Consistent, Basic Policies and Practices, and Professionalism Expectations Concerning Relations between the City and its Employees**

**PREAMBLE**

**WHEREAS**, NMSA 1978, Section 3-18-1 provides that municipalities , have the power to "protect generally the property of its municipality and its inhabitants " and to "preserve peace and order"; and,

**WHE REAS**, NMSA 1978, Section 3-17-1 provides that cities may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on cities, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the city and its inhabitants; and,

**WHEREAS**, NMSA 1978, Section 3-13-4 (1965) allows municipalities to establish a personnel merit system for the hiring, promotion, discharge and general regulation of municipal employees; and,

**WHEREAS**, the City of Truth or Consequences has a right and responsibility to the taxpayers to set reasonable professional, ethical, performance, and behavioral expectations for employees, supervisors and managers to ensure tax dollars are used in an appropriate and efficient manner; and,

**WHEREAS**, City of Truth or Consequences employees have an expectation and a right to be treated fairly, consistently and professionally while employed with the City of Truth or Consequences.

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## **SECTION I: DEFINITIONS**

- 1.1 ADMINISTRATIVE LEAVE WITH PAY: Leave with pay granted
- 1.2 at the City Manager's discretion after considering the department director and Human Resource Manager' s recommendation. Bereavement Leave is Administrative Leave with pay. See Section 10.13.
- 1.3 ADMINISTRATIVE LEAVE WITHOUT PAY: Leave without pay granted at the City Manager' s discretion after considering the department director and Human Resource Manager' s recommendation.
- 1.4 ANNIVERSARY DATE: Anniversary date means the date of appointment or reemployment and changes as of the date of promotion, demotion, reduction, or change to a different technical occupation group, group role, or manager category in the same pay band or pay opportunity.
- 1.5 ANNUAL LEAVE: Leave with pay granted to an employee, after accrual at a specific rate, with approval of the employee's supervisor.
- 1.6 APPEAL: Written request that a decision of a formal grievance be reconsidered at a further stage in the grievance procedure.
- 1.7 APPLICANT: A person who made formal application on an official City personnel application form for a position with the City.
- 1.8 "AT WILL" EMPLOYEE: See definition of "Unclassified Employee".
- 1.9 BOARD: Board means the Board of City Commissioners.
- 1.10 CASUAL EMPLOYEE: An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also work less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to grieve employment decisions.
- 1.11 CLASSIFIED EMPLOYEE: An employee that serves the prescribed probationary period and is eligible for the rights and privileges provided for under these Rules.
- 1.12 CONTINUOUS LENGTH OF CITY SERVICE: Continuous length of City service means the length of time for which there have been no breaks in employment as an employee spanning from the employee's Date of Hire, other than annual leave, sick leave , military leave authorized pursuant to Section 10.24 below, or authorized leave without pay for less than six (6) months.
- 1.13 CONTRACT EMPLOYEE: Contract employees are unclassified FLSA exempt and have a contract approved by the Board modifying the conditions of the City's personnel policy. Contract employees serve at the will and pleasure of the Board. Contract employees are not entitled to grievance procedures, employee benefits or holiday premium pay.

- 1.14 CITY BUSINESS: The performance of official duties of a City employee at an employee's normal work site or at a location authorized by the City.
- 1.15 CITY MANAGER: An individual appointed by the Board to conduct the business of the City and to act as the chief executive officer for the Board, aiding and assisting the Board in the exercise of their duties and responsibilities. In the event there is no City Manager, the duties and responsibilities specified in these Rules shall be carried out by an appointed Acting or Interim City Manager.
- 1.16 DATE OF HIRE: Date of Hire is the date indicated as such on the employee's Personnel Action Form indicating New Hire as a regular employee, from which there is continuous length of City service. Alternatively, the Date of Hire may be from the date of Reinstatement if reinstatement occurs after a lapse of continuous length of City service.
- 1.17 DEMOTION: An employee may be demoted to a position for which the employee is qualified when the employee would otherwise be terminated. The demotion may be a result of funding shortages. An employee who does not possess the necessary ability to render satisfactory performance in the position presently held may be demoted. Employees may voluntarily request such a demotion. Demoted employees may receive a reduction in pay, per City Manager approval and department head recommendation. Only a regular employee demoted due to disciplinary action is entitled to grievance procedures under Section VIII, Grievance Procedures.
- 1.18 DEPARTMENT DIRECTOR: An employee hired to fill a position with the responsibility of supervising and administrating a department of City government as determined and designated by the Board.
- 1.19 DISMISSAL: Dismissal means the involuntary separation or dismissal from employment for disciplinary reasons.
- 1.20 DOMESTIC PARTNER: An individual who has an exclusive and committed relationship with a City employee and the relationship is the same as, or similar to, a marriage relationship in this state. For purposes of these Rules: 1) domestic partners must have shared a common, primary residence, 2) must jointly be responsible for each other's common welfare and share financial obligations, 3) neither can be married or a member of another domestic partnership, 4) both must be at least 18 years of age, and 5) are not related by blood to a degree of closeness that would prevent them from being married to each other in this state.
- 1.21 DUE PROCESS: The right granted to a regular employee to pre- and post-disciplinary hearings for actions of suspension, demotion or dismissal.
- 1.22 EMERGENCY CALL-OUT PAY: Compensation paid to an employee who has been called to return to work after hours, including weekends. Employees will receive a minimum of two hours overtime for emergency call-outs.



- 1.23 **EXEMPT EMPLOYEES:** All executive, administrative and professional employees as defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act, whose compensation is based on a fixed salary.
- 1.24 **GRANT FUNDED EMPLOYEE:** A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of a grant agreement.
- 1.25 **GRIEVANCE HEARING:** A formal hearing conducted at the request of an employee grieving a promotion, suspension, demotion, involuntary transfer, or dismissal as set forth in these Personnel Rules and Regulations.
- 1.26 **GRIEVANCE:** A formal complaint by an employee concerning actions taken by management, which result in loss of pay and/or privileges to the employee including suspension, demotion, involuntary transfer or dismissal.
- 1.27 **HEARING OFFICER:** The individual charged with the responsibility of hearing and deciding allegations of improper promotion, or post-disciplinary action matters of demotion, suspension, involuntary transfer, and dismissal.
- 1.28 **IMMEDIATE FAMILY:** Spouses, domestic partners, children, parents, siblings, grandparents, grandchildren, like in-laws, like step-relationship, and persons with legal custodial relationships.
- 1.29 **LAYOFF:** The involuntary separation of an employee from City service without fault on the part of the employee, due to the abolition of a position, reorganization, lack of work, lack of funds, or as otherwise determined in the best interest of the City.
- 1.30 **MEDICAL DISABILITY DISMISSAL:** The dismissal of an employee from City employment when the employee is unable to perform the essential functions of the position with reasonable accommodation(s) that do not impose undue hardship upon the City, due to a medical condition, when there is corroborating documentation of this condition from a licensed health-care professional. Although Medical Disability Dismissal is not disciplinary in nature, employees are nonetheless entitled to participate in the City's pre-determination and grievance procedures if they are subject to dismissal.
- 1.31 **NONEXEMPT EMPLOYEES:** Employees that are not exempt employees as defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act.
- 1.32 **PART-TIME EMPLOYEE:** An employee who works twenty (20) hours or more and less than forty (40) hours per week. Employees working twenty (20) hours or more on a consecutive basis are eligible for fringe benefits.
- 1.33 **PRE-DISCIPLINARY HEARING:** A hearing conducted by the City Manager or his/her designee before the imposition of the disciplinary actions of suspension, demotion or dismissal.

- 1.34 **PROBATIONARY EMPLOYEE:** A full-time or part-time employee hired to fill a regular position that has not completed a one (1) year probationary period of employment, during which time the employee is terminable-at-will. During this probationary period, the supervisor is required to evaluate the employee at least every three (3) months.
- 1.35 **PROMOTION:** A promotion is the change of an employee from a position in one classification usually to a position in a classification with a higher salary range.
- 1.36 **REGULAR EMPLOYEE:** Full-time: An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. Part-time: An employee who has successfully completed probation with a work schedule of twenty (20) or more hours, but less than forty (40) hours per week.
- 1.37 **RESIGNATION:** Resignation means the voluntary separation of an employee from City service.
- 1.38 **SAFETY- or SECURITY-SENSITIVE POSITION (SSP):** A position approved as such by the department director and City Manager, which an individual has a key and direct role in an activity where impaired performance by drug or alcohol use could result in a serious injury, or an improper or inadequate response to a potentially serious incident. SSP include a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, law enforcement officers, employees who are required to regularly carry a firearm, drivers/operators required to have a CDL license, have access to confidential information and/or receive calls for public service and employees who regularly transport other people as their principal job or otherwise designated so by the City Manager .
- 1.39 **SICK LEAVE:** Leave with pay granted to employees when personal illness, injury, pre-arranged medical or dental examination, quarantine, therapy, counseling or other necessary treatment that keeps the employee from performing the duties of the position or when a member of the immediate family is ill, injured or requires treatment for the described reasons.
- 1.40 **STAND-BY PAY:** Compensation paid to employees, though off duty, is required to be available and able to respond to inquiries by telephone or radio, after regular working hours, including weekends.
- 1.41 **SUSPENSION:** An involuntary leave of absence, with or without pay, for disciplinary reasons, or pending investigation of allegations made against an employee, or for pending determination of a grievance procedure.
- 1.42 **TEMPORARY EMPLOYEE:** An employee hired to fill a position that will temporarily fill a position that is vacant due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) months. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.

- 1.43 TRANSFER: The voluntary or involuntary movement of an employee, from one department or office to another department or office in the City service.
- 1.44 UNCLASSIFIED EMPLOYEE (or At-Will Employee): An employee that can be dismissed at any time, with or without cause. The terminable-at-will employees in the City shall be probationary employees, temporary employees, contract employees, and others designated by the Commission. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.

## SECTION II: EMPLOYMENT STATUS

**2.1 Position Specification:** The City shall establish position specifications for all positions. Position specifications shall include title, tasks, duties, responsibilities and minimum qualifications. They will also specify knowledge, skills, education, and abilities required of applicants. See Definitions for description of employee position. An employee may qualify for one or more of the following position descriptions:

- A. Probationary Employee: A full-time or part-time employee hired to fill a regular position that has not yet completed the one (1) year probationary period of employment, or (twelve (12) months for police officers) during which time the employee is terminable-at-will. During this probationary period, the supervisor is required to evaluate the employee every three (3) months.
- B. Temporary Employee: A temporarily employee, hired to fill a vacancy due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) month period. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.
- C. Regular Employee: **Full-time:** An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. **Part-time:** An employee who has successfully completed probation with a work schedule of twenty (20) hours or more, but less than forty (40) hours per week. Employees working twenty (20) hours or more on a consecutive basis are eligible for fringe benefits.
- D. Grant Funded Employee: A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of the grant agreement.
- E. Casual Employee: An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also work less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to grieve employment decisions.
- F. Unclassified Employee: An employee who can be dismissed at any time, with or without cause. The terminable-at-will employees in the City shall be probationary employees, temporary employees, casual employees, contract employees, and others designated by the Board. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.
- G. Classified Employee: An employee that serves the prescribed probationary period and is eligible for the rights and privileges provided for under these Rules.
- H. Contract Employee: Contract employees are unclassified, FLSA exempt and have a contract approved by the Board modifying the conditions of the City's personnel policy.

Contract employees serve at the will and pleasure of the Board. Contract employees are not entitled to grievance procedures or holiday premium pay.

- I. Temporary Agency Employee: An individual who performs work for the City through a contract with an independent third-party, such as a temporary placement or employment agency. These individuals are not City employees and therefore not entitled to any benefits or rights detailed in this policy.

## **SECTION III: GENERAL PROVISIONS**

**3.1 Purpose:** The purpose of these Personnel Rules and Regulations (Rules) is to establish consistent, basic policies and practices concerning relations between the City and its employees. These Rules further establish the formal grievance procedure available to regular employees to hear their grievances with respect to promotions, demotions, suspensions, involuntary transfers and dismissal, and provide the method by which a personnel hearing officer is chosen to hear formal grievances. Independent contractors are not subject to the provisions of the Rules.

**3.2 Scope:** Definite rules and regulations cannot be readily formulated for every possible problem and situation. These Rules serve as an employment contract, general basis and guide for the proper, efficient, and effective management and administration of City personnel matters. The Rules contained herein replace and supersede all previously issued personnel rules regulations and ordinances applicable to City employees.

**3.3 Amendment of Rules & Regulations:** There shall be no resolution or other action of the Board or other City official, which is inconsistent with these Rules, except by amendment of these Rules. The Board reserves the right to amend these Rules at its discretion. The City Manager may issue interpretative memoranda or Administrative Instructions, consistent with these Rules, which further detail the interpretation of these Rules.

**3.4 Employee Knowledge & Information of Rules & Regulations:** Department Directors or Human Resources Manager shall provide a copy of these Rules to present employees and to all new employees with instructions to read and be familiar with all provisions of these Rules. Employees shall sign for a copy upon receipt.

**3.5 Equal Employment Opportunity Rules & Regulations:** Individuals will not be discriminated against on the grounds of race, age, religion, color, national origin, ancestry, sex, marital status, physical or mental handicap, medical condition, sexual orientation or gender identity, in consideration for employment, promotions, transfers, duration of employment, compensation, terms, conditions, or privileges of employment by the City.

**3.6 Administration by City Manager:** The City Manager or designee shall administer and interpret the personnel system and the terms of these Rules and its amendments, and all future approved operating procedures. The City Manager shall recommend to the Board any necessary amendments or revisions to the Rules.

**3.7 Duties of All Employees:** All employees shall adhere to the provisions of these Rules. Department Directors, Human Resources Manager and the City Manager further shall be responsible for seeing to the adherence and enforcement of these Rules.

**3.8 Chain of Command & Conflict Resolution:** In order to maintain open communication between the City and its employees and to ensure that employees' general working concerns and conflicts are addressed quickly and efficiently, the City will utilize the chain of command protocol. Employees have the right to present or make known their complaints through the chain of command, free from interference, restraint, discrimination, coercion, or reprisal. This provision does not apply to serious complaints such as harassment, dangerous working conditions, workplace violence and discrimination, which are otherwise addressed by the policy. It is required that an employee discusses his/her concerns first with his/her immediate supervisor. Departments should utilize dispute resolution techniques, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships between employees and management.

If the concern cannot be handled at this level , the employee may request a meeting with the next level supervisor, up to the department director of his/her department. If it becomes necessary to pursue the issue beyond the department director level, or if the concern cannot be handled or remedied within the department due to supervisory conflict, it may be addressed with the City Manager within ten (10) calendar days of the department ' s final decision. The City Manager' s decision on the complaint shall be final and binding.

**3.9 Conflict with Collective Bargaining Agreements:** If any provision of this Resolution is in conflict with a written Employee Agreement duly adopted by the Board pursuant to the Public Employee Bargaining Act [NMSA 1978, §§10-7E-1 to 10-7E-26], the terms of the Collective Bargaining Agreement shall control.

### **3.10 Code of Ethics:**

- A City of Truth or Consequences employees and volunteers shall treat their government or quasi-government position as a public trust, requiring adherence to and respect for the Constitution and laws of the United States of America, the Constitution and laws of the State of New Mexico, and the ordinances, resolutions, and policies of the City. Employees and volunteers shall use the powers and resources of public office to advance the public interest rather than as an opportunity to obtain personal benefits or pursue private interests incompatible or competing with the public interest. City Government cannot function efficiently without the confidence of the public. The public's Confidence in the effectiveness, equity, and honesty of City Employees is directly related to the ethical conduct of City Employees and Officials.
- B. The citizens of the City of Truth or Consequences have entrusted the Elected Officials and employees of the City with the responsibility of ensuring that tax dollars , which fund City services , are spent wisely and efficiently. As City employees, the public is our employer. Our work and conduct are always subject to public scrutiny and approval. Our contact with citizens and performance results will often be the basis upon which City government is judged.
- C. Elected Officials and Employees of the City shall maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City's public institutions; and, in a manner, that merits the respect and cooperation of fellow employees.
- D. The City's level of professionalism is demonstrated by each City Official and employee's actions or in some cases inactions; therefore, the City expects employees to conduct themselves professionally during every interaction and every task.

- E. The City has established reasonable professionalism expectations; expectations every employer would require of their staff. Elected officials and employees are expected to:
- Build trust, confidence, and professional relationships with the public, coworkers, and others contacted in performance of duties; and
  - Promote the City and its employees.

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Note: Talking behind an employee's back, toxic talk, misrepresenting the truth, and failing to provide reasonable customer service are examples of a lack of professionalism.

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F. General Conduct standards are set forth or restated as follows:

1. The City of Truth or Consequences requires all employees to familiarize themselves with all rules and regulations (general policies and those pertaining to their duties and positions), and that employees abide by these rules and regulations. The City's rules of conduct and performance standards are applicable to all City employees , during normal working hours, at work related or City-sponsored or City-endorsed functions, and while traveling on work related business.
2. Each employee shall make an immediate report to his or her immediate supervisor of any violation of the law or the rules and regulations of the City of which he/she has knowledge. Such report may be required in writing at the discretion of the receiving supervisor and the Human Resources Manager.
3. Each employee shall make a written report within three (3) working days to the Department Director of any criminal charge filed against him/her or arrest for any violation of any law or ordinance except minor traffic violations. (DUI is not a minor traffic offense.)
4. Each employee shall perform his/her duties fairly and impartially, and otherwise conduct him/herself both on-duty and off-duty to command the respect of fellow employees and the public. Each employee's conduct shall be at all times consistent with the goals and mission of the City.
5. No employee shall refuse to truthfully answer questions specifically relating to the performance of his/her official duties or refuse to participate with investigations..
6. No employee shall report for duty while under the influence of any drug prescribed or not prescribed, including but not limited to a narcotic, barbiturate , hallucinogenic drug, central nervous system stimulant , alcohol, or an intoxicant. In the event any of the foregoing drugs is prescribed and administered to an employee, the employee shall report this to the supervisor and Human Resources Manager. The supervisor and the Human Resources Manager shall then make a determination whether the employee can perform their duties without detrimental effect. An employee may be asked to submit to a drug and/or alcohol test when the supervisor has reason to suspect that the employee is under the influence of illegal drugs or alcohol.
7. No employee shall be insubordinate, neglectful, or unwilling to follow orders or perform officially designated duties.
8. No employee shall falsify reports or records or knowingly submit inaccurate or untruthful information for or on any City record, report or document.
9. No employee shall sleep on duty.

10. Violence, fighting, profanity or insulting behavior, non-sexual harassment, horseplay, bullying, mobbing, and threatening or interfering with visitors or other employees at any time on City premises or at any other place, while on duty, will not be tolerated. The City strictly prohibits sexual harassment or other forms of discrimination.
11. Gambling of any kind on City premises or at any other place, while on duty will not be tolerated.
12. Employees shall not reveal confidential information to unauthorized persons.
13. Employees shall not be tardy, absent, or depart from work early without the permission of their supervisors and shall observe time limitations on break and meal periods. Each employee shall notify his/her immediate supervisor or designated representative prior to his/her scheduled work shift in the event he or she expects to be absent from duty due to illness or other reason.
14. No employee shall solicit funds or distribute petitions or literature for any political purpose other than official business on City property or at any other place while on duty.
15. Every employee will comply with safety rules/regulations and shall report promptly to the appropriate supervisor any injury or illness.
16. Employees shall not use City property, materials or facilities for non-City business. No employee shall occupy, use or operate any City property or facility without prior authorization.
17. Every employee has the responsibility to protect and safeguard City property and the person and property of others. No employee shall be in unauthorized possession of any City property or others regardless of value, or attempt to remove such property from City premises.

G. The ethical City employee shall:

1. Properly administer the affairs of the City.
2. Promote decisions, which only benefit the public interest.
3. Actively promote public confidence in City government.
4. Keep safe all funds and other properties of the City.
5. Conduct and perform the duties of the office diligently and promptly dispose of the business of the City.
6. Maintain a positive image to pass constant public scrutiny.
7. Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
8. Inject the prestige of the office into everyday dealings with the public, employees and associates.
9. Maintain a respectful attitude toward employees, other public officials, colleagues and associates.
10. Effectively and efficiently, work with governmental agencies, political subdivisions and other organizations in order to further the interest of the City.
11. Faithfully comply with all laws and regulations applicable to the City and impartially apply them to everyone.

## **SECTION IV: RECRUITMENT AND SELECTION**

**4.1 Purpose:** It is the policy of the City to select and recruit the best qualified and the best- suited person for all positions in an open and competitive manner, and to ensure that no discrimination occurs in the process and ensure equal employment opportunities for all applicants and employees. The City will comply with all applicable federal and state laws and regulations.

**4.2 Recruitment of Applicants:** Department directors shall notify the City Manager and the Human Resources Manager of a vacant position. In an effort to present current employees a viable career path within the organization, internal employees are encouraged to apply for vacant or newly created positions, if they meet minimum qualifications. The Human Resources Manager shall simultaneously issue job announcements internally and externally through such media deemed appropriate to ensure open and competitive recruitment of individuals with sufficient time to ensure reasonable opportunity for persons to apply. The Human Resources Manager shall submit announcements and receive all applications through their Office. All publications for job announcements shall include reference to the City as "*An Equal Opportunity Employer*".

**4.3 Temporarily Filling Vacant Positions:** Vacant positions may be filled without public announcement by temporary employees on a temporary basis to replace regular employees on leave and pending the selection of a regular employee for a position or otherwise for a period not to exceed six months. Temporary employees may not be made regular employees in their position without completion of an open application and selection process.

**4.4 Best Qualified & Best-Suited Applicant Determination:** The best-qualified and best- suited applicant is determined by the department director, in conjunction with the Human Resources Manager, based on minimum qualifications of education, experience, abilities, skills and past work experience, as specified in written position specifications for each position. Personal interviews shall be conducted with at least three (3) applicants, or if less than three applications are received, all applicants shall be interviewed. All internal applicants meeting minimum job requirements for a position shall receive an interview.

**4.5 Selection:** The department director or designated representative shall review all applications for positions in their department, in conjunction with the Human Resources Manager, and make their recommendation to the City Manager. Final appointment shall be made by the City Manager based on the best qualified and the best-suited applicant for the position and the status of the City' s budget. The Human Resources Manager is responsible for notifying the prospective employee and extending job offers.

**4.6 Pre-Selection Prohibited:** To ensure the integrity and fairness of the selection process, posted and advertised positions shall not be promised to any person prior to recruitment and selection.

**4.7 Ineligibility for Hire and Rehire:** Applicants shall be considered ineligible for hire or rehire by the City if the applicant has:

- A. Knowingly made any false statement or omission on the employment application or City record;



- B. Not met the requirements of the position;
- C. Failed to complete pre-employment drug and alcohol screening or physical examinations or other requirements as directed by the City, except that an applicant not meeting drug and alcohol screening testing may reapply after a one-year period. An applicant who failed a physical exam due to a pre-existing correctable medical condition may reapply at any time after the condition is corrected;
- D. Not met the criteria for insurance or bonding as required by City or state law;
- E. Been dismissed from City service as a disciplinary measure in five (5) years prior to the date of application;
- F. Not been certified by a physician that the applicant can perform the physical requirements or the essential requirements of the position;
- G. Been convicted for driving while under the influence of alcohol or drugs within the past three years of the date of the application, if a valid New Mexico driver's license and class is required for the position; or
- H. Been convicted of a felony as described in NMSA 1978, §28-2-1, et seq. or convicted of a felony or infamous crime as defined in NMSA 1978, § 10-1-3 and by its nature conflicts with the duties and responsibilities of the position;
- I. Not met the requirements of state or federal funding agreements;
- J. Resigned with pending employment charges pursuant to section 7 and 8 within five (5) years prior to the date of application;
- K. Resigned from City employment without giving two weeks' notice, unless unique circumstances exist;
- L. Previously engaged in destruction of City property, including deleting public (business related) records or emails; and
- M. The above list is not necessarily exhaustive and may not include all of the reasons that would make an applicant ineligible for hire or rehire.

**4.8 Testing:** To determine employment eligibility, the City may require an applicant to submit to testing for certain bona fide occupational qualifications. This may include, without limitation pre-employment physical, drug, and alcohol screening examinations, and/or proficiency, skills or general aptitude testing. For law enforcement officers, psychological examinations and/or extensive medical examinations may be required as a condition of employment.

**4.9 Background Investigation; Driver's License (DL) Check:** The City and/or designed contractor(s) shall conduct background investigations on all applicants considered for employment and DL record checks on all perspective and current employees required to drive a vehicle for City business. All applicants shall sign a background investigation waiver and DL check release during the employment application phase or they will be excluded from consideration. DL checks shall be conducted at hiring, and quarterly thereafter, on employees required to drive, as a condition of employment. DL checks will not be conducted on perspective or current employees not having driving responsibilities as a condition of employment. However, if at any time an employee is required to drive a vehicle as a condition of employment, DL checks will be performed at that time and continue on a quarterly basis.

**4.10 Commencement of Work:** No applicant for employment shall commence work or be considered employed by the City until an approval of the selection is made in writing by the City Manager and Human Resources Manager on a Personnel Action Form (PAF) and all pre-employment testing and relevant background checks have been completed. Payroll shall not enter the applicant into the City's system prior to receipt of a completed and signed PAF.

## **SECTION V: CHANGES IN EMPLOYMENT STATUS**

**5.1 Promotion:** The City encourages professional growth of its employees and rewards the initiative, creativity, effort, commitment, and diligence of its employees through the promotional process. City employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify.

**5.2 Evaluation Period:** Regular employees either promoted or voluntarily transferred to a vacant or newly created position will be placed in an evaluation status period for ninety (90) days. This is a period of evaluation and training of the employee in the new position. If performance during the evaluation period is deemed unsatisfactory and documented, the employee may be returned to his/her previous position, if available, placed in another vacant position for which the employee is qualified, if available and in the best interest of the City, or dismissed at the discretion of the City Manager. Employees transferred back to previous positions receive the same pay received before their promotion or transfer.

**5.3 Demotion:** An employee may be demoted to a position for which the employee is qualified when: 1) the employee would otherwise be dismissed because the employee's position is being abolished due to lack of funds or lack of work and there are no vacancies at the same level for which the employee is qualified; 2) the employee's job is being reclassified; 3) the employee does not present satisfactory performance in the position presently held; 4) the employee voluntarily requests such a demotion, provided a position is available; or 5) employees being demoted for disciplinary reasons.

**5.4 Transfers:** Employees transferred from one position to another, in most cases, should meet all requirements of the new position.

- A. General Transfer. Employees may be moved from one position to another of the same grade and pay range either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the City. Voluntary transfers are not grievable. Fluctuating organizational needs may require temporary or permanent transfer of an employee from one geographic location to another within the City. If a transfer involves a probationary employee, time served in the former position shall be credited toward achievement of regular full-time status and salary increases, accumulated annual leave and sick leave shall be retained. The City Manager must approve all transfers.
- B. Voluntary Transfers between Departments. An employee who voluntarily transfers from one department to a vacant position in another department may be required to accept the new position at its entry-level salary depending on their experience and qualifications required for the new position. The transferred employee will be subject to an evaluation period of ninety (90) days, as specified in Section 5.2.
- C. Medical Transfer. An employee who has been certified by a licensed physician as being physically unable to perform the duties of the employee's current position may be transferred as a reasonable accommodation to an available position in which the physician certifies the employee is able to work, and for which the employee is qualified to perform. If no such position is available, the employee is subject to the leave without pay provisions of these Rules.

**5.5 Resignation:** An employee voluntarily resigning shall submit in writing to the department director and the Human Resources Manager, a two-week minimum notice of

resignation. Unless unique circumstances exist, failure to provide timely written notice may be grounds for refusal of future employment with the City. Unauthorized absence from work for three (3) consecutive regularly scheduled working days shall be considered a voluntary resignation. Once a Department Director accepts an employee's resignation, the notice of resignation is deemed "accepted"; the employee may no longer rescind the resignation unless approved by the City Manager.

**5.6 Layoff Procedure:** Upon directive of the Board, the City Manager shall make the determination for layoffs after consulting with appropriate department directors and the Human Resource Manager. When layoffs of more than one employee are required, layoffs shall be determined using the following criteria:

- A. Position in order of priority:
  - I. Temporary employees,
  2. Probationary employees,
  3. Casual employees ,
  4. Part-time employees.
- B. Performance of the employee compared to other employees being laid off in the same or similar positions ;
- C. Value of the employee's position to the critical operation of the City or department, such as safety-sensitive or enterprise positions;
- D. Length of continuous service with the City; and
- E. Funding source.

**5.7 Layoff Return Privileges:** Any full-time or part-time regular employee laid off and returns within six (6) months of layoff shall not have to serve a probationary period if the employee returns to their previous position and the probationary period had been served. A laid off-returning employee will be credited for all unused sick leave remaining and not compensated for at the time of layoff, if the employee returns within the six (6) month period. Layoff privileges end:

- A. Six (6) months after the effective layoff date;
- B. After an employee refused employment in a position for which the employee is qualified and/or for which the pay rate is the same or higher than the position previously held; or
- C. When a laid off employee accepts another position with the City. A laid off employee accepting another position with the City shall serve the required evaluation period.

**5.8 Medical Disability Dismissal:** Employees shall be involuntarily terminated upon completion of the twelve (12) week family/medical leave if the employee is physically unable to perform the essential duties of the employee's position with reasonable accommodation(s) that do not impose undue hardship upon the City, as certified by a qualified, licensed physician. The provisions of this subsection are subject to the provisions regarding Workers ' Compensation laws and "On the Job Injury Leave" found in Sections 10.14 and 10.15 of these Rules.

**5.9 Reinstatement:** Individuals that are reinstated, as regular employees to the same or like position are not entitled to any previous benefits such as sick leave, which had been accrued during previous employment with the City, except as, provided in Section 5.7.

## SECTION VI: CONDITIONS OF EMPLOYMENT

**6.1 Probationary Period for New Hires:** An employee hired to fill a position shall serve a probationary period of one (1) year, beginning on the first day of work, during which time the employee is terminable-at-will.

- A. Law enforcement officers in the police Department shall serve a one (1) year probationary period, beginning on the first day of work, during which time the employees are terminable-at-will. If a law enforcement officer is not certified prior to hiring, the law enforcement officer must obtain law enforcement certification within one year of employment. Uncertified law enforcement officers shall be terminated on the one-year anniversary of hire if they are not accepted or enrolled in a basic police officer training program certified by the Law Enforcement Academy Board.
- B. The probationary period is an integral part of the evaluation process and is for observing the employee's performance and obtaining the most effective adjustment of a new employee to the position. Employees will be evaluated at least every 3 months during the probationary period. The employee must achieve a satisfactory performance or better by the end of the probationary period before the employee can become a regular employee entitled to all of the rights and benefits of that status.
- C. If an employee satisfactorily completes the probationary period, the employee will become a regular employee. If the employee does not satisfactorily complete the probationary period, the employee may be dismissed, or upon the recommendation of the department director and with final approval of the City Manager, the probationary period may be extended for ninety (90) days.
- D. In the event a probationary employee is on extended leave for any reason, the probationary period will be extended in an amount equal to that leave period.
- E. Probationary employee provisions. A probationary employee:
  1. Can be dismissed, without cause, at any point during the probationary period;
  2. Is not eligible for personal holiday leave;
  3. Cannot grieve disciplinary actions;
  4. Is allowed to accrue and use sick and annual leave as soon as it is accrued with approval of supervisor;
  5. Employees terminated during their probationary period are only entitled to payment of unused annual leave; and
  6. Is eligible for health insurance and other optional benefits, as provided in Section 9.7.

**6.2 Temporary Employee Hired to a Regular Position:** An employee who fills a temporary position and is subsequently hired to fill a regular position shall serve the required probationary period. The beginning date of the probationary period is the date the employee formally transitions to regular status.

**6.3 Former City Employees Hired to a Position:** A former City employee re-hired in the same or like position, or re-hired at any time to fill a new position, shall serve the required probationary period.

**6.4 Permitted Political Activities:** All employees:

- A. May engage in political activity on their own time;

- B. Are encouraged to register to vote and to exercise their right to vote;
- C. Have a right to express their opinion on all political subjects and candidates on their own time;
- D. May serve as convention delegates;
- E. May sign nominating petitions and make voluntary contributions to political organizations and candidates on their own time; and
- F. May serve as an election or poll official.

**6.5 Prohibited Political Activities:** All employees are prohibited from:

- A. Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose;
- B. Directly or indirectly coercing, attempting to coerce, commanding or advising an official or employee to pay, lends, or contribute anything of value to a party, committee or organization, agency, or person for a political purpose;
- C. Threatening to deny promotions to or retaliating against an employee who does not vote for or support certain candidate(s), requiring employees to contribute to a political fund or candidate, influencing employees to buy tickets to political fund-raisers and similar events, advising employees to take part in political activity and matters of a similar nature;
- D. Engaging in political activity while on duty; and
- E. Using any City-owned equipment, supplies, vehicles, space, property, or work time for political purposes.

**6.6 Public/Political Office:**

- A. Employees covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections. (A local school board member or a member of any post-secondary educational institution' s governing body shall not be construed as holding political office)
- B. Employees may not hold a City political office and be a regular full-time or at-will Employee of the City.

**6.7 Nepotism:** To eliminate the appearance of nepotism, relatives within the third degree shall not work in the same department when there is a supervisory relationship between them.

- A. Relative, as used in this ordinance, includes father/mother and spouse, son/daughter and spouse, grandparents, grandchildren and spouse, uncle/aunt and spouse, nephew/niece and spouse, brother/sister and spouse, great grandparents, and great grandchild; including unrelated persons sharing a spousal/domestic partner relationship, adopted step-relatives.
- B. When there is a change in assignment or relationship among City employees, which leads to supervision of or by a relative, the relative supervisor must immediately inform the department director of the relationship in writing. The department director, subject to the approval of the City Manager, shall take appropriate action to eliminate the conflict. Options include eliminating supervisory responsibility for a specific employee, voluntarily/involuntary transfer of the employee or supervisor to

another position, demotion of the supervisor, or termination of the employee or supervisor, whichever is most feasible for the employee, supervisor and City.

**6.8 Conflict Ban:** No employee shall engage in any business, transaction, accept private employment or other public employment which is incompatible with the proper discharge of the employee's responsibilities or which gives the appearance of impropriety, or is prohibited by federal, state or City law or City policy.

**6.9 Outside Employment:** Employees may not, directly or indirectly, engage in any outside employment or financial interest which may conflict, in the City's opinion, with the best interests of the City or interfere with the employee's ability to perform his/her assigned City job. Examples include, but are not limited to outside employment which:

- A. Prevents the employee from being available for work beyond normal working hours, such as emergencies or peak work periods, when such availability is a regular part of the employee's job;
- B. Is conducted during the employee's work hours;
- C. Utilizes City facilities, equipment, resources or time;
- D. Constitutes employment, contractual commitment or self-employment which conflicts with Section 15.14, below; or
- E. May be reasonably perceived as a conflict of interest, gives the appearance of impropriety or otherwise discredits public service.

An employee who chooses to have an additional job, contractual commitment or self-employment, may do so provided he/she provides prior notification on the prescribed form and obtains prior approval from his/her department director and the City Manager. Any outside employment that could potentially interfere with emergency call-out situations must be reported to the employee's department director. If, after accepting outside employment, situations arise which could interfere with the employee's job, the employee must immediately report these situations to his/her department director.

**6.10 Workplace & Sexual Harassment:** The City will not tolerate harassment or sexual harassment.

- A. The City is committed to taking reasonable steps to provide a professional working environment free from all forms of harassment, whether based on sex, sexual orientation, gender identity, race, color, religion, national origin, age, disability or any other protected classification. Although this policy focuses on sexual harassment, it applies equally to all forms of harassment based on a protected classification. The procedures described in this policy shall be followed for all such harassment. This policy also applies when an employee is subject to harassment in the workplace by a non-City employee.
- B. Employees have a right to be free from workplace harassment. Employees are forbidden from engaging in harassing conduct on- or off- duty that creates a hostile work environment. Any act of harassment based upon a protected classification is a severe violation of City policy and will be addressed in a firm manner.
- C. Harassment Definition: verbal, non-verbal or physical conduct by any employee that, bullies, torments, persecutes, disrupts, or interferes with another employee's work performance or member of the public or that creates an intimidating, offensive or hostile environment.

D. Sexual Harassment Definition: is any unwelcome sexually oriented behavior, demand, comment or physical contact initiated by any individual at the work place when:

1. Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment
2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions/opportunities affecting such individual ; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creates an intimidating, hostile or offensive working environment.

E. Harassment can occur in a variety of forms. Examples include, but are not limited to: Teasing an employee(s) about their race, religion, sexual orientation etc. Telling a joke at the expense of or with the intent of embarrassing a protected class.

Sexual harassment also occurs in a variety of forms. Harassing conduct based on gender often is sexual in nature. This policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature. Sexual harassment is unacceptable in the workplace or in other work-related settings such as business trips and business-related events. The following are some common examples of behaviors or situations that constitute sexual harassment:

1. Oral or written sexual statements, comments, jokes, questions or innuendoes;
2. Display of sexually oriented visual items such as calendars, cartoons, photos or posters;
3. Assault, molestation or unwelcome physical contact such as kissing, touching, patting, pinching, brushing against or hugging;
4. Requests, demands or subtle pressure for sexual activity;
5. Threats or retaliation against an employee who refuses unwelcome sexual attention or sexual behavior;
6. Overt promises or practices that imply preferential treatment for any employee in exchange for dates, sexual attention or sexual behavior;
7. Sexual insults and suggestions including, but not limited to, lewd remarks, obscene gestures and sexually suggestive materials;
8. Any conduct that ridicules, or is malicious or abusive to, an individual because of the individual's gender;
9. Pressuring an employee to go out on a date;
10. Consensual "romantic" or sexual relationships between a supervisor/director and an employee in the same department ; or
11. Asking questions of a sexual nature.

F. Responsibility to Report Harassment. Any employee who believes they are a victim of harassment because of their protected classification, should first confront the person or persons responsible for the offensive behavior and indicate that it is unwelcome and should be stopped. The employee also has an obligation to promptly report the matter to the Human Resources Manager, City Attorney or City Manager. These individuals are authorized by this policy to receive and act upon complaints of harassment or discrimination on behalf of the City. All employees who observe, or become aware of harassment, also have an obligation to bring the matter to the attention of the Human

Resources Manager, City Attorney or City Manager, even if they are not the victim of harassment.

- G. Investigation of Complaints. It is the City's intent to provide a fair process for investigating and resolving complaints of harassment. The City will investigate all reports of alleged harassment. Information associated with the investigation will be kept confidential, to the extent possible, and consistent with the City's obligation to investigate promptly and thoroughly. All employees are required to cooperate with any investigation by the City in response to an allegation of harassment. Refusal to cooperate in an investigation may result in disciplinary action, up to and including termination.
- H. Appeal. Any affected employee dissatisfied with the conclusion or results of an investigation, or with any corrective measures taken, may appeal the decision to the City Manager. Any such appeal should be in writing and must include the nature of the employee's dissatisfaction with the conclusions or results of the investigation. Any qualifying disciplinary appeal must follow the grievance process.
- I. Protection against Retaliation. The City will not retaliate against any employee who reports sexual harassment in good faith and such retaliation in and of itself is grounds for disciplinary action, up to and including termination without prior progressive discipline. Retaliation is a serious violation of this policy and should be immediately reported.
- J. Discipline. Anyone violating section 6.10 will be subject to corrective or disciplinary action up to, and including dismissal.
- K. Unlawful harassment, including sexual harassment, of employees, or members of the public, may be cause for dismissal. If the City determines that harassment has occurred or that counseling, training, disciplinary measures or termination are appropriate, it will respond appropriately to correct the problem following City disciplinary procedures. Serious cases of harassment constitute cause for termination without prior progressive discipline. Employees who knowingly make false allegations of sexual harassment may be subject to disciplinary action.
- L. Mandatory Training. Periodic mandatory training for all employees will be provided by the City to increase knowledge of the workplace harassment policy, state and federal laws and the process for enforcing the policy.
- M. Vendors and Customers: Employees should report harassment, including sexual harassment from vendors, customers, other City employees and the general public utilizing this Policy.

## **6.11 Performance Evaluations and Performance Goals:**

- A. Performance Evaluations (Probationary Employees only)
  - 1. Probationary employees shall be evaluated at least every three (3) months or when a department director or immediate supervisor wishes to make the performance of an employee a matter of record.
  - 2. **Contents of Evaluation:** A performance evaluation shall contain an overall appraisal of the employee's performance while on probation. Approved forms are available in Human Resources. All evaluations shall be signed by the employee and supervisor, and forwarded to the City Manager.
  - 3. **Unsatisfactory Evaluation:** The probationary period is a time to grow and develop new employees and ensure a proper fit for the organization; however, if an employee receives an overall evaluation rating of unsatisfactory performance, the employee shall be warned that the failure to meet reasonable performance standards



within a set period shall result in dismissal. In some circumstances of unsatisfactory performance or unacceptable behavior, a probationary employee may not be given a warning and will be terminated as terminable-at-will.

### C. Performance Goals (Non-Probationary Employees)

1. Supervisors will develop SMART goals (Specific, Measurable, Achievable, Relevant, and Time-based) annually for each employee, other than probationary employees who shall follow the traditional performance evaluation process. SMART goal setting is important for employee motivation, keeps employees looking forward to new accomplishments, intended to grow employee knowledge and skill sets, designed to meet organizational strategic outcomes, and enhances organizational effectiveness.

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Supervisors are expected to supervise and manage staff on a daily basis, and thus, provide either positive reinforcement or constructive corrective feedback as appropriate; performance evaluations and goal setting should not be mistaken for daily supervisory responsibilities.

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2. Goal types include:
  - a. Essence of job (EOJ): EOJ goals clearly describe tasks required for the job. Goals can include productivity, efficiency, detail, accuracy, safety, ability to problem-solve or work as a team player, professionalism, customer service, etc. EOJ goals can relate to the speed of work or number of units completed, and product accuracy and quality, etc.
  - b. Specific project(s): Projects are activities that an employee will pursue with a beginning and ending, and are generally beyond the employee's routine duties. Project goals can relate to improving systems, developing new policy or procedures, developing programs, completing purposed research, etc.
  - c. Professional development: These goals specify what an employee will learn in the coming year. These goals grow an employee by developing new skills or knowledge. Goals shall be linked to a realistic organizational need.
  - d. Performance improvement: These goals are used when an employee's behavior is unsatisfactory or their performance is below reasonable expectations. Performance improvement goals should have a limited but reasonable end timeline. They shall document reasonable behavior or performance expectations in a clear and measurable way.
3. Goal Setting: Supervisors, in collaboration with the employee, shall develop SMART goals for each employee annually. Align goals with the department's overall strategies, priorities and most important needs.
4. Goal Tracking: Supervisors shall review goal progress with each employee at least quarterly. A supervisor may amend a goal, either increasing or decreasing responsibilities, if circumstances change during the period.
5. Employee Rebuttal: The employee may submit a written rebuttal statement to the performance goal evaluation and it will become a part of the performance goal report. The rebuttal must be submitted within ten (10) days of the evaluation or it will be denied.

6. Unsatisfactory Goal Evaluation: In the event an employee fails to meet established goal(s), when in the judgment of the supervisor, should have, the employee shall be warned that failure to meet reasonable expectations could result in disciplinary action and/or may be placed on a performance improvement plan.

## **6.12 Fitness for Duty:**

The City endeavors to provide a safe and productive work environment for the benefit of its employees and the public they serve. Employees are expected to manage their health in such a way that they can safely and effectively perform their essential job functions and to discuss with their supervisor any circumstance that may impact their ability to do so. The City may require professional evaluation of an employee's physical or mental capabilities to determine his or her ability to perform essential job functions. Such evaluations are conducted by an independent third party, licensed health/mental health care professional and are undertaken only after careful review by Human Resources. To the extent possible, the City will protect the confidentiality of the evaluation and results.

This evaluation process is for only those situations where reliable observation indicates that the employee may not be physically or mentally able to perform the essential functions of his or her position due to a physical or mental condition. It is not intended to be a substitute for sick or medical leave requests, workers' compensation claims, allegations of violence in the workplace, situations where there is an immediate threat of harm, or a performance management disciplinary process.

- A. Procedures: If, by observation of an employee's behavior or by receipt of reliable information, the City has reason to believe that an employee may lack the ability to perform the essential functions of his or her position due to a physical or mental condition, the following steps will be taken:
  1. The department head will provide Human Resources with detailed information regarding the reason for and circumstances leading up to the fitness-for-duty referral, including information on essential job functions, evidence of the employee's inability to perform those functions effectively, and any attempts at resolving the matter.
  2. The Human Resources Manager will review the information provided in the referral, along with a current job description of the essential functions of the employee's position. If it is determined that a fitness-for-duty evaluation is necessary, upon confirmation from the City Manager, the Human Resources Manager, will notify the employee in writing.
  3. Human Resources will determine the independent, third party, licensed health/mental health professional that will perform the evaluation, send a written request for an evaluation to him or her, and will schedule the evaluation at the earliest opportunity.
  4. Failure on the employee's part to comply with a scheduled fitness-for-duty evaluation constitutes insubordination and will be cause for disciplinary action, including termination.
  5. The City will pay all costs of the services performed by the health/mental health professional as part of the evaluation.
  6. If the City Manager deems it necessary, the employee may be placed on temporary, paid administration leave until the evaluation is completed.

7. The employee will be requested to sign a voluntary written authorization allowing the health/mental health professional to provide certain information obtained through the evaluation to the City. If no authorization is executed, the City may nevertheless obtain a description of the functional limitations of the employee that may limit the employee's ability to perform the essential function of his or her job, but no statement of medical cause may be disclosed.
  8. Insofar as feasible, the results of the evaluation will be treated as confidential, kept in a separate file within Human Recourses, and the minimum necessary information will be shared only with those who need to know the results for legitimate City business purposes.
  9. If it is determined that the employee is not able to perform the essential functions of his or her position, Human Resources will attempt to determine if there is a reasonable accommodation that will allow the employee to continue working. If an appropriate accommodation cannot be made, other options will be identified and communicated to the employee as available.
  10. If it appears that any functional limitations on the employee's ability to perform the essential functions of his or her position are the result of a work-related injury, the matter will be referred to Workers Compensation for the processing of a workers' compensation claim.
  11. All actions taken to carry out this policy will comply with state and federal laws, as well as City policies and procedures and applicable contractual provisions.
- B. Evaluation and Results: The fitness-for-duty evaluation will not be conducted for the purpose of diagnosis or treatment but rather for the purposes of determining an employee's ability to perform the essential functions of the job. Human Resources will provide the evaluator with a description of the essential function of the employee's position prior to the evaluation. The evaluator will be asked by Human Resources to release only that information as permitted under this policy or otherwise permitted by law. The evaluator will be asked to complete a written report containing only the following information.
1. A conclusion regarding the determination of fitness for duty;
  2. A description of the nature and extent of any functional limitation on the employee's ability to perform his or her job;
  3. A description of the expected duration of each such functional limitation; and
  4. An opinion as to whether or not the functional limitation may be the result of a work-related injury as related by the employee; further medical examination or investigation may be necessary to determine if the functional limitation arises out of, or has been caused by, the employee's occupation.
- C. Insofar as feasible, the results of the evaluation will be treated as confidential, and will be shared only with those who need to know the results for legitimate City business purposes. However, where the employee has placed at issue his or her medical history, mental or physical condition, or treatment, the relevant information may be used and disclosed by the City in connection with such proceedings.
- D. The City Manager will make a decision regarding the employee's status, including but not limited to the employee's return to duty or removal of the employee from any duties pending treatment and re-evaluation, depending on the results of the evaluation and the

recommendation of the evaluator. In certain circumstances, the employee may be subject to medical disability termination pursuant to Section 5.8 of this Ordinance.

### **6.13 Anti-Fraternization:**

- A. The City encourages employees to develop friendships and share a spirit of teamwork and camaraderie both in the workplace and outside of work. In instituting this dating or fraternization policy, it is not the City's goal to interfere with the development of co-worker friendships and relationships.
- B. City employees may date; develop friendships and relationships both inside and outside of the workplace as long as the relationships do not negatively affect work. Any relationship that interferes with the City's culture of teamwork, the harmonious work environment or the productivity of employees will be addressed by applying the progressive discipline policy as outlined in this Ordinance. Adverse workplace behavior or behavior that affects the workplace that arises because of personal relationships will not be tolerated.
- C. The exception to this policy relates to Managers, directors and supervisors. Anyone employed in a managerial or supervisory role shall not have an intimate relationship with employees who report to them. From an employee perspective, these relationships may be perceived as favoritism, misuse of authority, or potentially, sexual harassment. Even if no improper conduct occurs, the relationship would likely cause gossip, hard feelings, dissatisfaction, and distraction among other employees in the workplace. The relationship may appear to other employees as an inappropriate use of position power. The fraternization prohibited by this policy includes dating, romantic involvement, and sexual relations.
- D. Notify your supervisor and the Human Resources Manager if a coworker relationship is a concern and might be from the City's standpoint of job performance and workplace disruption. Appropriate actions will be determined and taken as per the City's personnel policy. In the discretion of the City Manager, the parties to a relationship that become a concern can be required NOT to work together; and, must keep the City informed on the relationship. Any disruption in the workplace is subject to discipline or adjustment in shift status if available.
- E. Sexual misconduct refers to a wide range of inappropriate behaviors associated with the exercise of "power" or "authority" over certain people in the work environment. Therefore, some work relationships are prohibited by State statute. Law enforcement, probation personnel, and counselors are legally prohibited from engaging in relationships with offenders, inmates or clients, as these employees have a position of authority over these individuals. In these relationships, either the Legislature or courts have determined that these individuals are not capable of "consenting" to sex with staff, just as individuals with diminished mental capacity and juveniles are deemed unable to consent.

## **SECTION VII: BASIS FOR EMPLOYEE DISCIPLINE**

**7.1 Discipline:** Disciplinary actions are based on just cause, in order to promote the efficiency of the services rendered by the City and the operation of its respective departments and offices. Disciplinary actions will be consistent with governing laws and regulations and will be taken without regard to race, age, religion, color, national origin, ancestry, sex, sexual

orientation , gender identity, physical or mental handicap, or medical condition. No employee will be disciplined for refusing to perform an unlawful act.

**7.2 Definition of Just Cause:** Just cause is defined as any conduct, action or inaction arising from or directly connected with the employee's work or behavior, which is inconsistent with the employee's obligation to the City and reflects the employee's disregard of the City's interest. Just cause includes , but is not limited to, inefficiency , incompetence , misconduct, negligence, insubordination , or performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems, or conviction of a felony or misdemeanor involving moral turpitude and the misdemeanor conviction directly relates to the employee's particular job, trade, or profession.

**7.3 Disciplinary Action:** The City Manager, department directors and supervisors have the authority to discipline an employee under their supervision. However, only the City Manager has the final authority to demote, suspend or terminate an employee for disciplinary reasons. Copies of any written disciplinary action must be furnished to Human Resources for placement in the employee's file, with evidence of the employee's receipt of the action.

**7.4 Consultation with City Attorney:** Dismissal, demotion, and suspension require consultation with the City Attorney before taking disciplinary action. Whenever such consultation is not practical because of urgency, necessary action may be taken and the situations/circumstances reviewed with the City Attorney as soon as practical.

**7.5 Progressive Discipline:** An employee shall be progressively disciplined whenever warranted. All actions involving substandard work performance, leading up to and including dismissal, require documented progressive discipline. The step of corrective action used depends on the severity of the infraction, the employee's previous work record, years of employment, and the employees' status within the organization, e.g., supervisors are expected to conduct themselves at a higher standard. Because of the serious nature of some infractions, the first disciplinary action may be suspension or dismissal.

**7.6 Verbal Reprimand:** A verbal reprimand is used for minor infractions to inform the employee that his/her actions, behavior or conduct needs to change. Supervisors will keep written notations of verbal reprimands, and will place the written notation of the verbal reprimand in the employee's personnel file. The placement of a verbal reprimand in an employee's file is not grievable. Causes for verbal reprimands include, but are not limited to:

- A. Substandard or unsatisfactory work performance;
- B. Unprofessional behavior;
- C. Malicious gossip and toxic talk;
- D. Repeated absence or tardiness;
- E. Misconduct on the job;
- F. Failure to follow safety rules or procedures , including preventable accidents;
- G. Failure to meet and/or maintain job requirements as set forth in the job description ;
- H. Violation of any personnel Rules, other City rules , policies, regulations or supplemental rules;
- I. Violation of a professional code of ethics accepted by those in the same profession as an employee and as stated in this policy;

- J. Non-cooperation by an employee with fellow employees or other personal conduct which interferes with the performance of his/her or another employee's work;
- K. Failure to adhere to an established work schedule;
- L. Excessive personal phone usage; and
- M. Failure to obtain authorization for overtime or compensation time.

**7.7 Written Reprimand:** An employee shall receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a verbal reprimand may be used, or if a verbal reprimand was not effective. Causes for written reprimands include, but are not limited to:

- A. All causes listed for verbal reprimands;
- B. Excessive absence or tardiness;
- C. Sleeping on the job;
- D. Unprofessional behavior;
- E. Negligence in the performance of duty including negligence in the operation of City vehicles or equipment, including preventable accidents;
- F. Negligence or failure to adhere to established safety rules or regulations as well as willful unsafe conduct;
- G. Insubordination and failure to comply with the lawful orders of a supervisor including the refusal to accept after hours assignments;
- H. Refusal to perform tasks or duties assigned or detailed in an employee's job description;
- I. Unauthorized absence from work;
- J. Failure to report duty injuries, accidents or vehicle collisions;
- K. Failure to follow the chain of command within a department;
- L. Unauthorized use or abuse of City property (e.g. phones, cell phones, computers, vehicles, equipment, etc.).
- M. Being untruthful when asked about any work related activities by a supervisor;
- N. Abuse of sick leave, including use of sick leave on a day for which vacation or other leave has been denied;
- O. Failure to follow a departmental SOP; and
- P. Violation of the Code of Ethics (Section 3.10).

Written reprimands for an employee's work performance or conduct shall be placed in the employee's personnel file after providing the employee with a copy of the statement. The employee will be asked to acknowledge having read the comments by signing the statement. If the employee refuses to sign, said refusal, that information shall be noted on the document by the employee's department director. The department director's signature or employee's signature indicates that the employee received the statement, but does not necessarily indicate concurrence with its content. In addition, the department director may read the letter of reprimand to the employee. The employee may respond with a written rebuttal within ten (10) days after the document was entered into the personnel file, which shall also be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not grievable.

**7.8 Suspension:** An employee may be suspended without pay for a single serious offense, for misconduct, or for continued inadequate job performance after previous attempt(s) to correct the performance have failed. Such suspension will not exceed two-hundred forty (240) hours. Suspension of an employee is subject to the formal grievance procedures. Causes for suspension include but are not limited to:

- A. All causes listed for verbal and written reprimands;
- B. Continuous documented instances of poor performance;
- C. Negligent damage to property and/or person(s), including preventable accidents;
- D. Physical or mental unfitness for duty;
- E. Consumption or possession of alcohol or controlled substances on-duty or on City property or in City vehicles;
- F. Fighting while on-duty or on City property;
- G. Harassment;
- H. Sexual harassment;
- I. Violation of the Code of Ethics (Section 3.10).
- J. Failure to report confiscation or loss of driver's license when required as condition of employment;
- K. Operation of a City vehicle or a private vehicle while on City business without a valid driver's license; and
- L. Unlawful carrying or possession of a firearm unless authorized by state law or City policy.
- M. Being under the influence of alcohol or controlled substance including illegal drugs as well as abuse of prescription drugs. See Section 11.
- N. Knowingly making any false statement or omission to a supervisor regarding work-related activities.

**7.9 Demotion:** An employee may be demoted for continued inadequate job performance after previous attempt(s) to correct the performance deficiency have failed, if a lower job position exists, the employee is capable of performing such a job, and it is in the best interest of the City to demote the employee. The demotion of an eligible employee is subject to formal grievance procedures. A demotion may require a decrease in salary, with approval of the City Manager. Employees engaged in misconduct or ethical infractions will not be considered for demotion.

**7.10 Dismissal:** Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance, or when the employee has engaged in other behavior that is of a serious nature that is unacceptable for City employees. The dismissal of an employee is subject to the formal grievance procedures. Causes for dismissal include, but are not limited to:

- A. All causes listed for the previous disciplinary actions or if an employee's performance failed to improve after attempts or correction have failed;
- B. Acceptance of a bribe, gratuity, gift, or kick-back;
- C. Abuse of official position or authority for personal profit or advantage;
- D. Theft, abuse or intentional destruction of City property, including electronic media or data;
- E. Unauthorized disclosure of confidential information from City records or documents, or discussions as set forth by applicable state law; falsification, destruction or unauthorized use of City records, reports, or other City data, including electronic media or data;
- F. Being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular job, trade, or profession;
- G. Being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular job, trade, or profession, if the City

determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

- H. Falsification of City records, including employment application, health history forms or any other document used in the employment process;
- I. Serious acts of negligence causing damage to City property, public or private property or injury to an employee or member of the public;
- J. Intentional acts causing damage to City property, public or private property or injuring an employee or member of the public;
- K. Conduct unbecoming an employee of the City;
- L. Engaging in conduct prohibited under the City's Drug-Free Workplace Policy as provided in Section 11.4, below;
- M. Insubordination or refusal to carry out reasonable directives;
- N. Failure to meet standards of substance abuse rehabilitation programs;
- O. Loss of license or certification necessary to legally perform the duties of the employee's position.
- P. Determination of Hatch Act violation by Office of Special Counsel;
- Q. Behavior that demonstrates deliberate violations of policy, wrongful intent, evil design, or so as to reveal intentional and substantial disregard of the City's interests, or of employee's duties and obligations to the City;
- R. Willful falsification of, or misrepresentation on, any work records; falsifying data or information requested by the City; forgery or inappropriate alteration of City records or other City documents (including written or audio or audio-visual media); and
- S. Action or inaction that subjects the City to civil liability.

**7.11 Examples Not Inclusive:** The above examples are typical of the types of infractions sometimes encountered but are not inclusive of all situations that may arise. The City reserves the right to exercise judgment and render disciplinary action or dismissal as deemed appropriate based on the circumstances of each case.

**7.12 Pre-Determination (Loudermill) Hearing:** Regular employees shall receive a pre-determination hearing prior to possible disciplinary action for cause or other action that may result in suspension without pay, demotion, and loss of pay, involuntary transfer, or dismissal. Prior to delivery of the written notice to the employee, the City Human Resources Manager shall review the cause for such action and may require the proposed level of discipline be increased or decreased based on policy and past action. The City Manager or his/her designee shall hold the hearing for employees of each respective department.

**7.13 Written Notice:** The employee's supervisor or department director shall present the employee with written notification of their intent to conduct a pre-determination hearing at least five (5) working days in advance of the hearing date. The written notification shall explain the reasons for the hearing, the proposed discipline, the employee's right to attend the pre-determination hearing, a list of all evidence and/or witnesses to be introduced by the Department supporting the Department's position, the time, place and date of the pre-determination hearing and the employee's right to respond to the proposed action. The time, place and date of the pre-determination hearing can be revised upon the written agreement of the parties.

**7.14 Immediate Suspension with Pay:** In cases where City property, other employees or citizens, or their property are at risk because of the employee's actions, or when in the best interest of the City, the City Manager or in his/her absence, an appointed designee shall put the



employee on administrative leave with pay until the pre-determination hearing is held and a decision is rendered. Any employee, who is placed on administrative leave pending disciplinary action, will be required to be away from their place of employment and will not be allowed to perform any job related duties or retain any City property during that time, but is subject to recall by the City during normal business hours. Administrative leave pending disciplinary action shall not exceed thirty (30) calendar days, unless the City Manager approves an extension of time. The department director, subject to the approval of the City Manager whenever circumstances warrant such leave , may also grant administrative leave with pay.

**7.15 Pre-Determination Hearing Procedure:** The City Manager or his/her designee shall meet with the appropriate department director and the employee if he or she chooses to participate, at the appointed time. The City Attorney may be present to assist the Hearing Officer/City Manager but shall not advocate on behalf a City Department. Legal counsel for the employee and the department, if any, may also be present. At this hearing, the employee will have an opportunity to respond to the reasons for the proposed action. Witnesses are permitted as determined relevant to the case by the City Manager or his/her designee. If an employee does not attend the pre-determination hearing and no good cause is shown for his/her absence, the hearing shall proceed as scheduled and a determination may be made.

**7.16 Pre-Determination Hearing Decision:** The City Manager or his/her designee will issue a decision in writing within ten (10) working days of the hearing. The decision will include the time, date and location of the meeting, persons present, and the determination. The written decision shall either be delivered to the employee by a supervisor or department director with the employee's, signature of receipt of the decision) or be sent to the employee by certified mail, return receipt requested.

**7.17 Notice of Grievance:** Within five (5) working days of receipt of the written decision, the employee must notify the Human Resources Manager or his/her designee in writing of his/her intent to pursue a grievance hearing before a Personnel Appeals Hearing Officer.

## **SECTION VIII: GRIEVANCE PROCEDURES**

The formal grievance procedure is applicable for promotion, suspension, demotion, involuntary transfer or dismissal. A grievance shall not stay the implementation of the pre-determination hearing decision.

**8.1 Conditions or Actions Not Grievable:** The following matters are not grievable:

- A. Disputes as to whether or not an established City practice or Rules are valid;
- B. Matters in which a method of review is mandated by law;
- C. Matters where the City is without authority to act or does not have the ability to provide a remedy;
- D. Dismissal of temporary, casual or contract employees dismissed at any point during their employment with the City;
- E. Preferences for employment promotions, voluntary transfers, temporary assignments, and removal from temporary assignments, and layoffs;
- F. Dismissal of a probationary employee prior to the expiration of the probationary period;
- G. Letters of complaint when the employee's department director determines the letters are justified and appropriate to be placed in the employee 's personnel file, so long as the

procedure for written reprimands are followed including the employee's right to submit a rebuttal;

- H. Verbal and written reprimands in the employee's file, although within ten (10) days the employee is allowed a rebuttal of the information contained in the reprimand which will be attached to the reprimand;
- I. Denial of permission for outside employment ;
- J. Performance evaluations/goals;
- K. Suspension from employment for three days or less.
- L. Denial of educational rewards or tuition reimbursement funding.

**8.2 Employees Not Eligible for Grievance Procedure:** Unclassified, temporary, casual, probationary, or contract employees are not eligible to request a grievance hearing. Additionally the City Manager is not entitled to the grievance procedure.

**8.3 Grievance Procedure:** A regular employee may request, in writing, a hearing before a Personnel Hearing Officer within five (5) working days of receiving the City Manager's decision resulting from the pre-disciplinary process or from other action as may be grievable under this Policy. The request will state with specificity the reason for the grievance and the remedy requested.

**8.4 Appointment of Personnel Hearing Officer:** After receiving the grievant's notification of intent to pursue a disciplinary hearing, the City Manager will provide the grievant with the name of the Hearing Officer.

**8.5 Hearing Officer Qualifications:** Hearing Officers shall be personnel professionals, be familiar with public or private personnel systems , or have pertinent experience in the field of management , education or law. The Hearing Officer shall be disinterested in the subject matter of the hearing. The City Manager shall verify the qualifications of the hearing officer. The hearing officer is not required to reside in the City.

**8.6 Grievance Hearing Schedule:** The City Manager or Hearing Officer will schedule a hearing to be held as soon as practicable after receiving the notification that the employee wants to pursue a grievance hearing. At a hearing, the grievant and City shall have an opportunity to present witnesses and physical evidence and cross-examine the witnesses before a neutral hearing officer. The City shall be represented by its attorney and the grievant may have an attorney or representative of their choice.

**8.7 Grievance Hearing Procedures - Rules of Procedure:**

- A. The hearing will not be open to the public, unless the grievant requests a public hearing.
- B. The formal Rules of Evidence shall not apply to the hearing.
- C. The hearing officer shall:
  - 1. Make rulings on procedural and substantial issues of the hearing;
  - 2. Determine the admissibility of evidence and testimony , all of which must have a direct bearing on the issue before the hearing officer; and
  - 3. Issue a written ruling, including findings of fact, which form the basis of the hearing officer's conclusions of law.

- D. The grievant, the grievant's legal representative, if any, and the City Attorney are required to be present at the hearing unless otherwise excused by the hearing officer or by agreement of the parties.
- E. The hearing officer shall determine reasonable timelines that the parties or their representatives shall prepare and provide copies of all exhibits and evidence, confidential statements identifying the issues to be heard, a witness list, and a complete list of documents to be admitted as evidence for the hearing officer as well as the opposing party. The hearing officer shall exclude from consideration exhibits and evidence, statements, witness lists, and other documents if not supplied in the manner detailed above.
- F. Each party will be responsible for ensuring that their witnesses are present for the hearing.
- G. Witnesses in grievance hearings are not permitted in the hearing room until called upon to testify, unless the witness is a party (i.e., the grievant, the grievant's department director and/or supervisor, the City Manager, Human Resources Manager, or City Attorney).
- H. An audio, audio-video record or transcript of all grievance hearings will be made.

**8.8 Conduct of Hearing:** The Grievant shall present an opening statement of issues involved in the case, followed by the City. Opening statements are limited to the pertinent issues of fact and law and shall not exceed ten minutes without the permission of the hearing officer.

**8.9 Order of Presentation:**

- A. The City will present first. Witnesses for the City may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the Grievant will have the opportunity to cross-examine the witness. The hearing officer will then have an opportunity to question the witness. The hearing officer shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- B. Witnesses for the Grievant may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the City will have the opportunity to cross-examine the witness. The hearing officer will then have an opportunity to question the witness. The hearing officer shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- C. Following the presentation of the City's and the Grievant's positions, rebuttals may be offered. Such testimony shall be brief and shall address only the issues brought forth in the City or Grievant's presentation.
- D. The City's closing statement shall be presented followed by the Grievant's closing statement. These statements shall not exceed ten (10) minutes without the permission of the hearing officer and shall contain a request for the desired outcome.

**8.10 Communication of Hearing Officer's Decision:** The hearing officer's decision will be issued as timely as possible following the hearing and will be signed by the hearing officer, and transmitted to the grievant, the City Manager and department director. The hearing officer may uphold, modify or reverse the decision of the City Manager or designee, and may reinstate the employee and award back pay and benefits. No attorney's fees, costs or other damages may be awarded. The standard of proof in a grievance hearing is a preponderance of the evidence.

The record of the proceedings will be retained by the City Human Resource 's office for a period of not less than five (5) years from the hearing date, along with all of the physical evidence admitted by the hearing officer. The verbal record may be transcribed only in the case of appeal to the District Court by one of the parties. The party requesting the transcription shall pay for the transcription.

**8.11 Appeal of Hearing Officer's Decision:** Either party may appeal the hearing officer ' s decision to the District Court by filing with the District Court and the Human Resources Manager a Notice of Appeal within thirty (30) calendar days of the hearing officer's decision. A party may cross-appeal within thirty (30) days of the date another party files a Notice of Appeal. Both parties shall be forever estopped from appealing the hearing officer' s decision after thirty (30) calendar days from the hearing officer's decision if no Notice of Appeal is timely filed.

- A. These Rules, if certified to be complete by the City Clerk, and in effect at the material times, may be included in the record on appeal at the request of any one of the respective parties at any time before forwarding the record to the District Court.
- B. The appeal shall be one of review of the record (transcript) along will all the exhibits as admitted. No trial de novo will be accorded.

## **SECTION IX: COMPENSATION & BENEFITS**

**9.1 Purpose:** The purpose of the compensation plan is to establish equitable compensation for all positions in the City. Such a plan may establish a salary schedule containing a minimum and maximum wage or salary for each position. Pay ranges are intended to furnish administrative flexibility. However, all wages and salaries are approved by the Board during the budget process or otherwise. The Board has sole authority to budget and authorize wage and salary increases. The Board acknowledges all changes in compensation and may set pay schedules and Rules regarding any raises and promotional increases for the entire fiscal year for all City employees.

**9.2 Hours of Work:** Employees will work their scheduled hours pursuant to work schedules established by their department director and approved by the City Manager. Full-time employees will work a minimum of forty (40) hours per week. Actual work periods may fluctuate at the discretion of the department director, with approval of the City Manager. Part-time employees are scheduled to work pursuant to scheduling set forth by their department director. Law Enforcement Personnel may work an alternative schedule in accordance with FLSA regulations in excess of eighty-six (86) hours per pay period permitted by 29 U.S.C. Section 207(k).

**9.3 Overtime Pay:** Only FLSA non-exempt employees shall be compensated for all time actually worked, whether or not the time is authorized. Failure to obtain authorization for overtime shall result in disciplinary action, up to and including dismissal. The rate shall be one and one-half (1½) times regular pay for each hour of overtime. Only actual time worked will be used to calculate overtime; holiday, annual, sick and other leave hours shall not be considered actual working hours.

- A. Regular employees: such payment shall be made only in cases when an FLSA non-exempt employee works over forty (40) "actual hours" in a normal workweek.

- B. Law Enforcement Personnel: An FLSA non-exempt, law enforcement employee shall be paid overtime according to FLSA regulations in excess of eighty-six (86) hours per pay period permitted by 29 U.S.C. Section 207(k).

**9.4 Consistency with Fair Labor Standards Act:** The provisions of Section 9.3 are subject to change or revision by the Fair Labor Standards Act and any federal regulation or revision thereof.

**9.5 Emergency Call-out Pay:** An employee called out will be paid for the greater of two (2) hours at one and one-half (1.5) times his/her regular rate or for actual hours worked at one and one-half (1.5) times his/her regular rate. Police officers are exempt from call-out pay eligibility, except as defined in Section 9.3 B.

**9.6 Stand-by Pay:** An employee on stand-by will be compensated at his/her regular rate for eight (8) hours during any regular seven-day workweek.

- A. No employee may be placed on stand-by for more than one week (seven consecutive days) at a time, except by special arrangement with the department director.

**9.7 P.E.R.A. Benefits:** All City employees, with the exception of those employees, who are subject to exclusion under P.E.R.A. rules, are required to join the Public Employees Retirement Association of New Mexico (P.E.R.A.).

**9.8 Insurance Benefits:** The City offers group insurance benefits to all employees as long as the employee is regularly scheduled to work at least 20 hours per week and whose term of employment when hired is for six or more months. Independent contractors and causal employees are not eligible under the City benefit plan. Insurance plans may be changed at the discretion of the Board or the insurance carrier.

**9.9 Fringe Benefits:** The City will follow the Internal Revenue Service's rules with regard to fringe benefits. Taxable fringe benefits will be included on the employee's W-2 form. (Examples of fringe benefits may include uniforms, uniform allowances, vehicle usage, City cell phones, etc.) If an employee has a question regarding fringe benefits and how that may affect them, the employee should contact the Human Resources Manager. Vehicles assigned as take-home vehicles must be properly identified with a logo as City of Truth or Consequences vehicles, with the exception of law enforcement undercover vehicles.

**9.10 Compensatory Time:** Compensatory time in lieu of cash compensation may be given if there is no remaining overtime in the Department's budget and shall be authorized only under rare circumstances, which call for immediate action or in special situations required by the nature of the operation or the status of the activity.

- A. Compensatory time in lieu of cash compensation may be given only if there is an agreement entered into voluntarily between the employee and department director.
- B. The employee must have entered into this agreement before compensatory overtime work is performed.
- C. Compensatory time off for FLSA non-exempt employees shall be at a rate equal to one and one-half (1.5) hours for each hour of employment for which overtime compensation is required. However, if the additional hours worked would not qualify

as overtime (i.e. leave was taken during the workweek), but the employee takes time off in lieu of payment such compensatory time would be accrued at the straight time rate.

- D. A maximum of 40 hours of compensatory time may be accrued before the employee will be required to exhaust the leave.
- E. The FLSA-covered employee who has accrued compensatory time off, and who has requested the use of compensatory time, shall be permitted to use the time within a reasonable period after making the request, if the use of compensatory time does not unduly disrupt the operations of the City, as determined by the employee's supervisor.
- F. After accrual of 40 hours of compensatory time, any overtime worked must be paid. If compensation is paid to an employee for accrued compensatory time, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such a payment.
- G. A department head shall make every reasonable effort to schedule time off, for an employee to use accrued compensatory time immediately after accrual.
- H. No employee whose position is designated as exempt shall be paid in any way for hours worked in excess of 40 in a workweek. It is the practice of the City to allow professional flexibility in work schedules for exempt employees to balance their professional and personal commitments. It is, however, generally expected that exempt employees are present and available during daily "coretimes".

**9.11 Flex Time:** Excess time accrued by a non-exempt employee above the employee's regularly scheduled daily work hours in, which the employee requests for department director approval to use the accrued hours as alternate leave on a day and time within the same pay period.

- A. Directors may, at their discretion, permit non-exempt employees who are requesting to use accrued flex time on a case-by-case basis, where the employee was engaged in approved work-related assignments that required the employee to work extended hours outside of their normal work day. Flex hours must be used within the same city pay period in which they were accrued and the employee must properly reflect the correct number of hours worked per day on their timesheet entry.

## **SECTION X: LEAVE AND HOLIDAYS**

### **10.1 Holidays:**

- A. The Board shall approve holidays at their discretion, for the calendar year. All employees, except temporary and casual employees, are eligible for holiday pay.
- B. An employee that works on a holiday will receive holiday pay plus their choice of:
  - 1. One hour of time off for each hour worked on the holiday, or
  - 2. Pay for actual time worked at their regular rate.
- C. If a holiday falls on an employee's regularly scheduled day off, the employee will receive eight (8) hours straight time.

**10.2 Personal Holiday Leave:** All regular employees who have completed the probationary period will have an eight (8) hour and part-time employees eligible for benefits will receive four (4) hours personal holiday each calendar year in addition to the regular holiday schedule. The personal holiday may be taken at any time, upon approval by the employee's supervisor. The entire eight (8) hours, four (4) hours for part-time employees must be taken when requesting personal holiday leave. Personal holiday time may not be taken in hourly increments. Personal holiday leave shall not carry over beyond the current calendar year.

**10.3 Annual Leave with Pay:** Annual leave may not be used before it is accrued and must be approved with at least seven (7) days or more notice by the employee's supervisor prior to being taken. Employees accrue annual leave with pay in accordance with the following schedule, based upon continuous length of City service:

Full Years of Service	Hours/pay period	Working days/Year
0 to 5 Years	4.0 hours	13 days/ 104 hours
5 to 10 Years	5.0 hours	16.25 days/ 130 hours
10 Years +	6.0 hours	19.5 days/ 156 hours

Employees hired before adoption of this ordinance are grandfathered in at the rate established at hiring and shall accrual annual leave in accordance with the following schedule:

Full Years of Service	Hours/pay period	Working days/Year
0 to 3 Years	4.0 hours	13 days/ 104 hours
3 to 15 Years	6.0 hours	20 days/ 160 hours
15 Years +	8 hours	26 days/ 208 hours

- A. Employees employed in regular part-time status accrue annual leave on a prorated basis.
- B. Only completed calendar months of service before and after interruptions or breaks will be counted. In computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual to another, the following will apply:
  - 1. Where the employee has been employed with the City without any interruption or break in continuity of service, the date from which their years of tenure are counted will be the first day of the first completed calendar month worked.
  - 2. Periods of leave without pay in excess of thirty (30) days will not be counted as service.

- C. An eligible employee will progress from one graduated rate of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.
- D. The amount of accrued annual leave permitted to be carried over from one calendar year to the next shall not exceed 240 hours, unless exigent circumstances prevented annual leave use and is approved by the City Manager.
- E. Upon separation of employment, an employee will be compensated for all unused and unforfeited annual leave, not to exceed 240 hours.
- F. Upon death of an eligible employee, compensation for unused total annual leave, not to exceed 240 hours, shall be payable to the employee's estate.

**10.4 Accrual Limitation:** Total number of accrued annual leave hours shall not exceed a maximum of 240 hours. Therefore, any hours exceeding 240 hours, at any time, will be forfeited, unless approved by the City Manager. Exceptions to this policy must result from a legitimate business necessity.

**10.5 Separation from Service or Change in Service Pay:** Employees shall be paid for all accrued annual leave upon separation from City service, not to exceed two hundred-forty (240) hours.

**10.6 Leave Donation:** Employees are permitted to donate or receive annual or sick leave for City employees with severe or extraordinary illnesses, or to provide care for relatives or household members with severe or extraordinary illnesses, if the employee has exhausted their annual and sick leave.

- A. An employee may donate as many annual or sick leave hours as desired, as long as the employee retains an annual and/or sick leave balance of at least 40 hours.
- B. Requests to receive donated leave require department director and City Manager approval. The City reserves the right to approve or deny donated leave requests. The City Manager will render a decision based on the employee's length of service, performance/disciplinary history and review of the employee's leave usage.
- C. A certificate of illness or injury will be required from a physician in order to qualify to use donated hours.
- D. Under no circumstances, including termination, can donated hours be converted into cash. Unused hours will be returned to the employee(s) making the donation.
- E. Upon death of an eligible employee, compensation for unused total annual leave, not to exceed 240 hours, shall be payable to the employee's estate.

**10.7 Sick Leave with Pay:** Employees shall accrue a maximum of four (4) hours of sick leave with pay per pay period. Part-time employees accrue sick leave at the rate of 2.0 hours per pay-period. Casual and temporary employees do not accrue sick leave.

- A. Sick leave shall be authorized by the employee's supervisor, when such leave is requested, when an employee is unable to perform normal job duties due to medical considerations such as, but not limited to, the following: illness, injury, prearranged medical or dental examination, quarantine, therapy, counseling, treatment, or when a member of the employee's immediate family is ill and requires the personal attention of the employee.



- B. The City has no maximum cap on accrued sick leave; all hours are allowed to be carried-over from one calendar year to the next. Upon separation or retirement of an employee serving five (5) or more continuous years of service, will be compensated for one third (1/3) of the first 480 accrued sick leave hours; a maximum of 160 hours. Employees with less than five (5) continuous years of service will forfeit all accrued sick leave at separation of employment. Employees are not permitted to donate sick leave at time of separation.

**10.8 Sick Leave Authorization:** Sick leave may not be used before it is accrued and must be authorized or denied according to City policy. Unless otherwise prescribed by separate department policy, the following procedures shall apply:

- A. Reporting Sick Leave. For police officers, sick leave shall be reported as soon as possible, but no later than two (2) hours prior to the employee's work shift. All other employees, sick leave shall be reported as soon as possible, but no later than thirty (30) minutes following the start of their normal work day.
- B. Sick leave shall be requested and entered in the City's system. If an employee uses any falsehood to support a request for leave, any leave authorized may be rescinded and the employee may be subject to disciplinary action. Leave may be granted contingent upon the employee presenting sufficient justification.

**10.9 Use of Sick Leave During Probationary Period:** Probationary employees accrue sick leave as set forth in 6.1 D and may use sick leave if accrued.

**10.10 Certification of Illness for Sick Leave:** A physician's written certification may be required prior to receipt of sick leave pay at the discretion of the department director.

**10.11 Bereavement Leave:** In the event of a death in the employee's immediate family, he or she will be entitled to bereavement leave. Up to three (3) days may be granted for an employee to attend the funeral of a member of his/her immediate family in state and up to five (5) days if the funeral is out-of-state. These days will be classified as Administrative Leave with pay and require City Manager approval.

**10.12 Family Medical Leave:**

- A. The City provides family medical leave of absence without pay to eligible employees who wish to take time off from work duties to fulfill family obligations relating directly to the birth or adoption of a child or the illness of a child, spouse, domestic partner, parent or the employee themselves. Regular full-time and part-time employees are eligible to request family leave as described in these Rules.
- B. Eligible employees are allowed family/medical leave according to provisions of the Family Medical Leave Act (FMLA). As soon as an eligible employee becomes aware of the need for a family medical leave of absence, the employee shall request leave from their supervisor. Employees requesting family medical leave related to the illness of a child, spouse, domestic partner, parent or the employee themselves shall be required to provide a healthcare provider's certification of employee/family member's serious health condition. Eligible employees who do not request family medical leave in advance of a qualifying event will automatically be placed on family medical leave as soon as the

Human Resources Manager determines that their leave qualifies for protections under FMLA.

- C. The City may require an employee to submit to a fitness for duty return to work exam when the need for FMLA leave is based on the employee's own serious health condition that may affect the essential functions of the employee's job. The City must notify the employee of this requirement at the beginning of the leave.
- D. Eligible employees are allowed up to twelve (12) weeks of family medical leave or up to twenty-six (26) weeks of leave, in a single 12-month period, to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligibility for leave will be determined on a twelve (12) month rolling-back calendar. The employee will be required to take any available annual or sick leave as part of the approved period of leave. If the family medical leave is unpaid, the employee is subject to all rules pertaining to leave without pay, section 10.20.
- E. Subject to the terms, conditions and limitations of the applicable plans, the City will continue to provide health insurance benefits for the full period of the approved family/medical leave, subject to all rules pertaining to leave without pay, Section 10.20.
- F. When family medical leave ends, every reasonable effort will be made to return the employee to the same position, if it is available, or to a similar available position for which the employee qualifies.

**10.13 Administrative Leave with Pay:** Administrative leave with pay may be granted by the department director, subject to the approval of the City Manager, pending an investigation or disciplinary action or fitness for duty evaluation, as subject to all rules pertaining to Immediate Suspension with Pay, Section 7.14.

**10.14 Workers' Compensation Program:** [§§5 2-5-1 et. seq., NMSA 1978]

- A. The City provides a comprehensive worker's compensation insurance program at no cost to employees. This program covers any injury or anyone suffering from occupational diseases sustained in the course of employment as approved by the insurance carrier. Subject to applicable legal requirements, Workers' Compensation insurance provides benefits after a short waiting period, or if the employee is hospitalized immediately.
- B. Employees who sustain work-related injuries or occupational diseases must inform their supervisor immediately, who will notify Human Resources. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible. A "Notice of Accident" form shall be filed with the Human Resources Manager immediately following the work-related injury. Employees sustaining an injury /illness NOT requiring medical care need not seek medical attention; the "Notice of Accident" form will provide sufficient documentation.
  - 1. The employee and the employee's supervisor shall sign the report. In addition, the supervisor's "Accident Investigating Report" will be filed on the following workday. All accidents shall be reported, however minor.
  - 2. Human Resources will complete an E-1 workers' compensation report form and report it to NMML in a timely manner.
  - 3. Supervisors will thoroughly investigate the injury/illness and complete a "Supervisor Report of Injury" form. In every case, the "corrective Action Taken" section of the report shall be completed.

- C. Neither the City nor the insurance carrier will be liable for the payment of workers' compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, athletic activity, or similar events off-duty.
- D. Subject to the terms, conditions and limitations of the applicable plans, the City will continue to provide health insurance benefits while the employee is receiving worker's compensation benefits, subject to the provisions of Section 10.15. Eligible employees will automatically be placed on family/medical leave as soon as the Human Resources Manager determines that their leave qualifies for protection under the Act.

**10.15 On-The-Job Injury Leave:** An employee injured on the job may use accrued sick leave until exhausted and then the use of annual leave is permissible for each regularly scheduled working day after the injury occurs for all such days that are not paid by Workers' Compensation Insurance. If the employee is on worker's compensation time for more than four (4) weeks, and is entitled to compensation for the first seven (7) days and has used accrued leave for the first seven (7) days of injury, the workers' compensation payments received for all such days shall be paid directly to the City by the workers' compensation carrier. In the event an employee uses accrued leave, in lieu of workers' compensation, the leave used shall be re-credited to the employee upon the City's receipt of the reimbursement by the Workers' Compensation carrier after the expiration of the statutory waiting period.

**10.16 Voting Leave:** For purposes of national, state or local elections, an employee, registered to vote, will be granted up to two (2) hours paid leave for voting, between the time of opening and the time of closing of polls. The employee's supervisor may specify the hours for the leave. This leave will not be granted to any employee whose workday begins more than two (2) hours subsequent to the time of the opening of the polls or ends more than three (3) hours before the closing of the polls.

**10.17 Court Service Leave with Pay:** Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to work. Employees serving as jurors shall file for jury pay and turn in any pay received to the City. Any jury duty worked beyond their regular work hours shall be refunded back to the employee.

- A. Procedures for Jury Duty Time:
  - I. Juror Service Verification form from the Court must be attached to the Leave Request Form.
  - 2. Reconciliation of time by Payroll will include matching Jury Hours Summary Sheet received by the Court to time sheet, leave form and Juror Service Verification/arm.
- B. Court Appearance Time. When required by City duties and subpoenaed to appear before a Court, personnel Hearing Officer, public body or the Board for testifying about City matters, the employee will be compensated as regular work time.

**10.18 Leave Without Pay:** The department director with the approval of the City Manager, may grant an employee leave without pay for a period not to exceed ten (10) days, when the department director deems that such leave without pay is in the best interest of the City.

- A. Failure to Report Timely: Failure on the part of the employee to report to work immediately to the assigned shift following the last day of the request, upon the expiration of approved leave without pay, shall be subject to disciplinary action up to and including termination.

**10.19 Life Threatening Illnesses in the Workplace:** Employees with life-threatening illnesses, such as cancer and heart disease, often wish to continue their normal pursuits, including work, to the extent allowed by their condition. The City supports these endeavors as long as employees are able to meet acceptable performance standards. As in the case of other disabilities, the City will make reasonable accommodations in accordance with all legal requirements, to allow qualified employees with life-threatening illnesses to perform the essential functions of their jobs.

- A. Medical information on individual employees is treated confidentially. The City will take reasonable precautions to protect such information from inappropriate disclosure. Management, as well as other employees, has a responsibility to respect and maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information is subject to corrective or disciplinary action up to and including dismissal of employment.
- B. The Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA) require the City to maintain the privacy of protected health information. A copy of the City's HIPAA Notice of Privacy Practices can be obtained from Human Resources.

**10.20 Inclement Weather:** The City Manager may close offices, authorize late reporting or early release due to inclement weather, and all employees will be compensated for normal work hours as administrative leave with pay and shown on a Leave Report Form. Inclement weather leave with pay will not exceed eight (8) hours in one workday.

**10.21 Leave For Unforeseen Circumstances:** The City Manager may close individual offices, authorize late reporting or early release due to unforeseen conditions beyond the City's control that prevent the employees from performing their duties as administrative leave with pay and entered into the City's system.

**10.22 Military Leave:**

- A. The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the job and benefits, for up to five years (or more in some cases), of a service member who must leave his or her civilian job because of military orders to report for training or active duty, voluntary or involuntary, in peacetime or wartime.
- B. Military Leave for Reserve or National Guard Activities (§ 20-1-1 NMSA 1978). USERRA requires service members, or a responsible representative of the military unit, to provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. Paid Military leave is granted for authorized reserve or National Guard activities for a maximum of fifteen (15) working days with pay during a one (1) year period based on the federal government's fiscal year from October 1 to September 30. Military leave must be requested twenty (20) working days in advance, unless a national or state emergency exists and an immediate call-up is initiated in which case notice as soon as possible is

required. The employee must furnish proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.

- C. Extended Unpaid Military Leave. Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days may use accrued annual leave. When military leave has been exhausted, employees have the option of being placed on leave without pay (LWOP) or using accrued leave. Employees may use all of their annual leave on consecutive days or use up to twenty-seven (27) hours per pay period in order to maintain their group insurance benefits. Employees who exhaust their annual leave shall then be placed on LWOP for the remainder of time they are on active duty. Employees shall not receive pay or accrue leave while on LWOP. Employees wanting to maintain insurance benefits while on military duty will be required to pay the employee's share of their premium.
- D. Service members are entitled to return to their City job and receive pay raises, promotions, pension credit and other seniority benefits as if you had been continually employed, provided certain eligibility criteria be met. Protection under the USERRA applies if:
  - 1. The job the employee left was for more than a brief, non-recurrent period, with no reasonable expectation that such employment would continue indefinitely or for a significant period.
  - 2. The employee left this job for the purpose of entering active duty.
  - 3. The employee is discharged under honorable conditions.AND
  - 4. The employee applied for reemployment within the applicable time limit.
- E. If these criteria are met, the USERRA provides the following protections:
  - 1. The employee is entitled to return to the prior position with the same seniority, benefits, pay, and, additionally, any promotion or raise which could have been reasonably expected if the employee had remained continuously on the civilian job.
  - 2. The City is required to offer disabled veterans the "nearest approximation" of the job the service member could have reasonably expected with continuous employment.
  - 3. Service members are protected from being discharged for the protected period allotted by USERRA according to the time served on active duty, unless the City proves misconduct or violation of policies.
  - 4. To be re-employed in the same position, the employee's return to work must occur within the following guidelines:
    - a. For a service period of 1-30 days, the employee must report to work immediately by the first regularly scheduled work day;
    - b. For a service period of 31-180 days, the employee must make application for re-employment within 14 calendar days after he/she is relieved from training or duty;
    - c. For a service period of 181 days or more, the employee must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty;
    - d. An employee, who is released from hospitalization of a service-related injury, continuing after discharge for a period of not more than one (1) year, must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty.

- F. Employees may qualify for up to twelve (12) weeks of leave for qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation under the FMLA.

**10.23 Light Duty Return-To-Work:** Employees who are on leave due to an on-duty injury or illness may be eligible to return to work on light duty status after their physician certifies their fitness to do so. The department director and the Human Resources Manager will determine if there is a position or duties suitable for an employee to perform light duty work. The City retains full discretion as to whether or not an employee is eligible for light duty status.

- A. Coordination with Attending Physician: An employee on leave due to a work-related disability can return to work only when the City receives the attending physician's written medical release authorizing such return. The Human Resources Manager is responsible for providing the physician with a copy of the employee's job description, copies of job descriptions for potential restricted duty assignments, and written information explaining the City's return-to-work program.
- 8. Return-to-Work Options: Arrangements to facilitate an employee's early return to work are made in consultation with the employee's attending physician and/or other qualified medical professionals retained by the City or its insurance carrier. The following options will be explored:
  - 1. Return to prior position: An employee is offered the opportunity to return to his or her prior position if the attending physician certifies that the employee can perform the essential functions of the job with or without reasonable accommodations. The Human Resources Manager or his/her designee is responsible for working with the employee's supervisor and attending physician (and third-party consultants, as necessary) to provide any reasonable accommodations.
  - 2. Restricted duty: Any employee who is not yet able to return to their former duties are offered, subject to the restrictions set out in Section 5.2 of these Rules, a temporary restricted duty assignment that has been approved by the employee's attending physician. The Human Resources Manager is responsible for working with the employee's supervisor, and the employee's attending physician to develop and implement the restricted duty assignment. The assignment can consist of the employee's regular job, with reduced working hours or reduced activities, or an alternative restricted duty position.

C. Limitations on Restricted-Duty Assignments: The following limitations apply to restricted duty assignments:

- 1. No guarantee of work: As provided in Section 5.9 of these Rules, the City will endeavor to return employees to gainful employment as soon as possible by exploring possible restricted duty assignments. However, the City does not guarantee the availability of restricted duty work.
- 2. Pay rates and Workers' Compensation benefits: Employees on restricted duty are not guaranteed the rate of pay they received for the position they held at the time they sustained their work-related injury or illness. The pay rate for a restricted-duty assignment is based on the knowledge, skills, and abilities required for the job as well

as general market conditions. Employees who return to work before they have reached maximum medical improvement (MMI) may be eligible for temporary partial disability benefits under the state Workers' Compensation program, if they earn less than they earned in the position held at the time they sustained the work-related accident or illness. Employees in restricted duty positions are not permitted to supplement their workers' compensation benefits by using their accrued annual, personal, or medical/sick leave.

3. Four (4) week limit: Restricted duty assignments are temporary arrangements intended to complement and facilitate the healing process. Restricted-duty assignments cannot exceed four (4) weeks without approval from the department director and approved by the City Manager.

- D. Employee Refusal of Work/Training: In the event that an employee refuses to return to regular or restricted duties in response to a written, bona fide offer of employment by the City sent via certified mail, the employee is separated from the City and his/her position will be filled permanently (NOTE: An exception to this rule applies in the case of employees who have not yet exhausted their FMLA leave entitlement, refer to subsection F.).

A written offer of employment shall be on a form promulgated by the City Manager and must clearly state:

1. The position offered and the duties of the position;
2. The City's agreement to any limitations or conditions set out in the attending physician's certification of the employee's fitness to return to work;
3. The job's essential functions; and
4. The job's start date, wage, working hours, supervisor and location;
5. Length of assignment and required training.

- E. Coordination with FMLA: Nothing in these Rules should be construed as denying employees their rights under the FMLA or any other federal or state law.
- F. It is the City's policy to designate an employee's absence from work due to a work-related injury or illness as FMLA leave to the extent allowed by federal law. Employees entitled to FMLA leave can voluntarily accept restricted duty assignments while they are recuperating, but they cannot be required to do so. Employees who lose their workers' compensation benefits because of declining a restricted duty assignment are required to substitute any available paid leave, such as accrued annual, personal, or medical/sick leave, for unpaid FMLA leave.
- G. Until employees have exhausted their twelve (12) week FMLA entitlement, they have the right to be reinstated to their original job or an equivalent job providing they are able to perform the job's essential functions.

#### **10.24 Change in FLSA Status:**

- A. Upon change from FLSA non-exempt to FLSA exempt status, employees shall be paid a lump sum for the unused portion of their accrued compensatory leave, overtime, sick leave and vacation leave. For employees that qualify, sick leave will be compensated in accordance with Section 10.7 B.
- B. The lump sum payment shall be calculated based on the non-exempt salary rate.

- C. Upon change from non-exempt to exempt status and transfer to a new department, employees shall be paid the lump sum for the unused portion of their accrued compensatory leave by their previous department.
- D. If an employee's change in status is contingent upon a Ninety (90) day trial period, pursuant to section 5.2 of this Ordinance, the lump sum payment shall not be made until successful completion of the trial period.

## **SECTION XI: SUBSTANCE ABUSE POLICY**

### **11.0 Purpose**

- A. The City has adopted this employee substance abuse policy and a drug and alcohol testing policy for the following City Departments: Electric, Fleet, Police, Solid Waste, Street, Waste Water, Water, and all other safety sensitive and non-safety sensitive employees. A safety sensitive employee is an employee who performs duties for the City, with safety ramifications for themselves, fellow employees and the general public. These positions may include, but are not limited to employees who operate equipment/vehicles, have access to confidential information and/or receive calls for public service.
- B. The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the misuse of alcohol, the use of prohibited drugs and the misuse of legal drugs. The City is concerned only with those situations where use of alcohol and other drugs interfere with any employee's health, job performance and adversely affects the job performance of other employees or is considered so serious as to be detrimental to the City's operations and the safety of the employees and others. There is no intent to intrude upon the private lives of employees.

**11.1 Safety Sensitive Employees:** Adherence to this testing policy is a condition of employment for all safety-sensitive positions. Safety-sensitive functions refer to any functions contained within an employee's realm of responsibilities that have an impact upon the safety and general welfare of the public or coworkers.

**11.2 Policy:** The City is dedicated to providing safe, dependable and economical services to our public. City employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a work environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

- A. An employee using prescription drugs or over-the-counter medications that could affect work performance, must inform their director (information received shall be kept confidential). An employee with a temporary ailment or permanent medical condition that may affect job performance also must notify their director. A doctor's statement may be required at the City's discretion. Failure to notify the director can lead to injury or property damage, or suspicions of substance abuse that might unnecessarily lead to



substance testing. Upon such notification the City may require the employee to take medical or other leave.

- B. All safety-sensitive employees will receive training on the effects and consequences of prohibited drug or alcohol use on personal health, safety and the work environment, and the signs and symptoms, which may indicate prohibited drug, or alcohol use. The City will schedule mandatory classes but it is ultimately the responsibility of the employee to attend a class provided for by the City.
- C. All department heads and supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol/drug testing will receive training on the physical, behavioral, speech and performance indicators of probable prohibited drug or alcohol misuse.

**11.3 Prohibited Substances:** "Prohibited substances" addressed by this policy include the following:

- A. Illegally used controlled substances or drugs: Includes, but is not limited to: marijuana, except when prescribed in accordance with New Mexico law and the employee is in a non-safety sensitive position, amphetamines, methamphetamines, opiates, phencyclidine (PCP), and cocaine, as well as drugs not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The collection agency shall adhere to all requirements outlined in 49 CFR, Part 40 DOT Guidelines in determining what constitutes a positive test.
- B. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance, including synthetic drugs, which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected shall be reported by the employee to their supervisor and medical advice shall be sought by both the employee and supervisor, as appropriate, before performing safety-sensitive functions. A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse or abuse of legal drugs while performing official business is prohibited.
- C. Alcohol: The use of beverages or medications containing alcohol, subject to Paragraph 11.3(B) above.

**11.4 Prohibited Conduct:**

- A. Manufacture, Trafficking, Possession, and Use. Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or sale of prohibited substances while on duty, on City premises, or in City vehicles. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.
- B. Intoxication/Under the Influence: Any safety-sensitive employee who fails a drug test or has a breath alcohol concentration of 0.04 or greater shall be removed from their safety-sensitive position and referred to an SAP (substance abuse professional). Such test result will subject the employee to disciplinary action up to and including termination. A safety sensitive employee with a breath alcohol concentration of 0.02 or greater, but less than 0.04 shall be immediately removed from their safety-sensitive position for a

minimum of 8 hours or until they can pass an alcohol test with a BAC of less than 0.02. If a breath analyzer is unavailable, testing will be conducted via blood test.

- C. Alcohol Use: No employee should report for duty or remain on duty when his/her ability to perform assigned duties is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No employee shall use alcohol while on duty, or while performing County duties. No employee shall use alcohol within four hours of reporting for duty; or during the hours, they are scheduled on call; or up to eight hours following an accident or until tested. Employees, who are not scheduled on call, shall upon being notified to report to duty, acknowledge alcohol use and their inability to perform his/her duties and shall be excused from doing so without further consequences. No County employee under the age of 21 shall have a breath alcohol concentration of .02 or greater at any time while performing duties for the County. Violation of these provisions is prohibited and punishable by termination.
- D. Compliance with Testing Requirements: Safety-sensitive employees shall be subject to urine drug testing and breath alcohol testing. Non-safety sensitive employees may be subject to urine drug testing and breath alcohol testing based on reasonable suspicion. Refusal to comply with a request for testing, failure to provide sufficient quantity of breath or urine, failure to appear timely, failure to cooperate with any part of the testing process, refusal to sign the drug testing chain of custody form, refusal to sign Step #2 on the alcohol breath testing form, inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation, tampering with or attempting to adulterate the specimen or collection procedure or not reporting to the collection site in the time allotted, shall constitute a verified positive test result.

### **11.5 Testing Which Results In a Dilute Specimen:**

#### **A. Definitions:**

Dilute Drug Screen - A drug screen that is identified by the testing lab as an irregular specimen pertaining to the specimen's specific gravity and creatinine concentration. (The irregularity in specific gravity minimizes the reliability of the testing procedure and therefore reduces the reliability in the results.)

Primary Test - A test that is conducted under Sections 11.10, 11.11 or 11.12.

Monitored Tests - The City will offer all employees who are required to take a second level test the opportunity to have the test monitored by a supervisor.

#### **B. Dilute Drug Screen Procedure:**

A dilute drug screen for Electric, Fleet, Police, Solid Waste, Street, Waste Water, Water, and all other safety sensitive City employees who are covered by this policy will be handled as follows:

##### **1. Primary Test:**

Identified as Dilute:

- a. The employee shall enter into a re-entry contract as defined in Section 11.17 and 11.18 or
- b. If the employee's physician certifies in writing that there is a valid medical cause for the dilute result, unrelated to illegal drug use or prescription drug abuse, the employee may submit to a hair sample test, at the City's expense, to contest the results.

- c. The employee without a physician's certification may submit to a hair sample test to contest the results if the employee pays, in advance, for the cost of the test.
  - 2. Second Level Test (test for re-entry purposes or follow-up tests defined within a re-entry contract):
    - a. Monitored Dilute - The City will accept the test results as provided by the lab ; tests will be monitored.
- C. Dilute Specimen Test for Employment Applicants: Any applicant for employment with the City whose pre-employment drug and alcohol screen test is identified as dilute, shall not be eligible for employment and is precluded from re-application for employment for:
- 1. A period of one (1) year from the date of the test, or
  - 2. The applicant may submit to a hair sample test to contest the results if the applicant pays, in advance, for the cost of the test. In the event the hair sample test results are negative, the applicant will be eligible for immediate hire.
  - 3. If the employee 's physician certifies in writing that there is a valid medical cause for the dilute result, unrelated to illegal drug use or prescription drug abuse, the employee may submit to a hair sample test to contest the results.

**11.6 Treatment Requirements:** All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. Under certain circumstances, employees may be required to undergo treatment for substance abuse or alcohol misuse. Any employee who refuses or fails to comply with the City's requirements for treatment, after care, or return to duty will be subject to termination. The cost of any treatment or rehabilitation services will be paid for directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

**11.7 Proper Application of the Policy:** The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, department directors/supervisors are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any department director/supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy concerning subordinates, will be subject to disciplinary action, up to and including termination.

**11.8 Testing Procedures:**

- A. Safety-sensitive employees of the City shall be subject to drug (urine) and alcohol testing for reasonable suspicion, return to duty, follow-up or random and may be subjected to testing following an accident. Follow-up testing will be conducted for a period of one to five years , with up to six tests performed during the first year and as many as four in subsequent years. The Substance Abuse Professional (SAP) may determine the frequency and duration of follow-up testing.
- B. Testing shall be conducted using techniques, equipment and certified laboratory facilities to ensure a high degree of accuracy and reliability. Alcohol testing may only occur during or immediately before/after performing safety sensitive duties and up to eight

hours following an accident. Drug testing may occur any time while performing duties for the City and up to 32 hours following an accident.

**11.9 Pre-Employment Drug & Alcohol Screening:** All applicants for employment with the City shall be required to take a drug and alcohol screening test when they report for their pre-employment medical examination or when otherwise directed by the City Manager or his/her designee. Any applicant for employment with the City, whose pre-employment drug and alcohol screen test is identified as positive, shall not be eligible for employment and is precluded from re-application for a period of one (1) year from the date of the test.

**11.10 Employee Requested Testing:** Any safety-sensitive employee who questions the result of a required drug test under paragraphs 11.10 through 11-15 of this policy may request that an additional test be conducted. This test will be conducted at a different certified laboratory. The test will be conducted on the split sample that was provided by the employee at the same time as the original sample. The method of collecting, storing, and testing the split sample will be consistent with acceptable testing standards. The employee's request for a split sample test must be made to the Medical Review Officer\* within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. An employee requested test will be at the expense of the employee.

**11.11 Reasonable Suspicion Testing:** All employees shall be subject to urine and/or breath testing when there is reasonable suspicion to believe an employee is under the influence of prohibited substances. Reasonable suspicion is a belief based on objective facts sufficient to lead a prudent person to suspect that an employee is under the influence of a substance to the extent that job performance may be impaired or ability to perform the job safely may be reduced. A reasonable suspicion referral for testing will be made based on articulable objective facts and circumstances, which are consistent with the short-term effects of substance abuse. Testing an employee, based on reasonable suspicion requires City Manager approval. The supervisor or designee will take the employee to the designated test site as soon as practical for a test. Examples of reasonable suspicion include, but are not limited to the following:

- A. Physical signs and symptoms consistent with prohibited substance use, including slurred speech, poor coordination, and glazed or bloodshot eyes;
- B. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances;
- C. Occurrence of an accident that may have been caused by use of a prohibited substance or alcohol misuse;
- D. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures;
- E. Odor of alcohol or prohibited substance on person, clothing or in workspace;
- F. Abnormal or erratic behavior;
- G. Abnormal decline in work performance associated with frequent absences or tardiness; or
- H. Information from a reliable source.

**11.12 Post-Accident Testing:** Any City employee involved in an automobile/heavy equipment accident occurring on City property or involving City equipment/vehicle meeting any of the following criteria shall be subject to a drug or alcohol test:

- A. An individual dies;
- 8. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;
- C. One or more vehicles incur disabling damage because of the accident and are transported away from the scene by tow truck or other vehicle; or
- D. The City driver was cited in the accident.

\* Medical Review Officer - See DEFINITIONS Section 11.21.

**11.13 Random Testing:**

- A. Employees in safety-sensitive positions shall be subjected to random, unannounced drug testing. The selection of safety-sensitive employees for random drug testing will be made using a scientifically valid method that ensures each covered employee will have an equal chance of being selected each time selections are made. The random tests will be unannounced and spread throughout the year on all days and during all hours of operation.
- B. When a safety-sensitive employee is informed of a random drug test, they must be tested as soon as is reasonably possible but in a time not to exceed 3 hours. All employees who have been randomly selected or are testing in conjunction with Rule 11.11 will be notified in writing by the City Manager, department director, supervisor, or Human Resources. All tests will be collected as a split sample, giving the employee an opportunity to exercise his/her right to an additional test (Section 11.10) on the sample collected. Should the City's agent not collect a split sample, the results of the test for which a split sample was not collected , will be disregarded by management and the employee will not be required to re-test for this specific testing period.
- C. All safety sensitive employees shall be placed in a selection pool and random drug testing shall come from this predetermined pool. The individual pools shall be defined as follows:
  - 1. Electric Department
  - 2. Fleet Department
  - 3. Police Department
  - 4. Solid Waste Department
  - 5. Street Department
  - 6. Waste Water Department
  - 7. Water Department
  - 8. All other safety-sensitive employees
- D. Shift employees, or employees who are not at work on the day of the scheduled test (random or otherwise), and who have been selected for testing, will be required to test immediately upon their return to work/duty and will be notified and expected to adhere to the rules as described above.

**11.14 Return-To-Duty Testing\*:** A return-to-duty test is required of an employee who has had a positive drug or alcohol test and must be passed (negative non-dilute) before they can return to a safety-sensitive position. The SAP must first clear the employee to return-to-regular- duty after the evaluation and insure the employee has consented to treatment. The return-to-duty test may be for drugs and/or alcohol as required. Any work missed due to a positive

drug/alcohol test or due to treatment shall be charged to the employees sick leave and/or annual leave (employee's choice) or leave without pay if the employee has no leave balances.

**11.15 Follow-Up Testing\*:** If allowed to return to duty, safety-sensitive employees shall be subject to unannounced follow-up testing for at least 12, but not to exceed 60 months. The SAP may recommend the frequency and duration of the follow-up testing as long as not more than six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.

**11.16 Employment Assessment:** The SAP may refer any safety-sensitive employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds for evaluation. A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related and drug-related disorders. The SAP may evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. Employees may select the SAP of their choice as long as the criterion above is met.

**11.17 Departmental Rule for Positive Drug/Alcohol Test:**

- A. Any probationary employee who, because of this policy tests positive for drugs and/or alcohol, will be terminated immediately.
- B. Any employee who has been placed on an improvement contract and who tests positive for drugs/alcohol as defined by this policy will be terminated from employment.
- C. Safety Sensitive Positions:
  - 1. A positive prohibited substance/alcohol test for an officer or dispatcher shall be reported to the New Mexico Law Enforcement Academy Director as outlined in the NMLEA Handbook Subsection B4 of 10.29.1.11 NMAC.
  - 2. Any safety sensitive employee who tests positive for prohibited substances and/or alcohol under this policy shall be terminated from employment with the City, Section 7.10.
  - 3. Any safety sensitive employee whose primary test is determined to be a dilute test will be subject to the terms and conditions as defined below (this does not include tests taken as a result of a re-entry contract which are monitored tests and are determined to be dilute).
- D. Any safety sensitive employee who is covered by this policy and whose primary test is determined to be dilute as herein defined, shall be subject to the terms and conditions of:
  - 1. The re-entry contracts defined below;
  - 2. Rule 11.13 of this policy, and;
  - 3. Rule 11.14 of this policy.
  - 4. If applicable, any CDL provisions that may apply.
- E. City safety sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test (subject to a re-entry contract) shall result in termination of employment.

### **11.18 Re-Entry Contracts** (general safety sensitive employees):

- A. Employees who re-enter the workforce must agree to a re-entry contract. That contract may include, but is not limited to:
  - 1. A release to work statement from the Substance Abuse Professional.
  - 2. A negative test for drugs and/or alcohol. (Section 11.14)
  - 3. An agreement to unannounced frequent follow-up testing for a period of one to five years with up to six tests performed the first year (Section 11.15).
  - 4. A statement of expected work-related behaviors.
  - 5. An agreement to follow specified after care requirements with the understanding that violation of the re-entry contract is grounds for termination.
  - 6. City safety sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test employees (subject to a re-entry contract) shall result in termination of employment.
  
- B. Any safety sensitive employees not covered above shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below).

**11.19 Detection:** The City reserves the right to inspect, at any time, all City property and all City vehicles and equipment for the presence of prohibited substances or alcohol. All inspections will be scheduled as deemed necessary by the City Manager or his/her designee.

### **11.20 Voluntary Request for Assistance:**

- A. The City intends to give the same consideration to persons who voluntarily request assistance (prior to being randomly selected or selected for cause) with chemical dependencies as it does to employees having other diseases. Therefore, employees are encouraged to seek professional assistance anytime they experience personal problems, including alcohol or drug dependency.
- B. Early recognition and treatment of chemical (drug and alcohol) dependency problems is important for successful rehabilitation and reduced personal, family and social disruption. The City supports sound treatment efforts and an employee's job will not be jeopardized for conscientiously seeking assistance prior to random selection or selection for cause. Normal City benefits, such as sick leave and the group medical plan, are available to give help in the rehabilitation process to any employee who voluntarily requests assistance for chemical dependencies.
- C. Employees are encouraged to self-report alcohol and drug dependencies prior to random testing selection or testing based on reasonable suspicion. The City has an obligation to maintain the public trust; therefore, any employee identified with a positive test result for illegal drugs, inappropriate use of prescription medications or alcohol will be terminated.

### **11.21 Definitions:**

**Medical Review Officer (MRO):** The MRO is a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate positive

drug test results. The List of primary responsibilities below is followed by standard operating procedures necessary to carry out those responsibilities:

- A. Receive test results from the laboratory
- 8. Review all drug testing results prior to reporting
- C. Verify that the laboratory report and assessment are correct
- D. Review and interpret each confirmed lab tested positive result
- E. Conduct a medical interview, providing an opportunity for the employee to discuss a positive test result
- F. Notify employer of verified positive test
- G. Process employee request for re-test
- H. If necessary, re-analyze the original specimen to determine the accuracy of the test result

#### **11.22 Records:**

- A. All records of the controlled substance abuse prevention programs must be kept in a secure location with controlled access in Human Resources. Regulation requires that certain records according to their importance be maintained for varying lengths of time, from one (1) to five (5) years.
- 8. Records must be kept confidential and be made available for inspections by the City Manager within two (2) business days following a request by an authorized representative of the Federal Highway Administration. These records should not be made a part of a driver's personnel file.
- C. The following are entitled access to these records through approval of the City Manager:
  - 1. CDL Issuer or his/her representative;
  - 2. The Secretary of Transportation;
  - 3. Any Department of Transportation Agency;
  - 4. Any State or Local Official with regulatory authority over the employee;
  - 5. Any prospective employer with the employee's written permission.

**11.23 Confidentially:** No laboratory reports or test results shall appear in the employment personnel file unless they are a part of a disciplinary action, but shall be placed in a special locked file.

## **SECTION XII: COMPUTER, EMAIL, INTERNET, SOCIAL MEDIA, & CELLULAR PHONE USE**

**12.0 Access:** Access to a City computer, email and Internet service and a cellular phone is a privilege. Users granted this privilege must adhere to strict guidelines concerning the appropriate use of this information resource. Users who violate the provisions outlined in this document are subject to disciplinary action up to and including termination. In addition, any inappropriate use that involves a criminal offense will result in legal action. All users are required to acknowledge receipt and understanding of guidelines contained in this document.

**12.1 Purpose & Scope:** To define policies and procedures for computer use and access to the Internet through the City network infrastructure, and cellular phone use. This policy applies to all personnel with a computer or access to Internet and related services through the City network infrastructure, or has a cellular phone provided by the City. Internet Related services



include all services provided with the TCP/IP protocol, including but not limited to Electronic Mail (e-mail), File Transfer Protocol (FTP), and World Wide Web (WWW) access. Internet access includes, but not limited to connections via DSL subscriptions, phone modem access, server-to-Internet access or T1 line access.

**12.2 Acceptable Use:** Access to a City computer or the Internet is specifically limited to activities in direct support of official City business.

- A. In addition to access in support of specific work related duties, the City Internet connection may be used for educational and work-related research purposes.
- B. If any user has a question of what constitutes acceptable use he/she should check with their supervisor for additional guidance. Management or supervisory personnel shall consult with the City Manager for clarification of these guidelines.

**12.3 Inappropriate Use:** City computers, Internet access or use of a City cellular phone shall not be used for any illegal or unlawful purposes. Examples of this would be personal use, or the transmission of violent, threatening, defrauding, pornographic, obscene or otherwise illegal or unlawful materials.

- A. Use of City electronic mail or messaging services shall be used for City business only. These services shall not be used to harass, intimidate or otherwise annoy another person.
- B. The City Internet access shall not be used for private, recreational or other non-City related activity.
- C. City equipment and the Internet connection shall not be used for commercial or political purposes.
- D. Use of City Internet access shall not be used for personal gain such as selling access of a City user login. Internet access shall not be used for or by performing work for profit with City resources in a manner not authorized by the City.
- E. Users shall not attempt to circumvent or subvert security measures on the City's network resources or any other system connected to or accessible through the Internet.
- F. City users shall not use Internet access for interception of network traffic for any purpose unless engaged in authorized network administration.
- G. City users shall not make or use illegal copies of copyrighted material, store such copies on City equipment or transmit these copies over the City network.
- H. City users shall not download non-City software without authorization from their department director and approved by the City's IT Manager.

**12.4 Internet, E-Mail & Cellular Phone Etiquette:** City employees shall ensure all communication through City email, messaging services and texted messages are conducted in a professional manner. The use vulgar or obscene language is prohibited.

- A. City users shall not reveal private or personal information without specific approval from management.
- B. Users should ensure that e-mail and texted messages are sent to only those users with a specific need to know. The transmission of e-mail or texted messages to large groups or messages with large file attachments should be avoided.
- C. Electronic Mail and texted messages are not guaranteed to be private. Messages transmitted through the City e-mail system or network infrastructure or on City cellular

phones are the property of the City and are therefore subject to inspection by management and to IPRA requests.

- D. The destruction or deletion of emails and texts containing City business is prohibited and a violation of law.

### **12.5 Security:**

- A. City users who identify or perceive an actual or suspected security problem shall immediately contact the City Information Technology Manager.
- B. Users shall not reveal account passwords or allow another person to use their account. Similarly, users shall not use the account of another user.
- C. Access to City network resources shall be revoked for any user identified as a security risk or a demonstrated history of security problems.

**12.6 Penalties:** Any user violating these policies is subject to the loss of network privileges and any other City disciplinary actions as detailed in Section 7 of this ordinance.

**12.7 No Expectation of Privacy:** Users should not expect any information transmitted via the City's systems or phones to remain private or confidential.

- A. The City may monitor use of any part of City Systems at any time, without notice, at its discretion. Such monitoring may include, but is not limited to limiting size, accessing, listening to, reading, or retrieving voice mail messages, e-mail, Internet communications, text messages, or local files.
- B. Users should be aware that deleted files or other communications may be retrieved and review by City Management.
- C. Users are prohibited from, among other things, accessing, listening to, reading or retrieving other team members' e-mail, voice mail, or Internet communications unless specifically authorized to do so by Management.
- D. All files, documents created or stored through the City's network infrastructure, computer system or cellular phones are the property of the City and are therefore subject to inspection by management and to IPRA requests.

**12.8 User Compliance:** All terms and conditions as stated in this document are applicable to all users of the network and the Internet connection.

**12.9 Protection & Handling of Sensitive Information:** It is the responsibility of every City employee to ensure the protection of sensitive information and comply with all information technology policies. This includes but is not limited to ensuring such information does not leave the City network, making a reasonable effort to redact sensitive information when sharing records and protecting security account information.

**12.10 Social Media:** The use of social media on the job is prohibited, unless as required to disseminate time sensitive information (emergency information) as quickly as possible or required for informational purposes. The City does not prohibit employees from participating in social media while not at work, nor is the content posted any concern of the City. However, if an employee uses social media to harm the City, City constituents, or fellow employees, participation while not at work can have employment consequences. To make the distinction between private activity and work activity as clear as possible, in cases where confusion might be created,

employees should identify a social media posting as a personal opinion rather than the opinion of the City.

### **SECTION XIII: PAY POLICY**

**13.1 Purpose:** This Section outlines the provisions for the City's system of comparing and classifying positions according to their relative equivalence for establishing fair and equitable promotion and pay compensation for employees. The Board approves all positions and salaries as part of the fiscal year budget process or as otherwise necessary.

**13.2 Applicability:** The provisions of this section shall apply to all employees except that Contract Employees and unclassified employees are subject to wage increases as negotiated and approved by the Board.

**13.3 Pay Compensation Process Overview:** The pay compensation system includes provisions for:

- A. Entry level wages;
- B. Step wage increases
- C. Transfers;
- D. Demotions; and
- E. Promotion wage increases.

The Board may at their discretion amend the general wage and classification plan and the general wage schedule by resolution or motion of the Board when deemed appropriate.

**13.4 Entry Level Wages:** All new employees are normally hired at the Entry level position for the level of position that has been vacated or otherwise approved for hire by the department director, subject to budgetary constraints and the approval of the City Manager.

**13.5 Position Specifications Requirements:** Each position has a written Position Specification, which includes specifications for minimum qualifications, education, experience, abilities, skills, license, or certification requirements, and a description of duties and responsibilities required for the position.

**13.6 Grandfather Clause:** Any employee whose position specification is revised is subject to the experience, education, or certification requirements of the new position specification shall show satisfactory progress to meet the new standards within six (6) months or may be subject to reclassification, transfer or dismissal.

**13.7 Contents of Personnel File:** Subsequent to hiring, a separate record file shall be prepared and maintained for each employee. These records shall be kept in the Human Resources Manager's office. It is the responsibility of each department director to ensure that the records of the employees are complete and up-to-date. The file shall contain a minimum of the following records:

- A. The original application form;

- B. the originating personnel action showing occupation, position classification, date of beginning employment and salary and a signed receipt , evidence of receiving these Rules;
- C. Copies of personnel action forms.
- D. Copies of all performance evaluations if applicable;
- E. Copies of all favorable or unfavorable letters or memorandums such as letters or certificates of appreciation or records of other outstanding achievements regardless of origination, so long as the procedure applicable to written reprimands is followed;
- F. Records or certificates of educational training or orientation achievement completion;
- G. Records of disciplinary actions such as reprimands, suspensions demotions or dismissal; and
- H. Application for retirement program.

**13.8 Access to Personnel Files:** Personnel files are the property of the City and access to the information they contain is restricted. Generally, only immediate supervisors and management personnel of the City who have a legitimate reason to review information in a file are allowed to do so. Employees who wish to review their own file should contact the Human Resources Manager. With reasonable advance notice, employees may review their own personnel files in City' s offices and in the presence of an individual appointed by the City to maintain the files.

## **SECTION XIV: EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PLAN**

**14.1 Purpose:** The purpose of this section is to recruit, employ and promote the most qualified applicants or employees to work in City employment. Employment and promotional opportunities shall be based solely upon ability and demonstrated competence, not upon extraneous factors. Age, sex, marital status, national origin, religion, race, sexual preference, political affiliation and handicaps not related to ability to perform the job sought, are declared extraneous factors that shall have no bearing on employment or promotional opportunities within City service.

**14.2 Statement of Policy:** It is the policy of the City to comply with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, amended by the Equal Employment Opportunity Act of 1972 and Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, in all employment and programs administered by the City. The City affirms that individuals will be considered for employment or promotion based on bona-fide occupational qualification only and best suited for a position. Each employee or prospective employee will be advised of this policy. All announcements or notices regarding position openings or opportunities will contain the words "An Equal Opportunity Employer".

**14.3 Management Responsibility:** The Human Resources Manager will consult with department directors to resolve internal complaints of employment discrimination filed by City employees or employment applicants. The Human Resources Manager shall be the referral officer for the City to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission (EEOC) as provided for in Public Law 88-352, Title VII, Section 706(C); 78 Stat. 241 (42 USC 2000e-5).

**14.4 Complaint Procedures:** Any employee or person refused employment or who believes he/she has been subjected to a discriminatory employment act or practice prohibited by federal or state law shall file with the Human Resources Manager a written and signed statement of facts setting out the basis of the complaint.

- A. Upon receiving a written and signed complaint or upon receiving notice of an alleged unlawful employment practice from an individual, the Human Resources Manager or designee shall immediately conduct an investigation and attempt to resolve such complaint informally and forward copies of the investigation and results to the department director and City Manager.
- B. If the process set forth in subsection A above does not resolve the complaint informally, it will go before a Hearing Officer appointed by the City Manager. The Hearing Officer shall conduct a hearing not more than forty-five (45) days after the complaint has been received by the Human Resources Manager. The complainant, complainant's attorney (if any), the City Manager, Human Resources Manager, City Attorney, department director, and the employee allegedly responsible for the discriminatory act or practice, shall be given five (5) days written notice of the hearing, together with a copy of the complaint filed with the Human Resources Manager.
- C. At the hearing, the complainant and respondent shall have the right to be represented by counsel; all testimony shall be received under oath, and the Hearing Officer shall have the authority to issue administrative subpoenas for the attendance of any City employee as a witness.
- D. The Hearing Officer shall report findings and recommendations in writing to the City Manager and department director not more than twenty (20) days after hearing the complaint. A full record of the proceedings shall be kept either by audio media or in writing by the Human Resources Manager in a confidential file.

**14.5 Remedies:** In the event the City Hearing Officer determines that a discriminatory act or practice has occurred, the City Manager may take appropriate action including, but not limited to, reinstatement, hiring or promotion of the aggrieved individual, with or without back pay, or any other equitable administrative relief necessary to correct and rectify the discriminatory act or practice. Nothing in this policy prohibits any aggrieved party from seeking remedy through the state or federal agency responsible for such actions.

## **SECTION XV: MISCELLANEOUS**

**15.1 Designated Work Areas:** All employees are to be at their designated work areas on time and ready to work. They shall work until the scheduled quitting time, unless permission of the supervisor has been obtained for different work hours. Employees shall not litter work areas and will keep such areas neat and clean.

**15.2 Personal Business:** Personal business shall not be conducted during work hours. While we live in a cellular-world, employees are expected to exercise good judgment when making or receiving personal phone calls. Personal calls shall not interfere with productivity or distract others. Personal calls shall be kept to a minimum while on duty.

**15.3 Safety:** The City is committed to having all work conducted in a safe manner. All safety precautions shall be followed in accordance with federal and state regulations, and City policies and Safety Policies.

- A. Safety is every employee's responsibility; thus every employee is responsible for his or her personal safety, as well as, the safety of co-workers, visitors, and the public who come in contact with City services.
- B. Employees are responsible for the safe and efficient use of City facilities, equipment and vehicles, for conducting themselves in accordance with work rules and safety regulations and ensuring all activities are conducted and carried out in a safe and efficient manner.
- C. Safety equipment will be provided and used in accordance with OSHA regulations, City safety policies and other regulatory standards.

**15.4 City Property:** Employees shall not misuse or destroy City property, records, or other material in their care, control, or custody; nor shall any City property, records, or other material be removed from the premises of the City offices unless written permission by the department director has been given. Employees shall not use City property, records or equipment for personal use.

**15.5 City Vehicles:** No City vehicle will be taken out of the City without permission of the department director and employees shall notify the department director of their destinations and itineraries. City vehicles shall be used for City business only. City vehicles may not be taken home unless designated permissible as defined in the City Take Home Vehicle Policy and adheres to Section 9.9 Fringe Benefits.

- A. City vehicles shall not be used for personal business, except, as is incidental in commuting. Employee family members or passengers not on official City business are not allowed to ride in a City vehicle and strict adherence to this policy is directed to all employees operating a City vehicle.
- B. Any damage to a City vehicle is to be reported immediately to the appropriate department head.

**15.6 Personal Appearance:** Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image the City presents to customers and visitors.

- A. During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who meet the public, both internal and external, must dress in appropriate business attire at all times. Employees may observe casual dress on Friday if the above stipulation does not apply. Examples of questionable work attire are sun dresses with bare backs and/or shoulders, men's undershirts, excessively baggy, short, or tight clothing, sweatpants and shorts, for men or women, bare midriffs or excessively sheer fabrics unless adequate cover-up (Jacket, sweater, etc.) is worn throughout the work day, and low-cut tops/blouses/shirts/dresses (e.g., if they expose "cleavage" when the employee is standing or sitting in a normal manner). Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstance, employees will not be compensated for the time away from work.
- B. Employees are required to maintain personal cleanliness.
- C. An employee should consult their department director if they have questions as to what constitutes appropriate attire.

## **15.7 Privileged/Confidential Information, Unauthorized Recordings, Eavesdropping:**

A. It is a violation of this policy to:

- A. Release or communicate information regarded as privileged or confidential to anyone not having a legitimate business need for the information.
- B. Read, interrupt, take or copy any message, document or communication intended for another without the consent of the intended recipient. Communications include, but are not limited to, statements made in person or phone during meetings, hearings, conferences, counseling, or conversations between employees or between employees and elected representatives.
- C. Engage in electronic surveillance, eavesdropping, and unauthorized or secret tape recording of any communications between or among employees or elected representatives of the City without the knowledge of the person making such communications.
- D. It is not a violation of this policy for employees to record communications with or among employees or citizen contacts in the course of official City business, or as otherwise expressly permitted by the Personnel Policy. This policy does not preclude tape recording when all parties to the communication are aware of the fact that the communication is being recorded or as required by statute for law enforcement contacts.

**15.8 Searches & Surveillance:** The City's employees should not expect privacy in their personal effects while on City property or on City time. Employee workplaces may be subject to video surveillance. The City may search lockers, desks, toolboxes, lunch sacks, clothing, City internet, City e-mail or City computer accounts and City electronic media/storage, a City vehicle, and any other item in which an unauthorized weapon or other contraband may be hidden. To the extent that an employee refuses to permit a search, such refusal may constitute grounds for disciplinary action.

**15.9 Workplace Violence:** The City provides a safe work place for all employees. To ensure a safe workplace and to reduce the risk of violence, all employees should review and understand all provisions of this Workplace Violence policy. All employees, including managers and supervisors, are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment.

- A. Prohibited Conduct: The City does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors, while not inclusive, provides examples of conduct that is prohibited.
  - 1. Causing physical injury to another person;
  - 2. Physical fighting;
  - 3. Making threatening remarks;
  - 4. Aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;
  - 5. Intentionally damaging City property or property of another employee;
  - 6. Possession of a weapon while on City property or while on City business;

7. Committing acts motivated by, or related to, sexual harassment, harassment or domestic violence.
- B. Reporting Procedures: Any potentially dangerous situations must be reported immediately in writing to a supervisor or the City Manager's office. All reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately and information will be disclosed to others only on a need-to-know basis. All parties involved in a situation will be counseled and the results of investigations will be discussed with them. The City will actively intervene at any indication of a possibly hostile or violent situation.
  - C. Risk Reduction Measures: Hiring: The City takes reasonable measures to conduct background investigations to review candidate's backgrounds and reduce the risk of hiring individuals with a history of violent behavior.
  - D. Safety: The risk management carrier conducts annual inspections of the premises to evaluate and determine any vulnerability to workplace violence or hazards. Any necessary corrective action will be taken to reduce all identified risk areas.
  - E. Individual Situations: While the City does not expect employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgment and to inform their supervisor or department director if any employee exhibits behavior, which could be a sign of a potentially dangerous situation. Such behavior includes:
    - 1. Discussing the use of weapons in a threatening manner related to the workplace, or bringing them to the workplace;
    - 2. Displaying overt signs of extreme stress, resentment , hostility, or anger;
    - 3. Making threatening remarks;
    - 4. Sudden or significant deterioration of performance;
    - 5. Displaying irrational or inappropriate behavior.
  - F. Dangerous /Emergency Situations: Employees confronted by or encounter an armed or dangerous person should not attempt to challenge or disarm the individual.
  - G. Enforcement: Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to corrective or disciplinary action, up to and including dismissal. Non-employees engaged in violent acts on the City's premises will be reported to the proper authorities.

**15.10 Final Paycheck:** An employee who resigns shall receive a final paycheck on the first regularly scheduled payday following the employee's effective date of resignation. An employee dismissed shall receive a full paycheck by 5:00 p.m. on the fifth (5<sup>th</sup>) working day following dismissal or on the next payday, whichever occurs first, or as required by law. In the case of death, final salary and compensation for unused annual leave shall be paid to the employee's named beneficiary or, if unnamed, to the employee's estate, on the next regularly scheduled payday.

**15.11 Uniforms:** An employee in a designated job with the City may be required to wear special clothing to perform the job function with patches, badges or other distinctive items as approved by the department director or the City Manager.



**15.12 Return of Uniforms, Equipment & City Property:** Upon severance from City service, all City issued uniforms, equipment, keys, cellular phones, laptop computers, etc. shall be returned to the City. Failure to do so shall result in possible legal action to recover the cost of missing items.

**15.13 Gifts, Gratuities or Kickbacks:** All employees are prohibited from accepting gifts or other considerations from anyone given with intent of modifying the employee's performance of duties or encouraging the employees to make purchases from the individual or business involved. Employees will maintain the highest moral standards and any attempt to influence employee's performance by a vendor or other person will be reported to the department director and City Manager.

- A. It is unlawful for any City employee, as defined in §13-1-28 NMSA 1978, to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract. An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust. (§13-1-190 NMSA 1978)
- B. Contingent fees prohibited: It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and persons or businesses employed by the City which are providing professional services to the City in anticipation of the receipt of federal or state grants or loans (§13-1-192 NMSA 1978).
- C. Contemporaneous employment prohibited: It is unlawful for a City employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the City by whom the employee is employed (§13-1-193 NMSA 1978).
- D. Use of confidential information prohibited: It is unlawful for any City employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person (§13-1-194 NMSA 1978).

**15.14 Normal Work Hours:** Normal work hours will be based on a forty (40) hour workweek. All City offices shall be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, unless the department director and the City Manager approve a different work schedule. During a normal workday, the department director may authorize an unpaid full one-hour lunch breaks in accordance with departmental scheduling needs.

**15.15 Reduced Work Hours:** The Board may reduce the number of work hours by resolution if the Board determines that the City budget will not sustain the normal work hours. Reduced work hours will apply to all full time employees of the City, with the possible exception of those employees in safety-sensitive or security-sensitive positions.

**15.16 Separation from Service with the City:** Upon an employee's termination or resignation from the City, he or she may be required to complete an exit interview and separation report with the Human Resources Manager, and/or the department director.

## SECTION XVI: AUTHORITY

**16.1 Rules:** These rules are promulgated on the authority granted in state and federal law and the Ordinance providing for these Rules.

**16.2 Savings Clause:** If any article, section, paragraph, clause, word or phrase of this Ordinance 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 Ordinance.

## SECTION XVII: REPEAL OF FORMER PERSONNEL POLICY

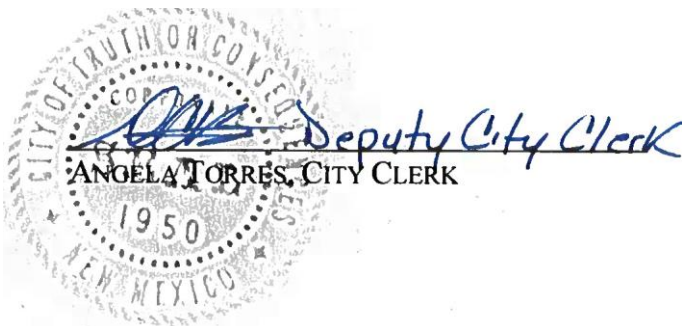
City Ordinances 10-3.3 Personnel Rules and Regulations is hereby repealed, as well as all other City Ordinances or Resolutions relating to personnel, which are in conflict with the above provisions, by the adoption of this Ordinance.

**APPROVED, ADOPTED, AND PASSED on this 22<sup>nd</sup> day of September, 2021.**



\_\_\_\_\_  
S ANDY W HITEHEAD , MAYOR

ATTEST BY:





## **EMPLOYEE ACKNOWLEDGEMENT FORM**

CITY EMPLOYEE RECEIPT OF PERSONNEL POLICY ORDINANCE No. 719.

I \_\_\_\_\_ acknowledge that on \_\_\_\_\_

*(print name of employee)*

*(date)*

I received an electronic/hard copy of the City of Truth or Consequences Personnel Policy Ordinance No. 719. I understand that the Personnel Policy is the law that controls, explains and provides the terms of and conditions of my employment with the City. I further understand that I am responsible for compliance with and understanding all City Policies, which can be found on the City's "Share" drive. I also understand that if I have questions concerning City policies I can talk to my supervisor, department director or Human Resources at any time. I further understand that this receipt will be placed in my personnel file as evidence of my having been given a copy the policy.

\_\_\_\_\_  
(Signature of Employee)