

**City of Rio Communities, New Mexico**  
**ORDINANCE 2018-xx**

**AN ORDINANCE SUPERSEDING OR REPEALING ORDINANCE NO. 2018-63, DATED:  
APRIL 24, 2018. CHAPTER 02, ADMINISTRATION AND PERSONNEL: ARTICLE 6  
PERSONNEL POLICY MANUAL**

**PASSED, APPROVED AND ADOPTED THIS XX DAY OF XXX 2018 BY THE GOVERNING BODY OF  
THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

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Mark Gwinn,  
Mayor

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Margaret (Peggy) Gutjahr,  
Councilor Mayor Pro-tem

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Bill Brown,  
Councilor

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Joshua Ramsell,  
Councilor

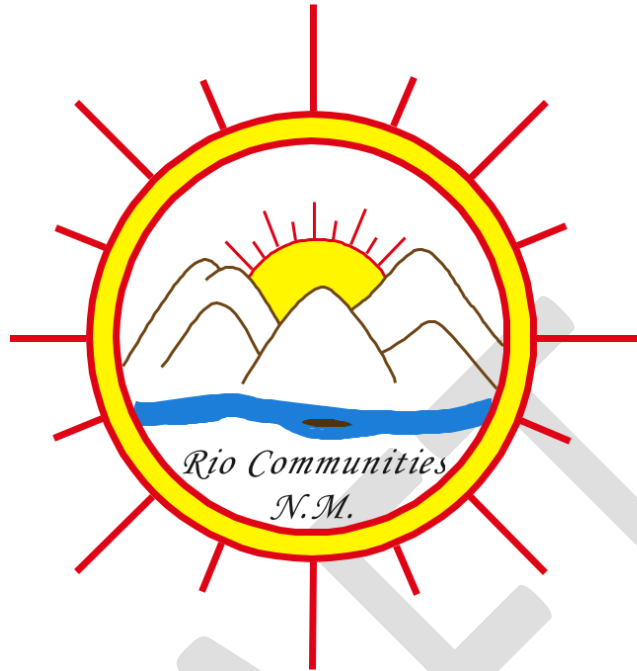
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Arturo Sais,  
Councilor

ATTEST:

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Elizabeth (Lisa) Adair,  
Municipal Clerk



**The City of Rio Communities**  
**PERSONNEL POLICY MANUAL**

**Ordinance# 2018-xx**  
**AN ORDINANCE REPEALING ORDINANCE NO. 2018-63**  
**DATED: April 24, 2018**

Adopted April 28, 2015  
Re-adopted xxxxx , 2018

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## **SECTION 1. GENERAL PROVISIONS**

- 1.1 PURPOSE.** The purpose of this Personnel policy Manual is to establish basic and consistent policies and practices concerning relations between the City of Rio Communities (hereafter the City) and its employees. This Personnel Policy Manual further establishes the formal grievance procedure available to regular employees to hear grievances with respect to demotions, dismissals and suspensions, and provides the method by which the Personnel Board hears formal grievances. The provisions of this Personnel Policy Manual shall apply to all City employees, except for those provisions that govern merit promotions, disciplinary and grievance actions for the City Manager who is at will.
- 1.2 SCOPE.** Definitive rules and regulations cannot be readily formulated for every possible problem and situation. Therefore, this ordinance serves as the bases for a general guide for the proper, efficient and effective administration of personnel matters for the employees of the City. The personnel rules contained herein replace and supersede all previously issued personnel rules and regulations, written or oral, applicable to employees of the City, including but not limited to the City. Nothing in the Personnel Policy Manual is intended to unlawfully restrict an employee's rights as guaranteed by Section 7 of the National Labor Relations Act, including but not limited to, the right to engage in concerted protected activity for the purposes of their mutual aid and/or protection. Violations of any policy in the Personnel Policy Manual may result in disciplinary action, up to, and including immediate termination of employment.
- 1.3 AMENDMENT OF POLICY.** There shall be no resolution or other action of the Governing Body of the City or other City officials that is inconsistent with this policy, except by amendment of this Ordinance as required by law. The City Council reserves the right to amend this Personnel Policy Manual at its discretion. All policy updates will be approved and provided to employees, by the City Manager, in writing. Oral statements or representations cannot change this Personnel Policy Manual.
- 1.4 EMPLOYEE KNOWLEDGE AND INFORMATION OF POLICY.** The City Manager shall provide a copy of this policy to present employees and all new employees with instructions to read and know the provisions of these rules. Employees shall sign an acknowledgement that they have reviewed the manual. (See Acknowledgement Signature Form at the end of this document)
- 1.5 EQUAL EMPLOYMENT OPPORTUNITY POLICY.** The City shall not discriminate against individuals on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, military or veteran status, pregnancy, genetic information, spousal or child support withholding, gender identity, citizenship or immigration status, physical or mental handicap or medical condition, in consideration for employment, duration of employment, transfers, leaves of absence, disciplinary action, compensation, terms,

conditions, or privileges of employment. This policy also includes all other legally protected classifications as defined by federal, state and local laws and regulations. The City will promptly investigate all complaints made related to this policy.

**EXIT INTERVIEW.** An interview held with an employee about to leave an organization, typically in order to discuss the employee's reasons for leaving and their experience of working for the organization.

- 1.6 REASONABLE ACCOMMODATIONS.** The City, in compliance with the Americans with Disabilities Act (ADA) and its amendments (ADAAA), provides qualified applicants and employees with disabilities reasonable accommodations to allow them to perform the essential functions of their jobs if the accommodations do not impose undue hardship on the City.

Employees must notify the City Manager to request reasonable accommodations. The City is committed to engaging in a timely, good faith and interactive process to determine if effective reasonable accommodations may be made.

- 1.7 ADMINISTRATION BY CITY MANAGER.** The City Manager shall administer the personnel system and the terms of this Personnel Policy Manual, its amendments, and all future approved personnel policies and operating procedures.

- 1.8 PRONOUNS.** All pronouns used in this *Personnel Policy Manual* shall include the masculine, feminine and neutral gender, and shall include the singular and plural; the context of this *Personnel Policy Manual* shall be read accordingly.



## SECTION 2 DEFINITIONS

- 2.1 ADMINISTRATIVE LEAVE WITH PAY.** Leave with pay shall be granted at the City Manager's discretion for good cause.
- 2.2 ANNIVERSARY DATE.** The day twelve (12) months from an employee's date of hire.
- 2.3 PAID TIME OFF (PTO).** Leave with pay granted to a regular or qualified appointed employee after accrual at a specific rate to be used by an employee at the employee's discretion.
- 2.4 APPEAL.** Written request that a decision of a formal grievance be reconsidered at a further stage in the grievance procedure.
- 2.5 APPLICANT.** A person who has made a formal application on an official City personnel application form for a position in the service of the City.
- 2.6 APPOINTED EMPLOYEE.** Appointed employees include: The City Manager.
- 2.7 CASUAL EMPLOYEE.** An employee paid by the hour that may be called on short notice and/or on an occasional basis.
- 2.8 DAYS.** Wherever the term "day or days" is used in this manual, it shall mean a calendar day or days and not a working day or days, unless otherwise specifically stated.
- 2.9 DEMOTION.** A personnel action that reduces the employee's responsibilities and pay. Demotions may be voluntary or may be the result of disciplinary actions.
- 2.10 DEPARTMENT HEAD.** The City Council appointee or City employee who has responsibility for supervising or administering a department of City government as determined and designated by the City Council.
- 2.11 DISMISSAL.** An action recommended by the City Manager for a department head dismissal must have the approval of the Mayor and a majority of the City Council, will terminate an individual's employment with the City. An action recommended by a department head for whom the employee works be approved by the City Manager, which terminates an individual's employment with the City.
- 2.12 DUE PROCESS.** The right granted to a full-time or part-time regular employee who has completed the probationary period, to pre-and post-disciplinary hearings, for actions of suspension, demotion or dismissal.
- 2.13 ELECTED OFFICIAL.** An individual elected by popular vote or appointed to fill vacancies in elective office (i.e., City councilor, mayor or municipal judge).

- 2.14 EXEMPT EMPLOYEES.** All executive, administrative and professional employees as defined in Department of Labor regulations relating to the Fair Labor Standards Act, and whose compensation/wage is based on a fixed annual salary. Once an exempt employee uses all accrued leave, the employee will not be paid for time absent from work.
- 2.15 EXIT INTERVIEW.** An interview held with an employee about to leave an organization, typically in order to discuss the employee's reasons for leaving and their experience of working for the organization.
- 2.16 FULL-TIME.** All employees who work a minimum of thirty-five (35) hours per week are considered full-time employees.
- 2.17 GRIEVANCE.** A formal complaint by an employee concerning actions taken by management that result in loss of pay to the employee or in dissatisfaction with the working conditions or relationships.
- 2.18 IMMEDIATE FAMILY.** Defined as spouse, parent, child or adopted child, grandchild, grandparent or sibling; or spouse's parent, child, grandchild, grandparent or sibling.
- 2.19 LAYOFF (Reduction in Force)** The involuntary separation of an employee from City service without fault on the part of the employee due to reorganization, lack of work or lack of funds.
- 2.20 MEDICAL DISABILITY TERMINATION.** The termination of an employee from City employment when the employee is unable to perform the essential functions of the position due to a medical condition.
- 2.21 NONEXEMPT EMPLOYEES.** All employees who are not exempt employees as defined in Department of Labor regulations relating to the Fair Labor Standards Act. Nonexempt employees shall receive overtime pay for actual hours worked in a normal workweek in excess of the hours set forth on Page 34 of this manual.
- 2.22 PART-TIME EMPLOYEE.** A position in which the employee works less than thirty-four (34) hours per week.
- 2.23 PERFORMANCE EVALUATION.** The written objective review made by the employee's supervisor of an employee's performance relating to the employee's assigned duties.
- 2.24 POST-DISCIPLINARY HEARING.** A formal hearing conducted by the personnel board at the request of an employee who is grieving a suspension or demotion, or a former employee who is grieving a dismissal, held after the pre-disciplinary hearing conducted by the mayor.

- 2.25 PREDISCIPLINARY HEARING.** A hearing conducted by the Governing Body before the imposition of the disciplinary actions of suspension, demotion or dismissal.
- 2.26 PROBATIONARY EMPLOYEE.** A full-time or part-time employee hired to fill a regular position who has not yet completed the six (6) month probationary period of employment during which time the employee is terminable-at-will. Law enforcement personnel shall serve a one (1) year probationary period.
- 2.27 PROMOTION.** Transfer to a position requiring higher responsibilities and salary.
- 2.28 REGULAR EMPLOYEE.** A full or part-time employee who has completed the probationary period, who shall be disciplined only for cause, and who is entitled to all the rights and benefits of the City's Personnel Policy Manual. A regular employee must be specifically designated as such on a personnel action form that will be made part of the employee's personnel file.
- 2.29 PTO (Paid Time Off) ABUSE.** Use of accrued PTO at a rate faster than fifty percent (50%) of the hours being accrued on a monthly basis for non-major medical problems. Employees abusing PTO leave shall be disciplined up to and including dismissal.
- 2.30 SUSPENSION.** An enforced leave of absence without pay for disciplinary reasons that becomes effective after the mayor has conducted the pre-disciplinary hearing and rendered his decision.
- 2.31 TEMPORARY/SEASONAL POSITION.** A position that is vacant due to the temporary absence of an employee or a position that is seasonal in nature. Temporary/seasonal employment will not exceed a four (4) month period.
- 2.32 TERMINATION-AT-WILL.** A termination-at-will employee is one who fills an appointed, temporary or casual position, or an employee who has not completed his probationary period. A termination-at-will employee serves at the discretion of the City and their employment can be terminated without cause. A termination-at-will employee cannot grieve suspension, demotion, dismissal, or other disciplinary actions.
- 2.33 TRANSFER.** The transfer of an employee from one department or office to another department or office in the City service, or to a position in another geographic location or to a position having the same salary.
- 2.34 CITY BUSINESS.** The performance of duties of a City position at an employee's normal workstation or at a location authorized by the City.

## SECTION 3 EMPLOYMENT STATUS

**3.1 FULL-TIME REGULAR EMPLOYEE.** A full-time regular employee is one who has completed the probationary period and who normally is scheduled to work a minimum of thirty-five (35) hours per week. A full-time regular employee is eligible for all rights and benefits provided by the City.

**3.2 PART-TIME REGULAR EMPLOYEE.** A part-time regular employee is an employee who has completed the probationary period and who works less than thirty-five (35) hours per week. Part-time regular employees are eligible for leave and benefit plans at a prorated basis.

### 3.3 OTHER CLASSES OF EMPLOYEES

#### A. Appointees of Elected Officials

The appointees of elected officials are as follows: City Manager. Appointees of elected officials shall receive a salary or hourly wage set by the City Council. Appointed employees are terminable-at-will and cannot avail themselves of the grievance procedure set forth herein but are entitled to all other benefits provided by the City.

#### B. Probationary Employee

The purpose of the probationary period is to evaluate the employee's ability, potential and performance. A full-time or part-time probationary employee is one who is hired to fill a regular position who has not yet completed the probationary period of employment during which time he is terminable-at-will and may not avail himself of the grievance procedure set forth herein but is entitled to all other City benefits provided herein.

1. A probationary employee accrues leave but may not use annual leave-time accrued until the probationary period is completed.
2. To determine whether an employee has satisfactorily completed the probationary period, the employee's department head will evaluate the employee's performance and the employee's ability to work with the public, peers, supervisors and management. A probationary employee will be evaluated at the end of the probationary period and may be evaluated at any other time during the probationary period.
3. During the probationary period, an employee hired to fill a law enforcement position shall obtain the statutorily required certification for the position. Failure to obtain such certification within the one (1) year period bars the employee from becoming a regular employee and shall result in the employee's dismissal.
4. If an employee does not satisfactorily complete the probationary period, the employee will be dismissed. Proposed dismissal of a probationary employee must be discussed with the City Manager. The Mayor/Council must approve the dismissals of department head probationary employees only.

5. 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 changes from temporary to probationary status.
6. A regular employee who transfers to a new position shall serve the normal probationary period.
7. A former City employee rehired more than six (6) months after termination or rehired at any time to fill a different position shall serve the required probationary period.
8. A probationary employee may not apply for other positions in any City office.
9. If the employee is hired to a full-time or part-time regular position, the first day of work in that position shall be used in computing the beginning of the probationary period.

**C. Temporary or Seasonal Employee**

A temporary or seasonal employee is hired on either a full-time or part-time basis to a seasonal position or to a temporary position established for a period of no more than four (4) months. A temporary employee is terminable-at-will, is not entitled to grieve personnel actions, does not receive benefits, and does not accrue leave.

**D. Casual Employee**

A casual employee is an employee paid by the hour that may be called on short notice, on an emergency basis or on an occasional or irregular basis. A casual employee is terminable-at-will, is not entitled to grieve personnel actions, does not receive benefits, and does not accrue leave.

## **SECTION 4 RECRUITMENT AND SELECTION**

**4.1. RECRUITMENT POSTING PROCEDURE.** Whenever filling a regular position, the department head will notify the City Clerk/Administrator of the position to be filled. The vacancy will be posted until filled in the City office and advertised to the public.

**4.2 EXCEPTIONS TO POSTING.** Posting is waived, with the approval of the City Manager when an applicant is authorized to perform the duties of a position on a temporary or casual basis.

**4.3 PERMISSION FOR TRANSFER.** No City employee or department head can deny another City employee who has completed the probationary period and who is not the subject of disciplinary action, permission to apply for a job vacancy in any other City office or department for which the employee is qualified.

### **4.4. APPLICANT RESPONSIBILITY**

#### **A. Submission of Applications**

Applications for employment shall be accepted in the City Manager's office during normal business hours. All applicants will receive verification of the receipt of their application and process information by either email or written documentation. Applicants shall be considered for positions for which they have applied and are qualified. Applications must be submitted on the employment application form provided by the City.

#### **B. Proof of Qualifications**

The applicant is responsible for furnishing proof of qualifications or possession of any license, certificate or degree when these requirements are necessary and set forth in the job description. Any misrepresentations, falsifications, or material omissions on an application, resume or other employment documents, may result in exclusion from consideration for employment or, if hired, actions up to and including discharge.

#### **C. Immigration Act Compliance**

The applicant is responsible for furnishing proof of identification and right to work in accordance with the Immigration Reform and Control Act of 1986 and to fulfil the City's requirements of the Federal Form I-9. Failure to provide appropriate and required documentation within three (3) days of hire and upon expiration (when applicable) may result in discharge, in compliance with federal regulations.

#### **D. Certification**

The applicant is responsible for signing the employment application and certifying as to the truth of all statements made in the application.

**E. Referral to Department Head**

The City Manager will refer applicants, who have met the qualifications, to the department head for interviews.

- 4.5 SELECTION.** Selection shall be made by the City Manager in consultation with all department heads and will be based on the following: skills, educational background, experience, personal interview, references and results of pre-employment examinations when required.

The City Manager/Department Head will convene a committee of no less than 3 appropriate staff and/or community members. The City Manager and/or Department Head will chair this committee. The committee will review the applications according to an established criterion and select those to be interviewed. The committee will develop the questions, point system and implement the interview process. References will be called for the top 2 applicants. The City Manager or designee will select the top applicant and offer them the position. If that person does not accept, then the second candidate will be notified.

**A. Employment Reference Check**

References provided by the applicant shall be checked. Applicants will be asked by the City to sign a written authorization for the City to check references. Only those applicants who sign this written authorization will be considered for the position for which they have applied.

We ask that employees don't provide references for other employees but that all contacts for references or verifications of employment be forwarded to the City Manager.

**B. Physical Examinations and Drug Testing**

Applicants to whom positions have been offered may be required to undergo medical examinations that may include urinalysis, blood testing and radiographic examinations. Drug testing will be done for specifically identified safety sensitive positions, including heavy road equipment operators and law enforcement officers. Pre-employment medical examinations will generally be completed and reviewed before actual employment begins. Offers of employment are contingent upon the physician's statement that the individual can perform the assigned duties and tasks of that position and is drug free. Pre-employment medical examinations will be paid for by the City.

**C. Background Check**

To protect the city, our people and our employees, and to ensure a workforce that reflects the City's commitment to integrity, the City conducts background checks upon

hire and throughout employment. All employment offers are made contingent upon successful completion and passing of a background check, and any unfavorable outcome may result in withdrawal of the offer.

A background check may include, but is not limited to, the following:

- A credit check – if applicable to the job
- Verification of a high school degree or diploma or a degree or diploma granted by an institution of higher learning
- Employment verifications and reference checks
- Multi-state criminal records checks - when these checks are not prohibited by state or local law, statute or regulation
- Motor vehicle check – if driving is a job requirement
- Social security and/or work eligibility verification
- Other checks as applicable to a specific job position and department

**4.6 INELIGIBILITY FOR HIRE AND REHIRE.** An applicant shall be considered ineligible for hire or rehire by the City if the applicant has:

- A. Made any false statement or omission on the employment application;
- B. Not met the requirements of the position; or
- C. Failed to complete pre-employment examinations or other requirements as directed by the city; or
- D. Not met the criteria for insurance or bonding as required by law; or
- E. Been dismissed from City service as a disciplinary measure; or
- F. Not been certified by a physician that the applicant can perform the physical requirements of the position; or
- G. Been convicted of a felony or a misdemeanor, which would affect the employee's ability to perform the job's essential functions or convicted of an infamous crime.

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.

**4.7 INELIGIBILITY OF APPLICANTS FOR LAW ENFORCEMENT POSITIONS.** No person under indictment, who is generally known for having a bad character or as a disturber of the peace shall be eligible to serve as a law enforcement officer.



## SECTION 5 CHANGES IN EMPLOYMENT STATUS

- 5.1 PROMOTION.** Employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify. The City Manager shall have final approval of all in house promotions.
- 5.2 DEMOTION.** An employee may be demoted to a vacant position for which the employee is qualified when the employee would otherwise be terminated because the employee's position is being abolished due to a lack of funds or lack of work and there are no appropriate vacancies at the same level; when the employee does not possess the necessary ability to render satisfactory performance in the position presently held; or when the employee voluntarily requests such a demotion. Demoted employees will receive a reduction in pay. Only a regular employee demoted due to an inability to render satisfactory performance in the position presently held is entitled to grievance proceedings.
- 5.3 TRANSFER.** Employees may be moved from one position to another at the same rate of pay either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the City. Involuntary transfers are not grounds for grievance.
- 5.4 RESIGNATION.** An employee voluntarily resigning shall submit, in writing, a two-week notice of resignation. Failure to provide a written two-week notice of resignation may be grounds for refusal of future employment with the City. Unauthorized absence from work for a period of three (3) consecutive regularly scheduled working days shall be considered a voluntary resignation. An exit interview will be required.
- 5.5 REDUCTION-IN-FORCE/LAYOFF.** If it is necessary for the City to reduce the number of City employees because of lack of funds or lack of work, the City Manager, after consulting with the relevant department head, shall make recommendations to the mayor, who shall make the determination of the necessity for layoffs. An exit interview will be required. The reduction will occur in the following manner:
- A. Casual, temporary, and probationary employees will be laid off before full or part-time regular employees unless they are filling positions, which require specific skills and knowledge.
  - B. Layoffs of regular employees shall be determined by department head based on the employee's suitability for the jobs remaining, ability to perform available work, past job performance, and length of service with the City.

- C. Employees to be laid off shall be notified at any time during the pay period and shall be allowed to work through the end of that regular pay period or receive pay to the end of that period.
- D. Accrued annual leave shall be paid on the final day of employment.
- E. An employee on layoff must reapply to be considered for future employment.
- F. A laid-off employee returning to City employment within six months of the layoff will not serve a probationary period if hired to the same position.

Such reductions-in-force will be approved by the City Council and are not grounds for grievance and shall include, but not be limited to, unsatisfactory performance or illegal activity or unacceptable conduct on the job. Employees, other than regular employees, may be dismissed with or without cause. In compliance with state statute, all dismissals of employees are subject to approval by the Mayor and the City Council. NMSA 1978, §3-11-6 (1985 Repl. Pamp.)

**5.6 UNEMPLOYMENT COMPENSATION.** Employees who are discharged from employment due to layoff/reduction-in-force may be eligible for Unemployment Insurance Benefits. Discharged employees must apply through the State of New Mexico, Department of Workforce Solutions, who will determine eligibility for these benefits.

## **SECTION 6 CONDITIONS OF EMPLOYMENT**

### **6.1 PERFORMANCE EVALUATION.**

#### **A. Probationary Period Evaluations**

The department head shall discuss performance with the employee during the probationary period as required in §3.3(B)(ii). The employee's performance is evaluated periodically (2, 4 & 6 months) during the probationary period. The employee must receive a performance evaluation of satisfactory or better at 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.

#### **B. Other Evaluations**

Other employees may be evaluated upon the following conditions:

1. On an annual basis. Department heads will initiate annual reviews of their employees at a time twelve (12) months from the date of hire or twelve (12) months from the date on which an employee transfers to a new position, and annually thereafter.
2. A change of status.
3. Recommendations of any type of salary increase.
4. Demotion or suspension.
5. Any other time that a department head or immediate supervisor wishes to make the particularly good or poor performance of an employee a matter of record.

Department heads will initiate annual reviews of their employees at a time twelve (12) months from the date of hire or twelve (12) months from the date which an employee transfers to a new position, and annually thereafter.

#### **C. Contents of Evaluation**

A performance evaluation shall contain an overall appraisal of the employee's performance such as satisfactory, outstanding or unsatisfactory. The performance evaluation shall state areas of responsibilities and standards of performance.

#### **D. Employee Rebuttal**

The employee may submit a rebuttal statement to the performance evaluation, which will be attached to and become a part of the performance evaluation. The rebuttal shall be submitted within ten (10) days of the evaluation.

#### **E. Unsatisfactory Evaluation**

In the event a regular employee receives an overall evaluation of unsatisfactory, the employee shall be provided with written information in the evaluation as to specific areas of deficient performance and steps for improvement. The employee shall also be warned that failure to meet reasonable performance standards of the position within a set time period, not to exceed ninety (90) days, shall result in dismissal. An employee who receives an overall evaluation of unsatisfactory shall be reevaluated at any time during the ninety (90) day period following the unsatisfactory evaluation, and if performance remains unsatisfactory, shall be dismissed pursuant to the procedures in these rules.

**F. Request of Evaluation**

If an employee would like to request an evaluation, they may do so, in writing to the City Manager. The request will be honored within thirty (30) days.

**6.2 PROHIBITED POLITICAL ACTIVITIES.**

**A. All employees are prohibited from:**

1. 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.
2. Directly or indirectly coercing, attempting to coerce, commanding or advising a state or City officer or employee to pay, lend, or contribute anything of value to a party, committee, or organization, agency, or person for a political purpose.
3. Threatening to deny promotions to any employee who does not vote for certain candidates, requiring employees to contribute part of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising events and similar events, advising employees to take part in political activity and matters of a similar nature.
4. Engaging in political activity while on duty or campaigning on City property.

**6.3 NEPOTISM.**

**A. Definition of Nepotism**

Nepotism, for purposes of this Personnel Policy Manual, is defined as the practice of giving preferential treatment in areas of employment, including but not limited to, selection, benefits, pay, promotion and discipline to an employee **near relatives**.

1. For purposes of this nepotism policy, **near relatives** are defined as the employee's spouse, children, parents, siblings, grandparents, grandchildren, aunts, uncles, first cousins and all like-relations of the employee's spouse and any former spouse(s), or unrelated persons sharing a spousal relationship. This definition covers any person related to the employee by birth, adoption, or marriage.

**B. Prohibited Practices**

The practice or appearance of nepotism is prohibited. Near-relatives shall not work in the same department when there is a supervisory relationship between them. Any problems arising from such a situation should be referred to the City Manager for review. Near-relatives cannot fill or be promoted into a position that requires supervision by a near-relative. Neither shall any elected official or appointee or City employee give employment as clerk, deputy, assistant or other class of departmental employee to any near relative when that person's compensation is six hundred (\$600) dollars or more per year. NMSA 1978, §10-1-10 (1987 Repl. Pamp.). Any exceptions to this rule must be approved by the City Council.

**6.4 CONFLICTS.**

**A. Conflict Ban**

No employee shall engage in any business or transaction, or accept private employment or other public employment, that is incompatible with the proper discharge of the employee's responsibilities, or which gives the appearance of impropriety.

**B. Outside Employment**

Because each employee represents the City, the City requires each employee to obtain the express written permission of the City Manager or supervisor to whom the employee reports for each position of outside employment. The approval document will be placed in the employee's personnel file.

**C. Approval of Outside Employment**

The City Manager shall determine whether:

1. The duties or services of the proposed supplemental/outside employment will create a conflict of interest for the employee or the employee's subordinates while serving in an official capacity with the City; or
2. The proposed supplementary/outside employment will defame, embarrass or reflect discredit upon the City; or
3. The employee is serving the City satisfactorily and will be able to continue to do so if the employee undertakes supplementary/outside employment; or
4. The employee's sick leave usage does not in any way reflect or give the appearance of abuse.

**D. Termination of Outside Employment**

Upon request of the City Manager and/or the Mayor/Council, no employee shall continue in supplementary/outside employment if such employment has a negative impact on the employee's job performance. A determination that such employment has a negative impact on an employee's job performance is not subject to the formal grievance procedure.

**6.5 HARASSMENT AND DISCRIMINATION IN THE WORKPLACE.** The City is committed to providing employees an environment in which employees are treated with dignity and respect. The city does not discriminate or permit discrimination against any individual based on a person's protected status, such as sex (including pregnancy), color, race, ancestry, religion, national origin, age, sexual orientation or gender identification, physical handicap, medical condition, disability, marital status, veteran status, citizenship status, or any other protected group status. Additionally, the state of New Mexico prohibits discrimination based upon; marital status, spousal affiliation, mental handicap or serious medical condition, race and ancestry.

Harassment, discrimination and the creation of a hostile work environment will not be tolerated on the part of any employee, supervisor, contractor, vendor, etc.

Harassment-Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA). Harassment consists of unwelcome conduct, whether verbal, physical, or visual that is based upon a person's protected status.

For the purposes of this policy, sexual harassment, which is a type of unlawful harassment, is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or advancement.
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include any hostility directed towards an employee because of gender, even if that hostility is not sexual in nature.

Harassment may take many different forms. Examples of conduct that may constitute harassment include but are not limited to:

- *Physical:* Unwelcome, unwanted physical contact, including but not limited to touching, pinching, patting, grabbing, poking, blocking normal movement, or brushing against another employee's body.
- *Verbal:* Epithets, jokes based on ethnicity or gender, derogatory comments, foul or obscene language. Unwanted sexual advances, propositions or other sexual comments, such as: sexually-oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in

the presence of any employee who indicates or has indicated in any way that such conduct in his or her presence is unwelcome.

- *Non-verbal*: The distribution, display, or discussion of any written or graphic material, including calendars, posters, and cartoons that are derogatory or sexually suggestive; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, that is sexual in nature.
- Threats or suggestions that lack of sexual favors will result in retaliation, withholding support for promotions or transfers, change in assignments or poor performance reviews.

*Hostile Work Environment*-A hostile work environment may be created by severe or pervasive conduct which unreasonably interferes with an employee's work performance and creates a work environment that is intimidating, abusive, hostile and offensive.

*Reporting Procedures*-Any employee who reasonably believes that he/she has been subjected to unlawful harassment, discrimination or a hostile work environment should immediately report the situation to the City Manager. If an employee doesn't feel comfortable reporting to the City Manager, they may report any member of the Personnel Board. Any Manager or Board member who has knowledge of a complaint must take appropriate action and ensure that an investigation is conducted. A Manager who has knowledge of a complaint and does not take action, may be held personally liable.

*Investigating the Complaint*-Any allegations of harassment and/or discrimination will be promptly investigated. The investigator will use discretion during their investigation and endeavor to limit information to those with a need to know. In pursuing the investigation, the investigator will try to take the wishes of the complainant under consideration, but the need to completely investigate all allegations will be the paramount concern. If harassment or discrimination is found to have occurred, prompt and appropriate remedial action will be taken.

*Retaliation*-Retaliation against any employee or individual for filing a harassment, discrimination or hostile work environment complaint, or participating in the investigation of a complaint, is unlawful and strictly prohibited.

If an employee feels that they have been subjected to unlawful retaliation, please notify the City Manager or a member of the Personnel Board. After investigation, any person found to have retaliated against another individual for reporting harassment may be subject to disciplinary action up to, and including, termination of employment.

*Resolving the Complaint*-This policy applies to everyone who interacts when working for the City, as well as all employees. The City will not tolerate, condone or allow harassment or discrimination, whether engaged in by fellow employee, supervisor, contractor, community member, vendor, etc. We encourage the reporting of all incidents of harassment, regardless of who the offender may be.

All complaints received will be thoroughly investigated and appropriately resolved. This policy is not intended to prohibit an employee from filing a complaint with the NM Human Rights Board or the federal Equal Employment Opportunity Commission.

**6.6 DRUG TESTING POLICY.** The City is committed to the goal of a drug-free work place in compliance with the Drug-Free Work Place Act of 1988. Drug testing of employees will be conducted by the City, in compliance with legal requirements and with employee consent.

**A. Illegal Use of Drugs or Alcohol**

The use of controlled substances, drugs or alcohol, prescribed and non-prescribed, is a concern to the City when it interferes with job performance, conduct, attendance, safety, or when it is in violation of the law. The unlawful manufacturing, distribution, possession or use of a controlled substance or alcohol by an employee while on City premises or while on City business is prohibited. Conducting City business that includes driving vehicles or operating City equipment while under the influence of alcohol or other drugs is also prohibited. Engaging in any of these prohibited activities may result in disciplinary action up to and including termination from employment.

**B. Pre-employment Drug Testing**

A successful employment applicant for a law enforcement position, maintenance department position or heavy equipment operator position shall be tested for alcohol or drugs when he reports for his medical examination. A confirmed positive test result shall be grounds for rejecting the applicant.

**C. Reasonable Suspicion Testing**

Any City employee shall be tested for alcohol and drugs if the City has reasonable grounds to suspect that the employee is engaging in the use of drugs or alcohol on the job or is reporting to work under the influence of drugs or alcohol. Reasonable suspicion includes, but is not limited to, the following:

1. All accidents that occur while doing business for the City.
2. Evidence of alcohol, drugs or paraphernalia discovered at the employee's work place; or
3. Any employee showing signs of erratic behavior, changes in mood, altered appearance or speech patterns, smell of alcohol on breath and person, an increase in absenteeism, tardiness and deterioration of work performance.

**6.7 REFUSAL TO SUBMIT TO DRUG TESTING.** Refusal by the employee to submit to drug testing shall be considered a positive test result and is grounds for immediate dismissal.

**6.8 POSITIVE RESULTS OF ALCOHOL AND DRUG TESTING.** The guidelines established by the National Institute of Drug Abuse will be used to determine whether an employee tests positive. If an employee tests positive for drugs or alcohol, the employee will be



suspended from employment without pay. To avoid dismissal the employee will be required to successfully complete an approved drug/alcohol rehabilitation program. The employee shall be responsible for paying the cost of the rehabilitation program unless the employee has insurance coverage for such treatment. Upon the employee's return to work after completion of the drug/alcohol rehabilitation program, the employee shall be required to test for alcohol/drugs for a period of two (2) years. If the employee tests positive during this testing period, the employee shall be subject to disciplinary action up to, and including, dismissal. If the employee successfully completes this two (2) year testing period, all records of the previous tests and related case documentation shall be destroyed after three (3) years from the initial positive test.

**6.9 RETESTING.** An employee who tests positive on a drug test may elect to have, at the employee's expense, a retest of the original sample at a drug testing laboratory of the employee's choice, provided the request is made in writing within twenty-four (24) hours of the employee receiving notice of a positive test result. The retest cost the responsibility of the employee however, the City shall reimburse for the retest if the retest is negative.

**6.10 CONFIDENTIALITY.** 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 held confidential and placed in a special locked file.

**6.11 VIOLENCE IN THE WORKPLACE.** It is the policy of The City to provide each of our employees with a workplace free from violence, including any acts or threats of violence by employees or former employees against any other employee on The City's property, or elsewhere, at any time.

The City is committed to the following:

- To provide a safe work environment and to seek to eliminate the potential for violence in and around the workplace.
  - To take prompt remedial action up to, and including, immediate termination, against any employee who engages in any threatening behavior or acts of violence or who uses any obscene, abusive, or threatening language or gestures.
  - To take appropriate action when dealing with clients, former employees, or visitors to The City's facilities who engage in such behavior. Such action may include notifying law enforcement and prosecuting violators of this policy to the maximum extent of the law.
- A. The City prohibits the wearing, transporting, storage or presence of firearms or other weapons in The City's facilities or vehicles with the exception of law enforcement personnel. Possession of a firearm or other weapon while in our facilities or while otherwise fulfilling job responsibilities is NEVER allowed. Anyone who violates this policy may be removed from the premises and reported to law enforcement authorities.

Possession of a valid concealed weapon permit authorized by the State of New Mexico is **not** an exemption under this policy.

- B. The City requires every employee who seeks or obtains a restraining order, or who is the subject of a restraining order, to advise the City Manager immediately, or within 24 hours of seeking or obtaining that order, and to promptly provide a copy of it so that compliance can be monitored. This policy applies to employees who are working off-site and to anyone that is visiting but isn't an employee.
- C. Employees have an obligation and duty to warn the City Manager of: (1) any suspicious workplace activity, or (2) situations or incidents that they observe or of which they are aware that appear to involve violence or the risk of violence. This includes, for example, threats or acts of violence, aggressive behavior, or threatening comments or remarks. This policy also applies to *relationship violence that may intrude into the workplace, endangering a person in the relationship or others in the workplace. Relationship violence is physically, sexually, and/or psychologically abusive behavior that takes place in a personal relationship, outside of the workplace.*
- D. Employee reports made pursuant to this policy will be held in confidence to the maximum extent possible. The City will not condone any form of retaliation against any employee for making a report under this policy.

**6.12 TOBACCO USE.** The City is committed to providing a safe and healthy environment, for employees, residents and visitors. Smoking, dipping, or use of electronic cigarettes is not permitted in The City's buildings or vehicles. Employees may not smoke within 200 feet of a building entrance, exit, or ventilation unit. Tobacco use is only allowed in areas as designated by the department or City Manager.

**6.13 CONTACT WITH THE MEDIA.** The City encourage employees to refer the media to the City Manager in order to make an authorized public statement. We would appreciate it if employees would not make statements on behalf of The City.

**6.14 PHONE USE.** The use of personal cell phones and work phones for personal use during work hours must be kept to a minimum. Cell phones must be on low during work hours. Office staff may be required to use personal cell phones for business purposes. While driving on City business, employees must follow all laws and regulations and also use hands-free devices when talking on their cell phones.

**6.15 TECHNOLOGY.** Computers, laptops, email, internet, tablets, printers and other workplace technologies are the City's property and are subject to audits and usage reviews. There should be no expectation of privacy when using the City's technology. Personal use is never allowed. Computer and Internet use should be limited to City business. Employees may utilize the services of the internet during break times, with the City Manager' approval, as long as they are not logging onto sites that are inappropriate or illegal and are using their own personal devices.

#### **6.16 DRIVING FOR WORK PURPOSES.**

- A. All persons driving any vehicle on City business must possess a valid driver's license, current registration, and current vehicle insurance. Employees whose job duties include driving must immediately notify the City Manager of changes in driver license status (i.e. revoked, expired, canceled, suspended, etc.) Please note that the City's insurance provider conducts periodic motor vehicle checks on all employees whose job duties require driving on City business.
- B. City vehicles should be used exclusively for job-related travel and operated by the employee only. Operators of City vehicles are responsible for the safe operation and cleanliness of the vehicle. Using seat belts is mandatory for operators and passengers. Smoking is prohibited in City vehicles. Private use of City vehicles is not permitted.
- C. When using a personal vehicle for work purposes, the employee's primary insurance is the primary insurance on the vehicle. Mileage reimbursement is intended to compensate employees for insurance and other costs associated with operating a vehicle.
- D. Whether driving a City vehicle or a privately-owned vehicle, all traffic citations and fines are the employee's responsibility and must be reported to the City Manager within 24 hours of occurrence. Accidents while on City business must be reported immediately. Employees must ensure that the appropriate police authority investigates all accidents before vehicles are removed from the scene of an accident, when applicable.
- E. Employees are expected to refrain from using cell phones while driving (this includes texting, emailing, etc.); except for hands-free phone use, in areas where such use is permitted by law.

**6.17 SOLICITATION.** Employees may not solicit other employees during working time or distribute literature in work areas at any time. Persons not employed by the City may not solicit employees for any purposes on city premises.

**6.18 ATTENDANCE AND PUNCTUALITY.** Work attendance is important, and the City expects employees to be responsible about coming into work on time. Excessive absences from work, lateness in reporting to work, or leaving early seriously impairs the value of our services to the community. Some office employees may be able to have more flexibility regarding their work hours. This decision is at the discretion of the City Manager.

Employees who are going to be late for work or absent, must notify their Supervisor by telephone as far in advance as feasible but before the start of their workday. Personal issues requiring time away from work should be scheduled during non-working hours, if possible. However, accrued PTO off may be used when necessary.

If an employee is absent for three (3) days without notifying their Supervisor, this will be considered a voluntary termination due to job abandonment.

## SECTION 7 EMPLOYEE DISCIPLINE

### 7.1 BASIS FOR EMPLOYEE DISCIPLINE.

#### A. Just Cause Discipline

Disciplinary actions for regular employees 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. No employee will be disciplined for refusing to perform an unlawful act.

#### B. Definition of Just Cause

Just cause is defined as any conduct, action or inaction arising from, or directly connected with, the employee's work that 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, incompetency, misconduct, negligence, insubordination, and performance that continues to be inadequate after reasonable efforts have been made to correct the performance problems, or conviction of a felony or misdemeanor as described in NMSA 1978, §28-2-1 *et seq.*

#### C. Disciplinary Action

Any department head may take disciplinary action in the form of a verbal or written reprimand, or may recommend suspension, demotion, or dismissal of an employee under the department head's authority, consistent with departmental policies and this Personnel Policy Manual. Copies of any documented disciplinary action must be present at the City Manager's office for placement in the employee's file with the signature of the recipient acknowledging receipt of the action.

#### D. Consultation with City Manager

Dismissal, involuntary demotion and suspension require consultation with the City Manager before the action is recommended to the Governing Body. Whenever such consultation is not practical because of urgent circumstances, necessary action may be taken, and the situation(s) reviewed with the City Manager as soon as practical. Recommendations by department heads for dismissals will be discussed by the City Manager with the state's Risk Management Division and dismissals, involuntary demotions and suspensions require approval by the majority of the in accordance with the procedures set forth below.

**7.2 PROGRESSIVE DISCIPLINE.** A regular employee shall be progressively disciplined whenever possible. Each case of inadequate performance or act of misconduct shall be judged individually. All actions involving substandard work performance, leading up to and including dismissal, require progressive warnings. The step of corrective action used depends on the severity of the infraction and the employee's previous work record. The

City reserves the right to bypass any step of progressive discipline, at their discretion, based on the severity of the situation. Because of the serious nature of some infractions, the first disciplinary action may constitute dismissal.

**A. Verbal Reprimand**

A verbal reprimand is used for minor infractions such as informing the employee that his actions, behavior or conduct needs to change. Department heads will keep written notations of verbal reprimands and these will be placed in the employee's personnel file. A verbal reprimand is not grounds for grievance. Causes of verbal reprimands include, but are not limited to:

1. Substandard work performance; or
2. Repeated absence or tardiness.

**B. 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 reminder was not effective. Causes for written reprimands include, but are not limited to:

1. The causes listed for verbal reprimands; or
2. Refusal to carry out orders; or
3. Sleeping on the job; or
4. Failure to follow safety rules; or
5. Failure to follow other City rules and procedures.

Written reprimands shall be placed in the employee's personnel file by the employee's department head 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. The employee may respond by noting on the reprimand that they do not agree with a written rebuttal, which shall be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not grounds for grievance.

**C. Suspension**

An employee may be suspended without pay for a single serious offense or for continued inadequate job performance or misconduct after previous attempt(s) to correct the conduct have failed. Such suspension will not exceed ten (10) working days. Suspension of a regular employee is subject to the formal grievance procedures. Causes for suspensions include, but are not limited to:

1. The causes listed for written reprimands; or
2. Continued instances of poor performance; or
3. Negligent damage to property and/or person(s).

#### **D. Demotion**

An employee may be demoted for continued inadequate job performance after previous attempt(s) to correct the conduct have failed. Demotion is not an appropriate disciplinary action for an employee who has a record of excessive absences or tardiness. The demotion of a regular employee is subject to the formal grievance procedures.

#### **E. Dismissal**

Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance. Dismissal is also the appropriate disciplinary measure, despite the absence of previous disciplinary actions, when the employee has engaged in behavior that is of a serious nature, which is unacceptable for City employees. The dismissal of a regular employee is subject to the formal grievance procedure. Causes for dismissal shall include, but are not limited to:

1. All causes listed for the previous four (4) disciplinary actions if continuing after attempts to correct has failed; or
2. Theft of City property or unapproved use of City property for personal reasons; or
3. Conviction of a job-related felony or misdemeanor as described in the Criminal Offender Employment Act, NMSA 1978, §28-2-1 *et seq.*; or
4. Serious acts of negligence causing damage to City property or to persons; or
5. Conduct unbecoming an employee of the City; or
6. Deliberate falsification of information on the employee's job application or other City records; or
7. Unlawful manufacturing, distributing, dispensing, possessing of using controlled substances or alcohol on the job or reporting to work under the influence of an unlawful controlled substance or alcohol; or
8. Intentional abuse or destruction of City equipment; or
9. Refusal to carry out reasonable orders when a threatening condition exists; or
10. Failure to meet standards of substance abuse rehabilitation programs.

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 determined appropriate based on the circumstances of each case.

**7.3 APPROVAL BY MAYOR AND CITY COUNCIL.** The Governing Body, as the pre-disciplinary hearing officer, will approve or disapprove all suspensions, demotions and dismissals of department head employees only. Suspensions without pay and demotions become effective when the Governing Body approves the action. Dismissals become effective after Council approval. If an employee does not grieve a suspension, demotion, or dismissal to the personnel hearing board, the City Council will either approve or disapprove the City

Managers actions of suspension, demotion or dismissal of the employee. The employee will not be given an opportunity to speak at this meeting. The employee must follow the grievance procedure set forth in section 8 of this manual if he/she wishes to pursue a grievance. If the City Council does not approve the City Manager's action, the employee will be reinstated and paid the wages he/she lost because of the disciplinary action.

**7.4 CONDITIONS OR ACTIONS NOT GRIEVABLE.** The following matters are not grounds for grievance

- A. Disputes as to whether or not an established City practice or policy is good.
- B. Matters where 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. Temporary/seasonal employees released prior to or at the end of their anticipated employment period.
- E. Probationary employees dismissed prior to the expiration of their probationary period.
- F. Appointed employees dismissed at any point during their employment with the City.
- G. Performance evaluations, preferences for employment promotions, transfers, temporary assignments, removal from temporary assignments, and layoffs.

## SECTION 8 FORMAL GRIEVANCE PROCEDURES

**8.1 INITIAL STEPS IN FORMAL GRIEVANCE PROCEDURE.** The following are the formal grievance procedures that apply to suspensions, involuntary demotions and dismissal of regular employees. Should the grievance be with the City Manager, the City Manager shall recuse him/her self from all relevant proceedings, including the Personnel Board.

**A. Written Notification**

The City Manager or designee shall present the employee with written notification of intent to suspend, demote or dismiss at least **three (3) working days** in advance of the proposed action. The written notification shall explain the reasons for the proposed action, the employee's right to a pre-disciplinary hearing and contain the scheduled time and place of the pre-disciplinary hearing. The notification shall be hand-delivered to the employee, receipt of which shall be acknowledged by the employee. The pre-disciplinary hearing shall not be set less than **three (3) working days** after the hand delivery of the notice.

**B. Immediate Suspension**

In cases where City property, other employees or citizens are at risk because of the employee's actions, the department head, in consultation with the City Manager, shall put the employee on administrative leave with pay while the appropriate disciplinary action is contemplated and until the pre-disciplinary hearing is held and the decision is rendered.

**8.2 PRE-DISCIPLINARY HEARINGS.** An employee shall pursue grievances according to the rules contained herein.

**A. Request for Pre-Disciplinary Hearing**

Within **two (2) working days** of the receipt of the disciplinary notice, the employee is required to notify the City Manager, in writing, and advise whether or not the employee will participate in the pre-disciplinary hearing. The time, place and date of the pre-disciplinary hearing can be rescheduled upon the written agreement of the parties.

**B. Pre-Disciplinary Hearing Procedure**

The City Manager shall meet with the employee and the employee's department head at the appointed time. At this pre-disciplinary hearing, the employee shall have the opportunity to respond to the proposed disciplinary action. The parties may be represented by counsel at the pre-disciplinary hearing at their own expense.

**C. Pre-disciplinary Hearing Decision**

The City Manager will issue a decision in writing within **three (3) working days** of the hearing. The written decision shall include the time, date and location of the meeting;



persons present and the determination. The written decision shall be either delivered directly to the employee (obtaining employee's signature of receipt of the decision) or be sent by certified mail, return receipt requested. The employee has a right to appeal the decision to the City personnel board.

**D. Effect of Decision**

Demotions and suspensions will become effective at the time that the pre-disciplinary hearing decision is issued. A dismissal grieved by an employee will not become effective until the City Council approves the dismissal following a post-disciplinary hearing.

**8.3 POST-DISCIPLINARY HEARINGS/APEALS TO THE PERSONNEL BOARD.**

**A. Notice of Appeal**

Within **three (3) working days** of receipt of the written pre-disciplinary decision, the grievant must give written notice to the City Manager of the grievant intent to pursue a post-disciplinary hearing.

**B. Post-Disciplinary Hearing Scheduled**

The post-disciplinary hearing must be held within **ten (10) working days** of the receipt of notification of intent to pursue a post-disciplinary hearing by the City Manager. The parties must agree in writing to any postponement of the grievance hearing beyond **ten (10) working days**. At this hearing, the grievant shall have an opportunity to present witnesses and physical evidence and cross-examine the City's witnesses before the City personnel board. The grievant and the City may be represented by legal counsel. Each party bears its own costs and expenses with respect to the retention of legal counsel and the pursuit of post-disciplinary actions.

**8.4 POST-DISCIPLINARY PERSONNEL BOARD HEARING RULES OF PROCEDURES.**

- A. The City Manager will determine the date and time of the post-disciplinary hearing and any continuances. Such hearings will be conducted at a time and place that is mutually convenient to all parties concerned. Requests for continuances of hearings shall be made at least **five (5) working days** prior to the scheduled hearing, absent extenuating circumstances. Requests for continuances of hearings shall be made in writing directly to the hearing officer with copies to all parties involved.
- B. Post-disciplinary hearings shall be conducted as open meetings with notice given to the public pursuant to the New Mexico Open Meetings Act, unless the grievant requests a closed hearing.
- C. A quorum of the personnel board shall, by majority vote:
  - 1. Make rulings on procedural and substantive 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 board.
  3. Follow the evidentiary standard for administrative agencies.
  4. Issue a written ruling, including findings of fact and conclusions of law.
- D. The following persons are required to be present at all grievance proceedings unless otherwise excused by the personnel board or by agreement of the parties: the grievant, grievant representative (if any), and the department's designated representative.
  - E. The parties shall stipulate to the facts and issues to the greatest extent possible prior to the hearing.
  - F. Prior to the hearing, representatives shall prepare copies of all exhibits and evidence, which are expected to be presented. Representatives shall stipulate to exhibits to the extent possible and bring to the hearing adequate copies for the personnel board as well as the opposing representative.
  - G. At least **five (5) calendar days** prior to the hearing; all parties must submit to the personnel board: a statement identifying the issues to be heard, a witness list, and a complete list of documents to be admitted as evidence.
  - H. Witnesses in grievance hearings are not admitted into the hearing room until called upon to testify. This ban excludes those individuals listed in Section IV above.
  - I. Notice of the hearing will be sent by certified mail to the grievant and postmarked at least **five (5) days** prior to the scheduled hearing. Copies of the hearing notice shall be sent concurrently to all relevant parties.
  - J. Either a tape recorded, or stenographic record of all post-disciplinary grievance hearings will be made.

## **8.5 CONDUCT OF HEARINGS.**

- A. The City, which carries the burden of proof by a preponderance of the evidence, shall present its statements of issues involved in the case, followed by the grievant. Opening statements are limited to the pertinent issues of fact and law and shall not exceed ten minutes without permission of the personnel board.
- B. Order of Presentation

1. The City will present its case first. Witnesses for the City may be called and questioned on their involvement in, or knowledge of, the case. Following each witness' testimony, the City will have the opportunity to cross-examine the witness. The personnel board will then have the opportunity to question the witness on matters related to the witness' testimony. The personnel board shall restrict its questions to those necessary to clarify the testimony previously given. Follow-up or redirect questioning will be allowed at the discretion of the personnel board.
  2. Witnesses for the grievant may be called and questioned on their involvement in, or knowledge of, the case. Following each witness' testimony, the City will have the opportunity to cross-examine the witness. The personnel board will then have the opportunity to question the witness on matters related to the witness' testimony. The personnel board shall restrict its questions to those necessary to clarify the testimony previously given. Follow-up or redirect questioning will be allowed at the discretion of the personnel board.
- C. Following presentation of the grievant position, the City may offer rebuttal testimony. Such testimony shall be brief and shall address only the issues brought forth in the grievant presentation.
- D. The City's closing statement shall be presented, followed by that of the grievant. These statements shall not exceed ten (10) minutes with the permission of the hearing officer, and at a minimum shall contain a request for the desired outcome. The City shall have the opportunity to make a final statement, not to exceed five (5) minutes, and which shall be limited to issues brought forth in the grievant closing statement.

#### **8.6 COMMUNICATION OF PERSONNEL BOARD'S DECISION.**

- A. The personnel board's recommendation to the City Council shall include findings and conclusions and shall be issued within **five (5) days** of the hearing and shall indicate whether the decision was unanimous or whether particular members dissented, and shall be transmitted to the grievant, department head, and the City Manager, who shall notify the City Council.
- B. The personnel board may only recommend upholding, modifying or reversing the decision and may recommend reinstating the employee and awarding back pay and benefits. The record of the proceedings will be retained by the City Manager's office or the certified court reporter for a period of no less than one (1) year from the hearing date, along with all of the physical evidence admitted by the personnel board.

- C. The verbal record shall be transcribed only in the case of appeal to the district court by one of the respective parties. The party requesting the transcription shall make arrangements to pay for the transcription.

#### **8.7 APPROVAL/DISAPPROVAL OF RECOMMENDATION.**

- A. The City Council will approve or disapprove the recommendation by majority vote. The City Council's vote will be based solely on the personnel board's findings and conclusions and its recommendation; no further testimony will be heard at the council meeting at which the vote is taken. The City Council will meet to vote on a recommendation of the personnel board within **five (5) working days** after the Personnel Board issues its decision.

#### **8.8 APPEAL OF CITY COUNCIL'S DECISION.**

- A. Either party may appeal the City Council's decision in the Thirteenth Judicial District Court by filing a notice of appeal within thirty (30) days of the decision.
- B. This Personnel Policy Manual 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 district court.

#### **8.9 PROCEDURE FOR GRIEVING WORKING CONDITIONS AND OTHER WORK-RELATED PROBLEMS.**

- A. With respect to those conditions about which an employee wishes to grieve, but which are not subject to the formal grievance procedure set forth in Sections 8.1 through 8.4 of this manual, the employee shall discuss the problem with the department head in an attempt to work out a solution. Included in this type of grievance are complaints charging discrimination based on race, color, religion, sex, sexual orientation, age, national origin, physical or mental handicap, or medical condition. If the employee is not satisfied with the proposed solution, the employee may address the problem to the City Manager, whose decision shall be final.

#### **8.10 WHISTLEBLOWER PROTECTIONS.**

- A. A whistleblower as defined by this policy is an employee of the City who reports an activity that they consider to be illegal or dishonest to one or more of the parties specified in this Policy. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; appropriate Management officials are charged with these responsibilities.

- B. Examples of illegal or dishonest activities may include, but are not limited to: violations of federal, state or local laws, billing for services not performed or for goods not delivered, and fraudulent financial reporting.
- C. If an employee has knowledge or a concern of illegal or dishonest fraudulent activity, they should contact their Manager or the City Manager. Employees who do not feel comfortable reporting within the City management, may contact a member of the personnel board. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including discharge.
- D. Whistleblower protections are provided in two areas—confidentiality and against retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law, and to provide accused individuals their legal rights of defense. The City will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, poor work assignments, and threats of physical harm. Any whistleblower who believes they are being retaliated against must contact the City Manager or a member of the personnel board, immediately. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.
- E. All complaints will be investigated by the City.

## **SECTION 9 PERSONNEL BOARD**

**9.1 PURPOSE.** The Personnel Board shall be responsible for making recommendations to the City Council concerning personnel policies and shall conduct post disciplinary hearings with respect to the grievance procedure set forth in Section 8 of this manual.

**9.2 PERSONNEL BOARD MEMBERSHIP.** The Personnel Board shall consist of the following:

- A. One (1) member of the City Council elected by the City Council. The term shall be two (2) years, with an indefinite number of terms allowed. The City Council member will not participate or vote in employee grievances.
- B. The City Manager will be a nonvoting member of the Personnel Board except for the purpose of breaking a tie when the Personnel Board is considering issues other than employee grievances. Should the grievance be with the City Manager, the City Manager shall recuse him/her self from all relevant proceedings.
- C. Three (3) residents of the City appointed by the Mayor at a regular or special public meeting of the City Council. These appointments shall be with the advice and consent of the City Council. The term of the resident members shall be two (2) years, with an indefinite number of terms allowed. In cases of resignation from the Board by a resident member or termination of residency within the City, the mayor, with the advice and consent of the City Council, shall appoint a replacement for a full term.
- D. Personnel Board members perform their duties on a voluntary basis and shall not receive payment for their services.

**9.3 CHAIRPERSON.** The board shall elect a chairperson who shall conduct the business of the board and who shall provide timely reports to the City Council. Neither a City Council member, nor the City Manager shall serve as chairperson.

**9.4 POWERS AND DUTIES.**

- A. **Personnel Policies.** The Board shall recommend to the City Council such personnel policies which may be necessary and desirable. Such policies, procedures, regulations, definitions, and rules may include, but are not limited to: provisions governing the hiring, promotion, transfers, separations, employee evaluations, demotions, suspensions, dismissals, probation, reprimands, fringe benefits, hours and conditions of work, holidays, and retirement for the city employees.

Rules and regulations recommended by the Personnel Board shall be subject to approval by the City Council.

- B. Amendments to the Personnel Manual.** The City Council shall review for consideration the recommendations or amendments made by the Personnel Board for adoption and inclusion into the Personnel Manual. After the City Council has reviewed and considered the same, the City Council may adopt or reject in total or in part those recommendations or amendments presented to them. The City Council may adopt personnel policies, procedures, regulations, definitions, rules, and the like, either upon the recommendation of the Personnel Board, or *sua sponte*, (of their own mind). The proposed recommendations or amendments shall be incorporated into the personnel manual by majority vote of the City Council at a duly called meeting of the Council at which a quorum is present. The City Council shall provide reasonable notice of the same, in accordance with law. The Personnel Manual and all changes thereto shall be binding on all parties from the time employment is approved by the City Council.
- C. Grievances.** The Personnel Board shall hear appeals of grievances of employees pursuant to Section 8 of this manual.

## **SECTION 10 COMPENSATION AND BENEFIT PROGRAM**

**10.1 HOURS OF WORK.** Employees will work their scheduled hours pursuant to work schedules established by the administration. The standard workday for employees will be from 8:00 a.m. to 5:00 p.m., unless otherwise directed by the department head. Employees will not be paid for travel time from home to the site of their work within the City or from the work site to their home. Actual work periods may fluctuate at the discretion of the department heads. Part-time employees are scheduled to work pursuant to scheduling set forth by their department heads. Part-time employees will generally work the same number of hours each week.

**10.2 BREAKS.** Full-time employees take a one (1) hour lunch break. Full-time employees are entitled to two (2) fifteen-minute breaks per day; employees working four (4) hours or less per day are entitled to one (1) fifteen-minute break per day. Supervisors may limit or delay breaks if continuous work is required because of an emergency or unusual condition. No breaks shall be taken until 1-1/2 hours after the shift has begun or after 1-1/2 hours before the shift ends.

**10.3 PAY PERIODS.** Employees shall be paid every two (2) weeks.

**10.4 TOUR OF DUTY.** Tour of duty is defined as the established 35-hour work week of an employee. An employee normally works Monday – Thursday, 8 hours during the day, usually 8:00 a.m. to 5:00 p.m., with a designated 1 hour off for lunch and Fridays, 9:00 a.m. – 12:00 noon. Some positions require attendance at Council and other evening meetings work hours to be flexible to accommodate.

**10.5 OVERTIME PAY.** The rate shall be one and one half (1-1/2) times regular pay for each hour of overtime and such payment shall be made only in cases when a nonexempt employee works over forty (40) “actual work hours” in a normal work week. Fair Labor Standards Act exempt employees shall not receive overtime pay. Overtime must be pre-approved by an employee’s direct Supervisor.

**10.6 TIME CARDS.** Magnetic employee ID cards are used for all time card entries by employees. Weekly time card records are verified with employees, approved by the City Manager and forwarded to the City Clerk for payroll entry and processing.

Under no circumstances may an employee clock in or out for another employee. Falsification of a timesheet is a serious offense. Only the direct supervisor and the City Manager are allowed to make corrections to time cards.



## **10.7 PAYCHECK DEDUCTIONS AND GARNISHMENTS.**

The City is required by law to make certain deductions from employee paychecks each pay period. Such deductions typically include federal and state taxes and Social Security (FICA) taxes.

When an employee's wages are garnished by a court order or the government, The City is legally bound to withhold the amount indicated in the garnishment order from the employee's paycheck. The City honors applicable federal and state guidelines that protect a certain amount of an employee's income from being subject to garnishment.

All deductions and garnishments, along with the amount, are listed on all pay stubs. These are totaled each year on the Form W-2, Wage and Tax Statement.

**10.8 GRATUITIES.** All employees are prohibited from accepting gifts or other considerations from vendors given with intent of modifying the employees' performance of duties or encouraging the employees to make purchases from the vendor involved. Employees shall uphold the highest of ethics in all their interaction with the public.

**10.9 PER DIEM AND MILEAGE.** All payments of per diem and mileage shall be made pursuant to policies established by the State of New Mexico. See miscellaneous Section 12 of this manual for travel policy and procedures

### **10.10 PERA BENEFITS. To Be Determined**

**10.11 NOMINAL FEE BENEFIT.** A nominal fee benefit is offered to regular full-time employees who have met the eligibility criteria. After that period upon becoming a regular employee, the City will contribute a maximum of \$150 per pay period. Part-time employees receive the nominal fee benefit at \$75.00 per pay period.

**10.12 FINAL PAY CHECK.** An employee who resigns shall receive a final paycheck on the first regularly scheduled payday following the employee's effective date of resignation. Any employee who is dismissed shall receive a final paycheck by 5:00 p.m. on the fifth (5) day following dismissal. Day one begins the day of dismissal and includes Saturday and Sunday. In 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.

### **10.13 COMPENSATORY TIME.**

#### **NON-EXEMPT EMPLOYEES**

Non-exempt employees are not permitted to earn compensatory time. Any adjustment to an employee's normal working schedule must have supervisory approval and may not total more than forty (40) hours in a single week and seventy (70) hours in a payroll

period. All exceptions to this 40/70 rule require the prior approval of the Authorized staff.

**EXEMPT EMPLOYEES**

Compensatory time may be earned by exempt staff with the approval of the supervisor, when a client crisis or special circumstances demand. Use of compensatory time must be pre-approved by a Supervisor. Compensatory time will not be granted for completion or normal work responsibilities.

Compensatory time may be accrued up to Twenty (20) hours and may be used at the mutual convenience of the employee and the supervisor. The City applies a use-it or lose-it rule for Compensatory time.

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## **SECTION 11 LEAVE AND HOLIDAYS**

**11.1 AUTHORIZED LEAVE.** Leave is any authorized absence, with or without pay, during regularly scheduled work hours, which is approved by the department head. The department head is responsible for the maintenance and transmittal of leave records to the City Manager's office. Each department must submit a completed "Request for Leave" form to the City Manager's office for each leave taken by an employee.

**11.2 UNAUTHORIZED LEAVE.** Absence without approved leave is subject to disciplinary action and loss of pay.

**11.3 HOLIDAYS.** All full-time employees of the City are eligible for legal holidays as adopted annually by resolution.

- A. All part-time employees will receive holiday benefits at their scheduled hours and regular rate of pay. Employees on leave without pay status will not be paid for holiday time. Casual employees and temporary employees are not entitled to holiday pay.
- B. Employees required to work on a holiday will be compensated for the holiday at two and one-half (2-1/2) times their rate of pay for the holiday hours actually worked, not to exceed twelve (12) hours. The holiday will begin at 6:00 p.m. of the eve of the holiday and end at 6:00 a.m. the day following the holiday, unless otherwise specified.
- C. When a holiday occurs during an employee's use of annual leave, the day shall be counted as a holiday and not a day of annual leave.
- D. Holidays that fall on Saturday will be taken off on Friday of the same week. Holidays that fall on Sunday will be taken off on Monday.
- E. For planning and budgetary purposes, annual holidays will be announced by the City Manager at the beginning of each calendar year and provided to employees in writing.

### **11.4 PAID TIME OFF (PTO)**

- A. The City offers employees a PTO benefit in order to promote a flexible approach to paid time away from work. PTO is intended for use in the following circumstances; vacation, illness or disability, personal business, family responsibilities, appointments, emergencies or other situations where time off from work is needed.
- B. Annual leave will accrue on a pay period basis from the date of employment. Upon termination of employment, an employee shall be compensated for accrued annual hours.

- C. No annual leave will be granted or taken before it is accrued. When a legal holiday that would have been a regular work day for the employee occurs during annual leave, the leave for that day will be charged as a holiday.
- D. Hours worked in addition to the regularly scheduled work week (such as overtime) will not entitle an employee to additional annual leave hours.
- E. Paid time off (PTO) must be requested in advance of the time it is to be taken, except under approved instances. Leave request forms should be submitted to supervisor at least two weeks prior to leave date to allow for proper coverage within department and office. Leave request will be approved contingent upon appropriate staff coverage within the City offices.
- F. Paid time off (PTO) is accrued at the following rates, conditioned on successful completion of 6 months of employment:

<u>Regular Pay Period</u>	<u>Accrued Pay Period</u>	<u>Maximum</u>
<b><u>0-3 Years' Service</u></b>		
Salary	3.69 Hours	120 Hours
Hourly	0.053 Per hour worked	65 Hours
<b><u>4-7 Years' Service</u></b>		
Salary	4.61 Hours	145 Hours
Hourly	0.066 Per hour worked	78 Hours
<b><u>8-11 Years' Service</u></b>		
Salary	5.54 Hours	170 Hours
Hourly	0.079 Per hour worked	92 Hours
<b><u>12+ Years' Service</u></b>		
Salary	6.48 Hours	195 Hours
Hourly	0.092 Per hour worked	105 Hours

- G. A probationary employee shall accrue annual leave but shall not be able to use accrued annual leave hours until completion of the employee's probationary period. However, if a probationary employee resigns or is dismissed before completing the probationary period, the employee shall be compensated for annual leave hours accrued.

**11.5 SICK LEAVE.** Employees with PTO (see above policy) may be granted time off for absences from work because of personal or immediate family illness, injuries and scheduled doctor's appointments for treatment, examinations and evaluations, providing the employee has sufficient PTO hours accumulated. Because PTO is intended for sick time

and vacation, there is not a separate sick bank or accrual system. For absences of more than three (3) days, the City may require a doctor's certification upon return to work. Only when all accrued PTO has been exhausted, will leave without pay be considered for sick time.

**11.6 BEREAVEMENT LEAVE.** In the event of the death of an employee's immediate family member as defined in Section 2.17, the employee shall be entitled to bereavement leave with pay, not to exceed three (3) days.

**11.7 ADMINISTRATIVE LEAVE WITH PAY.** Leave with pay and travel pay may be authorized by the City Manager to allow employees to attend meetings when the employee's attendance is on the behalf of the City and in the best interest of the City. If the employee receives payment by an outside entity for their attendance, the City shall pay the employee their regular salary less the amount received by the employee from the outside entity. Administrative leave with pay may also be granted by the City Manager pending disciplinary action.

#### **11.8 OCCUPATIONAL INJURY TIME/WORKERS COMPENSATION**

**A. Worker's Compensation.**

Employees injured on the job or suffering from occupational diseases, as defined in the New Mexico Worker's Compensation Statute, shall receive Worker's Compensation benefits as prescribed by law.

**B. Pre-existing Injury.**

All newly hired employees shall be required to complete a certificate of pre-existing condition form for submittal to the State of New Mexico Superintendent of Insurance.

**C. Injury Leave Pay.**

An employee injured on the job may use accrued annual or sick leave for each regularly scheduled work day after the injury occurs for all such days not paid by Worker's Compensation. If the employee is on Worker's Compensation time for more than four weeks and is entitled to compensation for the first seven days and has used accrued annual or sick leave for the first seven days of injury, the Worker's Compensation payments received for all such days shall be paid directly to the City by the Worker's Compensation carrier. In that event, annual or sick leave used by the employee, in lieu of Worker's Compensation, shall be re-credited to the employee upon the City's receipt of the reimbursement by Worker's Compensation after the expiration of the statutory waiting period.

**D. Reporting Procedure.**

All work-related injuries requiring medical attention must be reported to the employee's department head as soon as possible. A *First Report of Injury Form* must be filed with the City Manager *immediately*. The report shall be signed by the

employee and the employee's department head. In addition, the department head's accident investigation report must be filed on the day following the day the department head receives the employee's first accident report. All accidents shall be reported, however minor.

**E. Medical Procedure.**

In the event that an employee of the City is injured at work or otherwise suffers a workers' compensation injury, the employer will not initially select or direct health care for the worker. The worker will initially select/direct their own medical treatment by selecting a health care provider (HCP). Pursuant to the rules of the New Mexico Worker's Compensation Administration, the City may request consultation with the City's designated health care provider. If involved in a workplace accident, Employees may be required undergo drug and alcohol testing. If it is believed that the use of drugs or alcohol played a part in a workplace accident, Worker's' Compensation benefits may be significantly reduced.

**F. Return to Work.**

An employee shall return to his former position or be reassigned to a comparable position if the employee's physician certifies that the employee can return to work within four (4) months.

**G. Modified Work Schedule.**

1. An employee returning from Worker's Compensation disability may return to light duty if an appropriate position is available and the employee's physician certifies that the employee can return to a modified work schedule.
2. Light duty is defined either as performing the same job as the employee held before the injury, or as performing the duties of another position for which the employee is qualified, for fewer than eight (8) hours each day or having reduced physical requirements for the full day or less than the full day.
3. The times and conditions of light duty will be determined by the employee's department head in conjunction with the City Manager.

**H. Re-employment of City Employees Injured on the Job.**

If the City is hiring a regular full-time employee who has received or is due to receive benefits pursuant to the Worker's Compensation Act and who was unable to return to work during the four (4) month period for which the City shall hold the employee's position open, may apply for their pre-injury job, a modified job similar to the pre-injury job, or any job that pays less than the pre-injury job, provided that the employee is qualified for the job. The City shall rehire the regular full-time employee provided that the employee's treating health care provider certifies that the employee is fit to carry out the job without significant risk of injury.

**11.9 CIVIC DUTY LEAVE.** An employee shall be given necessary time off with pay for the following:

- A. Jury Duty.** Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. Employees must submit a copy of their jury summons immediately upon receipt so that staffing coverage can be made. If excused by the court during a working day, the employee shall return to duty if at least four (4) hours of City duty can be served in that work day. If the employee does not return to work, the balance of the day will be charged to annual leave or leave without pay. The fee the employee receives for serving as a juror shall be turned in to the City. If they will be paid upon return to work, employees must submit their official court timesheet to their supervisor.
- B. Court Appearance Time.** When required by City duties or subpoenaed to appear before a court, public body or City Council for the purpose of testifying in regard to City matters.
- C. Voting.** For purposes of a national, state, or local election, an employee who is 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 polls. The employee's supervisor may specify the hours for the leave. This leave will not be granted to any employee whose work day 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.

#### **11.10 MILITARY LEAVE FOR RESERVE OR NATIONAL GUARD DUTIES**

- A. Military Leave for Reserve or National Guard Activities.** Unpaid military leave is granted for authorized reserve or National Guard activities for a maximum of fifteen (15) working days during a one-year period. Military leave must be requested twenty (20) days in advance. The employee must provide proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.
- B. Unpaid Military Leave.** Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days shall be placed on leave without pay. The employee taking military leave **will not** first be required to exhaust annual and sick leave.
- C. Employees Returning from Unpaid Military Leave.** Any employee who leaves a position they had held with the City, other than a temporary position, to enter the armed forces of the United States, National Guard or organized reserve, and who serves on active duty and is honorably discharged or released from active duty to complete their remaining service in a reserve component, and who is still qualified to perform the duties of the City position previously held, shall be re-employed in such position or to a position of like seniority, status, and pay. To be re-employed in such position, the employee must make application for reemployment within ninety (90)

days after being relieved from training or duty, or from hospitalization continuing after discharge for a period of not more than one (1) year.

1. The returning employee will be deemed to have accrued seniority and length of service rights as though employment with the City had been continuous since the date of initial employment.
2. The returning employee shall have all annual and sick leave accrued at the time of his departure for military service restored.

**11.11 LACK OF WORK & INCLEMENT WEATHER.** The City may at its discretion send an employee home when there is no work available as determined by the City Manager and may close offices and send employees home due to inclement weather declared by the Mayor or, in his absence, the City Manager. Employees who are sent home by the City due to inclement weather, or other circumstances not covered in this policy manual, shall not be charged with leave for all normal work hours missed. Hours paid pursuant to this provision shall not be counted as hours worked for the computation of overtime.

**11.12 LEAVE WITHOUT PAY.** The Governing Body may grant regular employees leave without pay (LWOP) for a period not to exceed three (3) months, when the Mayor/Council deems that such leave without pay is in the best interest of the City. Reasons for such a leave may include, but are not limited to: education, medical disability; pregnancy or birth or adoption of a child; and the need to care for a family member, including a newborn. Leave without pay is subject to the following conditions:

- A. Use of All Leave.** Prior to going on leave without pay, an employee requesting leave without pay shall use all available annual leave, except those going on military leave without pay. If the employee is seeking leave without pay for medical or pregnancy related reasons, the employee shall first use all available annual and sick leave.
- B. Physician's Certificate.** Leave without pay requested because of medical reasons or pregnancy related reasons must be accompanied by a physician's written statement indicating the estimated time of disability or recommended time for post-natal recovery. An employee returning to work from leave without pay due to medical or pregnancy related reasons must be released by the employee's physician to return to work. Proof of release must be presented to the employee's department head.
- C. Benefits at Employee's Expense.** An employee on leave without pay does not accrue leave, nor does the employee receive City benefits.

**11.13 DISASTER AND EMERGENCY SERVICES LEAVE.** Employees who serve as "volunteer emergency responders" are entitled to up to ten (10) days of unpaid time off each calendar year consistent with state and federal law (Volunteer Emergency Responder Job Protection Act) when they are absent from work in order to respond to an



"emergency or disaster" as declared by the Governor of New Mexico or the President of the United States.

For purposes of this leave, "volunteer emergency responder" means a person who is a member in good standing of a volunteer fire department, an emergency medical service, a search and rescue team, law enforcement agency, or who is enrolled by the state or a political subdivision of the state for response to an emergency or disaster.

Employees utilizing this leave must make reasonable efforts to notify the City of their service and should continue to make reasonable notification efforts over the course of any absence.

The City may request that an employee provide a written verification from the Office of Emergency Management or a state or local official managing an emergency or disaster, of the dates and time that the employee served as a volunteer emergency responder. For more information regarding this leave, please see the City Manager.

**11.14 DOMESTIC ABUSE OR SEXUAL VIOLENCE LEAVE (DASV).** In accordance with New Mexico state regulations, the City will grant up to 14 days of DASV unpaid leave in any calendar year to an employee who is a victim of domestic abuse or sexual violence, or who has a family or household member who has been a victim. Alternatively, the employee may use accrued PTO.

When possible, please provide the City with at least 48-hours advance notice of DASV leave.

Verification of the need for DASV leave may be requested. This verification may be a police report, court record, doctor's certification, copy of order of protection, or a written statement from an attorney.

**11.15 NURSING MOTHERS LEAVE.** The City abides by New Mexico state law that allows for "the use of a breast pump in the workplace" for all nursing mothers. The law states, in order to foster the ability of a nursing mother who is an employee to use a breast pump in the workplace, an employer, including the state and its political subdivisions, shall provide a space for using the breast pump that is:

- Clean and private;
- Near the employee's workspace; and
- Not a bathroom; and
- Provide the employee with flexible break times

The City is not liable for storage of breast milk or payment for additional breaks beyond the established break time the nursing mother may need to take. Payment is not required for any overtime acquired due to nursing mothers' need to use the breast pump outside of regularly scheduled break times.

## SECTION 12 CONDUCT/MISCELLANEOUS

- 12.1 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 them neat and clean. Other than a drink, no food shall be consumed at their desk. Lunch and break meals shall be reserved for the break room.
- 12.2 PERSONAL BUSINESS.** Personal business shall not be conducted during work hours while on City premises.
- 12.3 SAFETY.** The City is committed to having all work conducted in a safe manner. All safety precautions shall be followed.
- 12.4 CITY PROPERTY.** Employees shall not misuse 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 has been given. Employees shall not use City property, records or equipment for personal use.
- 12.5 DISCHARGE— RETURNING CITY PROPERTY.** At the time that an employee is voluntarily or involuntarily discharged, the employee shall return all City property to the appropriate department head, including but not limited to: any keys, vehicles, supplies, equipment, and uniforms that may be in the employee's possession.
- 12.6 CITY VEHICLES.** No City vehicles will be taken out of the City without permission of the City Manager and employees shall notify the City Manager of their destinations and itineraries. City vehicles may be used only for City business and commuting to and from work, if required for a work-related purpose. City vehicles shall not be used for personal business, except as is incidental in commuting as determined by the employee's department head.
- 12.7 DRESS AND APPEARANCE.** Employees are constantly in the public eye and it is important that the employees present the best possible image to the public. Employees should always be clean and neatly dressed in clothing suitable for their work assignments. The city observes a business casual work environment. If an employee arrives at work and is not dressed appropriately or does not have sufficient hygiene, they will be sent home, without pay.
- 12.8 CONTENTS OF EMPLOYEE FILES.** Subsequent to hiring, two separate files shall be prepared and maintained for each employee: a personnel file and an evaluation file. These records shall be kept in the City Manager's office. It is the responsibility of each department head to ensure that the records of the employees are completed and up-to-date.

**A. Personnel File.** The personnel file shall contain the following records:

1. The original application forms.
2. The originating personnel action showing occupation, date of beginning employment and salary.
3. Records or certificates of educational training or orientation achievement completion
4. Application for retirement program.
5. Other related actions/forms concerning payroll deductions, insurance payment records, etc.
6. Exit interview.

**B. Evaluation File.** The evaluation file shall contain the following records:

1. Medical examination form.
2. Copies of personnel action forms.
3. Copies of all performance evaluations.
4. 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.
5. Records of disciplinary actions such as reprimand, suspension, demotion, or termination.

**12.9 MAINTENANCE OF EMPLOYEE FILES.** Such records shall be considered confidential and not available for public inspection. Physical access to an employee's records shall be in the control of the City Manager. An employee's records may be reviewed by the employee, the employee's department head, the department head of the department to which an employee may be transferred, and the Mayor/Council. If an employee wishes someone other than those authorized to have access to the employee's file, they must request so in writing.

**12.10 ADDITIONAL RULES.** Employees shall obey all additional rules, directives and requests stated verbally or in writing by their supervisors. Employees are generally required to follow all standards, rules, procedures and policies that are similar or normally expected in the workplace.

#### **12.11 ALLOWANCE EXPENDITURES & TRAVEL EXPENSE**

1. All travel must be approved by the City Manager or Treasurer before travel is initiated.
2. A PO must be issued stating dates, times, location, and personnel involved before travel is initiated.
3. Any registration fees and/or hotel reservations will be billed against the PO or be paid with City issued credit card.

4. Overnight travel requiring overnight lodging rates are as follows unless the municipal league has made specific lodging requirements:
  - In state areas - \$65.00
  - In state special areas (Santa Fe) - \$75.00
  - Out of state areas - \$75.00
  - Out of state special areas (NYC, Washington, DC, Chicago, LA, San Francisco, San Diego, Dallas, and Philadelphia) - \$95.00
5. Reimbursement for mileage will be reimbursed at current state rates for any travel to destinations greater than 35 miles one way.
6. Meals will be reimbursed as follows:
  - Meeting of less than 2 hours – none
  - Meeting more than 2 hours but less than 6 hours - \$8.00
  - Meeting more than 6 hours but less than 12 - \$16.00
7. Expenses will not be reimbursed more than 30 days after they are incurred or if appropriate receipts are not produced.
8. All local travel expenditures by City personnel must be supported by detailed expense reports. These reports should include point of origin, destination and total mileage for each trip. Parking charges and tolls will be reimbursed when receipts are submitted. All travel outside the State must be cleared with the City Manager, Governing Body of the City in advance. An expense account must be submitted monthly itemizing expenditures and appending receipts. Expenses will not be reimbursed more than thirty (30) days after they are incurred.

**12.12 CONFERENCES AND SEMINARS.** Attendance at conferences, workshops or other training sessions aimed at improving job performance is encouraged and can be scheduled during work time provided that approval by the Authorized staff, the City Manager and the Governing Body, has been received prior to the activity.

- A. Out of State travel must be approved sixty (60) days in advance by the appropriate funding sources.

**12.13 FRAUD.** Background-The Municipal fraud policy is established to facilitate the development of controls that will aid in the detection and prevention of fraud against the City. It is the intent of the City to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and the conduct of investigations.

Scope-This policy applies to any irregularity, or suspected irregularity, involving employees or governing body, as well as shareholders, consultants, vendors, contractors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship with the City (also called the City).

Any investigative activity required will be conducted without regard to the suspected

wrongdoer's length of service, position/title, or relationship to the City.

Policy-Management is responsible for the detection and prevention of fraud, misappropriations, and other irregularities. Fraud is defined as the intentional false representation or concealment of a material fact for the purpose of inducing another to act upon it to his injury. Each member of the management team will be familiar with the types of improprieties that might occur within his area of responsibility and be alert for any indication of irregularity.

Any irregularity that is detected or suspected must be reported immediately to the City Manager, who coordinates all investigations with the Legal Department and other affected areas, both internal and external.

Actions Constituting Fraud-the terms *defalcation, misappropriation, and other fiscal irregularities* refer to, but are not limited to:

- Any dishonest or fraudulent act
- Misappropriation of funds, securities, supplies, or other assets
- Impropriety in the handling or reporting of money or financial transactions
- Profiteering as a result of insider knowledge of company activities
- Disclosing confidential and proprietary information to outside parties
- Disclosing to other persons securities activities engaged in or contemplated by the company
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to the City; Exception: Gifts less than \$50 in value
- Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment
- Any similar or related irregularity

Other Irregularities-Irregularities concerning an employee and governing body's moral, ethical, or behavioral conduct should be resolved by departmental management and the City Manager.

If there is any question as to whether an action constitutes fraud, contact the City Manager for guidance.

Investigation Responsibilities-The City Manager has the primary responsibility for the investigation of all suspected fraudulent acts as defined in the policy. With the exception of cases where the City Manager is suspected of wrong doing. In such cases the Mayor will assume the duties assigned to the Manager. If the investigation substantiates that fraudulent activities have occurred, the City Manager will issue reports to appropriate designated personnel and, if appropriate, to the Governing Body.

Decisions to prosecute or refer the examination results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with legal counsel and senior management, as will final decisions on disposition of the case.

Confidentiality-The City Manager treats all information received confidentially. Any employee who suspects dishonest or fraudulent activity will notify the City Manager immediately and *should not attempt to personally conduct investigations or interviews/interrogations* related to any suspected fraudulent act (see Reporting Procedures section below).

Investigation results *will not be disclosed or discussed* with anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct and to protect the City from potential civil liability.

#### **12.14 AUTHORIZATION FOR INVESTIGATING SUSPICION OF FRAUD.**

Members of the Investigation Unit will have:

Free and unrestricted access to all City records and premises, whether owned or rented, the authority to examine, copy, and/or remove all or any portion of the contents of files, desks, cabinets, and other storage facilities on the premises without prior knowledge or consent of any individual who might use or have custody of any such items or facilities when it is within the scope of their investigation

Reporting Procedures-Great care must be taken in the investigation of suspected improprieties or irregularities so as to avoid mistaken accusations or alerting suspected individuals that an investigation is under way.

An employee who discovers or suspects fraudulent activity will *contact the City Manager immediately*. All inquiries concerning the activity under investigation from the suspected individual, his attorney or representative, or any other inquirer should be directed to the Investigations Unit or the Legal Department. No information concerning the status of an investigation will be given out. The proper response to any inquiries is: "I am not at liberty to discuss this matter." *Under no circumstances* should any reference be made to "the allegation," "the crime," "the fraud," "the forgery," "the misappropriation," or any other specific reference.

The reporting individual should be informed of the following:

- A. Do not contact the suspected individual in an effort to determine facts or demand restitution.
- B. Do not discuss the case, facts, suspicions, or allegations with *anyone* unless specifically asked to do so by the Legal Department or City Manager.

Acting in Good Faith-Anyone reporting any irregularity that is detected or suspected must be acting in good faith and have reasonable grounds for believing the information

provided. Allegations made maliciously or with knowledge of their falsity will not be tolerated. People making such allegations may be subject to institutional disciplinary action and/or legal actions by the individuals accused of fraudulent conduct.

Whistleblower Protection-Employees of the City may not retaliate against a whistleblower for reporting an activity which that person believes to be fraudulent or dishonest with the intent or effect of adversely affecting the terms or conditions of employment (including, but not limited to, threats of physical harm, dismissal, transfer to an undesirable job assignment, demotion, suspension, or impact on salary or wages). A whistleblower is defined as an employee who informs a manager, supervisor, or City Manager about an activity which that person believes to be fraudulent or dishonest.

Whistleblowers who believe that they have been retaliated against may file a written complaint with the City Manager. Any complaint of retaliation will be promptly investigated by the City Manager and appropriate remedial measures will be taken if allegations of retaliation are proven. This protection against retaliation is not intended to prohibit managers from taking action, including disciplinary action, in the usual scope of their duties and on the basis of valid performance-related factors. Please see the Whistleblower Protection policy in this Personnel Policy Manual.

Termination-If an investigation results in a recommendation to terminate an individual or take action against a municipal officer, the recommendation will be reviewed for approval by the designated representatives from Human Resources and the Legal Department and, if necessary, by outside counsel, before any such action is taken. Legal Counsel does not have the authority to terminate an employee. The decision to terminate an employee is made by the employee's management. Should the Legal Counsel believe the management decision inappropriate for the facts presented, the facts will be presented to executive level management for a decision.

Administration-The City Manager is responsible for the administration, revision, interpretation, and application of this policy. The policy will be reviewed annually and revised as needed.

**12.15 SOCIAL MEDIA.** This policy provides guidance for its members and the members of all boards, employees, committees, commissions and volunteers use of social media, which should be broadly understood for purposes of this policy to include blogs, wikis, microblogs, message boards, chat rooms, electronic newsletters, online forums, social networking sites, and other sites and services that permit users to share information with others in a contemporaneous manner.

Procedures-The following principles apply to professional use of social media on behalf of the City as well as personal use of social media when referencing the City.

Members and the members of all boards, employees, committees, commissions and volunteers need to know and adhere to the City Code of Ethics, Personnel Policy

Manual, and other company policies when using social media in reference to the City. Members and the members of all boards, employees, committees, commissions and volunteers should be aware of the effect their actions may have on their images, as well as the City image. The information that the individual post or publish may be public information for a long time.

Members and the members of all boards, employees, committees, commissions and volunteers should be aware that the City may observe content and information made available by said individual through social media. The individual should use their best judgment in posting material that is neither inappropriate nor harmful to the City, members and the members of all boards, employees, committees, commissions or customers.

Although not an exclusive list, some specific examples of prohibited social media conduct include posting commentary, content, or images that are defamatory, pornographic, proprietary, harassing, libelous, or that can create a hostile work environment.

Members and the members of all boards, employees, committees, commissions and volunteers are not to publish, post or release any information that is considered confidential or not public. If there are questions about what is considered confidential, individuals should check with the administration for the City.

Social media networks, blogs and other types of online content sometimes generate press and media attention or legal questions. The individual should refer these inquiries to authorized spokespersons for the City.

If the individual encounter a situation while using social media that threatens to become antagonistic, said individual should disengage from the dialogue in a polite manner and seek the advice of the administration for the City.

Individuals should get appropriate permission before you refer to or post images of current or former members and the members of all boards, employees, committees, commissions, volunteers, vendors or suppliers. Additionally, the individual should get appropriate permission to use a third party's copyrights, copyrighted material, trademarks, service marks or other intellectual property.

Social media use shouldn't interfere with individual's responsibilities at the City. The City computer systems are to be used for business purposes only. When using the City's computer systems, use of social media for business purposes is allowed (ex: Facebook, Twitter, [www.riocommunities.net](http://www.riocommunities.net) blogs and LinkedIn), but personal use of social media networks or personal blogging of online content is discouraged and could result in disciplinary action.



Subject to applicable law, after-hours online activity that violates the City Code of Ethics or any other company policy may subject the individual to disciplinary action or termination.

If the individual publishes content after-hours that involves work or subjects associated with the City, a disclaimer should be used, such as this: "The postings on this site are my own and may not represent the City of Rio Communities' positions, strategies or opinions."

It is highly recommended that the individual keep the City related social media accounts separate from personal accounts, if practical.

The City asks that employees report problems/issues to their supervisor, the City Manager and/or the Personnel Board, instead of posting them publically.

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CITY OF RIO COMMUNITIES

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**RECEIPT & ACKNOWLEDGMENT OF PERSONNEL POLICY MANUAL**

This Personnel Policy Manual is an important document which is intended to help employees become acquainted with the city of Rio Communities’ (the City) policies and procedures. This Handbook is intended to serve as a guide; it is not the final word in all cases. Individual circumstances may call for individual attention.

Please read the following statements and sign below to indicate your receipt and acknowledgment of the company Personnel Policy Manual.

1. I understand that this Personnel Policy Manual replaces all previous editions or versions of any Personnel Policy Manual, or any employee policies, written or verbal.
2. I understand that during my probationary period my employment is at-will and may be terminated by me or the City at any time, for any reason, with or without notice, and with or without procedural formality or engaging in any progressive discipline.
3. I understand that the policies and procedures in the Personnel Policy Manual do not constitute a contract, and that the company, at its sole discretion may vary from the policies in any of its manuals/handbooks and may change or revoke any of those policies at any time, for any reason.
4. I understand that nothing in this handbook is intended to infringe upon employee rights under Section Seven (7) of the National Labor Relations Act (NLRA).
5. I understand that my signature below indicates that I have read and understand the above statements and have received a copy of the City’s Personnel Policy Manual. I understand that I am required to abide by the policies in the Personnel Policy Manual.

\_\_\_\_\_  
Employee’s Printed Name

\_\_\_\_\_  
Employee’s Signature

\_\_\_\_\_  
Date

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