

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 9 Ordinance/Resolution# 13-108

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of January 22, 2013  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION AMENDING THE PERSONNEL MANUAL.

**PURPOSE(S) OF ACTION:**

Revisions for clarification and updates to the City's personnel manual.

<b>COUNCIL DISTRICT:</b> N/A		
<b><u>Drafter/Staff Contact:</u></b> Andre Moquin	<b><u>Department/Section:</u></b> Human Resources	<b><u>Phone:</u></b> 528-3401
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

Section 22-33 of LCMCF stipulates that Council shall adopt by resolution a personnel manual consisting of personnel rules, regulations and procedures.

City staff has reviewed this manual and recommends revisions for clarification purposes as well as changes and updates of policy based on best practices and other necessary adjustments. Legislative format and final versions of the proposed changes are found in Exhibit "A" and Exhibit "B" respectfully.

The last revisions of the existing personnel manual were approved by Council in August of 2010. The majority of changes outlined are being recommended for clarification and consistency purposes. These include changes to Section 208 Administrative Hiring Procedures, enabling a veteran's preference, Section 209 College Student Hiring Procedures, adding additional internship opportunities, Section 505 Annual Leave, allotting 80 hours of leave for first year employees and Section 1102 Employee Grievances, allowing for changes related to expanded roles of the assistant city manager positions.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Personnel Manual Amendments.
3. Attachment "A", Legislative Format.
4. Attachment "B", Summary of changes.

**SOURCE OF FUNDING:**

Is this action already budgeted?  N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the ____ Fund.
Does this action create any revenue?  N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: in the amount of \$ _____ for FY__.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the changes to the personnel manual.
2. Vote "No"; this will disapprove the changes to the personnel manual.
3. Vote to "Amend"; and provide changes to the resolution.
4. Vote to "Table"; and provide further direction to staff.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

**RESOLUTION NO. 13-108****A RESOLUTION AMENDING THE PERSONNEL MANUAL.**

The City Council is informed that:

**WHEREAS**, the Personnel Manual provides rules, regulations and procedures on personnel matters for City employees; and

**WHEREAS**, the Personnel Manual requires periodic revisions for clarification and updates; and

**WHEREAS**, City staff has reviewed the Personnel Manual and recommends revisions, changes, and additions of policy; and

**WHEREAS**, since the adoption of the existing Personnel Manual, August 2010, certain sections require revisions for clarification and consistency purposes, based on best practices, and in accordance with state and federal regulations.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the amendments to the 2010 Personnel Manual, attached herein as Exhibit "A", are hereby approved.

**(II)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

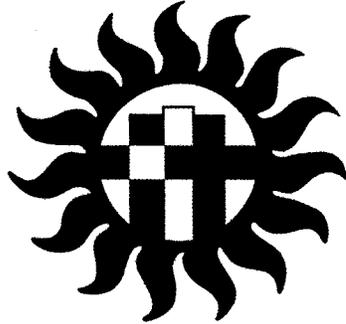
Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

*Anthony J. (Ato) Connolly*  
\_\_\_\_\_  
City Attorney

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____



# **City of Las Cruces**

**2013**

# **Personnel Manual**

Adopted January 22, 2013

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## SECTION 100 INTRODUCTION

The City of Las Cruces' Personnel Ordinance establishes the framework for the administration of the City's personnel system. The Personnel Ordinance was adopted as Chapter 22 of the Las Cruces Municipal Code by the Las Cruces City Council in April, 1999.

The following policies and procedures were developed to interpret and implement this ordinance.

This Personnel Manual establishes the policies and procedures that will be followed by the City of Las Cruces in personnel administration for non-represented employees. Terms and conditions of employment for union represented employees are contained in various union contracts.

The purpose of this Manual is to establish consistent basic personnel policies and practices governing relations between the City of Las Cruces and its employees. This Manual does not constitute an employment contract, and may be amended by the Human Resources Department, as necessary, with the approval of the City Manager and City Council.

The policies and procedures contained herein shall replace and supersede those contained in the Manual of Personnel Policies dated August 3, 2010.

This Manual of Personnel Policies should be interpreted as a whole rather than interpreting individual sections or sentences in isolation and out of context. Official interpretation of these policies and procedures shall be made by the Human Resources Department.

Individual department personnel policies, rules, regulations, and procedures can be promulgated with the concurrence of the Human Resources Director and the approval of the City Manager to ensure that they are not in conflict with the substance of the Personnel Ordinance and this Personnel Manual.

The City Manager, pursuant to New Mexico law and the City Charter, has final authority to approve or disapprove personnel actions of all City employees and to act in accord with City Council policies, consistent with provisions of the City Personnel Ordinance.

206. APPLICATION REVIEW AND REFERRAL The intent of the application review process is to maximize reliability, objectivity, and validity through a practical and job-related assessment of whether the applicant meets the minimum qualifications required for the position.

1. Selection Method. The hiring department, in consultation with the Human Resources Department, shall be responsible for determining valid selection methods to obtain the most qualified candidates for each vacancy.
2. Security. Selection material shall be confidential. Every precaution shall be taken by all persons participating in the development and maintenance of selection materials to maintain the highest level of integrity and security. Once selection processes are completed all materials, including copies and electronic files, must be sent to the Human Resources Department, unless approved in writing by the Human Resources Director. Failure to appropriately secure selection materials may lead to the rejection of sections, or an entire selection process.
3. Nepotism Prohibited. Any supervisor or manager who is in a position to recommend employment or promotion of a relative (by blood, marriage or domestic partnership) shall advise his/her immediate supervisor, and withdraw from the selection process.

Any employee asked to participate in a selection process where a relative (by blood, marriage or domestic partnership) shall immediately inform the hiring supervisor of their conflict of interest and withdraw from the selection process.

4. Preselection Prohibited. No City employee will promise job appointments to any person. All inquiries regarding vacancies should be referred to the Human Resources Department.
5. Education and Experience Substitutions  
All internal and external candidates seeking employment must meet the minimum qualifications outlined in the relevant job announcement. Should a job posting yield an insufficient pool of qualified candidates, the Human Resources Department in collaboration with the hiring department/section will determine whether to extend the posting, re-post the position or review applications for substitutions for degree requirements, education and/or experience.

A. Substitution of Experience for Education

If an applicant does not possess the required level of education one (1) year of relevant experience may be substituted for each year of required education. Relevant experience is experience that has equipped the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled.

If an applicant possesses a non-related degree, consideration may be given for relevant work experience.

For example, if a position requires a Bachelor's degree in Public Administration and an applicant has no college credits, four years of professional-level accounting experience may substitute for a Bachelor's degree. If a position requires a Master's degree and an applicant has neither a Bachelor's degree or Master's degree, six (6) years of relevant

experience may be substituted for the required education.

B. Substitution of Education for Experience.

Unless otherwise specified, one (1) year of relevant education at the undergraduate level may be substituted for one year of required experience. Relevant education is education that has equipped the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled. Generally this substitution will be limited to one half of the required experience.

For example, if a position requires two years of experience as an Accounting Technician, 30 credit hours of relevant study toward a Bachelor's degree may be substituted for one year of experience. Credit for one year of experience will be given for each year of (18 credit hours) education above the Bachelor degree level. For example, if a position requires six (6) years of experience, a Master's degree may be substituted for two (2) of the required experience. Relevant courses may be substituted for experience, provided an applicant submits a statement identifying the course for which they wish to be credited.

C. Level of Experience

Only related professional level experience will be credited for professional positions. Professional level experience involves work that is intellectual and varied in nature, requires advanced knowledge and education, and the exercise of discretion and judgment.

Non-professional level experience may not be substituted for the required professional level experience. In certain instances, non-professional experience may be substituted for educational requirements when the applicant pool does not contain applicants who meet the minimum requirements of the position.

Supervisory level experience will be credited if the experience involves supervision of two or more full-time positions. Supervisory experience involves work where one has the authority to conduct performance evaluations, approve requests for leave, and make recommendations regarding hiring, termination or other decisions affecting the employment status of others.

D. Non-Allowable Substitutions

For professions that require a college degree in order to obtain a license or certification to practice within the discipline, experience cannot serve as a substitute for education.

E. Substitutions for Training

Substitution of education or experience requirements may be made utilizing valid, current and applicable trainings or certifications. The determination of available substitutions shall be made by the Human Resources Department in collaboration with the hiring department/section.

6. Appeal of Disqualification

Applicants may appeal their disqualification to the Director of Human Resources.

7. Interviews. The hiring department/section will arrange interviews and arrange a time and accessible location for the interview to take place.
- A. Interviews shall include a weighted scoring mechanism developed to provide a standardized way of rating answers to the interview questions.
  - B. Applicants shall not be asked about items not relevant to the ability to do the job.
  - C. Applicants invited for interviews shall be notified that they can request accommodations for a disability for the testing/interview processes and told how to make that request.
  - D. The following paragraph shall be added to any correspondence scheduling an interview or test:

"It is the policy of the City of Las Cruces to provide reasonable accommodations for qualified persons with disabilities who are employees or applicants for employment. If you need assistance or accommodation to interview and/or test because of a disability, please contact the Human Resources Department at 575-528-3100/Voice or 528-3169/TTY.
  - E. If interviews are scheduled by telephone, the applicant shall be informed about the availability of reasonable accommodation in the interview and/or testing process.
  - F. The contact person for the accommodation request should NOT be a member of the search committee or in a decision-making position in the search process.
  - G. When a request for accommodation is received from an applicant, the contact person for the accommodation request shall consult with the Human Resources Department for assistance.
  - H. The Human Resources representative shall discuss the necessary documentation of disability, the requested accommodation and possible alternatives with the applicant. The ADA Coordinator is available to assist the Human Resources representative.
  - I. The Human Resources representative shall make a decision regarding the request, and if approved, take the necessary steps to insure the accommodation is provided. If the request is not approved, the Human Resources representative shall inform the applicant of the reason for denial of the requested accommodation, in writing, within 3 working days of the decision.

Information about an applicant's disability is CONFIDENTIAL and may not be shared with search committee members or decision-makers in the hiring process.
  - J. The hiring department/section is responsible for conducting appropriate reference and employment verification.

208. ADMINISTRATIVE HIRING PROCEDURES.

## 1. SECTION/DEPARTMENT:

When a section has a staffing requirement, notification will be prepared by the hiring Section for Department Director approval and sent to the Human Resources Department. The notification should include essential information required in the advertisement, including:

- A. Position title.
- B. Desired start date.
- C. Department and division.
- D. Job term and type.
- E. Position control information.
- F. Where and how long ads are to be published and funding source if advertisement is requested beyond the local market.
- G. Funding source.
- H. If the position will require a test to be administered, the requesting Section should specify the types of tests and special instructions needed for the administration of the tests.
- I. Other information as requested by the Human Resources Department.

## 2. HUMAN RESOURCES DEPARTMENT:

- A. If job description needs to be updated, HR staff will coordinate with the Section Manager/Administrator to have it updated prior to job posting.
- B. If job description has significant changes that increase or decrease job value, a new position evaluation will be done. HR will assign a new salary grade for the position.
- C. Job advertisement is posted by HR on the City web site, and forwarded to local and national advertising agencies requested by the Section.
- D. HR staff responds to requests for additional information from the public regarding job ads.
- E. HR staff may screen all applications, including job required credentials such as diplomas, licenses, certifications, etc.
- F. Following the closing of the job advertisement, HR staff;
  - 1. Reviews selection processes and methods.
  - 2. May rate the applications, or forwards applications to Section for the screening, interview and selection process.
  - 3. May coordinate special tests such as written exams, or other job related assessments.

## 3 SECTION/DEPARTMENT

Section Administrators/Managers and Department Directors are accountable for insuring that any part of the hiring process they choose to do is accomplished following legally prescribed hiring processes.

- A. Section Administrators/Managers, in collaboration with Human Resources, will determine the method for screening applications and set

- the date, location, and time for interviews.
- B. Should all things be equal at the conclusion of a selection process, a qualifying veteran will be offered the position.
  - C. The Department or Section completes reference checks on candidates prior to recommending the hire.
  - D. Once the selection process is complete, the Department submits the Personnel Action Notice (PAN) along with the application and all applicant materials to the Human Resources Department for review and recommendation to the Office of the City Manager.
  - E. Section Administrators are responsible for notifying candidates interviewed but not selected following notification that the recommended hire has been approved.
  - F. Section Administrators/Managers are responsible for providing Human Resources with all documentation, including rating sheets, interview questions asked and weighted answer sheet, test results, etc.
4. HUMAN RESOURCES DEPARTMENT:
- A. Contacts the section to set starting date and informs the new employee of date, time and place to report to work.
  - B. Sends out official letter of employment offer.
  - C. Schedules new employees for post offer testing.
  - D. Conducts criminal background checks and credit checks as applicable.
  - E. In-processes selected new employees for employment, including;
    - 1) Obtains copies of the new employee's relevant certifications, licenses, etc.
    - 2) Completes I-9 procedures.
    - 3) Processes post-offer testing results and informing department of results.
    - 4) Provides new employee orientation.
5. When directed by the City Manager, a Hiring Review Committee will be assembled and consist of the Human Resources Director, Budget Manager and one other appointee named by the City Manager. The Hiring Review Committee will convene and review all hiring requests and recommend approval/disapproval of each vacancy. The Department Director may appeal a disapproval by the Hiring Review Committee to the City Manager.

209. College Student Hiring Procedure

College students (New Mexico State University, Dona Ana Branch Community College, or other accredited college) may be hired on a full-time or part-time basis as needed by City departments.

Student placement will be mutually beneficial in that the students will meet organizational job requirements while receiving financial assistance and experience.

The number of student employees will vary according to City needs and may be adjusted at any time provided sufficient funds are available within the requesting section(s) budgets.

All college students who, during at least eight (8) months in any calendar year, or during the period of employment, is enrolled at an educational institutions whose academic credits would be accepted by a state educational institution and carrying at least 12 credit hours or is enrolled in an educational institution's graduate studies program and carrying at least 9 credit hours shall be exempt from membership in PERA.

## 1. Definitions:

- A. *Cooperative Education (Co-Op) Student* - A college student obtaining experienced based-learning through paid employment in curriculum-related work assignments. The work assignments, and will meet department objectives. Co-op or Intern employment will not exceed a two semester maximum duration unless specifically approved by the City Manager.
- B. *Co-Op Student Performance Appraisal* - A performance appraisal form to be completed by a co-op student's immediate supervisor once each semester which assesses the student's performance in personal and professional growth.
- C. *Work Experience Intern* - A student assigned to a curriculum-related work experience with the City, which may be paid or unpaid. Internships are one-time work assignments which may be completed for academic credit and are usually one semester in duration.
- D. *Research Intern* - A student working on a project may volunteer their time to the City when the project is mutually beneficial. This class of student may be selected by the department under the spirit and intent of City policy.
- E. *Special Grant Student* - A student assigned to a curriculum-related program whose wages are totally or partially paid by government or university funds (example: NMSU work-study program).

## 2. Procedure:

## A. Classification and Compensation

- 1. A student wage schedule will be established by the City Manager. Student co-op wages will be established according to class standing (e.g., a sophomore will be paid less than a junior).
- 2. Department Directors shall determine the number and curriculum specialty of students desired for each upcoming budget cycle. Funding can be included in the part-time, temporary position requests; however, the function of each student must be justified and approved by the Office of the City Manager

3. Interns being paid to work on City-generated projects or activities will be paid according to a City Manager approved student wage schedule. Interns will not be paid a wage for performing research that would not benefit the City and is for college credit only

B. Recruitment and Selection:

1. All requests for student candidates will be submitted to the Human Resources Department who is responsible for providing a list of student co-op or temporary position openings from NMSU, DABCC, or other accredited colleges.
2. Student candidates who are referred by the Human Resources Department will be interviewed by the requesting Section and given equal opportunity for placement without regard to any non-job related factor.
3. Vacant student positions must be evaluated to ensure that the position is warranted.
4. The Personnel Action Notice (PAN) and any special documentation (student agreement, work-study agreement) required for the position must be submitted to the Human Resources Department for approval.
5. The Human Resources Department will in-process the student and notify the requesting department/section to establish a starting work date. A co-op student must enroll with the college's Cooperative Education Program every semester, if applicable. The college's Cooperative Education Program will confirm enrollment each semester.
6. Students will not have grievance rights and may be terminated when there is lack of suitable work, they are determined unsuitable by their immediate supervisor or at the end of their student status. The appropriate Personnel Action Notice (PAN) with an explanation shall be processed and submitted to the Human Resources Department.

210. New Hire/Rehire Probation

1. A twelve (12) month trial period during which a determination is made as to whether or not an employee is suitable for regular employment.
2. A new employee serves "at will" and can be dismissed with or without cause by the City for any legal reason.
3. Prior to the completion of the probationary period (12 months), management shall decide whether or not to recommend continued employment.
4. If a decision is made to recommend the continuation of employment, a Personnel Action Notice shall be prepared changing the incumbent from probationary status to regular status. The probationary period ends once the recommendation has been approved.
5. The department or section making a recommendation for the completion of probation shall prepare and submit all required documentation the Human Resources Department during the eleventh month of the probationary period.
6. If the decision is to discontinue employment, the incumbent shall be separated.
7. An employee's probationary period may be extended by the City Manager's written authorization.

317. CATEGORIES OF EMPLOYMENT.

1. Full-Time Regular. A City employee budgeted to work 35 or more hours per seven day period, has completed the probationary period, and is entitled to all employee benefits.
2. Full-Time Temporary. City employee budgeted to work 35 or more hours per seven day period on a short-term appointment of less than 9 months, are given a definite termination date, and are not eligible for employee benefits.
3. Probationary. A full-time or part-time employee who has not yet completed the 12-month trial period for regular of employment. The probationary period is the final test in the selection process. Employees during the probationary period have no rights to the grievance and appeal procedures outlined in Section 1100 of these policies, and may be dismissed with or without cause for any legal reason.
4. Part-Time Regular. A City employee budgeted to work less than 35 hours/week in a regular, budgeted job and has completed the probationary period. Part-time regular employees who are budgeted to work 20 or more hours per seven day period are eligible for pro rated leave benefits.
5. Part-Time Temporary. A City employee budgeted to work less than 35 hours per seven day period on a short-term appointment of less than 9 months, are given a definite termination date, and are not eligible for employee benefits.
6. Seasonal. A full-time or part-time employee hired to provide services during a particular season in accordance with FLSA, whose employment ends with the season. These employees are not eligible for employee benefits. In no event shall a seasonal employee work more than seven (7) consecutive months.
7. Contract Employee A person who contracts with the City to perform a certain task for a set fee following a competitive process. A contract employee is not a Regular City employee. All duties, conditions, appointment duration, salary, benefits, and other terms shall be specified by contract. The City Manager is a contract employee.
8. Emergency Employee. A full-time or part-time person hired to ensure continuity of municipal services during an emergency. Emergency appointments need only approval by the City Manager and are not eligible for any City employee benefits. Emergency employee's shall not exceed three (3) months in duration, unless approved in writing by the City Manager.
9. Acting Employee. An incumbent appointed to temporarily assume the duties of a vacant position pending a regular competitive appointment or when a substantial increase in duties and responsibilities is delegated to the employee. An incumbent normally assumes the acting appointment in addition to performance of his/her usual duties. However, an employee may be assigned by the City Manager to perform duties in a position not related to their regular duties (see Section 418 for pay practices).
10. Grant-Funded Employee. A full-time or part-time employee hired and

compensated under a grant obtained by the City for a specific program. If provided for in the grant, these employees are eligible for benefits based on budgeted hours. Grant funded employees shall not have access to the grievance procedures when the adverse action is a result of a change in the grant provisions.

11. Special Staff (Deputy Chief – Term Appointment): Individuals, selected and recommended by their respective Chief to serve at the will and pleasure of the Chief in the capacity of Deputy Chief and Area Commander.
- A. The respective Chief shall submit a PAN and justification memo for City Manager consideration.
  - B. The City Manager may approve or reject the recommendation.
  - C. Upon termination of appointment,
    - 1) The employee shall revert to their previous position including changes in pay that may have occurred during their term of appointment.
    - 2) In cases where the appointee was not a current employee, their employment may be terminated.

These employees are eligible for all employee benefits but may not grieve the termination of their appointment or reduction of salary resulting from the termination of appointment.

12. Independent Contractors. An individual who meets the IRS test for an independent contractor who is not a City employee. These individuals are not eligible for any employee benefits and perform a specific task for a set fee without supervision by the City.

Procedures:

- A. Prior to securing the services of an individual the requesting Department/Section will coordinate with the Human Resources Department to make the determination of whether the contemplated arrangement meets the test for an independent contractor. If the funding source is a grant, the grant requirements will apply.
- B. If the determination is made that the arrangements meets the test for an independent contractor, the Department/Section will review the procurement code to ensure compliance and prepare an Independent Contractor Agreement using the City's template. If the determination is made that the test cannot be met, the Human Resources Department will assist the section with the appropriate hiring category under the personnel manual.
- C. The signed agreement is then sent to the Purchasing Manager for review and execution of the completed agreement.
- D. Once signed, Purchasing will issue the PO, send a copy of the executed agreement to the contractor and to the Section, and the original is sent to the City Clerk.

406. PAY RATE ADJUSTMENTS.

1. Conditional Hires. If, after several recruitment attempts or for positions that have been determined as being difficult to fill, no fully qualified candidate is identified, the hiring department may recommend a salary offer 5% lower than the entry level of the new pay range on a conditional basis of acceptable performance during the probationary period or thru the acquisition of appropriate licensures, certificates or experience. At the end of the probationary period, if the employee is performing the full scope of duties and responsibilities for the position, a pay rate adjustment shall be made to place the employee at the entry level for the position.
2. Transfers (Also Defined as Reassignment). When an employee is transferred (reassigned) from one position to another within the same pay grade he/she shall continue to receive the same base rate
3. Promotions. Placement of an employee within a higher grade than the employee's current assigned grade.

The employee will receive the higher of:

- A. Two and one half (2.5) percent when the new position is one salary grade higher, or
  - B. Five (5) percent when the new position is two (2) salary grades higher, or
  - C. Seven and one half (7.5) percent when the new position is three (3) salary grades higher, or
  - D. Ten (10) percent when the new position is four (4) or more salary grades higher, or
  - E. Twelve (12) percent if moving from a non-exempt to a higher exempt position, or
  - F. Two and one half (2.5) percent above the minimum of the new pay grade.
4. Conditional Promotions.

If no qualified candidate is identified in multiple recruitment efforts or for positions that have been determined as difficult to fill, the hiring department may offer an internal candidate a conditional promotional opportunity.

The employee will receive half the promotion rate as defined in three (3) above.

At the end of the conditional period or thru the acquisition of appropriate licensures, certificates or experience, if the employee is performing the full scope of duties and responsibilities for the position, a pay rate adjustment shall be made to place the employee at the full promotional rate as defined above.

5. Reclassifications  
Reclassification is the reassignment of a position from one class to a different class to recognize a significant change in the duties and responsibilities of the position/employee. For an upward reclassification the percentage increase will be the higher of:

- A. Two and one half (2.5) percent when the new position is one salary grade higher, or
  - B. Five (5) percent when the new position is two (2) salary grades higher, or
  - C. Seven and one half (7.5) percent when the new position is three (3) grades higher, or
  - D. Ten (10) percent when the new position is four (4) or more salary grades higher, or
  - E. Twelve (12) percent if moving from a non-exempt to a higher exempt position, or
  - F. Two and one half (2.5) percent above the minimum of the new pay grade.
  - G. For a downward reclassification the affected employee should be placed in the lower of their current percentile rank, or the maximum of their new pay grade
6. Demotion. The placement of an employee within a lower grade than the employee's current assigned grade resulting in a decrease in pay.
- In the case of a demotion, the employee shall be placed in the pay grade for the position they are being demoted to at their same percentile rank or the maximum of the new pay grade, whichever is lower.
- In the event that an unrepresented or represented employee is demoted into a represented position, the employee shall be placed in the pay grade for the position they are being demoted to at the average wages of all employees within that position with the similar length of service with the City. In the event that no such match exists the new salary will be determined by the City Manager.
7. Full Reinstatement. When reinstated from layoff for lack of work, the employee shall be restored to the same grade and percentile rank of the grade the employee had at the time of the layoff.
8. Reinstatement to a Lower Grade. If reinstated from a layoff to a lower grade, for whatever reason, the employee shall be placed in the pay grade for the position they are being reinstated to at their same percentile rank or the maximum of the new pay grade, whichever is lower.
9. Merit Increase Program. All full- and part-time regular, non-contract, non-sworn employees in good standing, and employees who were hired before September 1<sup>st</sup> of the preceding year, may be eligible for a prorated merit increase based on overall performance evaluation ratings, the employees current percentile rank, and merit budget allocated by the City Council in its annual budget. Merit increases will range from 0% up to 6% of the employees base rate, and will be added to the base pay the first full pay period in September beginning September 2010.
10. Employees near the top of their pay grade are eligible to receive performance increases based on their overall performance evaluation. The increase will be applied to the employees' base salary but any amount in excess of the salary grade maximum will be awarded as a lump sum payment, and will not be added to base pay. Merit Lump Sum Awards. An employee eligible for a merit award who has met or surpassed the maximum of their pay grade shall be eligible for a merit lump sum award based on overall performance

evaluation ratings and percentile rank of the employee. Merit lump sum awards will not be added to the employee's base rate. Lump sum merit awards will range from 0% up to 3% of their base rate and will be distributed in September beginning September 2010.

11. Cost-of-Living/General Wage Adjustments. The City Council may allocate funds for general wage adjustments. These adjustments may be made to the pay grades. All eligible employees will receive the amount of the adjustment that does not cause the employee to exceed the maximum of the grade.
12. Exempt Employee Initial and Last Paycheck. Exempt employees will be paid a proportionate part of the employee's full salary for the time actually worked in the first and last week of employment at an hourly equivalent of the employee's full salary.
13. The City Manager has discretion to review an individual's salary and make adjustments in the interest of parity or equity. Such salary adjustments are extraordinary and unusual and are to be considered, without precedent, on a case-by-case basis.
14. The City Manager may evaluate the impact of a change to an employee's duties and responsibilities, and for fairness and equity and may direct an employee's salary be frozen for a period of time. The Human Resources Department will evaluate the effects of the freeze and make recommendations to the City Manager regarding the duration of the freeze.

- 503 ATTENDANCE/PUNCTUALITY. Whenever possible, time off should be scheduled in advance. Excessive unscheduled absenteeism or failing to be punctual can adversely affect the quality of services, the workload of co-workers, and the employee's work record. Repeated unscheduled absences, even for legitimate reasons, will be subject to review and progressive discipline may be initiated. Employees are personally responsible for properly notifying their immediate supervisor or designee in advance of the scheduled work shift whenever they will be absent, late, or need to leave early.

Definitions:

1. Scheduled Absences are Pre-planned periods of time off which an employee and their immediate supervisor mutually agree to before the absence is to occur.
2. Unscheduled Absences. Unplanned time off to which an employee and their immediate supervisor did not mutually agree in advance. An unscheduled absence may be paid if sufficient leave accruals are available *and* the supervisor or designee is properly notified before the shift begins. The supervisor retains the right to approve/disapprove use leave accruals if proper notification of the absence is not received or leave is denied.
3. Absence – includes missing an entire scheduled shift of work or reporting to work more than two hours late or not staying through at least one-half of a scheduled shift.
4. Failure to Report on Time –arriving or “clocking in” after the official starting time, or leaving or “clocking out” before the official quitting time, without advance approval.
5. Failure to Notify Supervisor. Employees failing to properly notify their immediate supervisor or designee of an absence, will not be paid for such absence. Three consecutive unscheduled absences without calling may constitute a presumption of job abandonment and the employee may be deemed to have voluntarily resigned their position. In this situation, the employee will be ineligible for future re-hire.
6. Extenuating Circumstances. Occasionally, there may be situations which could be exempt from the disciplinary measures of this policy. Should such a case arise, the employee should review the events that occurred with the Department Director.
7. Incarceration. An employee who is arrested or incarcerated by authorities shall not be granted any form of paid leave to serve periods of confinement or incarceration (generally excluding pre-trial confinement)\*
8. De Minimis time. Infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes that may be disregarded.
9. 3-4 minute rounding rule. 3 minutes “round down” and 4 minutes “round up”.

Examples:

- a. An employee's start time is 8:00 am. The employee arrives at 8:03 am. Under the 3-4 minute rules, the start-time will be “rounded down” to 8:00

am for this employee. But if the same employee arrives another day at 8:05 am, the start-time will be "rounded up" to be 8:06 am.

- b. An employee's normal quitting time is 5:30 pm. The employee leaves one day at 5:32 pm, the time will be "rounded down" to 5:30 pm. But if this same employee leaves at 5:34 pm, then the employer must "round up" so that the employee's time is actually recorded as 5:36 pm.

10. Occasional tardiness for a work assignment or shift may be considered as de minimis for time keeping purposes. However, frequent, disruptive, regular or habitual tardiness shall be cause for discipline.

11. Employees shall not arrive early or leave late without the prior approval of their supervisor.

505. **ANNUAL LEAVE.** Annual Leave (also referred to as vacation) may be taken from time to time, normally in four-hour increments depending on unused accrual and prior approval by supervision. Eligibility depends on the following criteria:

1. Individual must be employed in a position eligible for annual leave accruals.
2. Annual Leave shall "accrue" to regular and probationary full-time employees and to regular and probationary part-time employees, based on eligible hours worked, from date of regular appointment at the following accrual rates, depending on years of service. Annual leave shall accrue to contract employees in accordance with the terms of the contract and shall accrue for grant-funded employees in accordance with the terms of the grant.

YEARS OF SERVICE	REGULAR F/T 40 HRS/WK	LCFD WORKING 56 HRS/WK
1 <sup>st</sup> - 3 <sup>rd</sup> Year	80 hrs/yr (10 days)	112 hrs/yr
4th - 10th Year	120 hrs/yr (15 days)	168 hrs/yr
11th + Years	160 hrs/yr (20 days)	224 hrs/yr

3. An employee who has been approved for annual leave shall not change that leave to sick leave, when applicable, without presenting to management a physician's statement verifying the illness.
4. Exceptions to accrual rates can be made under extraordinary circumstances upon recommendation of the Department Director and approved by the City Manager.

507. PERSONAL LEAVE. Regular and probationary employees shall accrue, at the beginning of the first full payroll of each calendar year, personal time off to conduct personal business as described below. The amount of Personal Leave authorized each calendar year is determined according to the employee's schedule. Personal leave shall accrue to contract employees in accordance with the terms of the contract and for grant-funded employees, in accordance with the terms of the grant.
1. 8 hrs per calendar year for employee's who are budgeted to work 35 or more hrs/week.
  2. 12 hrs per calendar year for 56 hour non-union fire service employees.
  3. Part-time regular employees shall accrue personal leave on a regular hours worked.
  4. All unused personal leave shall be forfeited effective midnight, at the beginning of the first full pay period of each calendar year.
  5. Personal Leave must be approved in advance and requested using the Request for Leave Form.
  6. An employee who has been approved for the use of personal leave shall not change that leave to sick leave, when applicable, without presenting management with a physician's statement verifying the illness.

510. SICK LEAVE BANK.Purpose:

On occasion, a City of Las Cruces employee or a member of their immediate family may encounter a catastrophic illness that requires an extended absence from work. The Sick Leave Bank (SLB) is created to provide for donation of sick/annual or personal leave to assist an employee who has exhausted all accrued leave and who has no other paid leave options available. This leave may be granted in the event of a catastrophic illness of the employee or immediate family member.

A catastrophic illness means an illness, injury, impairment, or physical/mental condition which prevents the employee from performing the functions of their job, or a life-threatening illness of an immediate family member; and requires the services of a licensed medical practitioner for a prolonged period of time, and forces the employee to exhaust all leave time earned and be in a leave without pay status.

Policy:

1. The Sick Leave Bank will consist of leave donated by employees. All donations of leave to the SLB are strictly voluntary, but in order for employees to become eligible to receive leave from the SLB, they must donate at least twelve (12) hours of leave, or 16.9 hours for firefighters working 56 hours per week, to the SLB at the beginning of each calendar year, or they shall relinquish their eligibility to withdraw leave from the SLB for that calendar year.
2. Part-time regular employees shall donate/withdraw leave from the SLB on a pro-rated basis.
3. Employees may donate additional leave throughout the year if they choose to do so. Employees may donate annual leave regardless of accrual balance, and sick leave if the sick leave donated is in excess of a 96-hour balance.
4. Leave hours will be donated/withdrawn on a one-to-one hourly basis. Leave donations to the SLB will be converted to a dollar value based on the base rate of pay of the donator and deposited into the SLB. Leave withdrawn from the SLB will be in the form of a dollar value based on the receivers base rate of pay. During the period of receiving donations from the SLB, the employee will not accrue any leave.
5. FMLA qualifying leave will run concurrently with hours provided from the Sick Leave Bank.
6. This policy does not cover time off due to a job-related injury covered by Workers Compensation or maternity leave which does not involve a serious illness/injury of an employee.
7. Sick leave bank hours may be used in conjunction with part-time temporary modified duty assignments (light duty).
8. All leave withdrawn is contingent upon the availability of leave in the Sick Leave Bank. Because the Sick Leave Bank is not funded, City management will work with the departments who have users of the SLB and may need

temporary replacements, but do not have adequate budget since they are being charged for the employee using SLB hours.

9. The Human Resources Department will monitor donations and withdrawals and may, from time to time, solicit additional donations from employees during the calendar year. Employees who donate leave during these mid-year efforts will not be eligible to withdraw leave from the SLB for that calendar year unless they previously met the initial eligibility requirements.
10. Excess SLB donations will not carry over from one year to the next. Employees will be permitted to make donations each year for the following year, as established by the Human Resources Department. This will allow employees to use annual leave hours for the donation that they would otherwise have lost due to annual leave accrual maximums.

Procedure:

The Human Resources Department is responsible for tracking and maintaining the Sick Leave Bank and notifying employees of the following Sick Leave Bank requirements. The Human Resources Director shall accept SLB Donation/Request Forms and function as the approving authority.

1. The minimum eligibility qualifications for the Sick Leave Bank are:
  - A. All full-time regular and part-time regular employees who have completed their probationary period are eligible to receive sick leave hours if hours are available in the Sick Leave Bank.
  - B. Temporary employees are not eligible to donate or receive Sick Leave Bank hours.
  - C. Employees who face extreme hardship due to a qualifying catastrophic illness and who have exhausted all sick and/or annual leave as a result of the catastrophic illness may apply for leave from the Sick Leave Bank.
  - D. Extreme hardship is defined as: When an employee has exhausted their sick and annual leave and requires additional leave to fully recuperate from a qualifying catastrophic or additional time to care for an immediate family member with a catastrophic illness before returning to employment.
  - E. Sick leave bank hours Leave hours will generally be withdrawn in increments of 4 hours per day, unless being used as part of a temporary modified duty assignment.
2. The confidentiality of the Sick Leave Bank applicants/recipients will be protected. Employees shall apply for leave from the Sick Leave Bank by using the SLB Request Form, which can be obtained from the Human Resources Department. The employee will:
  - A. Meet minimum qualifications of the Sick Leave Bank Policy.
  - B. Provide Human Resources with the FMLA Certificate of Health Care Provider (#WH-380 or equivalent applicable form), completed by the employee's treating physician.

- C. Provide a signed Sick Leave Bank Request Form prior to the anticipated exhaustion of accrued paid leave hours, or as soon as applicable.
- D. Have no abuse of sick leave documented by the Department Director/Section Administrator/Manager.
- E. Have exhausted all accrued leave.
- F. A maximum of 12 weeks may be withdrawn from the Sick Leave Bank per calendar year.

515. LEAVE WITHOUT PAY STATUS. This classification, hereinafter referred to as LWOP, may be awarded voluntarily or involuntarily for a variety of reasons. While an employee is on LWOP status, they are on the inactive payroll and all employer benefit contributions are suspended. Note: the FMLA provides for a continuation of benefit payments for qualifying events.
1. Involuntary LWOP. Employees are usually assigned to this status for disciplinary reasons as a result of employee misconduct. In those cases, LWOP status assumes the form of suspension from duty without pay for a specific period of time. In other special cases, involuntary LWOP may result from administrative action in order to accommodate an employee who has exhausted all other types of Leave with Pay. In every case, involuntary LWOP status is initiated by management and approved by the City Manager.
  2. Voluntary LWOP. This type of leave may be requested by employees for a variety of reasons not covered under the Family and Medical Leave Act. Approval of LWOP is discretionary on a case-by-case basis. Each request will be considered in terms of work load, staffing levels, business necessity, availability of personnel, timeliness, reason for leave and other job-related factors.
  3. Reinstatement from LWOP Status. Reinstatement will be made only if a vacant position exists for which the employee who was on LWOP qualifies. The City Manager shall make the final determination concerning reinstatement based on suitability, budgetary constraints, staffing levels, and other related factors.
  4. Continuation of Certain Benefits During LWOP Status. The immediate supervisor is charged with the responsibility to make sure that employees placed on LWOP status receive information on what happens to their benefits during that period. The employee may continue as a member of the Employee Health Care Plan in accordance with the provisions of the applicable insurance contract by paying the COBRA rate both his/her share and the City's share.
  5. If a City employee has an on-the-job illness or injury that last over a seven day period the employee will be placed in LWOP status on the eighth day. The employee can use any combination of accrued leave for the first seven days i.e. Annual, Sick, Comp Time. If the illness or injury lasts for more than four weeks the employee will be compensated for the first seven days at the Workers' Compensation rate of sixth-six point seven percent of the average weekly wages and must repay the City for any leave taken during that period of time. Employees may choose to return the payment to the City and maintain the use of leave. Employees must comply with this provision of this policy or forfeit their Workers' Compensation Benefits.

516. WORKERS' COMPENSATION PAY STATUS.

When an employee is receiving Workers' Compensation benefits as a result of on-the-job illness or injury, the employee may continue as a participant in the City's group insurance by continuing to pay the employee's portion of the premium. The employee in this status shall be designated for payroll purposes as being on Leave Without Pay. Employees on LWOP due to a Workers' Compensation Injury will accrue time in grade and longevity credits only. However, the accruals will not be posted until such time that the employee returns to the active payroll.

519. PROVISIONS FOR CERTAIN NON-UNION FIRE DEPARTMENT PERSONNEL.

1. Non-union 40 hour fire personnel shall be eligible to receive eight (8) hours of prorated holiday pay for twelve (12) regularly scheduled holidays or as determined by the City Council.
2. Exempt 56 hour Fire Service employees shall have ninety-six (96) hours holiday leave hours placed in a bank in January of each calendar year. Methods for requests of holiday leave hours shall be established by the Chief. Any unused holiday leave hours shall be forfeited at the issuance of new banked hours. Prorated holiday leave hours shall be banked for employees promoting into eligible positions.
3. Unrepresented, non-exempt Fire Department employees working a 56-hour week schedule shall receive twelve (12) hours of holiday pay at the employees' regular hourly rate for each holiday recognized by the CITY.

603. WORK RULES.

The following work rules apply to all City employees. These rules are not intended to be all inclusive and the City shall, when it deems appropriate, establish additional rules to ensure effective operation of the City.

1. Employees must be at their designated work place on time and ready to work. Employees shall remain at work, until the scheduled quitting time, unless permission to leave earlier is granted by their supervisor.
2. Where operations are continuous, an employee shall not leave his/her post until replaced by the next shift employee or until relieved by the supervisor.
3. City offices will be staffed at least between 8:00 A.M. and 5:00 P.M. Monday through Friday to provide prompt assistance to City residents. Supervisors will arrange for their office staff members to take staggered lunch hours or shifts so City offices are staffed during these hours.
4. Employees shall not gather on City premises to conduct any personal business without authorization.
5. Employees shall follow all safety regulations including wearing safety articles and using protective equipment. Employees shall immediately report accidents or injuries to supervision.
6. Employees shall be responsible for and shall not misuse City property, records, or other materials in their care, custody, and control. City property, records, or other materials shall not be removed from the premises without written permission from the Section Administrator/Manager.
7. Employees shall not litter work areas.
8. Employees shall deal with the public and co-workers in a courteous and professional manner.
9. PUBLIC STATEMENTS ON BEHALF OF THE CITY. The Public Information Officer, attorneys in the Legal Office, Program Administrators/Managers, Department Directors, and the Office of the City Manager are authorized to make public statements on behalf of the City. These individuals may authorize others verbally or in writing to speak on behalf of the City. No City employee will make a public statement on behalf of the City on a matter involving litigation or confidential personnel matters without expressed authority to do so from the City Manager. City employees will direct media inquiries to the appropriate authorized person to address the media's particular questions.
10. Prior to the usual reporting time, each employee shall advise supervision of his/her inability to report to work and the reason.
11. Employees shall immediately report the loss of their badge or identification card to their supervisor. Employees shall not allow other persons to use their badges or identification card at any time.
12. Employees shall only smoke in designated smoking areas.

13. Employees will notify their supervisor and the Human Resources Department whenever there is a change that may affect their employment or benefit status.
14. Employees are responsible for obtaining and renewing any license, certificate, permit, or other credential required in order to perform their job. Moreover, employees are required to report the loss or revocation of any credential to supervision immediately. Failure to report shall result in disciplinary action.
15. All employees of the City who are required by their duties to wear uniforms will wear regulation uniforms provided by the City as determined by the City Uniform Policy or Standard Operating Procedures of the Las Cruces Fire or Las Cruces Police Department.
16. In the course of conducting City business, employees shall not park in prohibited areas.
17. Employees shall not unduly restrict or interrupt work or interfere with the work of others.
18. Employees shall report for and remain at work only when able to safely perform their job duties.
19. Employees will notify their immediate supervisor whenever they will be absent, late, or need to leave early.
20. Employees may not use his/her position to coerce or abuse another person.
21. Employees may not engage in theft, unauthorized possession or use, vandalism or damage of City property, or private property while in performance of his/her official duties.
22. Employees shall not fight, engage in horseplay, gamble, use abusive language, bully, assault, including sexual assault, or make threats while on duty or on City premises.
23. Employees shall not use City facilities or equipment to conduct a personal business during working hours on City premises and shall not remove City property from City premises without prior written consent of the supervisor.
24. Employees shall not engage in unapproved soliciting or any partisan political activity while on the job.
25. Employees shall not post notices on the City premises without prior written approval from the appropriate authority.
26. Employees shall not possess unauthorized weapons, illegal drugs, or alcohol on City premises.

27. Employees shall not sell, distribute, use, or be under the influence of any illegal drug or alcohol while on City premises or while operating any City owned or leased equipment.
28. Employee will not engage in personal conduct which interferes with the proper performance of another employee's duties.
29. Employees shall not falsify time sheets, public records, or claims of illness or injury.
30. Employees shall not punch or sign another employee's time card or work sheet (except for supervisors signing time sheets for employees under their jurisdiction).
31. No employee shall engage in any unapproved outside employment or business activity that conflicts with his/her municipal employment. The City Manager must approve any outside employment for full-time employees.
32. No employee shall harass, discriminate or retaliate against any other employee or citizen.
33. No employee shall be insubordinate, which is failure to obey a direct lawful order of a supervisor or someone higher in the chain of command.
34. Employees shall not engage in negligent or careless operation or maintenance of equipment; unsafe practices which endanger the employee, other employees, or the public.
35. Employees shall not abuse legitimate grievance processes resulting in repeated unsubstantiated claims.
36. Employees will make themselves available, participate fully in all administrative investigations and be completely honest in said participation.
37. All employees shall immediately notify Risk Management following any accident or citation received in the course of operating City equipment, and shall remain on scene until released by Risk Management in non-emergency situations.
38. No City employees shall solicit anything of value from a citizen or business for services that the City is expected to provide.
39. Employees will effectively perform their work assignments and not be derelict in the execution of their job duties.

Employees shall not misuse City computers, networks, internet services, social media, telephones or other devices.

612. ACCIDENT/INJURY/PREGNACY REPORTING AND RETURN TO WORK PROCEDURES

1. POLICY:

Any City employee who incurs an injury or illness which limits his/her ability to perform one or more of the essential functions of his/her job for a temporary period of time will return to work as soon as possible, consistent with any medical limitations arising from that injury or illness. When an employee is temporarily unable to perform his or her usual and customary duties, the City will endeavor to place the employee in a temporary assignment as long as meaningful and necessary work is available. This assignment will be consistent with the employee's skills and abilities and any medically necessary work restrictions.

2. DEFINITIONS:

Temporary assignment is an alternate assignment within an employee's current job classification, or another meaningful work assignment while recovering from an accident or injury.

3. GENERAL:

- A. All requirements for temporary assignments will be evaluated on a case-by-case basis with consideration given to the skills and abilities of the employee, the medical or physical restrictions, and the availability of work. The physician's statement releasing the employee for modified or light duty shall include a description of the injury/illness, prognosis, work restrictions or limitations, the estimated length of time the employee may require modified work and, if applicable, any follow-up treatment or therapy required.
- B. The City may require periodic medical updates from the physician regarding the employee's ability to perform the duties of the temporary assignment or be released to return to full duty.
- C. The City may require an employee to submit to an examination with a physician chosen by the City at City expense, if the amount of temporary assignment appears to be excessive, if the restrictions/limitations cannot be adequately interpreted or clarified with the employee's physician, or if the City has reason to believe the employee's release for duty is inconsistent with job requirements.
- D. Temporary assignments shall meet the requirements of grants or other funding sources.

4. WORKERS' COMPENSATION PROCEDURES

A. REPORTING ON-THE-JOB INJURIES

Any employee who is injured by an accident, which arises out of and in the course of employment, shall immediately notify his or her supervisor. The employee and the supervisor shall then prepare a Notification of Accident form and the employee shall report to the Human Resources Department with that form. The employee shall then be sent for medical evaluation and treatment of the injury. Should the injury render the employee unable to report to the Human Resources Department, the supervisor shall be responsible for reporting the injury and accident.

If the employee is removed from work by the treating physician, the

Human Resources Department shall notify the supervisor.

**B. RETURN TO WORK PROCEDURES**

- 1) Prior to returning to work, an employee injured in the course of employment shall obtain a release from the treating physician and shall take that release, including any restrictions to the Human Resources Department.
- 2) If the employee is released without restrictions, he or she shall return immediately to their work location.
- 3) If the employee is released with temporary restrictions, the Human Resources Department shall contact the employee's Department Director, or a representative, and provide a report of all restrictions and attempt to make an initial determination for a temporary assignment. Or, the employee may be sent to the Department Director, who will determine if the employee can be utilized temporarily within the department or its sections consistent with the limitations. The Department Director may review the report with the employee, clarifying any questions they may have regarding the restrictions/limitations. If the employee can be so used, a Temporary Assignment Agreement will be executed and forwarded to Human Resources, and the employee will report to that department/section on Temporary Assignment.
- 4) The Department Director will arrange the work schedule to permit the injured employee to keep physician appointments and any prescribed physical therapy or work hardening sessions. If, while on temporary assignment, the employee needs to be absent during work hours for medical treatment or a doctor's appointment, the employee must bring a statement from the treating physician/facility indicating whether or not there are any changes in the employee's condition that would impact the temporary assignment. This statement shall be delivered to the Human Resources Department prior to returning to the work site. The Human Resources Department will advise the Department Director of any changes in restrictions and a new Temporary Assignment Agreement may be created.
- 5) If no work is available consistent with the employee's restrictions, the employee shall be sent home.
- 6) The Human Resources Department shall be the point of contact with the injured worker, the treating physician and keep the Department Director apprised of the employee's workers' compensation status and any changes in restrictions.
- 7) Temporary assignment shall not exceed 90 days in duration.

**5. NON-WORK-RELATED INJURY/ILLNESS PROCEDURES**

**A. NOTIFICATION OF INJURY/ILLNESS**

Any employee who suffers an illness or an accidental injury which does not arise out of or in the course of employment, and who is unable to report to work, will immediately notify his or her supervisor of that fact. If the employee is absent from work for more than three calendar days, the supervisor of that employee shall notify the Human Resources Department of that fact. The Human Resources Department will implement the Family and Medical Leave Act (FMLA) procedures.

**B. RETURN TO WORK PROCEDURES**

1) Prior to returning to work, an employee may be required to visit his or her health care provider and submit a written fitness-for-duty or return to work statement as to his or her ability to return work, and any restrictions which exist.

C. If the employee is released without restrictions, he or she shall return immediately to their original work location.

1) If there are temporary restrictions to the release, the Human Resources Department) shall contact the employee's Department Director to determine if the employee can be utilized temporarily in the department consistent with the limitations. If the employee can be so used, a Temporary Assignment Agreement will be executed and forwarded to Human Resources, and the employee will report to that department for work.

2) If there is no such work available, the Human Resources Department, with the approval of the originating Department Director, will contact other Department Directors to determine if there is any temporary work available within the City that is consistent with the medical limitations of the employee. If such work is available, the employee shall be sent to that workstation for assignment.

3) If, while on temporary assignment, the employee needs to be absent during work hours for medical treatment or a doctor's appointment, the employee must bring a statement from the treating physician/facility indicating whether or not there are any changes in the employee's condition that would impact the temporary assignment. This statement shall be delivered to the Human Resources Department prior to returning to the work site. The Human Resources Department will advise the Department Director of any changes in restrictions.

4) If no work is available consistent with the employee's restrictions, the employee shall be sent home and may utilize accrued annual, sick, personal leave or excused leave without pay. The Human Resources Department will assist the employee in procuring any City benefits information that would assist the employee in considering options and/or decision-making.

5) If the health care provider treating the employee certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." but is entitled to remain on FMLA leave (if applicable) until the employee's FMLA leave entitlement is exhausted and will be required to use accrued paid leave.

6) Temporary assignment shall not exceed 90 days in duration.

**D. ADA DISABILITY**

When an employee believes his or her restrictions may rise to the level of a disability as defined by the ADA, the employee is responsible for following the Reasonable Accommodation Policy and Procedures.

**E. DURATION OF TEMPORARY ASSIGNMENT**

In no event will a temporary assignment last for more than 90 calendar

days for each injury in a calendar year. If the employee is not able to return to full duties within 90 days, an evaluation will be conducted by the Disability Review Team to identify options available to the employee, which may include consideration of medical retirement or termination. The City reserves the right, for good reason, to discontinue a temporary assignment at anytime. Good reason shall include, but not be limited to, temporary work no longer being available, operational requirements prohibiting the continuance of temporary assignment, or the employee's inability to satisfactorily perform the duties of the temporary assignment.

6. PREGNANCY:

Whenever an employee becomes pregnant, she will work in her current position in accordance with her physician's recommendations, as long as she is able to perform the essential functions of the job. If her physician submits information indicating that she can no longer perform all of her current job duties, she may be eligible for a modified duty assignment. Department Director shall review any restrictions and determines if a modified duty assignment is available consistent with the limitations. If the employee can be so used, a Modified Duty Agreement will be executed and forwarded to Human Resources, and the employee will report to that department for work. Postpartum modified duty shall not exceed ninety (90) days.

2. DEFINITIONS:

Temporary assignment is an alternate assignment within an employee's current job classification, or another meaningful work assignment while recovering from an accident or injury.

3. GENERAL:

- A. All requirements for temporary assignments will be evaluated on a case-by-case basis with consideration given to the skills and abilities of the employee, the medical or physical restrictions, and the availability of work. The physician's statement releasing the employee for modified or light duty shall include a description of the injury/illness, prognosis, work restrictions or limitations, the estimated length of time the employee may require modified work and, if applicable, any follow-up treatment or therapy required.
- B. The City may require periodic medical updates from the physician regarding the employee's ability to perform the duties of the temporary assignment or be released to return to full duty.
- C. The City may require an employee to submit to an examination with a physician chosen by the City at City expense, if the amount of temporary assignment appears to be excessive, if the restrictions/limitations cannot be adequately interpreted or clarified with the employee's physician, or if the City has reason to believe the employee's release for duty is inconsistent with job requirements.
- D. Temporary assignments shall meet the requirements of grants or other funding sources.

4. WORKERS' COMPENSATION PROCEDURES

A. REPORTING ON-THE-JOB INJURIES

Any employee who is injured by an accident, which arises out of and in the course of employment, shall immediately notify his or her supervisor. The employee and the supervisor shall then prepare a Notification of Accident form and the employee shall report to the Risk Management Office ~~Human Resources Department~~ with that form. The employee shall then be sent for medical evaluation and treatment of the injury. Should the injury render the employee unable to report to the Risk Management Office ~~Human Resources Department~~, the supervisor shall be responsible to ~~for reporting the injury and accident to~~ Risk Management.

If the employee is removed from work by the treating physician, the Risk Management ~~Human Resources Department~~ Office shall notify the supervisor.

B. RETURN TO WORK PROCEDURES

- 1) Prior to returning to work, an employee injured in the course of employment shall obtain a release from the treating physician and shall take that release, including any restrictions to the Risk Management Office ~~Human Resources Department~~.
- 2) If the employee is released without restrictions, he or she shall return immediately to their work location.
- 3) If the employee is released with temporary restrictions, the Workers' ~~Compensation~~ ~~Coordinator~~ Human Resources

Department shall contact the employee's Department Director, or a representative, and provide a report of all restrictions and attempt to make an initial determination for a temporary assignment. ~~Or, if~~ the employee ~~will~~ may be sent to the Department Director, who will determine if the employee can be utilized temporarily within the department or its sections consistent with the limitations. The Department Director ~~will~~ may review the report ~~while with~~ the employee is present, clarifying any questions they may have regarding the restrictions/limitations. If the employee can be so used, a Temporary Assignment Agreement will be executed and forwarded to Human Resources, and the employee will report to that department/section on Temporary Assignment.

- 4) The Department Director will arrange the work schedule to permit the injured employee to keep physician appointments and any prescribed physical therapy or work hardening sessions. If, while on temporary assignment, the employee needs to be absent during work hours for medical treatment or a doctor's appointment, the employee must bring a statement from the treating physician/facility indicating whether or not there are any changes in the employee's condition that would impact the temporary assignment. This statement shall be delivered to the ~~Workers' Compensation Coordinator~~ Human Resources Department prior to returning to the work site. The ~~Workers' Compensation Coordinator~~ Human Resources Department will advise the Department Director of any changes in restrictions and a new Temporary Assignment Agreement may be created.
- 5) If no work is available consistent with the employee's restrictions, the employee shall be sent home.
- 6) The ~~Workers' Compensation Coordinator~~ Human Resources Department shall ~~maintain~~ be the point of contact with the injured worker, the treating physician and keep the Department Director apprised of the employee's workers' compensation status and any changes in restrictions.
- 7) Temporary assignment shall not exceed 90 days in duration.

## 5. NON-WORK-RELATED INJURY/ILLNESS PROCEDURES

### A. NOTIFICATION OF INJURY/ILLNESS

Any employee who suffers an illness or an accidental injury which does not arise out of or in the course of employment, and who is unable to report to work, will immediately notify his or her supervisor of that fact. If the employee is absent from work for more than three calendar days, the supervisor of that employee shall notify the Human Resources Department of that fact. The Human Resources Department will implement the Family and Medical Leave Act (FMLA) procedures.

### B. RETURN TO WORK PROCEDURES

- 1) Prior to returning to work, an employee may be required to visit his or her health care provider and submit a written fitness-for-duty or return to work statement as to his or her ability to return work, and any restrictions which exist.

C. If the employee is released without restrictions, he or she shall return

immediately to their original work location.

- 1) If there are temporary restrictions to the release, the Human Resources Department ~~(in the case of non-work related injury/illness)~~ shall contact the employee's Department Director to determine if the employee can be utilized temporarily in the department consistent with the limitations. If the employee can be so used, a Temporary Assignment Agreement will be executed and forwarded to Human Resources, and the employee will report to that department for work.
- 2) If there is no such work available, the Human Resources Department, with the approval of the originating Department Director, will contact other Department Directors to determine if there is any temporary work available within the City that is consistent with the medical limitations of the employee. If such work is available, the employee shall be sent to that workstation for assignment.
- 3) If, while on temporary assignment, the employee needs to be absent during work hours for medical treatment or a doctor's appointment, the employee must bring a statement from the treating physician/facility indicating whether or not there are any changes in the employee's condition that would impact the temporary assignment. This statement shall be delivered to the Human Resources ~~Director—Department~~ prior to returning to the work site. The Human Resources ~~Director—Department~~ will advise the Department Director of any changes in restrictions.
- 4) If no work is available consistent with the employee's restrictions, the employee shall be sent home and may utilize accrued annual, sick, personal leave or excused leave without pay. The Human Resources Department will assist the employee in procuring any City benefits information that would assist the employee in considering options and/or decision-making.
- 5) If the health care provider treating the employee certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." but is entitled to remain on FMLA leave (if applicable) until the employee's FMLA leave entitlement is exhausted and will be required to use accrued paid leave.
- 6) Temporary assignment shall not exceed 90 days in duration.

D. PREGNANCY:

~~Whenever an employee becomes pregnant, she will work in her current position in accordance with her physician's recommendations, as long as able to perform the essential functions of the job. If her physician submits information indicating that she can no longer perform her current job duties, she will be eligible for temporary assignment.~~

E.D. ADA DISABILITY

When an employee believes his or her restrictions may rise to the level of a disability as defined by the ADA, the employee is responsible for following the Reasonable Accommodation Policy and Procedures.

F.E. DURATION OF TEMPORARY ASSIGNMENT

In no event will a temporary assignment last for more than 90 calendar

days for each injury in a calendar year. If the employee is not able to return to full duties within 90 days, an evaluation will be conducted by the Disability Review Team to identify options available to the employee, which may include consideration of medical retirement or termination. The City reserves the right, for good reason, to discontinue a temporary assignment at anytime. Good reason shall include, but not be limited to, temporary work no longer being available, operational requirements prohibiting the continuance of temporary assignment, or the employee's inability to satisfactorily perform the duties of the temporary assignment.

6. PREGNANCY:

Whenever an employee becomes pregnant, she will work in her current position in accordance with her physician's recommendations, as long as she is able to perform the essential functions of the job. If her physician submits information indicating that she can no longer perform all of her current job duties, she may be eligible for a modified duty assignment. Department Director shall review any restrictions and determines if a modified duty assignment is available consistent with the limitations. If the employee can be so used, a Modified Duty Agreement will be executed and forwarded to Human Resources, and the employee will report to that department for work. Postpartum modified duty shall not exceed ninety (90) days.

614. LOSS OF EMPLOYEE'S DRIVER'S LICENSE1. APPLICABILITY:

This policy applies to all City employees who are required by the essential functions of their job to operate a City-owned motor vehicle or who are asked to drive on City business.

2. PURPOSE:

A. The three primary objectives of this policy are:

- 1) Ensure the safest practical working environment for our driving employees.
- 2) Protect the citizens of Las Cruces.
- 3) Control the financial liability of the City in driving situations.

B. These goals are achieved by reviewing the driving histories of City employees and applicants for City jobs that require driving on City business. Only those applicants having acceptable driving histories are hired. Employees who do not maintain acceptable driving records are subject to discipline up to and including termination.

3. POLICY:

An employee must have the appropriate license in his/her possession to drive on City business. Only authorized employees are allowed to drive vehicles on City business. Employees are required to comply with all applicable federal, state and local regulations relevant to driving a motor vehicle. Employees will be permitted to operate City-owned motor vehicles only if they possess a current and valid New Mexico Driver's License or Texas Driver's License, or have a valid and unexpired New Mexico or Texas Temporary Driving Privilege License.

4. MANAGEMENT RESPONSIBILITIES:

A. Department Directors shall establish and maintain a list of driving positions. A copy of the current list shall be sent to the Human Resources Department in January of each year. This list identified the:

- 1) Department Name/Section Name
- 2) Job classifications
- 3) Position numbers
- 4) Employee's name and number

B. Department Directors, or their designee, shall prohibit any employee without an appropriate driver's license in his/her possession from driving on City business.

C. Department Directors, or their designee, will regularly, not less than quarterly, inspect and keep a written record of the drivers' license of each employee who operates a City-owned motor vehicle to ensure possession of the required license.

D. Department Directors, or their designee, shall immediately remove from a driving position any employee who cannot produce a valid license or whose license is cancelled, expired, refused, revoked, suspended, or restricted in a manner which affects the employee's ability to drive on City business.

E. If a supervisor learns that an employee has had their drivers' license revoked or

suspended or that the employee does not have a valid and un-expired New Mexico Temporary Driving Privilege License in their possession, the supervisor will take the following actions:

- 1) Immediately prevent the employee from operating a City-owned motor vehicle until further notice from the employee that the license has been returned.
- 2) Inform the Department Director in writing of the suspension, revocation or non-renewal and the facts surround the loss of the license by the next business day.
- 3) The Department Director will determine if there is a vacant position for which the employee is qualified to which the employee can be transferred to for which there are no priority reassignments under Workers' Compensation or ADA. If an appropriate position is identified, the employee will be reassigned to that position with a reduction in pay commensurate with the new position.
- 4) If there are no vacant positions for which the employee is qualified, the Department Director shall issue a Personnel Action Notice (PAN) placing the employee on leave. If the employee has annual or personal leave or accrued compensatory time he/she may opt to use it, otherwise, he/she will be placed on leave without pay (LWOP) status.
- 5) While on leave, the employee may seek other positions in the City for which he/she is qualified for up to ninety (90) days, or pursue reinstatement of lost license or certification during this time.
- 6) If the employee has his/her license re-instated within ninety (90) days, he/she may be placed back into his/her previous position if available, or compete for vacant positions for which the employee is eligible.
- 7) If a suitable vacancy cannot be found, or license cannot be re-instated at the end of the ninety (90) day period, the employee will be terminated.
- 8) An employee in a driving position who has a status change in his/her driver's license for a period of more than ninety (90) days shall be terminated.

5. EMPLOYEE RESPONSIBILITIES:

- A. An employee in a driving position must be able to drive as an essential job function. Each driving employee is responsible for:
  - 1) Being aware of, understanding, and complying with federal, state, and local laws and City policies applying to the operation of vehicles on City business.
  - 2) Ensuring that the privilege to drive is maintained.
  - 3) Maintaining in his/her possession the appropriate driver's license at all times while driving on City business and to prove they have valid driving privileges upon request.
  - 4) Comply with all license restrictions issued by the DMV.
  - 5) Signing a release of information form allowing the City to periodically verify driving privileges and records with the New Mexico Department of Motor Vehicles.
  - 6) Immediately reporting to their immediate supervisor prior to starting the next work shift if they do not have a valid drivers' license for any reason or if there is any change in status of his/her driver's license
  - 7) Refrain from driving on City business after there has been a change in status of his/her driver's license, even if the cancellation, expiration, refusal,

revocation, suspension, or restriction has ended, unless the license has been reinstated. Proof of reinstatement must be provided to the supervisor before driving on City business.

- 8) If an employee is cited for DUI/DWI or incurs any other action that threatens their drivers' license, the employee will:
  - a) Provide notice of such citation, non-renewal or other action to their direct supervisor prior to starting the next work shift.
  - b) Provide proof of their Request for Hearing or appeal within twenty (20) days of the date of the citation, non-renewal or other action.
  - c) Provide a copy of the Notice of Hearing from the Department of Motor Vehicle (DMV) within 72 hours of receipt.
  - d) Provide a copy of the DMV ruling within three (3) days of the ruling, but no later than 90 days from the citation, non-renewal or other action.
  - e) Immediately notify supervisor of all court proceedings, and provide copies of results related to the outcome.
- B. An employee in a non-driving position must:
  - 1) Comply with federal, state, and local driving laws.
  - 2) Follow all regulations pertaining to driving on City business if requested to drive a vehicle on City business.
  - 3) Immediately notify his/her supervisor if requested to drive a vehicles on City business and the employee does not have the appropriate driver's license in his/her possession.
  - 4) Sign a release of information form authorizing the City to verify drivers' license status.
- C. No employee will drive on City business after consuming alcoholic beverages or any other substance that may impair driving. Any impairment affecting the ability to operate a vehicle safely must be immediately reported to the supervisor.
- D. Failure to comply with any of these reporting requirements will result in immediate termination.

## 6. HIRING PROCEDURES

- A. Driving records of applicants for driving positions must be reviewed before making an offer of employment. Applicants must have an acceptable driving record to be considered for employment.
- B. Driving records are evaluated based on moving violation convictions, chargeable accidents, and related performance. Driving record points are determined by the DMV.
- C. The employee's driver's license must be checked before an employee is promoted, transferred, or reassigned into a driving position. An employee who does not have the appropriate driver's license will not be placed into a driving position.

## 7. DEFINITIONS

- A. Acceptable Driving Record: The driving employee has accumulated three points or fewer in the previous twelve months. Points are as shown in the Current DMV

violation record. In addition, any cancellation, expiration, refusal, revocation, suspension, or restriction affecting the employee's ability to drive on City business, or other factors such as a chargeable accident or zero point violation, are considered in determining whether the employee's driving record is acceptable. Certain positions will have additional requirements that define an acceptable driving record.

The following items preclude hiring into a driving position:

- 1) Eight or more point in the previous 36 months, as shown in the DMV record.
  - 2) More than two chargeable accidents within the previous 36 months.
  - 3) A conviction of driving under the influence within the previous 36 months.
  - 4) License has been cancelled, refused, revoked, suspended, or restricted as the direct result of a moving violation within the previous 36 months.
  - 5) A current cancellation, expiration, refusal, revocation, suspension, or restriction that affects that applicant/incumbent's ability to drive on City business.
- B. Appropriate License: A New Mexico driver's license of the class required for the vehicle being driven. The license must be current and valid and have all endorsements required by the type of equipment, the class of vehicle being driven, and the load being carried. The license may not have any restrictions that would preclude driving on City business. The appropriate Commercial Driver's License (CDL) is required when driving any CDL vehicle on City business, no matter where it is operated.
- C. Authorized: The employee has been given explicit permission by his/her supervisor to drive a specific class of vehicle on City business.
- D. Cancelled: The state has removed the person's driving privileges.
- E. Change in Status: The driver's license has been cancelled, refused, revoked, suspended, or restricted in such a manner which affects the person's ability to drive on City business.
- F. Chargeable Accident: The driver received a conviction of a moving violation for a collision or is found most at fault by the DMV.
- G. Driving on City Business: The use of a motor vehicle to carry out the duties of the position. Driving on City business includes driving a vehicle owned, leased, rented, or otherwise controlled by the City, as well as the use of a personal vehicle on City business.
- H. Driving Position: A job that requires driving a vehicle on City business as part of the essential duties of the position.
- I. Driving Record: The DMV moving violation record and any chargeable driving incidents.
- J. Employee: Includes regular full-time, regular part-time, temporary, emergency, contract, and volunteer workers.
- K. Expired: The driver's license is not renewed before its date of termination.
- L. Non-Driving Position: Any position not designated as a driving position.
- M. Refused: A license is not issued by DMV.

- N. Restricted: Any limitation imposed on the driver's license that precludes the person from operating the vehicle on City business without meeting the restriction (e.g. wearing eyeglasses, or having an air brake endorsement for vehicles that have air brakes, etc.)
- O. Revoked: A license which has been rescinded by the DMV. The person's driving privileges are repealed for a minimum of one year.
- P. Suspended: The temporary removal of the person's driving privileges, which may be for a definite or indefinite period.

907. PREDETERMINATION (LOUDERMILL) PROCEDURES

1. A due process "Loudermill" hearing shall be afforded all regular full-time and part-time employees, who have successfully completed their probation, prior to termination, demotion, or a suspension of more than three (3) working days.
2. The supervisor shall notify the affected employee, both orally and in writing, of his/her recommendation to terminate, demote, or suspend (for more than three (3) working days), the employee from City service, and his/her reason(s) for doing so. This shall be accomplished in the following manner:
  - A. The supervisor who initiates such action shall complete a Notice of Intent to Terminate, Demote or Suspend form.
  - B. The completed form shall include:
    - 1) The recommended effective date of termination, demotion or suspension.
    - 2) Reason(s) for terminating, demoting or suspending the employee.
    - 3) Relevant documentation to support the termination, demotion or suspension. Such documentation shall be attached to the "Notice of Intent to Terminate, Demote or Suspend" form.  
 EEO investigative reports are deemed confidential unless otherwise directed by a competent court of jurisdiction or by order of the City Manager. Therefore, if an EEO investigation is the basis of disciplinary action, the affected employee will be provided a summary of the investigation. The investigation documentation shall not be photocopied or disseminated beyond the EEO Office, City Attorney's Office, City Manager's Office or Human Resources Department.
    - 4) Date, time, and location of the employee's "Loudermill" hearing. The hearing must be conducted within five (5) business days from date of the notice.
3. Following notification of intent to terminate or suspend, the Department Director shall determine if the employee will continue working or be placed on administrative leave with pay, pending the "Loudermill" hearing outcome. In the case of demotion, the employee shall maintain his/her position grade pending the outcome of the "Loudermill" hearing.
  - A. The Loudermill hearing shall be conducted by the Department Director of the Supervisor recommending the disciplinary action.
    - 1) In the event that the employee is a direct-report to the City Manager or an Assistant City Manager, the Human Resources Department shall appoint an Assistant City Manager or a Department Director to conduct the Loudermill.
    - 2) In situations where the Department Director initiates the recommended discipline, the Human Resources Department shall appoint a different Department Director or an Assistant City Manager as the hearing officer.
    - 3) The hearing shall be recorded. The original recording shall be transcribed by the Department, attached with any resulting disciplinary action and submitted to the Human Resources Department.

- 4) Participants in the Loudermill should be limited to the hearing officer, the Recording Secretary, and the employee.
  - a) The hearing officer (the Department Director) shall state the reason(s) for the disciplinary action and review relevant supporting documentation. The employee shall be afforded an opportunity to refute the reason(s) for disciplinary action and enter into the record any relevant documentation to support his/her position.
  - b) The hearing officer shall forward a written recommendation, based on the evidence presented at the Loudermill hearing, along with the Personnel Action Notice and transcript of the Loudermill to the Human Resources Department. The Human Resources Department will send the PAN, transcript and any other supporting information to the City Manager for final action.
  - c) The employee shall be notified by the hearing officer, within five (5) business days, of the results of the hearing. This notification shall be made prior to submitting his/her recommendation to the City Manager.
  - d) Nothing in these procedures is designed to supersede or prevent an employee from availing himself/herself of the City's grievance procedure.
  - e) The Personnel Action Notice signed by the City Manager will be forwarded to the Human Resources Department who will prepare all appropriate paperwork and will ensure proper notification of the employee.

1102. EMPLOYEE GRIEVANCE.

1. The word grievance means a formal, written statement from an eligible employee concerning actions taken by the City on one of the following items: loss of pay, written reprimand, suspension, and termination. Demotions, reclassifications, transfers, reassignments, and changes in shift rotations may not be grieved by an employee unless they are a direct consequence of a disciplinary action to that employee. Performance reviews and promotions cannot be grieved.
2. The wording eligible employee means any regular full-time and regular part-time employee. Discharge of an employee shall not preclude access to the grievance procedure.
  - A. The City Manager shall not have access to the grievance procedure.
  - B. Executive employees shall have recourse to the grievance procedure, but may only grieve terminations and disciplinary actions which result in loss of pay. Executive employees include Department Directors, the City Attorney and Assistant City Managers.
  - C. Executive employees and any other employees who report directly to the City Manager shall make a good faith effort to resolve the issue with the City Manager prior to filing a grievance to the Personnel Appeals Hearing Officer. The grievance must be filled within (7) seven business days following the event on which the grievance is based.
  - D. Employees reporting to Assistant City Managers shall first make a good faith effort to resolve the issue with their respective Assistant City Manager prior to filling a grievance with the City Manager. The City Manager will have seven (7) days to respond. If the decision of the City Manager is not satisfactory to the employee, a grievance may, within (7) seven business days of receipt of the decision, appeal in writing to the Personnel Appeals Hearing Officer.
  - E. Appeals to the Personnel Appeals Hearing Officer shall be filed with the City Clerk or his/her designee.
  - F. Failure of the grievant to properly follow the provisions of the "Grievance Procedure" shall result in the automatic forfeiture of the grievance with prejudice.
  - G. The established grievance procedure shall be followed except for:
    - 1) All collective bargaining units will follow the grievance procedures in their negotiated contracts.

3. Grievance Procedure:

Step 1

- A. Before an employee files a formal written grievance, the employee and his/her immediate supervisor must make a good faith effort to resolve the issue, except in situations where a special hearing officer was appointed to conduct the Loudermill hearing.
- B. A good faith effort shall consist of a face-to-face meeting between the employee and his/her immediate supervisor to discuss the issue and resolution.
- C. The filing of a formal, written grievance shall not preclude continuing a good faith effort to resolve the grievance. The good faith effort does not extend the time limit(s) included in the grievance procedure.
- D. When a special hearing officer has been appointed to conduct the Loudermill hearing, the employee may bypass the "good faith effort" of a face-to-face

meeting with the immediate supervisor and the filing of a formal written grievance with the employee's Department Director and may file a formal written grievance directly with the City Clerk's Office within (7) seven business days following the event on which the grievance is based.

#### Step 2

- A. Within (7) seven business days following the event on which the grievance is based, an eligible employee may file a formal written grievance with the Department Director. The good faith efforts shall have taken place in order for the formal written grievance to proceed.
- B. The grievance must be filed on forms available on the intranet, the Human Resources Department, City Clerk's Office, EEO/Training Office, and the Department Director's Office.
- C. The grievance must be specific and refer to an issue that can be grieved. The contents of a formal written grievance and settlement desired cannot be changed after it is submitted.
- D. A copy of the grievance shall be immediately forwarded by the Department Director to the Human Resources Director, the EEO Officer, and the immediate supervisor of the employee.

#### Step 3

- A. Within (7) seven business days after receipt of the formal grievance and after reviewing all the facts pertaining to the grievance, the Department Director or his/her designee shall provide a written response to the employee who filed the grievance.
- B. If the Department Director does not respond to the employee grievance within (7) seven business days the employee may, within seven (7) business days, file the grievance to the Personnel Appeals-Hearing Officer as outlined in Step 4.

#### Step 4

- A. If the decision of the Department Director is not satisfactory to the employee who has filed a grievance, the employee may, within (7) seven business days of receipt of this decision, appeal that decision in writing to the Personnel Appeals Hearing Officer.
  - 1) The employee's written appeal to the Personnel Appeals Hearing Officer shall be filed with the City Clerk or his/her designee.
  - 2) The appeal to the Personnel Appeals Hearing Officer must include a copy of the original City of Las Cruces Employee Grievance Form (and all pertinent attachments provided by grieving party and/or Department Director).
  - 3) The appeal must not contain any changes, deletions or addendums to the initial grievance, settlement desired and/or reply.
  - 4) The appeal must indicate if the employee will be represented by an attorney.
  - 5) A copy of the appeal shall be immediately forwarded by the Department Director to the Human Resources Director, the EEO Officer, and the immediate supervisor of the employee.

- B. Should the Department Director's response to the Grieving Party indicate that the issue cannot be grieved under City procedures and the Grieving Party nonetheless files an appeal with the City Clerk, the following shall apply:
- 1) This appeal will be forwarded to the Personnel Appeals Hearing Officer.
  - 2) Within (15) fifteen business days, the Hearing Officer will issue a decision as to whether the Personnel Appeals Hearing Officer will accept the appeal for a hearing. The decision of the Hearing Officer shall be based on the provisions outlined in this section.
  - 3) An affirmative decision will allow the appeal to proceed. A denial will end the internal administrative remedies.

4. Hearing Procedure:

- A. Within (15) fifteen business days from the filing of the employee's appeal, the City Clerk or his/her designee, with the concurrence of the Personnel Appeals Hearing Officer, shall schedule a hearing on the grievance before the Personnel Appeals Hearing Officer.
- B. Posting of the notice shall be prepared by the City Clerk or his/her designee at least (7) seven days prior to the hearing.
- C. The notice shall also be distributed to the Grieving Party, Personnel Appeals Hearing Officer, the immediate supervisor of the Grieving Party, his/her Department Director, the Human Resources Director, EEO Officer, City Attorney, and City Manager.
- D. The hearing shall be closed to the public, unless the grieving party requests otherwise.
- E. The following shall constitute the conditions of representation during a hearing before the Personnel Appeals Hearing Officer:
  - 1) The employee who has filed a grievance may represent himself/herself before the Personnel Appeals Hearing Officer. The Grieving Party may be represented by an attorney or in the alternative have (1) one observer of his/her choice present at the hearing.
  - 2) The immediate supervisor of the employee who has filed a grievance will represent the City in grievance hearings before the Personnel Appeals Hearing Officer. One (1) next level supervisor may serve as an observer during the hearing. If the employee is represented by an attorney, the City may be represented by an attorney.
  - 3) Observers for the Grieving Party and the City will not participate in any manner during the hearing before the Personnel Appeals Hearing Officer. Failure to adhere to this requirement and/or for being disruptive, may force the exclusion of the observer(s) from the hearing.
  - 4) The Personnel Appeals Hearing Officer shall make the determination on excluding an observer.
  - 5) The Grieving Party and the immediate supervisor are responsible for providing the observer(s) with any information and documents. The observer(s) shall be identified and his/her name(s) provided to the Personnel Appeals Hearing Officer (7) seven business days prior to the hearing.

- 6) If the Grieving Party is the City Attorney, or a staff Attorney, the City will be represented by an attorney of its choice. If the Grieving Party is a Department Director, the Assistant City Manager will represent the City.
  - 7) Neither the City, nor the Grieving Party, nor their attorney or observer(s) shall have any ex-parte contact either orally or in writing with the Personnel Appeals Hearing Officer prior to the hearing or after the hearing, until the written decision of the Hearing Officer is made public.
- F. It shall be the responsibility of the City Clerk or his/her designee to schedule or reschedule a hearing, accept the witness list and name(s) of observer(s).
  - G. It shall be the responsibility of the Grieving Party and the City to provide any other information, documentation or copies requested by the Personnel Appeals Hearing Officer.
  - H. All pertinent documents shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.
  - I. The Personnel Appeals Hearing Officer shall use his/her discretion as to whether to accept a document(s) not submitted in a timely manner.
  - J. The City will make an audio recording of the proceedings. A grieving party desiring a complete verbatim transcript shall provide for such a report at his/her expense.
  - K. The Personnel Appeals Hearing Officer shall have authority to call for the attendance of a reasonable number of pertinent witnesses and the production of documents, to swear witnesses, to examine witnesses, including the employee and his/her supervisor, and to hear all evidence properly brought before the Hearing Officer.
    - 1) All pertinent witness lists shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.
    - 2) The Personnel Appeals Hearing Officer shall use his/her discretion as to whether to accept a witness(es) whose name was not submitted in a timely manner.
    - 3) The formal rules of evidence shall not control this proceeding. To allow for the orderly calling of witnesses and to avoid down time, the Personnel Appeals Hearing Officer may request City management to have witnesses available according to a mutually agreed upon schedule.
    - 4) Any City employee who is called as a witness before the Personnel Appeals Hearing Officer is required to attend the hearing. Failure to appear after receiving a written notice may result in disciplinary action.
    - 5) The EEO Officer, Human Resources Director, City Attorney and their respective staff shall be exempt from being called as a witness for either the Grieving Party or the City except by direct order of the Hearing Officer.
  - L. The burden of persuasion and of going forward with the evidence initially rests with the City.
  - M. The standard of proof in a grievance hearing is the "preponderance of the evidence."
  - N. The Personnel Appeals Hearing Officer shall either approve, disapprove or modify, with consent of the parties, a decision made by a supervisor, department

- director or municipal court supervisor, except with grievances that deal with a termination.
- O. The Personnel Appeals Hearing Officer shall have no authority to modify job classifications or related wage rates as set forth in Section 22-49 and Section 22-50 of the Personnel Ordinance, nor shall it have the authority to change the intent of any personnel policy or grievance procedure.
  - P. The Personnel Appeals Hearing Officer shall have no authority to grant back pay to any employee for any period prior to the date of the event upon which the grievance is based.
  - Q. A decision or recommendation of the Personnel Appeals Hearing Officer in any particular case shall not affect retroactively, or in the future, any other employee grievance.
  - R. The decision or recommendation of the Personnel Appeals Hearing Officer shall be based upon the evidence presented at the hearing. Furthermore, the decision or recommendation shall be specific and pertinent to the grievance issue.
  - S. Within (15) fifteen business days from the date of the hearing, the Personnel Appeals Hearing Officer shall render his/her decision or recommendation.
  - T. Should the Personnel Appeals Hearing Officer want to comment on issues that were not contained in the grieving party's grievance appeal, but were discovered during the hearing, he/she may do so by submitting a supplemental comment report to the City Manager for his/her review. The supplemental comment report is not considered as or made a part of the grievance decision or recommendation.
  - U. The Personnel Appeals Hearing Officer shall immediately send a copy of the decision/recommendation to the City Manager, City Attorney, the Department Director, the EEO Officer, the Human Resources Director, and the Grieving Party.
5. The City Manager, or Presiding Municipal Court Judge, after a whole record review, must approve or reject, in writing, the recommendation of the Personnel Appeals Hearing Officer which deals with the termination of an employee. A grievance recommendation relating to a termination that is rejected by the city manager or municipal court presiding judge, after a whole record review, shall end the internal administrative remedies.
  6. A decision rendered by the Personnel Appeals Hearing Officer on the grievance issues of loss of pay, written reprimand, suspension or demotions, reclassifications, transfers, reassignments, changes in shift rotations, and the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation, shall be final and binding on all parties, unless appealed as set forth in this section.
  7. Any grievance not filed pursuant to the provisions of this procedure within (7) seven business days of the event on which such a grievance is based, shall be deemed to have been waived and no relief shall be granted thereon.
  8. The employee or the City may appeal the decision of the Personnel Appeals Hearing Officer or the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision or rejection shall be affirmed unless the decision or rejection is found to be:
    - A. Arbitrary or capricious and unsupported by substantial evidence;

- B. In violation of applicable constitutional provisions or otherwise illegal; or
  - C. In excess of the statutory authority or jurisdiction of the Personnel Appeals Hearing Officer.
9. Personnel Appeals Hearing Officer.
- A. The City Manager shall determine how many Personnel Appeals Hearing Officers are required for the efficient operation of the disciplinary appeal procedure and initiate the selection procedure prescribed in the procurement code.
  - B. A Personnel Appeals Hearing Officer shall be an attorney licensed to practice in New Mexico who is experienced in employment law. Personnel Appeals Hearing Officers shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.
  - C. A Personnel Appeals Hearing Officer shall provide services under a contract with the City and shall not be considered an employee of the City for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the City for any reason except violation of the Code of Judicial Conduct. In the event the City does not have a contract with any Hearing Officer, the parties may agree to a Hearing Officer to hear a specific case.
  - D. No person shall attempt to influence a Personnel Appeals Hearing Officer's findings and conclusions pursuant to this article except during a hearing or in the presence of a representative of the opposing party.

1103. DISCRIMINATION AND HARASSMENT POLICY: The City does not tolerate any form of unlawful discrimination on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability, in city employment, city operated programs, services or facilities.

The City believes that all employees are entitled to a workplace free of harassment and expects employees to treat each other and our customers with courtesy and respect. Conduct which violates this policy includes, but is not limited to foul language, dirty jokes or comments pertaining to race, religion, sex, sexual orientation, gender identify, color, ancestry, serious medical condition, national origin, age, or disability, regardless of whether the conduct was intended or not intended to offend or intimidate.

1. Discriminatory practices include:

- A. Harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability. Harassment is a form of discrimination.
- 1) Sexual harassment includes: requests for sexual favors, unwelcome sexual advances and other non-verbal, verbal or physical conduct of a sexual nature that creates a hostile environment for persons of either gender.
  - 2) A hostile environment is a result of severe or pervasive harassment that substantially interferes with an individual's work performance. The harassment must have been unwelcome and offensive to the victim and of a nature that would be offensive to the reasonable person.
    - a) The hostile environment standard applies to harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability.
    - b) Examples of harassing conduct include, but are not limited to:
      - i. Sexual harassment: requests for sexual favors, sex oriented verbal kidding, teasing, jokes, comments, display of sexually suggestive objects or pictures, physical contact such as hugging, patting, or brushing up against another's body.
      - ii. Gender or sex harassment: gender based jokes or comments;
      - iii. Race or national origin harassment: epithets, slurs, or negative stereotypical comments, jokes or cartoons;
      - iv. Age harassment: stray remarks or jokes relating to a person's age.
      - v. Disability harassment: Disparaging remarks, slurs or jokes relating to a person's physical or mental disability.
      - vi. Religious harassment: Coercion of employee participation in religious activities, verbal attacks or religious slurs.
      - vii. Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, religion, or ethnic group, or individuals with disabilities.
      - viii. Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability.

- ix. Retaliation to an employee who takes one of the following actions: filing a complaint of discrimination, participating in a discrimination investigation, opposing discriminatory practices or exercising any other right under federal anti-discrimination laws. The City will not tolerate employment based retaliation and any violation should be reported immediately.
- B. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during City business trips, City business meetings, conducting City related business and City business-related social events.
- C. If an investigation determines that discrimination, harassment or retaliation indeed occurred, the offender will be subject to corrective action and/or disciplinary action up to and including termination.

## 2. PROCEDURES

- A. The City encourages the use of its preventive and corrective opportunities and an individual who feels that he/she has been a victim of discrimination may make a complaint, without fear of retaliation, according to the following procedures:
  - 1) Within (30) business days of the alleged discriminatory incident, the complainant, at his/her discretion, shall make a complaint to any one of the following designated representatives: Any City supervisor or Department Director, the City EEO Officer, the City Human Resources Director, the City Attorney, or the City Manager.
  - 2) The complainant shall make contact with one of the above designated representatives or his/her designee in order to properly bring forward a complaint.
  - 3) The complainant may use the City's Discrimination Complaint Form to file a complaint. Other formats such as memorandums, handwritten statements, e-mail messages or other formats may also be acceptable. Verbal complaints shall be converted into a written format as soon as practical by the designated representative. The designated representative will forward the complaint to the City EEO Officer, Human Resources Director and/or the City Attorney within (24) twenty four hours of receipt. Complaints which are submitted anonymously may not be accepted.
  - 4) An employee who believes that he/she is a victim of discrimination, harassment and/or retaliation in the workplace has an affirmative duty to report such conduct.
  - 5) The City encourages employees to report sexual harassment from non-City employed individuals, such as vendors or others who may use City facilities or services. In this event, the Department Director of the complainant shall take the necessary action to address the harassment.
  - 6) Supervisors have a duty to pro-actively address workplace issues that deal with discrimination and harassment under the theory of they "knew or should have known of the harassment". Additionally, inappropriate supervisor conduct is not acceptable. A supervisor who fails to take appropriate action under this section or otherwise engages in inappropriate conduct will be subject to disciplinary action.

- 7) To the extent possible, the confidentiality of the person making the complaint and that of the respondent will be maintained.
    - a) Information contained in the report of inquiry may be used in disciplinary actions resulting from the investigation.
    - b) EEO investigative reports are deemed confidential unless otherwise directed by a competent court of jurisdiction or by order of the City Manager.
    - c) Therefore, if an EEO investigation is the basis of disciplinary action, the employee will be provided a summary of the investigation.
    - d) Investigation documentation shall not be photocopied or disseminated beyond the EEO Office, City Attorney's Office, City Manager's Office and Human Resources Department. "Relevant documentation" for purposes of any resulting Loudermill shall consist of a summary of the findings.
    - e) Investigation documentation shall remain confidential, to the extent allowed by law, and shall not be photocopied or disseminated beyond the EEO Office, City Attorney's Office, City Manager's Office and Human Resources Department.
  - 8) Within (5) five business days from the receipt of the complaint, the City EEO Officer, or in the absence of the City EEO Officer, an individual designated by the City Manager, shall begin an investigation of the complaint.
    - a) City employees shall cooperate with an investigation and be truthful with the investigator. Failure to cooperate and to be truthful may result in disciplinary action.
  - 9) Within (45) forty five business days from the beginning of the investigation, the City EEO Officer or designated individual, shall submit a confidential written report of inquiry to the City Attorney.
  - 10) The City Attorney or his/her designee shall have (14) fourteen business days to review the report and to issue a written determination on whether a discriminatory practice has occurred.
  - 11) Within (5) five business days of receipt of the determination, the City Manager or his/her designee shall review the determination and report. The City Manager will forward the determination to the respondent's Department Director for appropriate action, if necessary. Disciplinary action shall be consistent with City policy and procedures. The City Manager shall forward a copy of the determination, along with the report to the City EEO Officer.
3. NOTIFICATION:
- A. The City EEO Officer shall notify the complainant of the determination.
  - B. The Department Director shall notify the respondent of the determination.
4. EXTERNAL COMPLAINTS:
- A. If the determination is not satisfactory to the complainant, and the complainant is a City employee, the City EEO Officer shall advise the complainant that he/she has further recourse to the New Mexico Department of Labor Human Rights Division or the United States Equal Employment Opportunity Commission. If the complainant is not a City employee, he/she will be advised of the right to file a

complaint with the New Mexico Department of Labor Human Rights Division or the United States Equal Employment Opportunity Commission. For disability complaints not related to employment, an individual may contact the United States Department of Justice.

B. Individuals may also file directly with the following agencies:

- 1) New Mexico Department of Labor  
Human Rights Division  
Aspen Plaza  
1596 Pacheco Street  
Santa Fe, New Mexico 87505  
1-800-566-9471  
[Contact within 300 calendar days from incident]
  
- 2) United States Equal Employment Opportunity Commission  
El Paso Area Office  
300 E Main Drive Suite 500  
El Paso, TX 79901  
1-866-408-8075  
[Contact within 300 calendar days from incident]
  
- 3) United States Department of Justice  
Civil Rights Division  
Coordination and Review Section  
P.O. Box 66118  
Washington, D.C. 20035-6118  
1-800-514-0301 (voice)  
1-800-514-0383 (TTY)  
[Contact within 300 calendar days from incident]

**SECTION 1300 DEFINITIONS****A**

**Acting Appointment** - the City Manager may appoint an incumbent to a vacant position for a period of time not to normally exceed six months pending selection of a qualified person to fill a vacancy. Acting appointees may receive additional temporary compensation if certain conditions are met.

**Administrative Employee** - this class of salaried exempt employees is defined in Section 310 of the Personnel Manual.

**Administrative Leave** - paid leave approved at the discretion of the City Manager. Administrative Leave allows the employee to be away from work without losing any work-related benefits.

**Allocation** - the assignment of a position as to class and specific pay grade.

**Anniversary** - the date on which an employee was appointed to a regular position.

**Annual Leave** - leave with pay granted to employees at a specific rate to be used by an employee with prior approval from management.

**Appeal** - formal request that a decision on a formal grievance petition be reconsidered at a further stage in the grievance procedure.

**Applicant** - individual who has filed an application for a vacant position and desires to be considered for appointment to a position in the City service.

**Appointing Authority** - officials authorized to recommend appointment of individuals to positions in the City service. The City Manager is the ultimate appointing authority.

**C**

**Call-Back** - Call-Back occurs when an employee is on scheduled time off (excluding lunch breaks) and is unexpectedly notified to return to work. The order to return to work is due to an unexpected event beyond control of management and normally results in an increase to the scheduled number of employees on duty. It is not one employee replacing another scheduled employee.

**Cause** - means reason for discipline of regular employees, determined by the standards of job performance and maintenance of the public interest.

**City** - the municipal government, composed of the City Council, the City Manager, all divisions, departments, agencies, and employees which comprise the organization designed to provide service to the citizenry.

**City Council** - the duly elected or appointed officials who comprise the legislative body of the municipal government with powers defined by N.M. law and City Charter.

**City Manager** - the municipal government's chief executive officer charged with complete responsibility of employees, facilities, and other resources as set forth by N.M. State Law and the City Charter.

**Class** - one or more positions which are sufficiently alike to warrant using the same (or similar) title, qualification requirements, examination, and pay grade. Sometimes called "Classification."

**Classification Plan** - the sum total of all class specifications in the municipal service.

**Classified Employee** - a full or part-time employee holding a classified position who has completed the probationary period. A classified employee is entitled to all of the rights and benefits of the City Personnel Ordinance and Personnel Manual.

**Classified Position** - a position for which there is a job description, and a set salary range, is subject to recruitment procedures, and for which all employment actions must be based solely on merit.

**Class Specification** - a written description of a class, which includes the position title, a general statement of duties and responsibilities, requirements, and definition of working conditions.

**Compensatory Time** - those hours granted to non-exempt employees covered by the Fair Labor Standards Act in lieu of overtime, on the basis of one and one-half (1-1/2) hours compensatory time for each hour of overtime.

**Contract Employee** - a person who contracts with the City to perform a certain task for a set fee. Such a person is not a "regular" City employee. All duties, conditions, appointment duration, fees, benefits, and other terms shall be specified by contract.

**Customarily and Regularly (FLSA)** - a frequency that must be greater than occasional but which may be less than constant. Work normally and recurrently performed every workweek and does not include isolated or one-time tasks.

**Creditable Service** - time on the City payroll constitutes creditable service. Creditable service does not include time that an employee is on leave without pay, lay-off status, or the time the employee is on workers compensation.

## **D**

**Demotion** - the assignment of an employee from one class to another which has a lower pay grade and lower maximum rate of pay (also called downgrade and reclassification).

**Department Director** - a City official designated with responsibility for operation and management of a major division of City government. Departments are comprised of several section and units with similar service missions.

**Difficult to Fill Positions** – Positions identified by the Human Resources Director as traditionally not yielding a significant number of qualified candidates.

**Directly and Closely Related (FLSA)** – Tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work.

**Disability** - an employee or applicant who has: a physical or mental impairment which substantially limits one or more major life activities; or a record of having such impairment; or is regarded as having such an impairment.

**Discipline** - action taken with regard to an employee, including reprimand, suspension, demotion, or dismissal.

**Discretion (FLSA)** – the comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.

**Dismissal** - involuntary termination of employment for reasons other than lack of funds or lack of work.

**Domestic partners** – Two individuals who are in a mutually exclusive, committed relationship for the last twelve (12) months, who share a primary residence, who are jointly responsible for the common welfare of each other, who share financial obligations and have executed an affidavit of domestic partnership with the Human Resources Department and granted domestic partnership status.

**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.

## **E**

**Eligible** - a person whose name is included with a list of qualified candidates for a vacant position in accordance with procedures described in Section 200.

**Eligible List** - a list of persons qualified to fill a vacancy in a particular class.

**Emergency Employee** - a full-time or part-time employee who is hired to ensure continuity of municipal services during an emergency.

**Employee** - an individual who is legally employed by the City government and is paid through the City payroll, except for city Councillors, contracted persons, and consultants.

**Entry Level Rate** - the minimum base rate in any salary grade established for a class.

**Executive** - a salaried exempt official fully defined in Section 309 of this Manual.

**Essential Job Functions** - the fundamental job duties of the employee's position.

**Exempt Employee** - all executive, administrative, and professional employees as

defined in Department of Labor regulations relating to the Fair Labor Standards Act, and whose compensation is based on a fixed annual salary. Pursuant to principles of public accountability, for employees who accrue annual leave, personal leave and sick leave, deductions from pay of exempt employees shall be taken for absences for personal reasons or illness or injury when leave is not used by the employee..

## F

**Fair Labor Standards Act (FLSA)** - means the Federal law which sets minimum wage, overtime pay, equal pay, record keeping, and child labor standards for employees who are covered by the Act.

**Family Medical Leave** - leave granted under the Family and Medical Leave Act of 1993.

**Fee basis (FLSA)** – Paid an agreed sum for a single job regardless of the time required for its completion.

**Field of Science or Learning (FLSA)** – Law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades.

**Full-Time** - an employee working at 35 or more hours or more per seven day period.

## G

**Grievance** - an employee complaint regarding alleged unjust application of discipline, or unjust application, interpretation, or violation of the rules and regulations of the City or the department for whom the employee works.

## H

**Hearing** - a formal review of the facts and circumstances surrounding a personnel action.

## I

**Immediate Family (Emergency)** - for purposes of emergency leave: spouse, domestic partner, child, stepchild, mother, father, mother-in-law, father-in-law, brother, sister.

**Immediate Family (Sick)** - for purposes of sick leave: spouse, child or stepchild, or an individual for which the employee is a court appointed legal guardian or domestic partner and eligible dependent.

**Incumbent** - the current occupant of a position in the municipal service.

**Independent Judgment** – the comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.

**Insubordination** - failure to obey a direct lawful order of a supervisor or someone higher in the chain of command

## **J**

**Job Analysis** - comprehensive analysis of the duties and responsibilities and essential functions of a position and of the qualifications required of persons selected for the position.

**Job Description** - a written statement of duties, responsibilities and essential functions which characterizes a job and includes the education, experience, knowledge, and ability required to perform the duties of the job.

## **L**

**Layoff** - the separation of an employee which occurs when a regular position has been abolished because of material changes in duties, or shortage or stoppage of work or funds, or other reasons in the best interest of the city, as determined by the City Manager.

**Leave** - an authorized absence from regularly scheduled work hours for reasons specified in the personnel rules (holidays, vacation, sickness, injury, disability, jury duty, etc.).

**Leave With Pay** - Authorized absence from work with pay.

**Leave Without Pay** - Authorized absence from work without pay.

**Limited Competition** - competition for a vacancy which is available only for eligible City employees.

**Loudermill** - the informal "due process" or "pre-disciplinary" hearing given to an employee prior to termination, demotion, or suspension of any regular employee for more than three (3) work days.

## **M**

**Management & Supervision** - persons designated as heads of a group of employees, a section, a major functional unit, or an activity, with authority and responsibility to exercise independent judgment; who assign tasks, set standards of job performance, recommend hires, transfers, suspensions, layoffs, recalls, promotions, and terminations of subordinates. Further, they may assign, reward, or discipline others, and direct or adjust employee grievances.

**Matters of Significance (FLSA)** – level of importance or consequence of the work performed.

**Medical Standards** - medical requirements established for selected classes of positions

which are related to performance and consistently applied.

**Merit System** - a personnel system designed to attract and hold employees by making individual employment decisions based on qualifications, experience, and performance rather than on political association.

**Military Leave** - paid leave granted to an employee who is a member of the armed services or air national guard or a military reservist not to exceed one hundred and sixty (160) hours working days per calendar year.

## **N**

**Nepotism** - patronage of one's relatives by providing them employment or position. Restrictions concerning nepotism may be found in Section 22-78 of the Personnel Ordinance.

**New Hire** - a person not previously employed by the City.

**Nonexempt Employees** - all employees who are not exempt employees as defined in Department of Labor regulations relating to the Fair Labor Standards Act.

## **O**

**Office of the City Manager** – generally refers to the City Manager and Assistant City Managers.

**Open Competition** - competition for a position which is available to all interested persons.

**Overtime** - means time an employee is directed and authorized to work in excess of the 40 hours per week, or fire personnel, 212 hours per 28-day period.

## **P**

**Part-Time Employee** - one who is scheduled to work less than 35 hours per seven day period.

**Pay Period** - a two-week period, of which there are twenty-six (26) specified per year.

**Pay Plans** - the salary schedules for salaried exempt and non-exempt employees or any other class(es) of positions in the municipal service.

**Pay Rate** - also called base rate.

**Pay Range** - the minimum, midpoint, and maximum base rates established for each salary grade.

**Performance Review** - an assessment of an employee's work.

**Personal Leave** - Leave granted to employees to be used at the employee's discretion subject to the supervisor's approval.

**Post-Disciplinary Hearing** - a hearing conducted by the Personnel Appeals Hearing Officer at the request of an employee who is grieving a suspension or demotion, or a former employee who is grieving a dismissal and who has complied with the administrative process as set forth in the Rules and Regulations

**Primary Duty (FLSA)** – Principal, main, major or most important duty that the employee performs.

**Probation** - a one year (12 month) trial period of employment, during which an employee is required to demonstrate fitness for regular employment. The probation period is another aspect of the selection process.

**Probationary Employee** - a full-time or part-time employee hired to fill a position in the classified service who has not yet completed the probationary period of employment during which time the employee may be terminated at will.

**Professional Employee** - a salaried exempt person defined fully in Section 311 of this document.

**Promotion** - the assignment of an employee from one class to another, which has a higher maximum rate of pay, and greater responsibility. Promotion requires that an employee be upgraded and reclassified.

**Provisional Appointment** - appointment of a person from outside the City work force to fill a vacant position pending selection of a qualified person.

## **R**

**Reclassification**- reassignment of a position from one class (grade) to a different class (grade) to correct an error in the original assignment or to recognize a change in the duties and responsibilities of a position. Ideally, reallocation should occur when a position is vacant. Reclassification shall not be used solely as a method of awarding an incumbent a salary increase or decrease.

**Reasonable Accommodation** - a reasonable accommodation is any modification or adjustment to a job, the work environment, or the way in which the work is customarily done that makes it possible for a qualified individual with a disability to perform the essential functions of the job and ensure equal employment opportunity.

**Recruitment Process** - procedures used by the Human Resources Department in attracting job applicants for city positions; i.e., posting vacancies in the Human Resources Department , newspaper, and radio advertising, mailings to employment agencies and community organizations or by other means.

**Regular Employee** - one who is an incumbent and has completed probation in a continuing, budgeted position within the municipal service and who satisfies all

requirements for the position.

**Re-Hire** - Re-employment of a former employee who left the municipal service in good standing.

**Reinstatement** - an action whereby an employee is restored to the municipal service after involuntary termination or suspension. Reinstatement may be to a position with pay and benefits comparable to those received at the time of termination or suspension.

**Resignation** - voluntary separation from City employment prior to retirement.

**Retirement Date** - the date on which a regular City employee retires and begins drawing PERA retirement.

**Reviewer** - the rater's immediate supervisor who is required to review and approve each performance review within his/her purview before it is included as part of the reviewed employee's permanent record.

**Rules** - means the Personnel Rules and Regulations of the Personnel Manual promulgated in accordance with the provisions of the Personnel Ordinance.

## **S**

**Salary** - payment for work performed that is pre-determined and uniform from one payday to the next and does not depend on the number of hours worked.

**Salary Schedules** - (Refer to "Pay Plans") matrices of base rate salaries ranging from minimum, midpoint and maximum, depicting approved pay ranges for employees in the municipal service.

**Seasonal Employee** - an employee hired for an established seasonal program as allowed by FLSA..

**Selection** - means the choosing of a candidate for employment.

**Selection Device** - devices used separately or in combination, as appropriate, to obtain the best qualified candidates for vacant positions. Such devices may include, but are not limited to, work sample and performance tests, practical written tests, oral examinations, rating of training and experience, interview, skill tests, and others.

**Separation** - removal of an employee from the municipal payroll for voluntary or involuntary reasons; to include dismissal, resignation, layoff, retirement, abandonment of the job, death, and other reasons.

**Sick Leave** - leave with pay, granted to a classified or qualified unclassified employee, after accrual at a specific rate for illnesses.

**Standby Duty** - an employee is on standby duty when the employee is required to be available for call to duty. The employee may move about within range of a pager, but

must remain fit for duty.

## **T**

**Temporary Appointment** - appointment of an individual who meets minimum qualification requirements for a period of time not to exceed 6 months.

**Temporary Employee** - means an employee who has been appointed to a temporary position in accordance with the personnel rules, who is not eligible to receive leave and benefits, and who is not entitled to rights of grievance and appeal. A temporary employee may be full-time or part-time.

**Temporary Pay Upgrade** - employee compensation for temporarily performing assigned duties or responsibilities of a higher pay grade, provided the temporary upgrade in assignment exceeds more than 28 calendar days.

**Termination** - the resignation, retirement, dismissal, or death of an employee.

**Transfer** - assignment of an employee from one position to another in the same salary schedule. May also be assignment of an employee from one work site to another, from one agency to another, to more or less responsible or skilled occupations, or from one operational assignment to another in accordance with existing municipal policy. Transfers may be voluntary or involuntary.

## **U**

**Unauthorized Absence** - absence from duty without supervisory approval.

**Unclassified Employees** - at will employees who may be terminated for any or no reason and who have no layoff rights or recourse to the grievance procedure.

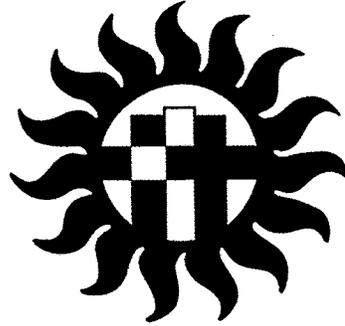
## **V**

**Vacancy** - an authorized position not occupied by an incumbent which has been approved by the appropriate designated authority for filling.

## **W**

**Wage** - payment that is calculated according to the number of hours worked and which may fluctuate from one pay day to the next as the number of hours worked varies.

**Work Requiring Advanced Knowledge** - work which is predominantly intellectual in nature, and which includes work requiring the consistent exercise of discretion and judgment.



# City of Las Cruces

**20130**

## **Personnel Manual**

Adopted ~~August 3~~ January 22, 20130

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## SECTION 100 INTRODUCTION

The City of Las Cruces' Personnel Ordinance establishes the framework for the administration of the City's personnel system. The Personnel Ordinance was adopted as Chapter 22 of the Las Cruces Municipal Code by the Las Cruces City Council in April, 1999.

The following policies and procedures were developed to interpret and implement this ordinance.

This ~~Manual of Personnel Policies~~ Manual establishes the policies and procedures that will be followed by the City of Las Cruces in personnel administration for non-represented employees. Terms and conditions of employment for union represented employees are contained in various union contracts.

The purpose of this Manual is to establish consistent basic personnel policies and practices governing relations between the City of Las Cruces and its employees. This Manual does not constitute an employment contract, and may be amended by the Human Resources Department, as necessary, with the approval of the City Manager and City Council.

The policies and procedures contained herein shall replace and supersede those contained in the Manual of Personnel Polices dated July 2, 2007 August 3, 2010.

~~Numerous City Council and City Manager Polices have been incorporated into this Manual of Personnel Policies.~~

This Manual of Personnel Polices should be interpreted as a whole rather than interpreting individual sections or sentences in isolation and out of context. Official interpretation of these policies and procedures shall be made by the Human Resources Department.

Individual department personnel policies, rules, regulations, and procedures can be promulgated with the concurrence of the Human Resources Director and the approval of the City Manager to ensure that they are not in conflict with the substance of the Personnel Ordinance and this ~~Manual of Personnel~~ Manual ~~Polices~~.

The City Manager, pursuant to New Mexico law and the City Charter, has final authority to approve or disapprove personnel actions of all City employees and to act in accord with City Council policies, consistent with provisions of the City Personnel Ordinance.

206. APPLICATION REVIEW AND REFERRAL The intent of the application review process is to maximize reliability, objectivity, and validity through a practical and job-related assessment of whether the applicant meets the minimum qualifications required for the position.

1. Selection Method. The hiring department, in consultation with the Human Resources Department, shall be responsible for determining valid selection methods to obtain the most qualified candidates for each vacancy.
2. Security. Selection material shall be confidential. Every precaution shall be taken by all persons participating in the development and maintenance of selection materials to maintain the highest level of integrity and security. Once selection processes are completed all materials, including copies and electronic files, must be sent to the Human Resources Department, unless approved in writing by the Human Resources Director. Failure to appropriately secure selection materials may lead to the rejection of sections, or an entire selection process.
3. Nepotism Prohibited. Any supervisor or manager who is in a position to recommend employment or promotion of a relative (by blood, marriage or domestic partnership) shall advise his/her immediate supervisor, and withdraw from the selection process.

Any employee asked to participate in a selection process where a relative (by blood, marriage or domestic partnership) shall immediately inform the hiring supervisor of their conflict of interest and withdraw from the selection process.

4. Preselection Prohibited. No City employee will promise job appointments to any person. All inquiries regarding vacancies should be referred to the Human Resources Department.
5. Education and Experience Substitutions  
All internal and external candidates seeking employment must meet the minimum qualifications outlined in the relevant job announcement. Should a job posting yield an insufficient pool of qualified candidates, the Human Resources Department in collaboration with the hiring department/section will determine whether to extend the posting, re-post the position or review applications for substitutions for degree requirements, education and/or experience.

A. Substitution of Experience for Education

If an applicant does not possess the required level of education one (1) year of relevant experience may be substituted for each year of required education. Relevant experience is experience that has equipped the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled.

If an applicant possesses a non-related degree, consideration may be given for relevant work experience.

For example, if a position requires a Bachelor's degree in Public Administration and an applicant has no college credits, four years of professional-level accounting experience may substitute for a Bachelor's degree. If a position requires a Master's degree and an applicant has neither a Bachelor's degree or Master's degree, six (6) years of relevant

experience may be substituted for the required education.

B. Substitution of Education for Experience.

Unless otherwise specified, one (1) year of relevant education at the undergraduate level may be substituted for one year of required experience. Relevant education is education that has equipped the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled. Generally this substitution will be limited to one half of the required experience.

For example, if a position requires two years of experience as an Accounting Technician, 30 credit hours of relevant study toward a Bachelor's degree may be substituted for one year of experience. Credit for one year of experience will be given for each year of (18 credit hours) education above the Bachelor degree level. For example, if a position requires six (6) years of experience, a Master's degree may be substituted for two (2) of the required experience. Relevant courses may be substituted for experience, provided an applicant submits a statement identifying the course for which they wish to be credited.

C. Level of Experience

Only related professional level experience will be credited for professional positions. Professional level experience involves work that is intellectual and varied in nature, requires advanced knowledge and education, and the exercise of discretion and judgment.

Non-professional level experience may not be substituted for the required professional level experience. In certain instances, non-professional experience may be substituted for educational requirements when the applicant pool does not contain applicants who meet the minimum requirements of the position.

Supervisory level experience will be credited if the experience involves supervision of two or more full-time positions. Supervisory experience involves work where one has the authority to conduct performance evaluations, approve requests for leave, and make recommendations regarding hiring, termination or other decisions affecting the employment status of others.

D. Non-Allowable Substitutions

For professions that require a college degree in order to obtain a license or certification to practice within the discipline, experience cannot serve as a substitute for education.

E. Substitutions for Training

Substitution of education or experience requirements may be made utilizing valid, current and applicable trainings or certifications. The determination of available substitutions shall be made by the Human Resources Department in collaboration with the hiring department/section.

6. Appeal of Disqualification

Applicants may appeal their disqualification to the Director of Human Resources.

7. Interviews. The hiring department/section will arrange interviews and arrange a time and accessible location for the interview to take place.
- A. Interviews shall include a weighted scoring mechanism developed to provide a standardized way of rating answers to the interview questions.
  - B. Applicants shall not be asked about items not relevant to the ability to do the job.
  - C. Applicants invited for interviews shall be notified that they can request accommodations for a disability for the testing/interview processes and told how to make that request.
  - D. The following paragraph shall be added to any correspondence scheduling an interview or test:
 

"It is the policy of the City of Las Cruces to provide reasonable accommodations for qualified persons with disabilities who are employees or applicants for employment. If you need assistance or accommodation to interview and/or test because of a disability, please contact the Human Resources Department at ~~505~~575-528-3100/Voice or 528-3169/TTY.
  - E. If interviews are scheduled by telephone, the applicant shall be informed about the availability of reasonable accommodation in the interview and/or testing process.
  - F. The contact person for the accommodation request should NOT be a member of the search committee or in a decision-making position in the search process.
  - G. When a request for accommodation is received from an applicant, the contact person for the accommodation request shall consult with the Human Resources Department for assistance.
  - H. The Human Resources representative shall discuss the necessary documentation of disability, the requested accommodation and possible alternatives with the applicant. The ADA Coordinator is available to assist the Human Resources representative.
  - I. The Human Resources representative shall make a decision regarding the request, and if approved, take the necessary steps to insure the accommodation is provided. If the request is not approved, the Human Resources representative shall inform the applicant of the reason for denial of the requested accommodation, in writing, within 3 working days of the decision.
 

Information about an applicant's disability is CONFIDENTIAL and may not be shared with search committee members or decision-makers in the hiring process.
  - J. The hiring department/section is responsible for conducting appropriate reference and employment verification.

208. ADMINISTRATIVE HIRING PROCEDURES.

## 1. SECTION/DEPARTMENT:

When a section has a staffing requirement, notification will be prepared by the hiring Section for Department Director approval and sent to the Human Resources Department. The notification should include essential information required in the advertisement, including:

- A. Position title.
- B. Desired start date.
- C. Department and division.
- D. Job term and type.
- E. Position control information.
- F. Where and how long ads are to be published and funding source if advertisement is requested beyond the local market.
- G. Funding source.
- H. If the position will require a test to be administered, the requesting Section should specify the types of tests and special instructions needed for the administration of the tests.
- I. Other information as requested by the Human Resources Department.

## 2. HUMAN RESOURCES DEPARTMENT:

~~A. With input from the Section Manager/Administrator establishes salary grade, and job description.~~

~~B.A.~~ If job description needs to be updated, HR staff will coordinate with the Section Manager/Administrator to have it updated prior to job posting.

~~C.B.~~ If job description has significant changes that increase or decrease job value, a new position evaluation will be done. HR will assign a new salary grade for the position.

~~D.C.~~ Job advertisement is posted by HR in local newspapers, on the City web site, and forwarded to local and national advertising agencies requested by the Section.

~~E.D.~~ HR staff responds to requests for additional information from the public regarding job ads.

~~F.E.~~ HR staff may screen all applications, including job required credentials such as diplomas, licenses, certifications, etc.

~~G.F.~~ Following the closing of the job advertisement, HR staff;

- 1. Reviews selection processes and methods.
- 2. May rate the applications, or forwards applications to Section for the screening, interview and selection process.
- 3. May coordinate special tests such as written exams, or other job related assessments.

## 3 SECTION/DEPARTMENT

Section Administrators/Managers and Department Directors are accountable for insuring that any part of the hiring process they choose to do is

accomplished following legally prescribed hiring processes.

A. Section Administrators/Managers, in collaboration with Human Resources, will determine the method for screening applications and set the date, location, and time for interviews.

A-B. Should all things be equal at the conclusion of a selection process, a qualifying veteran will be offered the position.

B-C. The Department or Section completes reference checks on candidates prior to recommending the hire.

C-D. Once the selection process is complete, the Department submits the Personnel Action Notice (PAN) along with the application and all applicant materials to the Human Resources Department for processing review and recommendation to the Office of the City Manager.

D-E. Section Administrators are responsible for notifying candidates interviewed but not selected following notification that the recommended hire has been approved.

E-F. Section Administrators/Managers are responsible for providing Human Resources with all documentation, including rating sheets, interview questions asked and weighted answer sheet, test results, etc.

#### 4. HUMAN RESOURCES DEPARTMENT:

A. Contacts the section to set starting date and informs the new employee of date, time and place to report to work.

B. Sends out official letter of employment offer.

C. Schedules new employees for post offer testing.

D. Conducts criminal background checks and credit checks as applicable.

E. In-processes selected new employees for employment, including;

1) Obtains copies of the new employee's relevant certifications, licenses, etc.

2) Completes I-9 procedures.

3) Processes post-offer testing results and informing department of results.

4) Provides new employee orientation.

5. When directed by the City Manager, a Hiring Review Committee will be assembled and consist of the Human Resources Director, Budget Manager and one other appointee named by the City Manager. The Hiring Review Committee will convene and review all hiring requests and recommend approval/disapproval of each vacancy. The Department Director may appeal a disapproval by the Hiring Review Committee to the City Manager.

209. College Student Hiring Procedure

College students (New Mexico State University, Dona Ana Branch Community College, or other accredited college) may be hired on a full-time or part-time basis as needed by City departments.

Student placement will be mutually beneficial in that the students will meet organizational job requirements while receiving financial assistance and experience.

The number of student employees will vary according to City needs and may be adjusted at any time provided sufficient funds are available within the requesting section(s) budgets.

All college students who, during at least eight (8) months in any calendar year, or during the period of employment, is enrolled at an educational institutions whose academic credits would be accepted by a state educational institution and carrying at least 12 credit hours or is enrolled in an educational institution's graduate studies program and carrying at least 9 credit hours shall be exempt from membership in PERA.

## 1. Definitions:

A. *Cooperative Education (Co-Op) Student* - A college student obtaining experienced based-learning through paid employment in curriculum-related work assignments. The work assignments, and will meet department objectives. Co-op or Intern employment will not exceed a two semester maximum duration unless specifically approved by the City Manager.

B. *Co-Op Student Performance Appraisal* - A performance appraisal form to be completed by a co-op student's immediate supervisor once each semester which assesses the student's performance in personal and professional growth.

C. *Work Experience Intern* - A student assigned to a curriculum-related work experience with the City, which may be paid or unpaid. Internships are one-time work assignments which may be completed for academic credit and are usually one semester in duration.

G-D. Research Intern - A student working on a project may volunteer their time to the City when the project is mutually beneficial. This class of student may be selected by the department under the spirit and intent of City policy.

D-E. *Special Grant Student* - A student assigned to a curriculum-related program whose wages are totally or partially paid by government or university funds (example: NMSU work-study program).

D.

## 2. Procedure:

## A. Classification and Compensation

1. A student wage schedule will be established by the City Manager, ~~on an annual basis for the upcoming budget year.~~ Student co-op wages will be established according to class standing (e.g., a sophomore will be paid less than a junior).

2. Department Directors shall determine the number and curriculum specialty of students desired for each upcoming budget cycle. Funding can be included in the part-time, temporary position requests;

however, the function of each student must be justified and forwarded to the Budget Office as part of the budget preparation process. approved by the Office of the City Manager

~~3. Wages for interns working a curriculum-related project must be approved by the City Manager, subject to justification by the Department Director.~~

4.3. Interns being paid to work on City-generated projects or activities will be paid according to a City Manager approved student wage schedule. Interns will not be paid a wage for performing research that would not benefit the City and is for college credit only

B. Recruitment and Selection:

1. All requests for student candidates will be submitted to the Human Resources Department who is responsible for providing a list of student co-op or temporary position openings to from NMSU, DABCC, and or other accredited colleges.
2. Student candidates who are referred by the Human Resources Department will be interviewed by the requesting Section and given equal opportunity for placement without regard to any non-job related factor.
3. Vacant student positions must be evaluated to ensure that the position is warranted.
4. The Personnel Action Notice (PAN) and any special documentation (student agreement, work-study agreement) required for the position must be submitted to the Human Resources ~~Director~~ Department for approval.
5. The Human Resources Department will in-process the student and notify the requesting department/section to establish a starting work date. A co-op student must enroll with the college's Cooperative Education Program every semester, if applicable. The college's Cooperative Education Program will confirm enrollment each semester.
6. Students will not have grievance rights and may be terminated when there is lack of suitable work, they are determined unsuitable by their immediate supervisor or at the end of their student status. The appropriate Personnel Action Notice (PAN) with an explanation shall be processed and submitted to the Human Resources Department.

210. New Hire/Rehire Probation

1. Definition: Unless otherwise authorized by the City Manager, probation is a twelve (12) month trial period during which a determination is made as to whether or not an employee is suitable for regular employment.
2. A new employee serves "at will" and can be dismissed with or without cause by the City for any legal reason.
3. New Hire Probation: Prior to the completion of the new hire probationary period (12 months), management shall decide whether or not to recommend continued employment.
- 4.4. If a decision is made to recommend the continuation of employment, a Personnel Action Notice shall be prepared changing the incumbent from probationary status to regular status. The probationary period ends once the recommendation has been approved.
- 4.
5. The department or section making a recommendation for the completion of probation shall prepare and submit all required documentation the Human Resources Department during the eleventh month of the probationary period.
6. If the decision is to discontinue employment, the incumbent shall be separated.
7. An employee's probationary period may be extended by the City Manager's written authorization.

317. CATEGORIES OF EMPLOYMENT.

1. Full-Time Regular. A City employee budgeted to work 35 or more hours per seven day period, has completed the probationary period, and is entitled to all employee benefits.
2. Full-Time Temporary. City employee budgeted to work 35 or more hours per seven day period on a short-term appointment of less than 9 months, are given a definite termination date, and are not eligible for employee benefits.
3. Probationary. A full-time or part-time employee who has not yet completed the 12-month trial period for regular of employment. The probationary period is the final test in the selection process. Employees during the probationary period have no rights to the grievance and appeal procedures outlined in Section 1100 of these policies, and may be dismissed with or without cause for any legal reason.
4. Part-Time Regular. A City employee budgeted to work less than 35 hours/week in a regular, budgeted job and has completed the probationary period. Part-time regular employees who are budgeted to work 20 or more hours per seven day period are eligible for pro rated leave benefits.
5. Part-Time Temporary. A City employee budgeted to work less than 35 hours per seven day period on a short-term appointment of less than 9 months, are given a definite termination date, and are not eligible for employee benefits.
6. Seasonal. A full-time or part-time employee hired to provide services during a particular season in accordance with FLSA, whose employment ends with the season. These employees are not eligible for employee benefits. In no event shall a seasonal employee work more than seven (7) consecutive months.
7. Contract Employee A person who contracts with the City to perform a certain task for a set fee following a competitive process. A contract employee is not a Regular City employee. All duties, conditions, appointment duration, salary, benefits, and other terms shall be specified by contract. The City Manager is a contract employee.
8. Emergency Employee. A full-time or part-time person hired to ensure continuity of municipal services during an emergency. Emergency appointments need only approval by the City Manager and are not eligible for any City employee benefits. -Emergency employee's shall not exceed three (3) months in duration, unless approved in writing by the City Manager.
9. Acting Employee. An incumbent appointed to temporarily assume the duties of a vacant position pending a regular competitive appointment or when a substantial increase in duties and responsibilities is delegated to the employee. An incumbent normally assumes the acting appointment in addition to performance of his/her usual duties. However, an employee may be assigned by the City Manager to perform duties in a position not related to their regular duties (see Section 418 for pay practices).
10. Grant-Funded Employee. A full-time or part-time employee hired and

compensated under a grant obtained by the City for a specific program. If provided for in the grant, these employees are eligible for benefits based on budgeted hours. Grant funded employees shall not have access to the grievance procedures when the adverse action is a result of a change in the grant provisions.

11. Special Staff (Deputy Chief – Term Appointment): Individuals, selected and recommended by their respective Chief to serve at the will and pleasure of the Chief in the capacity of Deputy Chief and Area Commander.
- A. The respective Chief shall submit a PAN and justification memo for City Manager consideration.
  - B. The City Manager may approve or reject the recommendation.
  - C. Upon termination of appointment,
    - 1) The employee shall revert to their previous position including changes in pay that may have occurred during their term of appointment.
    - 2) In cases where the appointee was not a current employee, their employment may be terminated.

These employees are eligible for all employee benefits but may not grieve the termination of their appointment or reduction of salary resulting from the termination of appointment.

12. Independent Contractors. An individual who meets the IRS test for an independent contractor who is not a City employee. These individuals are not eligible for any employee benefits and perform a specific task for a set fee without supervision by the City.

Procedures:

- A. Prior to securing the services of an individual the using requesting Department/Section will coordinate with the Human Resources Department to make the determination of whether the contemplated arrangement meets the test for an independent contractor. If the funding source is a grant, the grant requirements will apply. ~~If the contract is for more than \$2,500 the Procurement Code will apply.~~
- B. If the determination is made that the arrangements meets the test for an independent contractor, the Department/Section will review the procurement code to ensure compliance and prepare an Independent Contractor Agreement using the City's template. If the determination is made that the test cannot be met, the Human Resources Department will assist the section with the appropriate hiring category under the personnel manual.
  - C. ~~Once the Section has developed the independent contractor agreement, the agreement will be sent to the Legal Department for review of the agreement before either the Section or contractor has signed the agreement.~~
  - D. ~~Once approved by the Legal Department as to form, the agreement is sent back to the Section for signatures of the Section Administrator,~~

~~Department Director and contractor, both signing as 'approvals' to the proposed agreement.~~

~~E.C.\_\_\_\_\_~~ The signed agreement is then sent to the Purchasing Manager for review and ~~execution and date of the completed agreement.~~

~~F.D.\_\_\_\_\_~~ Once signed, Purchasing will issue the PO, send a copy of the executed agreement to the contractor and to the Section, and the original is sent to the City Clerk.

406. PAY RATE ADJUSTMENTS.

1. Conditional Hires. If, after several recruitment attempts or for positions that have been determined as being difficult to fill, no fully qualified candidate is identified, the hiring department may recommend a salary offer 5% lower than the entry level of the new pay range on a conditional basis of acceptable performance during the probationary period or thru the acquisition of appropriate licensures, certificates or experience. At the end of the probationary period, if the employee is performing the full scope of duties and responsibilities for the position, a pay rate adjustment shall be made to place the employee at the entry level for the position.
2. Transfers (Also Defined as Reassignment). When an employee is transferred (reassigned) from one position to another within the same pay grade he/she shall continue to receive the same base rate
3. Promotions. Placement of an employee within a higher grade than the employee's current assigned grade.

The employee will receive the higher of:

- A. Two and one half (2.5) percent when the new position is one salary grade higher, or
  - B. Five (5) percent when the new position is two (2) salary grades higher, or
  - C. Seven and one half (7.5) percent when the new position is three (3) salary grades higher, or
  - D. Ten (10) percent when the new position if four (4) or more salary grades higher, or
  - E. Twelve (12) percent if moving from a non-exempt to a higher exempt position, or
  - F. Two and one half (2.5) percent above the minimum of the new pay grade.
4. Conditional Promotions.

If no qualified candidate is identified in multiple recruitment efforts or for positions that have been determined as difficult to fill, the hiring department may offer an internal candidate a conditional promotional opportunity.

The employee will receive half the promotion rate as defined in three (3) above.

At the end of the conditional period or thru the acquisition of appropriate licensures, certificates or experience, if the employee is performing the full scope of duties and responsibilities for the position, a pay rate adjustment shall be made to place the employee at the full promotional rate as defined above.

5. Reclassifications  
Reclassification is the reassignment of a position from one class to a different class to recognize a significant change in the duties and responsibilities of the position/employee. For an upward reclassification the percentage increase will be the higher of:

- A. Two and one half (2.5) percent when the new position is one salary grade higher, or
- B. Five (5) percent when the new position is two (2) salary grades higher, or
- C. Seven and one half (7.5) percent when the new position is three (3) grades higher, or
- D. Ten (10) percent when the new position if four (4) or more salary grades higher, or
- E. Twelve (12) percent if moving from a non-exempt to a higher exempt position, or
- F. Two and one half (2.5) percent above the minimum of the new pay grade.
- G. For a downward reclassification the affected employee should be placed in the lower of their current percentile rank, or the maximum of their new pay grade

6. Demotion. The placement of an employee within a lower grade than the employee's current assigned grade resulting in a decrease in pay.

In the case of a demotion, the employee shall be placed in the pay grade for the position they are being demoted to at their same percentile rank or the maximum of the new pay grade, whichever is lower.

In the event that an unrepresented or represented employee is demoted into a represented position, the employee shall be placed in the pay grade for the position they are being demoted to at the average wages of all employees within that position with the similar length of service with the City. In the event that no such match exists the new salary will be determined by the City Manager.

7. Full Reinstatement. When reinstated from layoff for lack of work, the employee shall be restored to the same grade and percentile rank of the grade the employee had at the time of the layoff.
8. Reinstatement to a Lower Grade. If reinstated from a layoff to a lower grade, for whatever reason, the employee shall be placed in the pay grade for the position they are being reinstated to at their same percentile rank or the maximum of the new pay grade, whichever is lower.
9. Merit Increase Programs. ~~Effective July 1, 2004 and the start of each subsequent fiscal year, a~~All full- and part-time regular, non-contract, non-sworn employees in good standing, and employees who were hired before September 1<sup>st</sup> of the preceding year, shall ~~may~~ be eligible for a prorated merit increase based on overall performance evaluation ratings, the employees current percentile rank, and merit budget allocated by the City Council in its annual budget. Merit increases will range from 0% up to 6% of the employees base rate, and will be added to the base pay the first full pay period in September beginning September 2010.

Employees near the top of their pay grade are eligible to receive performance increases based on their overall performance evaluation. The increase will be applied to the employees' base salary but any amount in excess of the salary grade maximum will be awarded as a lump sum payment, and will not be added to base pay.

10. Merit Lump Sum Awards. An employee eligible for a merit award who has met or surpassed the maximum of their pay grade shall be eligible for a merit lump sum award based on overall performance evaluation ratings and percentile rank of the employee. Merit lump sum awards will not be added to the employee's base rate. Lump sum merit awards will range from 0% up to 3% of their base rate and will be distributed in September beginning September 2010.
11. Cost-of-Living/General Wage Adjustments. The City Council may allocate funds for general wage adjustments. These adjustments may be made to the pay grades. All eligible employees will receive the amount of the adjustment that does not cause the employee to exceed the maximum of the grade.
12. Exempt Employee Initial and Last Paycheck. Exempt employees will be paid a proportionate part of the employee's full salary for the time actually worked in the first and last week of employment at an hourly equivalent of the employee's full salary.
13. The City Manager has discretion to review an individual's salary and make adjustments in the interest of parity or equity. Such salary adjustments are extraordinary and unusual and are to be considered, without precedent, on a case-by-case basis.
- ~~13.~~14. The City Manager may evaluate the impact of a change to an employee's duties and responsibilities, and for fairness and equity and may direct an employee's salary be frozen for a period of time. The Human Resources Department will evaluate the effects of the freeze and make recommendations to the City Manager regarding the duration of the freeze.

- 503 ATTENDANCE/PUNCTUALITY. Whenever possible, time off should be scheduled in advance. Excessive unscheduled absenteeism or failing to be punctual can adversely affect the quality of services, the workload of co-workers, and the employee's work record. Repeated unscheduled absences, even for legitimate reasons, will be subject to review and progressive discipline may be initiated. Employees are personally responsible for properly notifying their immediate supervisor or designee in advance of the scheduled work shift whenever they will be absent, late, or need to leave early.

Definitions:

1. Scheduled Absences are Pre-planned periods of time off which an employee and their immediate supervisor mutually agree to before the absence is to occur.
2. Unscheduled Absences. Unplanned time off to which an employee and their immediate supervisor did not mutually agree in advance. An unscheduled absence may be paid if sufficient leave accruals are available *and* the supervisor or designee is properly notified before the shift begins. The supervisor retains the right to approve/disapprove use of ~~sick-leave~~ accruals if proper notification of the absence is not received or leave is denied.
3. Absence – includes missing an entire scheduled shift of work or reporting to work more than two hours late or not staying through at least one-half of a scheduled shift.
4. Failure to Report on Time –arriving or “clocking in” after the official starting time, or leaving or “clocking out” before the official quitting time, without advance approval.
5. Failure to Notify Supervisor. Employees failing to properly notify their immediate supervisor or designee of an absence, will not be paid for such absence. Three consecutive unscheduled absences without calling may constitute a presumption of job abandonment and the employee may be deemed to have voluntarily resigned their position. In this situation, the employee will be ineligible for future re-hire.
6. Extenuating Circumstances. Occasionally, there may be situations which could be exempt from the disciplinary measures of this policy. Should such a case arise, the employee should review the events that occurred with the Department Director.
7. Incarceration. An employee who is arrested or incarcerated by authorities shall not be granted any form of paid leave to serve periods of confinement or incarceration (generally excluding pre-trial confinement).
- 7-8. De Minimis time. Infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes that may be disregarded.
9. 3-4 minute rounding rule. 3 minutes “round down” and 4 minutes “round up”.

Examples:

- a. An employee's start time is 8:00 am. The employee arrives at 8:03 am. Under the 3-4 minute rules, the start-time will be “rounded down” to 8:00

am for this employee. But if the same employee arrives another day at 8:05 am, the start-time will be "rounded up" to be 8:06 am.

7.b. An employee's normal quitting time is 5:30 pm. The employee leaves one day at 5:32 pm, the time will be "rounded down" to 5:30 pm. But if this same employee leaves at 5:34 pm, then the employer must "round up" so that the employee's time is actually recorded as 5:36 pm.

7.10. Occasional tardiness for a work assignment or shift may be considered as de minimis for time keeping purposes. However, frequent, disruptive, regular or habitual tardiness shall be cause for discipline.

7.

7.11. Employees shall not arrive early or leave late without the prior approval of their supervisor.

505. ANNUAL LEAVE. Annual Leave (also referred to as vacation) may be taken from time to time, normally in four-hour increments depending on unused accrual and prior approval by supervision. Eligibility depends on the following criteria:

1. Individual must be employed in a position eligible for annual leave accruals.

2. Annual Leave shall "accrue" to regular and probationary full-time employees and to regular and probationary part-time employees, based on eligible hours worked, from date of regular appointment at the following accrual rates, depending on years of service. Annual leave shall accrue to contract employees in accordance with the terms of the contract and shall accrue for grant-funded employees in accordance with the terms of the grant.

YEARS OF SERVICE	REGULAR F/T 40 HRS/WK	LCFD WORKING 56 HRS/WK
1 <sup>st</sup> - 3 <sup>rd</sup> Year During 1st Year	80 hrs/yr (10 days) 56 hrs/yr (7 days)	112 hrs/yr 56 hrs/yr
4th - 10th Year 2 <sup>nd</sup> and 3 <sup>rd</sup> Year	120 hrs/yr (15 days) 80 hrs/yr (10 days)	168 hrs/yr 112 hrs/yr
11th + Years 4th - 10th Year	160 hrs/yr (20 days) 120 hrs/yr (15 days)	224 hrs/yr 168 hrs/yr
11th + Years	160 hrs/yr (20 days)	224 hrs/yr

3. ~~3.~~—An employee who has been approved for annual leave shall not change that leave to sick leave, when applicable, without presenting to management a physician's statement verifying the illness.
4. Exceptions to this ~~policy~~ accrual rates can be made under extraordinary circumstances upon recommendation of the Department Director and approved by the City Manager.

507. PERSONAL LEAVE. Regular and probationary employees shall accrue, at the beginning of the first full payroll of each calendar year, personal time off to conduct personal business as described below. The amount of Personal Leave authorized each calendar year is determined according to the employee's schedule. Personal leave shall accrue to contract employees in accordance with the terms of the contract and for grant-funded employees, in accordance with the terms of the grant.
1. 8 hrs per calendar year for employee's who are budgeted to work 35 or more hrs/week.
  2. 41.25~~12~~ hrs per calendar year for 56 hour non-union fire service employees.
  3. Part-time regular employees shall accrue personal leave on a regular hours worked.
  4. All unused personal leave shall be forfeited effective midnight, at the beginning of the first full pay period of each calendar year.
  5. Personal Leave must be approved in advance and requested using the Request for Leave Form.
  6. An employee who has been approved for the use of personal leave shall not change that leave to sick leave, when applicable, without presenting management with a physician's statement verifying the illness.
  - ~~7. Eligible, non-represented employees shall receive an additional eight (8) hours of prorated personal leave on August 15, 2010. This leave will be forfeited if unused by July 2, 2011.~~

510. SICK LEAVE BANK.Purpose:

On occasion, a City of Las Cruces employee or a member of their immediate family may encounter a catastrophic illness that requires an extended absence from work. The Sick Leave Bank (SLB) is created to provide for donation of sick/annual or personal leave to assist an employee who has exhausted all accrued leave and who has no other paid leave options available. This leave may be granted in the event of a catastrophic illness of the employee or immediate family member.

A catastrophic illness means an illness, injury, impairment, or physical/mental condition which prevents the employee from performing the functions of their job, or a life-threatening illness of an immediate family member; and requires the services of a licensed medical practitioner for a prolonged period of time, and forces the employee to exhaust all leave time earned and be in a leave without pay status.

Policy:

1. The Sick Leave Bank will consist of leave donated by employees. All donations of leave to the SLB are strictly voluntary, but in order for employees to become eligible to receive leave from the SLB, they must donate at least twelve (12) hours of leave, or 16.9 hours for firefighters working 56 hours per week, to the SLB at the beginning of each calendar year, or they shall relinquish their eligibility to withdraw leave from the SLB for that calendar year.
2. Part-time regular employees shall donate/withdraw leave from the SLB on a pro-rated basis.
3. Employees may donate additional leave throughout the year if they choose to do so. Employees may donate annual leave regardless of accrual balance, and sick leave if the sick leave donated is in excess of a 96-hour balance.
4. Leave hours will be donated/withdrawn on a one-to-one hourly basis. Leave donations to the SLB will be converted to a dollar value based on the base rate of pay of the donator and deposited into the SLB. Leave withdrawn from the SLB will be in the form of a dollar value based on the receivers base rate of pay. During the period of receiving donations from the SLB, the employee will not accrue any leave.
- 5.—FMLA qualifying leave will run concurrently with hours provided from the Sick Leave Bank.
- ~~6.5.~~
- 6.—This policy does not cover time off due to a job-related injury covered by Workers Compensation or maternity leave which does not involve a serious illness/injury of an employee.
- 6.
7. Sick leave bank hours may be used in conjunction with part-time temporary modified duty assignments (light duty).

~~7.~~ All leave withdrawn is contingent upon the availability of leave in the Sick Leave Bank. Because the Sick Leave Bank is not funded, City management will work with the departments who have users of the SLB and may need temporary replacements, but do not have adequate budget since they are being charged for the employee using SLB hours.

8.

~~8.~~ The Human Resources Department will monitor donations and withdrawals and may, from time to time, solicit additional donations from employees during the calendar year. Employees who donate leave during these mid-year efforts will not be eligible to withdraw leave from the SLB for that calendar year unless they previously met the initial eligibility requirements.

9.

~~10. 9.~~ Excess SLB donations will not carry over from one year to the next. Employees will be permitted to make donations ~~on December 31 of each year~~ for the following year, as established by the Human Resources Department. This will allow employees to use annual leave hours for the donation that they would otherwise have lost due to annual leave accrual maximums.

Procedure:

The Human Resources Department is responsible for tracking and maintaining the Sick Leave Bank and notifying employees of the following Sick Leave Bank requirements. The Human Resources Director shall accept SLB Donation/Request Forms and function as the approving authority.

1. The minimum eligibility qualifications for the Sick Leave Bank are:
  - A. All full-time regular and part-time regular employees who have completed their probationary period are eligible to receive sick leave hours if hours are available in the Sick Leave Bank.
  - B. Temporary employees are not eligible to donate or receive Sick Leave Bank hours.
  - C. Employees who face extreme hardship due to a qualifying catastrophic illness and who have exhausted all sick and/or annual leave as a result of the catastrophic illness may apply for leave from the Sick Leave Bank.
  - D. Extreme hardship is defined as: When an employee has exhausted their sick and annual leave and requires additional leave to fully recuperate from a qualifying catastrophic or additional time to care for an immediate family member with a catastrophic illness before returning to employment.
  - E. Sick leave bank hours. ~~The leave recipient will continue to accrue annual and sick leave while receiving donated leave from the Sick Leave Bank, but such accruals shall be used as they are earned. Leave hours will generally be withdrawn in increments of 480 hours per pay period/day, unless being used as part of a temporary modified duty assignment minus~~

|           ~~any leave accrued during each pay period.~~

2. The confidentiality of the Sick Leave Bank applicants/recipients will be protected. Employees shall apply for leave from the Sick Leave Bank by using the SLB Request Form, which can be obtained from the Human Resources Department. The employee will:
  - A. Meet minimum qualifications of the Sick Leave Bank Policy.
  - B. Provide Human Resources with the FMLA Certificate of Health Care Provider (#WH-380 or equivalent applicable form), completed by the employee's treating physician.
  - C. Provide a signed Sick Leave Bank Request Form prior to the anticipated exhaustion of accrued paid leave hours, or as soon as applicable.
  - D. Have no abuse of sick leave documented by the Department Director/Section Administrator/Manager.
  - E. Have exhausted all accrued leave.
  - F. A maximum of 12 weeks may be withdrawn from the Sick Leave Bank per calendar year.

515. LEAVE WITHOUT PAY STATUS. This classification, hereinafter referred to as LWOP, may be awarded voluntarily or involuntarily for a variety of reasons. While an employee is on LWOP status, they are on the inactive payroll and all employer benefit contributions are suspended. Note: the FMLA provides for a continuation of benefit payments for qualifying events.
1. Involuntary LWOP. Employees are usually assigned to this status for disciplinary reasons as a result of employee misconduct. In those cases, LWOP status assumes the form of suspension from duty without pay for a specific period of time. In other special cases, involuntary LWOP may result from administrative action in order to accommodate an employee who has exhausted all other types of Leave with Pay. In every case, involuntary LWOP status is initiated by management and approved by the City Manager.
  2. Voluntary LWOP. This type of leave may be requested by employees for a variety of reasons not covered under the Family and Medical Leave Act. Approval of LWOP is discretionary on a case-by-case basis. Each request will be considered in terms of work load, staffing levels, business necessity, availability of personnel, timeliness, reason for leave and other job-related factors.
  3. Reinstatement from LWOP Status. Reinstatement will be made only if a vacant position exists for which the employee who was on LWOP qualifies. The City Manager shall make the final determination concerning reinstatement based on suitability, budgetary constraints, staffing levels, and other related factors.
  4. Continuation of Certain Benefits During LWOP Status. The immediate supervisor is charged with the responsibility to make sure that employees placed on LWOP status receive information on what happens to their benefits during that period. The employee may continue as a member of the Employee Health Care Plan in accordance with the provisions of the applicable insurance contract by paying the COBRA rate both his/her share and the City's share.
  5. —If a City employee has an on-the-job illness or injury that last over a seven day period the employee will be placed in LWOP status on the eighth day. The employee can use any combination of accrued leave for the first seven days i.e. Annual, Sick, Comp Time. If the illness or injury lasts for more than four weeks the employee will be compensated for the first seven days at the Workers' Compensation rate of six-six point seven percent of the average weekly wages and must repay the City for any leave taken during that period of time. Employees may choose to return the payment to the City and - maintain the use of leave. Employees must comply with this provision of this policy or forfeit their Workers' Compensation Benefits.

516. WORKERS' COMPENSATION PAY STATUS.

When an employee is receiving Workers' Compensation benefits as a result of on-the-job illness or injury, the employee may continue as a participant in the City's group insurance by continuing to pay the employee's portion of the premium. The employee in this status shall be designated for payroll purposes as being on Leave Without Pay. Employees on LWOP due to a Workers' Compensation Injury will accrue ~~Annual Leave~~, time in grade and longevity credits only. However, the accruals will not be posted until such time that the employee returns to the active payroll.

519. PAYMENT PROVISIONS FOR CERTAIN NON-UNION FIRE DEPARTMENT PERSONNEL.

1. All ~~N40~~ hour non-union 40 hour fire personnel service employees, whether on duty or not, shall be eligible to receive ~~8 hours~~ eight (8) hours of prorated holiday pay for twelve (12) regularly scheduled holidays or as determined by the City Council holiday pay.
2. Exempt 56 hour Fire Service employees shall have ninety-six (96) hours holiday leave hours placed in a bank in January of each calendar year. Methods for requests of holiday leave hours shall be established by the Chief. Any unused holiday leave hours shall be forfeited at the issuance of new banked hours. Prorated holiday leave hours shall be banked for employees promoting into eligible positions.
3. Unrepresented, non-exempt Fire Department employees working a 56-hour week schedule shall receive twelve (12) hours of holiday pay at the employees' regular hourly rate for each holiday recognized by the CITY.

603. WORK RULES.

The following work rules apply to all City employees. These rules are not intended to be all inclusive and the City shall, when it deems appropriate, establish additional rules to ensure effective operation of the City.

1. Employees must be at their designated work place on time and ready to work. Employees shall remain at work, until the scheduled quitting time, unless permission to leave earlier is granted by their supervisor.
2. Where operations are continuous, an employee shall not leave his/her post until replaced by the next shift employee or until relieved by the supervisor.
3. City offices will be staffed at least between 8:00 A.M. and 5:00 P.M. Monday through Friday to provide prompt assistance to City residents. Supervisors will arrange for their office staff members to take staggered lunch hours or shifts so City offices are staffed during these hours.
4. Employees shall not gather on City premises to conduct any personal business without authorization.
5. Employees shall follow all safety regulations including wearing safety articles and using protective equipment. Employees shall immediately report accidents or injuries to supervision.
6. Employees shall be responsible for and shall not misuse City property, records, or other materials in their care, custody, and control. City property, records, or other materials shall not be removed from the premises without written permission from the Section Administrator/Manager.
7. Employees shall not litter work areas.
8. Employees shall deal with the public and co-workers in a courteous and professional manner.
9. PUBLIC STATEMENTS ON BEHALF OF THE CITY. The Public Information Officer, attorneys in the Legal Office, Program Administrators/Managers, Department Directors, and the Office of the City Manager are authorized to make public statements on behalf of the City. These individuals may authorize others verbally or in writing to speak on behalf of the City. No City employee will make a public statement on behalf of the City on a matter involving litigation or confidential personnel matters without expressed authority to do so from the City Manager. City employees will direct media inquiries to the appropriate authorized person to address the media's particular questions.
10. Prior to the usual reporting time, each employee shall advise supervision of his/her inability to report to work and the reason.
11. Employees shall immediately report the loss of their badge or identification card to their supervisor. Employees shall not allow other persons to use their badges or identification card at any time.
12. Employees shall only smoke in designated smoking areas.

13. Employees will notify their supervisor and the Human Resources Department whenever there is a change that may affect their employment or benefit status.
14. Employees are responsible for obtaining and renewing any license, certificate, permit, or other credential required in order to perform their job. Moreover, employees are required to report the loss or revocation of any credential to supervision immediately. Failure to report shall result in disciplinary action.
15. All employees of the City who are required by their duties to wear uniforms will wear regulation uniforms provided by the City as determined by the City Uniform Policy or Standard Operating Procedures of the Las Cruces Fire or Las Cruces Police Department.
16. In the course of conducting City business, employees shall not park in prohibited areas.
17. Employees shall not unduly restrict or interrupt work or interfere with the work of others.
18. Employees shall report for and remain at work only when able to safely perform their job duties.
19. Employees will notify their immediate supervisor whenever they will be absent, late, or need to leave early.
20. Employees may not use his/her position to coerce or abuse another person.
21. Employees may not engage in theft, unauthorized possession or use, vandalism or damage of City property, or private property while in performance of his/her official duties.
22. Employees shall not fight, engage in horseplay, gamble, use abusive language, bully, assault, including sexual assault, or make threats while on duty or on City premises.
23. Employees shall not use City facilities or equipment to conduct a personal business during working hours on City premises and shall not remove City property from City premises without prior written consent of the supervisor.
24. Employees shall not engage in unapproved soliciting or any partisan political activity while on the job.
25. Employees shall not post notices on the City premises without prior written approval from the appropriate authority.
26. Employees shall not possess unauthorized weapons, illegal drugs, or alcohol on City premises.

27. Employees shall not sell, distribute, use, or be under the influence of any illegal drug or alcohol while on City premises or while operating any City owned or leased equipment.
  28. Employee will not engage in personal conduct which interferes with the proper performance of another employee's duties.
  29. Employees shall not falsify time sheets, public records, or claims of illness or injury.
  30. Employees shall not punch or sign another employee's time card or work sheet (except for supervisors signing time sheets for employees under their jurisdiction).
  31. No employee shall engage in any unapproved outside employment or business activity that conflicts with his/her municipal employment. The City Manager must approve any outside employment for full-time employees.
  32. No employee shall harass, discriminate or retaliate against any other employee or citizen.
  33. No employee shall be insubordinate, which is failure to obey a direct lawful order of a supervisor or someone higher in the chain of command.
  34. Employees shall not engage in negligent or careless operation or maintenance of equipment; unsafe practices which endanger the employee, other employees, or the public.
  35. Employees shall not abuse legitimate grievance processes resulting in repeated unsubstantiated claims.
  36. Employees will make themselves available, participate fully in all administrative investigations and be completely honest in said participation.
  37. All employees shall immediately notify Risk Management following any accident or citation received in the course of operating City equipment, and shall remain on scene until released by Risk Management in non-emergency situations.
  38. No City employees shall solicit anything of value from a citizen or business for services that the City is expected to provide.
- Employees will effectively perform their work assignments and not be derelict in the execution of their job duties.
- 39.
39. Employees shall not misuse City computers, networks, internet services, social media, telephones or other devices.

| 612. ACCIDENT/INJURY/PREGNACY REPORTING AND RETURN TO WORK PROCEDURES

1. POLICY:

Any City employee who incurs an injury or illness which limits his/her ability to perform one or more of the essential functions of his/her job for a temporary period of time will return to work as soon as possible, consistent with any medical limitations arising from that injury or illness. When an employee is temporarily unable to perform his or her usual and customary duties, the City will endeavor to place the employee in a temporary assignment as long as meaningful and necessary work is available. This assignment will be consistent with the employee's skills and abilities and any medically necessary work restrictions.

8.

614. LOSS OF EMPLOYEE'S DRIVER'S LICENSE1. APPLICABILITY:

This policy applies to all City employees who are required by the essential functions of their job to operate a City-owned motor vehicle or who are asked to drive on City business.

2. PURPOSE:

A. The three primary objectives of this policy are:

- 1) Ensure the safest practical working environment for our driving employees.
- 2) Protect the citizens of Las Cruces.
- 3) Control the financial liability of the City in driving situations.

B. These goals are achieved by reviewing the driving histories of City employees and applicants for City jobs that require driving on City business. Only those applicants having acceptable driving histories are hired. Employees who do not maintain acceptable driving records are subject to discipline up to and including termination.

3. POLICY:

An employee must have the appropriate license in his/her possession to drive on City business. Only authorized employees are allowed to drive vehicles on City business. Employees are required to comply with all applicable federal, state and local regulations relevant to driving a motor vehicle. Employees will be permitted to operate City-owned motor vehicles only if they possess a current and valid New Mexico Driver's License or Texas Driver's License, or have a valid and unexpired New Mexico or Texas Temporary Driving Privilege License.

4. MANAGEMENT RESPONSIBILITIES:

A. Department Directors shall establish and maintain a list of driving positions. A copy of the current list shall be sent to the Human Resources Department in January of each year. This list identified the:

- 1) Department Name/Section Name
- 2) Job classifications
- 3) Position numbers
- 4) Employee's name and number

B. Department Directors, or their designee, shall prohibit any employee without an appropriate driver's license in his/her possession from driving on City business.

C. Department Directors, or their designee, will regularly, not less than quarterly, inspect and keep a written record of the drivers' license of each employee who operates a City-owned motor vehicle to ensure possession of the required license.

D. Department Directors, or their designee, shall immediately remove from a driving position any employee who cannot produce a valid license or

whose license is cancelled, expired, refused, revoked, suspended, or restricted in a manner which affects the employee's ability to drive on City business.

E. If a supervisor learns that an employee has had their drivers' license revoked or suspended or that the employee does not have a valid and unexpired New Mexico Temporary Driving Privilege License in their possession, the supervisor will take the following actions:

- 1) Immediately prevent the employee from operating a City-owned motor vehicle until further notice from the employee that the license has been returned.
- 2) Inform the Department Director in writing of the suspension, revocation or non-renewal and the facts surround the loss of the license by the next business day.
- 3) The Department Director will determine if there is a vacant position for which the employee is qualified to which the employee can be transferred to for which there are no priority reassignments under Workers' Compensation or ADA. If an appropriate position is identified, the employee will be reassigned to that position with a reduction in pay commensurate with the new position.
- 4) If there are no vacant positions for which the employee is qualified, the Department Director shall issue a Personnel Action Notice (PAN) placing the employee on leave. If the employee has annual or personal leave or accrued compensatory time he/she may opt to use it, otherwise, he/she will be placed on leave without pay (LWOP) status.
- 5) While on leave, the employee may seek other positions in the City for which he/she is qualified for up to ninety (90) days, or pursue reinstatement of lost license or certification during this time.
- 6) If the employee has his/her license re-instated within ninety (90) days, he/she may be placed back into his/her previous position if available, or compete for vacant positions for which the employee is eligible.
- 7) If a suitable vacancy cannot be found, or license cannot be re-instated at the end of the ninety (90) day period, the employee will be terminated.
- 8) An employee in a driving position who has a status change in his/her driver's license for a period of more than ninety (90) days shall be terminated.

5. EMPLOYEE RESPONSIBILITIES:

A. An employee in a driving position must be able to drive as an essential job function. Each driving employee is responsible for:

- 1) Being aware of, understanding, and complying with federal, state, and local laws and City policies applying to the operation of vehicles on City business.
- 2) Ensuring that the privilege to drive is maintained.
- 3) Maintaining in his/her possession the appropriate driver's license at all times while driving on City business and to prove they have valid driving privileges upon request.
- 4) Comply with all license restrictions issued by the DMV.
- 5) Signing a release of information form allowing the City to periodically

verify driving privileges and records with the New Mexico Department of Motor Vehicles.

- 6) Immediately reporting to their immediate supervisor prior to starting the next work shift if they do not have a valid drivers' license for any reason or if there is any change in status of his/her driver's license
  - 7) Refrain from driving on City business after there has been a change in status of his/her driver's license, even if the cancellation, expiration, refusal, revocation, suspension, or restriction has ended, unless the license has been reinstated. Proof of reinstatement must be provided to the supervisor before driving on City business.
  - 8) If an employee is cited for DUI/DWI or incurs any other action that threatens their drivers' license, the employee will:
    - a) Provide notice of such citation, non-renewal or other action to their direct supervisor prior to starting the next work shift.
    - b) Provide proof of their Request for Hearing or appeal within twenty (20) days of the date of the citation, non-renewal or other action.
    - c) Provide a copy of the Notice of Hearing from the Department of Motor Vehicle (DMV) within 72 hours of receipt.
    - d) Provide a copy of the DMV ruling within three (3) days of the ruling, but no later than 90 days from the citation, non-renewal or other action.
    - e) Immediately notify supervisor of all court proceedings, and provide copies of results related to the outcome.
- B. An employee in a non-driving position must:
- 1) Comply with federal, state, and local driving laws.
  - 2) Follow all regulations pertaining to driving on City business if requested to drive a vehicle on City business.
  - 3) Immediately notify his/her supervisor if requested to drive a vehicles on City business and the employee does not have the appropriate driver's license in his/her possession.
  - 4) Sign a release of information form authorizing the City to verify drivers' license status.
- C. No employee will drive on City business after consuming alcoholic beverages or any other substance that may impair driving. Any impairment affecting the ability to operate a vehicle safely must be immediately reported to the supervisor.
- D. Failure to comply with any of these reporting requirements will result in immediate termination.

## 6. HIRING PROCEDURES

- A. Driving records of applicants for driving positions, ~~including present City employees,~~ must be reviewed before making an offer of employment. Applicants must have an acceptable driving history record to be considered for employment.
- B. Driving records are evaluated based on moving violation convictions, chargeable accidents, and related performance. Driving record points are determined by the DMV.

- C. The employee's ~~driving record~~ driver's license must be checked before an employee is promoted, transferred, or reassigned into a driving position. An employee who does not have the appropriate driver's license a ~~permissible driving history~~ will not be placed into a driving position.

## 7. DEFINITIONS

- A. Acceptable Driving Record: The driving employee has accumulated three points or fewer in the previous twelve months. Points are as shown in the Current DMV violation record. In addition, any cancellation, expiration, refusal, revocation, suspension, or restriction affecting the employee's ability to drive on City business, or other factors such as a chargeable accident or zero point violation, are considered in determining whether the employee's driving record is acceptable. Certain positions will have additional requirements that define an acceptable driving record.

The following items preclude hiring into a driving position:

- 1) Eight or more point in the previous 36 months, as shown in the DMV record.
  - 2) More than two chargeable accidents within the previous 36 months.
  - 3) A conviction of driving under the influence within the previous 36 months.
  - 4) License has been cancelled, refused, revoked, suspended, or restricted as the direct result of a moving violation within the previous 36 months.
  - 5) A current cancellation, expiration, refusal, revocation, suspension, or restriction that affects that applicant/incumbent's ability to drive on City business.
- B. Appropriate License: A New Mexico driver's license of the class required for the vehicle being driven. The license must be current and valid and have all endorsements required by the type of equipment, the class of vehicle being driven, and the load being carried. The license may not have any restrictions that would preclude driving on City business. The appropriate Commercial Driver's License (CDL) is required when driving any CDL vehicle on City business, no matter where it is operated.
- C. Authorized: The employee has been given explicit permission by his/her supervisor to drive a specific class of vehicle on City business.
- D. Cancelled: The state has removed the person's driving privileges.
- E. Change in Status: The driver's license has been cancelled, refused, revoked, suspended, or restricted in such a manner which affects the person's ability to drive on City business.
- F. Chargeable Accident: The driver received a conviction of a moving violation for a collision or is found most at fault by the DMV.
- G. Driving on City Business: The use of a motor vehicle to carry out the duties of the position. Driving on City business includes driving a vehicle owned, leased, rented, or otherwise controlled by the City, as well as the use of a personal vehicle on City business.
- H. Driving Position: A job that requires driving a vehicle on City business as part of the essential duties of the position.
- I. Driving Record: The DMV moving violation record and any chargeable driving incidents.

- J. Employee: Includes regular full-time, regular part-time, temporary, emergency, contract, and volunteer workers.
- K. Expired: The driver's license is not renewed before its date of termination.
- L. Non-Driving Position: Any position not designated as a driving position.
- M. Refused: A license is not issued by DMV.
- N. Restricted: Any limitation imposed on the driver's license that precludes the person from operating the vehicle on City business without meeting the restriction (e.g. wearing eyeglasses, or having an air brake endorsement for vehicles that have air brakes, etc.)
- O. Revoked: A license which has been rescinded by the DMV. The person's driving privileges are repealed for a minimum of one year.
- P. Suspended: The temporary removal of the person's driving privileges, which may be for a definite or indefinite period.

907. PREDETERMINATION (LOUDERMILL) PROCEDURES

1. A due process "Loudermill" hearing shall be afforded all regular full-time and part-time employees, who have successfully completed their probation, prior to termination, demotion, or a suspension of more than three (3) working days.
2. The supervisor shall notify the affected employee, both orally and in writing, of his/her recommendation to terminate, demote, or suspend (for more than three (3) working days), the employee from City service, and his/her reason(s) for doing so. This shall be accomplished in the following manner:
  - A. The supervisor who initiates such action shall complete a Notice of Intent to Terminate, Demote or Suspend form.
  - B. The completed form shall include:
    - 1) The recommended effective date of termination, demotion or suspension.
    - 2) Reason(s) for terminating, demoting or suspending the employee.
    - 3) Relevant documentation to support the termination, demotion or suspension. Such documentation shall be attached to the "Notice of Intent to Terminate, Demote or Suspend" form.  
EEO investigative reports are deemed confidential unless otherwise directed by a competent court of jurisdiction or by order of the City Manager. Therefore, if an EEO investigation is the basis of disciplinary action, the affected employee will be provided a summary of the investigation. The investigation documentation shall not be photocopied or disseminated beyond the EEO Office, City Attorney's Office, City Manager's Office or Human Resources Department.
    - 4) Date, time, and location of the employee's "Loudermill" hearing. The hearing must be conducted within five (5) business days from date of the notice.
- 3 Following notification of intent to terminate or suspend, the Department Director shall determine if the employee will continue working or be placed on administrative leave with pay, pending the "Loudermill" hearing outcome. In the case of demotion, the employee shall maintain his/her position grade pending the outcome of the "Loudermill" hearing.
  - A. The Loudermill hearing shall be conducted by the Department Director of the Supervisor recommending the disciplinary action.
    - 1) In the event that the ~~supervisor-employee~~ is a direct-report to the City Manager or an Assistant City Manager, the Human Resources Department shall appoint the ~~an~~ Assistant City Manager or a Department Director to conduct the Loudermill.
    - 2) In the event that the ~~disciplinary action involves a direct report to the Department Director or in~~ situations where the Department Director initiates the recommended discipline, the Human Resources Department shall appoint a different Department Director or the ~~an~~ Assistant City Manager as the hearing officer.
    - 3) The hearing shall be recorded. The original recording shall be transcribed by the Department, attached with any resulting disciplinary action and submitted to the Human Resources Department.

- 4) Participants in the Loudermill should be limited to the hearing officer, the Recording Secretary, and the employee.
  - a) The hearing officer (the Department Director) shall state the reason(s) for the disciplinary action and review relevant supporting documentation. The employee shall be afforded an opportunity to refute the reason(s) for disciplinary action and enter into the record any relevant documentation to support his/her position.
  - b) The hearing officer shall forward a written recommendation, based on the evidence presented at the Loudermill hearing, along with the Personnel Action Notice and transcript of the Loudermill to the Human Resources Department. The Human Resources Department will send the PAN, transcript and any other supporting information to the City Manager for final action.
  - c) The employee shall be notified by the hearing officer, within five (5) business days, of the results of the hearing. This notification shall be made prior to submitting his/her recommendation to the City Manager.
  - d) Nothing in these procedures is designed to supersede or prevent an employee from availing himself/herself of the City's grievance procedure.
  - e) The Personnel Action Notice signed by the City Manager will be forwarded to the Human Resources Department who will prepare all appropriate paperwork and will ensure proper notification of the employee.

1102. EMPLOYEE GRIEVANCE.

1. The word grievance means a formal, written statement from an eligible employee concerning actions taken by the City on one of the following items: loss of pay, written reprimand, suspension, and termination. Demotions, reclassifications, transfers, reassignments, and changes in shift rotations may not be grieved by an employee unless they are a direct consequence of a disciplinary action to that employee. Performance reviews and promotions cannot be grieved.
2. The wording eligible employee means any regular full-time and regular part-time employee. Discharge of an employee shall not preclude access to the grievance procedure.
  - A. The City Manager shall not have access to the grievance procedure.
  - B. Executive employees shall have recourse to the grievance procedure, but may only grieve terminations and disciplinary actions which result in loss of pay. Executive employees include Department Directors, the City Attorney and Assistant City Managers.
  - C. Executive employees and any other employees who report directly to the City Manager shall make a good faith effort to resolve the issue with the City Manager prior to filing a grievance to the Personnel Appeals Hearing Officer. The grievance must be filled within (7) seven business days following the event on which the grievance is based shall follow the grievance procedures as outlined in this section.
  - D. Employees reporting to Assistant City Managers shall first make a good faith effort to resolve the issue with their respective Assistant City Manager prior to filling a grievance with the City Manager. The City Manager will have seven (7) days to respond. If the decision of the City Manager is not satisfactory to the employee, a grievance may, within (7) seven business days of receipt of the decision, appeal in writing to the Personnel Appeals Hearing Officer.
  - ~~C.E.~~ Appeals to the Personnel Appeals Hearing Officer shall be filed with the City Clerk or his/her designee. -
  - ~~C.F.~~ Failure of the grievant to properly follow the provisions of the "Grievance Procedure" shall result in the automatic forfeiture of the grievance with prejudice.
  - ~~D.G.~~ The established grievance procedure shall be followed except for:
    - 1) All collective bargaining units will follow the grievance procedures in their negotiated contracts.
3. Grievance Procedure:
  - Step 1
    - A. Before an employee files a formal written grievance, the employee and his/her immediate supervisor must make a good faith effort to resolve the issue, except in situations where a special hearing officer was appointed to conduct the Loudermill hearing.
    - B. A good faith effort shall consist of a face-to-face meeting between the employee and his/her immediate supervisor to discuss the issue and resolution.
    - C. The filing of a formal, written grievance shall not preclude continuing a good faith effort to resolve the grievance. The good faith effort does not extend the time limit(s) included in the grievance procedure.

- D. When a special hearing officer has been appointed to conduct the Loudermill hearing, the employee may bypass the "good faith effort" of a face-to-face meeting with the immediate supervisor and the filing of a formal written grievance with the employee's Department Director and may file a formal written grievance directly with the City Clerk's Office within (7) seven business days following the event on which the grievance is based.

### Step 2

- A. Within (7) seven business days following the event on which the grievance is based, an eligible employee may file a formal written grievance with the Department Director. The good faith efforts shall have taken place in order for the formal written grievance to proceed.
- B. The grievance must be filed on forms available on the intranet, the Human Resources Department, City Clerk's Office, EEO/Training Office, and the Department Director's Office.
- C. The grievance must be specific and refer to an issue that can be grieved. The contents of a formal written grievance and settlement desired cannot be changed after it is submitted.
- D. A copy of the grievance shall be immediately forwarded by the Department Director to the Human Resources Director, the EEO Officer, and the immediate supervisor of the employee.

### Step 3

- A. Within (7) seven business days after receipt of the formal grievance and after reviewing all the facts pertaining to the grievance, the Department Director or his/her designee shall provide a written response to the employee who filed the grievance.
- B. If the Department Director does not respond to the employee grievance within (7) seven business days the employee may, within seven (7) business days, file the grievance to the Personnel Appeals-Hearing Officer as outlined in Step 4.

### Step 4

- A. If the decision of the Department Director is not satisfactory to the employee who has filed a grievance, the employee may, within (7) seven business days of receipt of this decision, appeal that decision in writing to the Personnel Appeals Hearing Officer.
- 1) The employee's written appeal to the Personnel Appeals Hearing Officer shall be filed with the City Clerk or his/her designee.
  - 2) The appeal to the Personnel Appeals Hearing Officer must include a copy of the original City of Las Cruces Employee Grievance Form (and all pertinent attachments provided by grieving party and/or Department Director).
  - 3) The appeal must not contain any changes, deletions or addendums to the initial grievance, settlement desired and/or reply.
  - 4) The appeal must indicate if the employee will be represented by an attorney.
- 4)5) A copy of the appeal shall be immediately forwarded by the Department Director to the Human Resources Director, the EEO Officer, and the immediate supervisor of the employee.

- B. Should the Department Director's response to the Grieving Party indicate that the issue cannot be grieved under City procedures and the Grieving Party nonetheless files an appeal with the City Clerk, the following shall apply:
- 1) This appeal will be forwarded to the Personnel Appeals Hearing Officer.
  - 2) Within (15) fifteen business days, the Hearing Officer will issue a decision as to whether the Personnel Appeals Hearing Officer will accept the appeal for a hearing. The decision of the Hearing Officer shall be based on the provisions outlined in this section.
  - 3) An affirmative decision will allow the appeal to proceed. A denial will end the internal administrative remedies.
4. Hearing Procedure:
- A. Within (15) fifteen business days from the filing of the employee's appeal, the City Clerk or his/her designee, with the concurrence of the Personnel Appeals Hearing Officer, shall schedule a hearing on the grievance before the Personnel Appeals Hearing Officer.
  - B. Posting of the notice shall be prepared by the City Clerk or his/her designee at least (7) seven days prior to the hearing.
  - C. The notice shall also be distributed to the Grieving Party, Personnel Appeals Hearing Officer, the immediate supervisor of the Grieving Party, his/her Department Director, the Human Resources Director, EEO Officer, City Attorney, and City Manager.
  - D. The hearing shall be closed to the public, unless the grieving party requests otherwise.
  - E. The following shall constitute the conditions of representation during a hearing before the Personnel Appeals Hearing Officer:
    - 1) The employee who has filed a grievance may represent himself/herself before the Personnel Appeals Hearing Officer. The Grieving Party may be represented by an attorney or in the alternative have (1) one observer of his/her choice present at the hearing.
    - 2) The immediate supervisor of the employee who has filed a grievance will represent the City in grievance hearings before the Personnel Appeals Hearing Officer. One (1) next level supervisor may serve as an observer during the hearing. If the employee is represented by an attorney, the City may be represented by an attorney.
    - 3) Observers for the Grieving Party and the City will not participate in any manner during the hearing before the Personnel Appeals Hearing Officer. Failure to adhere to this requirement and/or for being disruptive, may force the exclusion of the observer(s) from the hearing.
    - 4) The Personnel Appeals Hearing Officer shall make the determination on excluding an observer.
    - 5) The Grieving Party and the immediate supervisor are responsible for providing the observer(s) with any information and documents. The observer(s) shall be identified and his/her name(s) provided to the Personnel Appeals Hearing Officer (7) seven business days prior to the hearing.

- 6) If the Grieving Party is the City Attorney, or a staff Attorney, the City will be represented by an attorney of its choice. If the Grieving Party is a Department Director, the Assistant City Manager will represent the City.
  - 7) Neither the City, nor the Grieving Party, nor their attorney or observer(s) shall have any ex-parte contact either orally or in writing with the Personnel Appeals Hearing Officer prior to the hearing or after the hearing, until the written decision of the Hearing Officer is made public.
- F. It shall be the responsibility of the City Clerk or his/her designee to schedule or reschedule a hearing, accept the witness list and name(s) of observer(s).
  - G. It shall be the responsibility of the Grieving Party and the City to provide any other information, documentation or copies requested by the Personnel Appeals Hearing Officer.
  - H. All pertinent documents shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.
  - I. The Personnel Appeals Hearing Officer shall use his/her discretion as to whether to accept a document(s) not submitted in a timely manner.
  - J. The City will make an audio recording of the proceedings. A grieving party desiring a complete verbatim transcript shall provide for such a report at his/her expense.
  - K. The Personnel Appeals Hearing Officer shall have authority to call for the attendance of a reasonable number of pertinent witnesses and the production of documents, to swear witnesses, to examine witnesses, including the employee and his/her supervisor, and to hear all evidence properly brought before the Hearing Officer.
    - 1) All pertinent witness lists shall be provided to the City Clerk or his/her designee at least (7) seven business days prior to the scheduled hearing.
    - 2) The Personnel Appeals Hearing Officer shall use his/her discretion as to whether to accept a witness(es) whose name was not submitted in a timely manner.
    - 3) The formal rules of evidence shall not control this proceeding. To allow for the orderly calling of witnesses and to avoid down time, the Personnel Appeals Hearing Officer may request City management to have witnesses available according to a mutually agreed upon schedule.
    - 4) Any City employee who is called as a witness before the Personnel Appeals Hearing Officer is required to attend the hearing. Failure to appear after receiving a written notice may result in disciplinary action.
    - 5) The EEO Officer, Human Resources Director, City Attorney and their respective staff shall be exempt from being called as a witness for either the Grieving Party or the City except by direct order of the Hearing Officer.
  - L. The burden of persuasion and of going forward with the evidence initially rests with the City.
  - M. The standard of proof in a grievance hearing is the "preponderance of the evidence."
  - N. The Personnel Appeals Hearing Officer shall either approve, disapprove or modify, with consent of the parties, a decision made by a supervisor, department

- director or municipal court supervisor, except with grievances that deal with a termination.
- O. The Personnel Appeals Hearing Officer shall have no authority to modify job classifications or related wage rates as set forth in Section 22-49 and Section 22-50 of the Personnel Ordinance, nor shall it have the authority to change the intent of any personnel policy or grievance procedure.
  - P. The Personnel Appeals Hearing Officer shall have no authority to grant back pay to any employee for any period prior to the date of the event upon which the grievance is based.
  - Q. A decision or recommendation of the Personnel Appeals Hearing Officer in any particular case shall not affect retroactively, or in the future, any other employee grievance.
  - R. The decision or recommendation of the Personnel Appeals Hearing Officer shall be based upon the evidence presented at the hearing. Furthermore, the decision or recommendation shall be specific and pertinent to the grievance issue.
  - S. Within (15) fifteen business days from the date of the hearing, the Personnel Appeals Hearing Officer shall render his/her decision or recommendation.
  - T. Should the Personnel Appeals Hearing Officer want to comment on issues that were not contained in the grieving party's grievance appeal, but were discovered during the hearing, he/she may do so by submitting a supplemental comment report to the City Manager for his/her review. The supplemental comment report is not considered as or made a part of the grievance decision or recommendation.
  - U. The Personnel Appeals Hearing Officer shall immediately send a copy of the decision/recommendation to the City Manager, City Attorney, the Department Director, the EEO Officer, the Human Resources Director, and the Grieving Party.
5. The City Manager, or Presiding Municipal Court Judge, after a whole record review, must approve or reject, in writing, the recommendation of the Personnel Appeals Hearing Officer which deals with the termination of an employee. A grievance recommendation relating to a termination that is rejected by the city manager or municipal court presiding judge, after a whole record review, shall end the internal administrative remedies.
  6. A decision rendered by the Personnel Appeals Hearing Officer on the grievance issues of loss of pay, written reprimand, suspension or demotions, reclassifications, transfers, reassignments, changes in shift rotations, and the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation, shall be final and binding on all parties, unless appealed as set forth in this section.
  7. Any grievance not filed pursuant to the provisions of this procedure within (7) seven business days of the event on which such a grievance is based, shall be deemed to have been waived and no relief shall be granted thereon.
  8. The employee or the City may appeal the decision of the Personnel Appeals Hearing Officer or the City Manager's rejection of the Personnel Appeals Hearing Officer's recommendation to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision or rejection shall be affirmed unless the decision or rejection is found to be:
    - A. Arbitrary or capricious and unsupported by substantial evidence;

- B. In violation of applicable constitutional provisions or otherwise illegal; or
- C. In excess of the statutory authority or jurisdiction of the Personnel Appeals Hearing Officer.

9. Personnel Appeals Hearing Officer.

- A. The City Manager shall determine how many Personnel Appeals Hearing Officers are required for the efficient operation of the disciplinary appeal procedure and initiate the selection procedure prescribed in the procurement code.
- B. A Personnel Appeals Hearing Officer shall be an attorney licensed to practice in New Mexico who is experienced in employment law. Personnel Appeals Hearing Officers shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.
- C. A Personnel Appeals Hearing Officer shall provide services under a contract with the City and shall not be considered an employee of the City for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the City for any reason except violation of the Code of Judicial Conduct. In the event the City does not have a contract with any Hearing Officer, the parties may agree to a Hearing Officer to hear a specific case.
- D. No person shall attempt to influence a Personnel Appeals Hearing Officer's findings and conclusions pursuant to this article except during a hearing or in the presence of a representative of the opposing party.

1103. DISCRIMINATION AND HARASSMENT POLICY: The City does not tolerate any form of unlawful discrimination on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability, in city employment, city operated programs, services or facilities.

The City believes that all employees are entitled to a workplace free of harassment and expects employees to treat each other and our customers with courtesy and respect. Conduct which violates this policy includes, but is not limited to foul language, dirty jokes or comments pertaining to race, religion, sex, sexual orientation, gender identify, color, ancestry, serious medical condition, national origin, age, or disability, regardless of whether the conduct was intended or not intended to offend or intimidate.

1. Discriminatory practices include:

- A. Harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability. Harassment is a form of discrimination.
- 1) Sexual harassment includes: requests for sexual favors, unwelcome sexual advances and other non-verbal, verbal or physical conduct of a sexual nature that creates a hostile environment for persons of either gender.
  - 2) A hostile environment is a result of severe or pervasive harassment that substantially interferes with an individual's work performance. The harassment must have been unwelcome and offensive to the victim and of a nature that would be offensive to the reasonable person.
    - a) The hostile environment standard applies to harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability.
    - b) Examples of harassing conduct include, but are not limited to:
      - i. Sexual harassment: requests for sexual favors, sex oriented verbal kidding, teasing, jokes, comments, display of sexually suggestive objects or pictures, physical contact such as hugging, patting, or brushing up against another's body.
      - ii. Gender or sex harassment: gender based jokes or comments;
      - iii. Race or national origin harassment: epithets, slurs, or negative stereotypical comments, jokes or cartoons;
      - iv. Age harassment: stray remarks or jokes relating to a person's age.
      - v. Disability harassment: Disparaging remarks, slurs or jokes relating to a person's physical or mental disability.
      - vi. Religious harassment: Coercion of employee participation in religious activities, verbal attacks or religious slurs.
      - vii. Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, religion, or ethnic group, or individuals with disabilities.
      - viii. Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability.

- ix. Retaliation to an employee who takes one of the following actions: filing a complaint of discrimination, participating in a discrimination investigation, opposing discriminatory practices or exercising any other right under federal anti-discrimination laws. The City will not tolerate employment based retaliation and any violation should be reported immediately.
- B. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during City business trips, City business meetings, conducting City related business and City business-related social events.
- C. If an investigation determines that discrimination, harassment or retaliation indeed occurred, the offender will be subject to corrective action and/or disciplinary action up to and including termination.

## 2. PROCEDURES

- A. The City encourages the use of its preventive and corrective opportunities and an individual who feels that he/she has been a victim of discrimination may make a complaint, without fear of retaliation, according to the following procedures:
  - 1) Within (30) business days of the alleged discriminatory incident, the complainant, at his/her discretion, shall make a complaint to any one of the following designated representatives: Any City supervisor or Department Director, the City EEO Officer, the City Human Resources Director, the City Attorney, or the City Manager.
  - 2) The complainant shall make contact with one of the above designated representatives or his/her designee in order to properly bring forward a complaint.
  - 3) The complainant may use the City's Discrimination Complaint Form to file a complaint. Other formats such as memorandums, handwritten statements, e-mail messages or other formats may also be acceptable. Verbal complaints shall be converted into a written format as soon as practical by the designated representative. The designated representative will forward the complaint to the City EEO Officer, Human Resources Director and/or the City Attorney within (24) twenty four hours of receipt. Complaints which are submitted anonymously may not be accepted.
  - 4) An employee who believes that he/she is a victim of discrimination, harassment and/or retaliation in the workplace has an affirmative duty to report such conduct.
  - 5) The City encourages employees to report sexual harassment from non-City employed individuals, such as vendors or others who may use City facilities or services. In this event, the Department Director of the complainant shall take the necessary action to address the harassment.
  - 6) Supervisors have a duty to pro-actively address workplace issues that deal with discrimination and harassment under the theory of they "knew or should have known of the harassment". Additionally, inappropriate supervisor conduct is not acceptable. A supervisor who fails to take appropriate action under this section or otherwise engages in inappropriate conduct will be subject to disciplinary action.

- 7) To the extent possible, the confidentiality of the person making the complaint and that of the respondent will be maintained.
    - a) Information contained in the report of inquiry may be used in disciplinary actions resulting from the investigation.
    - b) EEO investigative reports are deemed confidential unless otherwise directed by a competent court of jurisdiction or by order of the City Manager.
    - c) Therefore, if an EEO investigation is the basis of disciplinary action, the employee will be provided a summary of the investigation.
    - d) Investigation documentation shall not be photocopied or disseminated beyond the EEO Office, City Attorney's Office, City Manager's Office and Human Resources Department. "Relevant documentation" for purposes of any resulting Loudermill shall consist of a summary of the findings.
    - e) Investigation documentation shall remain confidential, to the extent allowed by law, and shall not be photocopied or disseminated beyond the EEO Office, City Attorney's Office, City Manager's Office and Human Resources Department.
  - 8) Within (5) five business days from the receipt of the complaint, the City EEO Officer, or in the absence of the City EEO Officer, an individual designated by the City Manager, shall begin an investigation of the complaint.
    - a) City employees shall cooperate with an investigation and be truthful with the investigator. Failure to cooperate and to be truthful may result in disciplinary action.
  - 9) Within (45) forty five business days from the beginning of the investigation, the City EEO Officer or designated individual, shall submit a confidential written report of inquiry to the City Attorney.
  - 10) The City Attorney or his/her designee shall have (14) fourteen business days to review the report and to issue a written determination on whether a discriminatory practice has occurred.
  - 11) Within (5) five business days of receipt of the determination, the City Manager or his/her designee shall review the determination and report. The City Manager will forward the determination to the respondent's Department Director for appropriate action, if necessary. Disciplinary action shall be consistent with City policy and procedures. The City Manager shall forward a copy of the determination, along with the report to the City EEO Officer.
3. NOTIFICATION:
- A. The City EEO Officer shall notify the complainant of the determination.
  - B. The Department Director shall notify the respondent of the determination.
4. EXTERNAL COMPLAINTS:
- A. If the determination is not satisfactory to the complainant, and the complainant is a City employee, the City EEO Officer shall advise the complainant that he/she has further recourse to the New Mexico Department of Labor Human Rights Division or the United States Equal Employment Opportunity Commission. If the complainant is not a City employee, he/she will be advised of the right to file a

complaint with the New Mexico Department of Labor Human Rights Division or the United States Equal Employment Opportunity Commission. For disability complaints not related to employment, an individual may contact the United States Department of Justice.

B. Individuals may also file directly with the following agencies:

- 1) New Mexico Department of Labor  
Human Rights Division  
Aspen Plaza  
1596 Pacheco Street  
Santa Fe, New Mexico 87505  
1-800-566-9471  
[Contact within 300 calendar days from incident]
  
- 2) United States Equal Employment Opportunity Commission  
El Paso Area Office  
300 E Main Drive Suite 500  
El Paso, TX 79901  
1-866-408-8075  
~~505 Marquette Avenue NW, Suite 900~~  
~~Albuquerque, New Mexico 87102~~  
~~1-800-669-4000~~  
[Contact within 300 calendar days from incident]
  
- 3) United States Department of Justice  
Civil Rights Division  
Coordination and Review Section  
P.O. Box 66118  
Washington, D.C. 20035-6118  
1-800-514-0301 (voice)  
1-800-514-0383 (TTY)  
[Contact within 300 calendar days from incident]

**A**

**Acting Appointment** - the City Manager may appoint an incumbent to a vacant position for a period of time not to normally exceed six months pending selection of a qualified person to fill a vacancy. Acting appointees may receive additional temporary compensation if certain conditions are met.

**Administrative Employee** - this class of salaried exempt employees is defined in Section 310 of the Personnel Manual.

**Administrative Leave** - paid leave approved at the discretion of the City Manager. Administrative Leave allows the employee to be away from work without losing any work-related benefits.

**Allocation** - the assignment of a position as to class and specific pay grade.

**Anniversary** - the date on which an employee was appointed to a regular position.

**Annual Leave** - leave with pay granted to employees at a specific rate to be used by an employee with prior approval from management.

**Appeal** - formal request that a decision on a formal grievance petition be reconsidered at a further stage in the grievance procedure.

**Applicant** - individual who has filed an application for a vacant position and desires to be considered for appointment to a position in the City service.

**Appointing Authority** - officials authorized to recommend appointment of individuals to positions in the City service. The City Manager is the ultimate appointing authority.

**C**

**Call-Back** - Call-Back occurs when an employee is on scheduled time off (excluding lunch breaks) and is unexpectedly notified to return to work. The order to return to work is due to an unexpected event beyond control of management and normally results in an increase to the scheduled number of employees on duty. It is not one employee replacing another scheduled employee.

**Cause** - means reason for discipline of regular employees, determined by the standards of job performance and maintenance of the public interest.

**City** - the municipal government, composed of the City Council, the City Manager, all divisions, departments, agencies, and employees which comprise the organization designed to provide service to the citizenry.

**City Council** - the duly elected or appointed officials who comprise the legislative body of the municipal government with powers defined by N.M. law and City Charter.

**City Manager** - the municipal government's chief executive officer charged with complete responsibility of employees, facilities, and other resources as set forth by N.M. State Law and the City Charter.

**Class** - one or more positions which are sufficiently alike to warrant using the same (or similar) title, qualification requirements, examination, and pay grade. Sometimes called "Classification."

**Classification Plan** - the sum total of all class specifications in the municipal service.

**Classified Employee** - a full or part-time employee holding a classified position who has completed the probationary period. A classified employee is entitled to all of the rights and benefits of the City Personnel Ordinance and Personnel Manual.

**Classified Position** - a position for which there is a job description, and a set salary range, is subject to recruitment procedures, and for which all employment actions must be based solely on merit.

**Class Specification** - a written description of a class, which includes the position title, a general statement of duties and responsibilities, requirements, and definition of working conditions.

**Compensatory Time** - those hours granted to non-exempt employees covered by the Fair Labor Standards Act in lieu of overtime, on the basis of one and one-half (1-1/2) hours compensatory time for each hour of overtime.

**Contract Employee** - a person who contracts with the City to perform a certain task for a set fee. Such a person is not a "regular" City employee. All duties, conditions, appointment duration, fees, benefits, and other terms shall be specified by contract.

**Customarily and Regularly (FLSA)** - a frequency that must be greater than occasional but which may be less than constant. Work normally and recurrently performed every workweek and does not include isolated or one-time tasks.

**Creditable Service** - time on the City payroll constitutes creditable service. Creditable service does not include time that an employee is on leave without pay, lay-off status, or the time the employee is on workers compensation.

## **D**

**Demotion** - the assignment of an employee from one class to another which has a lower pay grade and lower maximum rate of pay (also called downgrade and reclassification).

**Department Director** - a City official designated with responsibility for operation and management of a major division of City government. Departments are comprised of several section and units with similar service missions.

**Difficult to Fill Positions** - Positions identified by the Human Resources Director as traditionally not yielding a significant number of qualified candidates.

**Directly and Closely Related (FLSA)** – Tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work.

**Disability** - an employee or applicant who has: a physical or mental impairment which substantially limits one or more major life activities; or a record of having such impairment; or is regarded as having such an impairment.

**Discipline** - action taken with regard to an employee, including reprimand, suspension, demotion, or dismissal.

**Discretion (FLSA)** – the comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.

**Dismissal** - involuntary termination of employment for reasons other than lack of funds or lack of work.

**Domestic partners** – Two individuals who are in a mutually exclusive, committed relationship for the last twelve (12) months, who share a primary residence, who are jointly responsible for the common welfare of each other, who share financial obligations and have executed an affidavit of domestic partnership with the Human Resources Department and granted domestic partnership status.

**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.

## **E**

**Eligible** - a person whose name is included with a list of qualified candidates for a vacant position in accordance with procedures described in Section 200.

**Eligible List** - a list of persons qualified to fill a vacancy in a particular class.

**Emergency Employee** - a full-time or part-time employee who is hired to ensure continuity of municipal services during an emergency.

**Employee** - an individual who is legally employed by the City government and is paid through the City payroll, except for city Councillors, contracted persons, and consultants.

**Entry Level Rate** - the minimum base rate in any salary grade established for a class.

**Executive** - a salaried exempt official fully defined in Section 309 of this Manual.

**Essential Job Functions** - the fundamental job duties of the employee's position.

**Exempt Employee** - all executive, administrative, and professional employees as defined in Department of Labor regulations relating to the Fair Labor Standards Act, and whose compensation is based on a fixed annual salary. Pursuant to principles of public accountability, for employees who accrue annual leave, personal leave and sick leave,

deductions from pay of exempt employees shall be taken for absences for personal reasons or illness or injury when leave is not used by the employee..

## **F**

**Fair Labor Standards Act (FLSA)** - means the Federal law which sets minimum wage, overtime pay, equal pay, record keeping, and child labor standards for employees who are covered by the Act.

**Family Medical Leave** - leave granted under the Family and Medical Leave Act of 1993.

**Fee basis (FLSA)** – Paid an agreed sum for a single job regardless of the time required for its completion.

**Field of Science or Learning (FLSA)** – Law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades.

**Full-Time** - an employee working at 35 or more hours or more per seven day period.

## **G**

**Grievance** - an employee complaint regarding alleged unjust application of discipline, or unjust application, interpretation, or violation of the rules and regulations of the City or the department for whom the employee works.

## **H**

**Hearing** - a formal review of the facts and circumstances surrounding a personnel action.

## **I**

**Immediate Family (Emergency)** - for purposes of emergency leave: spouse, domestic partner, child, stepchild, mother, father, mother-in-law, father-in-law, brother, sister.

**Immediate Family (Sick)** - for purposes of sick leave: spouse, child or stepchild, or an individual for which the employee is a court appointed legal guardian or domestic partner and eligible dependent.

**Incumbent** - the current occupant of a position in the municipal service.

**Independent Judgment** – the comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.

**Insubordination** - failure to obey a direct lawful order of a supervisor or someone higher in the chain of command

**J**

**Job Analysis** - comprehensive analysis of the duties and responsibilities and essential functions of a position and of the qualifications required of persons selected for the position.

**Job Description** - a written statement of duties, responsibilities and essential functions which characterizes a job and includes the education, experience, knowledge, and ability required to perform the duties of the job.

**L**

**Layoff** - the separation of an employee which occurs when a regular position has been abolished because of material changes in duties, or shortage or stoppage of work or funds, or other reasons in the best interest of the city, as determined by the City Manager.

**Leave** - an authorized absence from regularly scheduled work hours for reasons specified in the personnel rules (holidays, vacation, sickness, injury, disability, jury duty, etc.).

**Leave With Pay** - Authorized absence from work with pay.

**Leave Without Pay** - Authorized absence from work without pay.

**Limited Competition** - competition for a vacancy which is available only for eligible City employees.

**Loudermill** - the informal "due process" or "pre-disciplinary" hearing given to an employee prior to termination, demotion, or suspension of any regular employee for more than three (3) work days.

**M**

**Management & Supervision** - persons designated as heads of a group of employees, a section, a major functional unit, or an activity, with authority and responsibility to exercise independent judgment; who assign tasks, set standards of job performance, recommend hires, transfers, suspensions, layoffs, recalls, promotions, and terminations of subordinates. Further, they may assign, reward, or discipline others, and direct or adjust employee grievances.

**Matters of Significance (FLSA)** – level of importance or consequence of the work performed.

**Medical Standards** - medical requirements established for selected classes of positions which are related to performance and consistently applied.

**Merit System** - a personnel system designed to attract and hold employees by making individual employment decisions based on qualifications, experience, and performance

rather than on political association.

**Military Leave** - paid leave granted to an employee who is a member of the armed services or air national guard or a military reservist not to exceed one hundred and sixty (160) hours working days per calendar year.

## **N**

**Nepotism** - patronage of one's relatives by providing them employment or position. Restrictions concerning nepotism may be found in Section 22-78 of the Personnel Ordinance.

**New Hire** - a person not previously employed by the City.

**Nonexempt Employees** - all employees who are not exempt employees as defined in Department of Labor regulations relating to the Fair Labor Standards Act.

## **O**

**Office of the City Manager – generally refers to the City Manager and Assistant City Managers.**

**Open Competition** - competition for a position which is available to all interested persons.

**Overtime** - means time an employee is directed and authorized to work in excess of the 40 hours per week, or fire personnel, 212 hours per 28-day period.

## **P**

**Part-Time Employee** - one who is scheduled to work less than 35 hours per seven day period.

**Pay Period** - a two-week period, of which there are twenty-six (26) specified per year.

**Pay Plans** - the salary schedules for salaried exempt and non-exempt employees or any other class(es) of positions in the municipal service.

**Pay Rate** - also called base rate.

**Pay Range** - the minimum, midpoint, and maximum base rates established for each salary grade.

**Performance Review** - an assessment of an employee's work.

**Personal Leave** - Leave granted to employees to be used at the employee's discretion subject to the supervisor's approval.

**Post-Disciplinary Hearing** - a hearing conducted by the Personnel Appeals Hearing Officer at the request of an employee who is grieving a suspension or demotion, or a former employee who is grieving a dismissal and who has complied with the administrative process as set forth in the Rules and Regulations

**Primary Duty (FLSA)** – Principal, main, major or most important duty that the employee performs.

**Probation** - a one year (12 month) trial period of employment, during which an employee is required to demonstrate fitness for regular employment. The probation period is another aspect of the selection process.

**Probationary Employee** - a full-time or part-time employee hired to fill a position in the classified service who has not yet completed the probationary period of employment during which time the employee may be terminated at will.

**Professional Employee** - a salaried exempt person defined fully in Section 311 of this document.

**Promotion** - the assignment of an employee from one class to another, which has a higher maximum rate of pay, and greater responsibility. Promotion requires that an employee be upgraded and reclassified.

**Provisional Appointment** - appointment of a person from outside the City work force to fill a vacant position pending selection of a qualified person.

## **R**

**Reclassification**- reassignment of a position from one class (grade) to a different class (grade) to correct an error in the original assignment or to recognize a change in the duties and responsibilities of a position. Ideally, reallocation should occur when a position is vacant. Reclassification shall not be used solely as a method of awarding an incumbent a salary increase or decrease.

**Reasonable Accommodation** - a reasonable accommodation is any modification or adjustment to a job, the work environment, or the way in which the work is customarily done that makes it possible for a qualified individual with a disability to perform the essential functions of the job and ensure equal employment opportunity.

**Recruitment Process** - procedures used by the Human Resources Department in attracting job applicants for city positions; i.e., posting vacancies in the Human Resources Department , newspaper, and radio advertising, mailings to employment agencies and community organizations or by other means.

**Regular Employee** - one who is an incumbent and has completed probation in a continuing, budgeted position within the municipal service and who satisfies all requirements for the position.

**Re-Hire** - Re-employment of a former employee who left the municipal service in good

standing.

**Reinstatement** - an action whereby an employee is restored to the municipal service after involuntary termination or suspension. Reinstatement may be to a position with pay and benefits comparable to those received at the time of termination or suspension.

**Resignation** - voluntary separation from City employment prior to retirement.

**Retirement Date** - the date on which a regular City employee retires and begins drawing PERA retirement.

**Reviewer** - the rater's immediate supervisor who is required to review and approve each performance review within his/her purview before it is included as part of the reviewed employee's permanent record.

**Rules** - means the Personnel Rules and Regulations of the Personnel Manual promulgated in accordance with the provisions of the Personnel Ordinance.

## **S**

**Salary** - payment for work performed that is pre-determined and uniform from one payday to the next and does not depend on the number of hours worked.

**Salary Schedules** - (Refer to "Pay Plans") matrices of base rate salaries ranging from minimum, midpoint and maximum, depicting approved pay ranges for employees in the municipal service.

**Seasonal Employee** - an employee hired for an established seasonal program as allowed by FLSA..

**Selection** - means the choosing of a candidate for employment.

**Selection Device** - devices used separately or in combination, as appropriate, to obtain the best qualified candidates for vacant positions. Such devices may include, but are not limited to, work sample and performance tests, practical written tests, oral examinations, rating of training and experience, interview, skill tests, and others.

**Separation** - removal of an employee from the municipal payroll for voluntary or involuntary reasons; to include dismissal, resignation, layoff, retirement, abandonment of the job, death, and other reasons.

**Sick Leave** - leave with pay, granted to a classified or qualified unclassified employee, after accrual at a specific rate for illnesses.

**Standby Duty** - an employee is on standby duty when the employee is required to be available for call to duty. The employee may move about within range of a pager, but must remain fit for duty.

## **T**

**Temporary Appointment** - appointment of an individual who meets minimum qualification requirements for a period of time not to exceed 6 months.

**Temporary Employee** - means an employee who has been appointed to a temporary position in accordance with the personnel rules, who is not eligible to receive leave and benefits, and who is not entitled to rights of grievance and appeal. A temporary employee may be full-time or part-time.

**Temporary Pay Upgrade** - employee compensation for temporarily performing assigned duties or responsibilities of a higher pay grade, provided the temporary upgrade in assignment exceeds more than 28 calendar days.

**Termination** - the resignation, retirement, dismissal, or death of an employee.

**Transfer** - assignment of an employee from one position to another in the same salary schedule. May also be assignment of an employee from one work site to another, from one agency to another, to more or less responsible or skilled occupations, or from one operational assignment to another in accordance with existing municipal policy. Transfers may be voluntary or involuntary.

## U

**Unauthorized Absence** - absence from duty without supervisory approval.

**Unclassified Employees** - at will employees who may be terminated for any or no reason and who have no layoff rights or recourse to the grievance procedure.

## V

**Vacancy** - an authorized position not occupied by an incumbent which has been approved by the appropriate designated authority for filling.

## W

**Wage** - payment that is calculated according to the number of hours worked and which may fluctuate from one pay day to the next as the number of hours worked varies.

**Work Requiring Advanced Knowledge** – work which is predominantly intellectual in nature, and which includes work requiring the consistent exercise of discretion and judgment.

Section	Summary of Changes
Cover	Dates
100	Introduction Date adjustment and other grammatical changes
206	Application review and Referral Clarification and additional latitude for substitutions
208	Administrative Hiring Procedures Veterans preference and other clarifications
209	College Student Hiring Procedures Clarification, additional internship opportunity
210	Probation Clarification regarding end of probation
317	Categories of Employment Add Area Commanders, clarification for acting, simplify ICA process
406	Pay Rate Adjustments Better define difficult to fill positions and ability to freeze salaries
503	Attendance and Punctuality Clarification and definition of di minimis
505	Annual Leave Stipulate 80 hours of annual leave in first year
507	Personal Leave Delete unnecessary language and clarification, adjust personal leave for certain 56 hour employees
510	Sick Leave Bank Adjust accruals, specify leave eligibility and payout rate
515	Leave Without Pay Status Adjust language for first 7 days
516	Workers' Compensation Pay Status Adjust accrual provision
519	Provisions for Certain Non-Union Fire Department Personnel Addition of FD holiday leave hours
603	Work Rules Additional rule regarding IT usage and other clarifications
603.A	E-Mail, Internet, and PC Use Delete to refer to City Manager Policy
612	Accident/Injury/Pregnancy Reporting and Return to Work Procedures Clarification of roles and responsibilities, change in reporting, pregnancy modified assignment clarification
614	Loss of Employee's Drivers Licence Gramatical changes and clarification
907	Loudermill Procedures Adjusting for Assistant City Managers
1102	Employee Grievances Clarification and adjustment for Assistant City Manager roles
1103	Discrimination Complaint Procedures Clarification and new EEO office address
Definition	Difficult to fill positions
	Office of the City Manager