# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

**Item #** 2 **Ordinance/Resolution#** 10-053 **Council District:** ___

**For Meeting of** August 17, 2009
(Adoption Date)

**TITLE:**

**A RESOLUTION REPEALING SECTIONS 100, 206, 208, 209, 210, 212, 306, 312, 317.9, 317.11, 317.12, 407, 408, 409, 411, 413, 418, 504, 505, 506, 507, 508, 509, 510, 512, 514, 521, 603, 603.A, 612, 613, 614, 615, 616, 617, 701, 705, 710, 907, 909, 1102, 1103, 1104, 1200, 1300 AND ENACTING SECTIONS 100, 206, 208, 209, 210, 212, 306, 312, 317.9, 317.11, 317.12, 407, 408, 409, 411, 413, 418, 504, 505, 506, 507, 508, 509, 510, 512, 514, 521, 524, 603, 603.A, 612, 613, 614, 615, 616, 617, 701, 705, 710, 907, 909, 1102, 1103, 1104, 1200, 1300 OF THE MANUAL OF PERSONNEL POLICIES.**

**PURPOSE(S) OF ACTION: Revisions for clarification and updates to remain in compliance with state and federal regulations.**

| Name of Drafter: Jo Richards | | Department: HR | | Phone: 528-3090 | |
|---|---|---|---|---|---|
| **Department** | **Signature** | **Phone** | **Department** | **Signature** | **Phone** |
| Originating Department | | 528 3401 | Budget | | 2300 |
| | | | Assistant City Manager | | 2271 |
| Legal | | 2128 | City Manager | | 2074 |

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The Personnel Manual provides administrative and procedural guidance on personnel matters for City employees. City staff has reviewed this manual and recommends revisions for clarification purposes as well as changes and additions of policy based on current state and federal regulations. Various sections recommended for change and summary, or purpose, of changes is outlined in Attachment A.**

(Continue on additional sheets as required)

**The existing version of the Personnel Manual was adopted July 2, 2007. The majority of changes outlined are being recommended for clarification and consistency purposes. However, there other areas being addressed based on best practices within the industry and updates to state and federal regulations (refer to Attachment A, sections 413, 507, 514, 524, 603, and 1104).**

## SUPPORT INFORMATION:

| Fund Name / Account Number | Amount of Expenditure | Budget Amount |
|---|---|---|
| N/A | N/A | N/A |

*List your exhibits and attachments after the fund box just like the example below.*

1. Resolution.
2. Attachment "A", sections recommended for change and summary, or purpose, of change.
3. Attachment "B", strike-thru version of the Manual of Personnel Policies, showing areas edited.
4. Attachment "C", final version of the Manual of Personnel Policies with all changes incorporated.

## OPTIONS / ALTERNATIVES:

1. Vote "yes", approving the changes recommended to the Manual of Personnel Policies. The amended Manual of Personnel Policies will be made available electronically (internet/intranet) to all City staff and the public.
2. Vote "no", disapproving the changes to the Manual of Personnel Policies. The existing Manual of Personnel Policies will remain in effect. However, administrative changes will need to be implemented to standard practices and procedures to comply with state and federal regulations.
3. Modify the recommended changes to the Manual of Personnel Policies.

(Continue on additional sheets as required)

**RESOLUTION NO.** 10-053

**A RESOLUTION REPEALING SECTIONS 100, 206, 208, 209, 210, 212, 306, 312, 317.9, 317.11, 317.12, 407, 408, 409, 411, 413, 418, 504, 505, 506, 507, 508, 509, 510, 512, 514, 521, 603, 603.A, 612, 613, 614, 615, 616, 617, 701, 705, 710, 907, 909, 1102, 1103, 1104, 1200, 1300 AND ENACTING SECTIONS 100, 206, 208, 209, 210, 212, 306, 312, 317.9, 317.11, 317.12, 407, 408, 409, 411, 413, 418, 504, 505, 506, 507, 508, 509, 510, 512, 514, 521, 524, 603, 603.A, 612, 613, 614, 615, 616, 617, 701, 705, 710, 907, 909, 1102, 1103, 1104, 1200, 1300 OF THE MANUAL OF PERSONNEL POLICIES.**

The City Council is informed that:

**WHEREAS,** the Manual of Personnel Policies requires periodic revisions for clarification and updates to remain in compliance with state and federal regulations, and

**WHEREAS,** the Manual of Personnel Policies provides administrative and procedural guidance on personnel matters for City employees, and

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

**WHEREAS,** since the adoption of the existing Manual of Personnel Policies, July 2, 2007, areas require revisions for clarification and consistency purposes, based on best practices within the industry, 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** City Council hereby approves the recommended amendments to the City's Manual of Personnel Policies as shown in Attachment A.

**(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 _____ 200___.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Connor: ____
Councillor Archuleta: ____
Councillor Small: ____
Councillor Jones: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

# ATTACHMENT A

Personnel Manual Changes
8/17/09

| Section | Summary |
|---|---|
| Cover | Dates |
| Table of C | Addition of Section 524 708 |
| 100 | Revision date |
| 206 | Clarification, add disqualification appeal |
| 208 | Clarification of methods and requirements |
| 209 | Clarification |
| 210 | Clarification of regular employment |
| 212 | Inclusion of orientation check list into personnel file |
| 208 | Clarification |
| 209 | Clarification |
| 210 | Clarification |
| 212 | Formalizing Checklist |
| 306 | Clarification |
| 312 | Punctuation |
| 317.9 | Allowing extension of emergency hire by CM |
| 317.11 | Specialty appointment beyond current employee |
| 317.12 | Specify method, form |
| 407 | Redefine regular rate of pay |
| 408 | Clarify regular rate |
| 409 | Comptime sick leave swap requirements other clarifications |
| 411 | Clarification for regular rate and audit requirements |
| 413 | Expansion of definition of flexible and alternate schedule |
| 418 | Written requirement for acting appointment extension |
| 504 | Changes for consistency with other sections of manual |
| 505 | Changes for consistency with other sections of manual |
| 506 | Changes to timing of changes |
| 507 | Changes in timing of accrual and forfeiture |
| 507 | Additional 8 hours of personal leave for unrepresented employees for FY10 |
| 508 | Addition of other eligible leave types |
| 509 | Change leave adjustment to coincide with pay period. |
| 509 | Change to payout if resignation is to avoid discipline |
| 510 | Clarification |
| 512 | Typo |
| 514 | Adding New Military provisions |
| 514 | Clarify procedure |
| 521 | Clarify procedure |
| 524 | Addition of domestic abuse leave |
| 603 | Add Bullying, accident procedures and dereliction |
| 603.A | Clarification |

| | |
|---|---|
| 612 | Clarify Language |
| 613 | Clarify responsibility and reporting requirements |
| 614 | Clarification |
| 615 | Addition to definition |
| 616 | Adding Fire investigators |
| 617 | Typo |
| 701 | Clarification of purpose |
| 705 | Clarification |
| 710 | Modify form |
| 907 | Add flexibility in predetermination process |
| 909 | Adjust layoff date to notice requirement |
| 1102 | Clarification of steps in process |
| 1103 | Typo |
| 1104 | Clarification due to rehabilitation act |
| 1200 | Clarification |
| 1300 | Clarification |
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# ATTACHMENT B

# City of Las Cruces

# 2009~~7~~

# Personnel Manual

Adopted ~~July 2~~August 17, 2009~~7~~

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# INTRODUCTION

# 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 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 ~~(Seventh Edition)~~ dated ~~August 16~~July 2, 2007~~1999~~.

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 Policies.

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.

# SECTION 200

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# RECRUITMENT & SELECTION

# SECTION 200 RECRUITMENT AND SELECTION

201. POLICY. It is policy for the City of Las Cruces to recruit and select the most qualified persons for positions in the City's service. Recruitment and selection shall be conducted in a manner that will ensure open competition, provide equal employment opportunity, and prohibit discrimination or favoritism because of race, politics, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability, and in accordance with the City's Hiring Process: Application Review, Interviewing and Selection Guidance.

202. POSTINGS. When a request to fill a vacancy has been approved the following procedure shall be followed:

Job announcements will be posted in places available to the general public and all City employees. Postings will include pertinent job information, including minimum qualifications and entry level salary. All postings shall include the essential functions, work environment, physical and cognitive requirements, and selection criteria to be used, including any tests and/or skill assessment.

Job announcements shall be posted for not less than five business days. This period of time may be waived by the City Manager.

203. APPLICATION FORM. All applications for employment shall be made on forms or methods prescribed by the Human Resources Department. Although resumes that meet posted deadlines will be accepted, a City application form or release for reference check must also be completed by job applicants selected prior to or at the time of interview.

204. APPLICATION SUBMITTAL. All applications will be submitted to the Human Resources Department, unless authorized in writing by the Director of Human Resources.

205. REJECTION OF APPLICANTS. An applicant may be rejected if the applicant:

1. Does not meet the minimum qualifications for the position.
2. Has falsified, omitted, misrepresented or provided misleading information on an application or resume. (Employees who violate this section shall be subject to disciplinary action, up to and including dismissal).
3. Is unable to perform the essential functions of the position, with or without reasonable accommodations.
4. Has been convicted of a crime that renders him/her unqualified for the position to which he/she has applied.
5. Is under 18 years of age if being considered for Regular Full-time or Part-time employment.
6. Has established an unsatisfactory employment record.

7. Advocates the overthrow of the government of the United States by force or violence.
8. Submitted an application after an announcement closed or submitted an application for an unannounced position.
9. Submitted an incomplete application and/or failed to provide copies of documents cited in the job announcement prior to a final decision on hiring.
10. Receives a positive test result on a pre-employment drug test.
11. Failed background investigations.

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.
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 positions 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.

6. Appeal of Disqualification

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

~~6.~~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 505-528-3100/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.

207. Employment Testing. The Human Resources Director (or designee) will review all written, skills and field testing procedures to assure that these tests are valid and conducted in a standardized and impartial manner and are job related. This review shall ensure that these tests can be quantitatively scored prior to being administered. The posted job announcement will indicate that applicant testing will be required, and an invitation to request any reasonable accommodation needed for the test. Requests for reasonable accommodation shall be processed in accordance with the City's Reasonable Accommodation Policy.

208. ADMINISTRATIVE HIRING PROCEDURES.

1. SECTION/DEPARTMENT:

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

A. Position title.

B. ~~Dates to be advertised~~Desired start date.

C. Department and division.

D. Job term and type.

E. Position control information.

~~B.Type or range of pay-monthly, hourly, salary range, or contract.~~

~~C.Category of employment.~~

~~D.Requested modifications to the current functions of the position.~~

~~E.~~F. Where and how long ads are to be published and funding source if advertisement is requested beyond the local market.

~~F.~~G. Funding source.

~~G.~~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~~/step~~, and job description.

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

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

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

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

G. 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. The Department or Section completes reference checks on candidates prior to recommending the hire.

C. 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.

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

E. 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~~ing~~ 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 ~~have been allocated by~~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. *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 completed for academic credit and are usually one semester in

duration.

D. *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 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.

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

4. 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 NMSU, DABCC, and 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 ~~co-op~~ student positions must be evaluated ~~in accordance with Section 208 of this manual~~ 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 for approval.

5. The Human Resources Department will in-process the student and notify the requesting department/section to ~~negotiate~~ establish a starting work date. A co-op student must enroll with the college's Cooperative Education Program every semester. 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 ~~and~~ or at the end of their student status. The

appropriate Personnel Action Notice (PAN) with an explanation ~~should~~ shall be processed and submitted to the Human Resources Department.

210. Probation

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 ~~their position~~regular employment. A new employee serves "at will" and can be dismissed with or without cause by the City for any legal reason.

1. New Hire Probation: Prior to the completion of the new hire probation period (12 months), management shall decide whether or not to recommend continued employment. If the decision is to discontinue employment, the incumbent shall be separated. If a decision is made to continue employment, a Personnel Action Notice shall be prepared by the hiring section changing the incumbent from probationary status to regular status.

211. Immigration Law Compliance

In compliance with the Immigration Reform and Control Act of 1986, each new or rehired employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility.

Non-citizen employees, whose work authorization has expired, will not be scheduled to work and will be placed on Leave Without Pay. The employee is responsible for obtaining Immigration and Naturalization documents verifying eligibility to work in the United States. Upon receipt of proper immigration documents, the I-9 form will be updated and the employee may be eligible for re-instatement.

212. Employee Orientation.

1. New Employee. New employees shall receive new employee orientation upon beginning City service. The purpose of orientation is to ensure maximum understanding of the requirements and conditions under which the individual is expected to function. The Human Resources Department will coordinate orientation for new employees.

2. Supervisor. Each Department Director will ensure that the section to which the new employee is to be assigned makes provisions for a supervisor to be available for specific orientation of the new employee regarding section functions, responsibilities, and unique requirements of the section using the ~~department's~~ City's new employee checklist. The form will be forwarded to the Human Resources Department, within seven (7) days, for inclusion into the employee's personnel file.

# SECTION 300

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# CLASSIFICATION PLAN

# SECTION 300 CLASSIFICATION PLAN

301. THE LAS CRUCES MUNICIPAL GOVERNMENT HAS AN ONGOING CLASSIFICATION PLAN WHICH IS DEFINED AS:

"The sum total of all class specifications in the municipal service."

302. CLASS SPECIFICATION IS:

A written description of a class, which includes the position, the title, a statement of duties and responsibilities, examples of typical duties performed, a statement of minimum qualification requirements, and a definition of working conditions.

303. THE TERM CLASS IS:

One or more positions which are sufficiently alike to warrant using the same or similar title, qualification requirements, specifications, and pay grade. It is commonly called "Classification."

304. ALLOCATION IS:

When the City Council appropriates personnel funds, the City Manager uses those funds to allocate positions where needed throughout the City work force.

305. RECLASSIFICATION IS:

1. The reassignment of a position from one class to a different class to correct an error in the original assignment or to recognize a significant change in the duties and responsibilities of a position.
2. When a reclassification is requested to recognize a significant change in the duties and responsibilities of a position, the recommending department shall complete and submit to Human Resources a job analysis worksheet/Position Analysis Questionnaire for evaluation and classification.
3. Reclassification shall not be used as a method of awarding an employee a salary increase. All reclassification recommendations or requests shall be presented to the City Manager. The City Manager may direct the Human Resources Department to analyze the position and make a recommendation.
4. Although there may be various instances when a position is reclassified, such as during reorganization or when directed by the City Manager, the customary time for submitting a request is at budget revision or prior to the budget cycle preparation. The ideal time is when the position is vacant.

306. CLASSIFICATION CATEGORIES. All ~~time positions~~regular positions in the municipal employment are assigned as salaried exempt (E) or non-exempt (N).

307. EXEMPT AND NON-EXEMPT DEFINED. Salaried exempt employees are those whose duties, responsibilities, and compensation render them exempt from overtime requirements of the Fair Labor Standards Act. Non-exempt employees are those

whose duties, responsibilities, and compensation cause them to not be exempt from overtime requirements of the same Act.

308. SALARIED EXEMPT "UPSET TESTS." The FLSA (2004 Amendments) requires that any position assigned as salaried exempt must satisfy each and every one of the "tests" cited in Section 309, Section 310, or Section 311, 312 or 313. Positions which do not satisfy the "tests" in one or more of those Sections must be classified as non-exempt".

309. EXECUTIVE. Those assigned as salaried exempt executives for the City of Las Cruces must meet all of the following requirements:

1. Compensation paid on a salary basis at a rate not less than $455 per week.
2. Primary duty is managing a customarily recognized department or subdivision.
3. Customarily and regularly directs the work of at least two or more other full-time employees or their equivalent; and
4. Has authority to hire or fire other employees, or make such recommendations that are given particular weight.

310. ADMINISTRATIVE. Persons assigned as salaried exempt administrative employees for the City of Las Cruces must meet all of the following requirements:

1. Compensation paid on a salary or fee basis at a rate not less than $455 per week;
2. Primary duty is the performance of office or non-manual work directly related to the management of general business operations of the City; and
3. Includes the exercise of discretion and independent judgment with respect to matters of significance.

311. PROFESSIONAL. Individuals assigned as salaried exempt professionals must meet all of the following requirements:

1. Compensated on a salary or fee basis at a rate not less than $455 per week;
2. Primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment; and
3. The advanced knowledge must be in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

312. COMPUTER. Individuals assigned as salaried exempt computer employees must meet all of the following requirements:

1. Compensated either on a salary or fee basis at a rate not less than $455 per week OR, if compensated on an hourly basis at a rate not less than $27.63 an hour; and
2. Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties as described below;
3. Pprimary duty must consist of:

A. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
B. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
C. A combination of the aforementioned duties, the performance of which requires the same level of skills.

313. HIGHLY COMPENSATED. Individuals assigned as salaried exempt highly compensated must meet all of the following requirements.

1. Total annual compensation of $100,000 or more, which must include at least $455 per week paid on a salary or fee basis;
2. Primary duty is the performance of office or non-manual work and is customarily and regularly perform at least one of the duties of an exempt Executive, Administrative or Professional employee as identified above.

314. FLSA EXEMPTION AND NOTIFICATION POLICY

1. FLSA exemptions to the overtime requirements do not apply to manual laborers who perform work involving repetitive operations with their hands, physical skill and energy. The exemptions also do not apply to First Responders as defined by the 2003 FLSA Amendments.

2. The City prohibits improper pay deductions for exempt employees and will reimburse employees for any improper deductions made. Any exempt employee who believes there have been improper pay deductions made shall immediately contact the Human Resources Department and present the relevant evidence of said deductions. The Human Resources Department will take immediate action to investigate the issue and, if founded, correct the improper deduction.

3. 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 because:

   A. permission for leave has not been sought or has been sought and denied;

   B. accrued leave has been exhausted; or

   C. the employee chooses to use leave without pay.

315. SUPERVISOR. An employee who devotes a substantial amount of work time in supervisory duties, who customarily directs the work of two or more employees and who has authority to recommend the hiring, retaining, promoting, disciplining, adjustment of grievances, or evaluation of other employees. Does not include an individual who occasionally assumes a supervisory role or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

316. POSITION ASSIGNMENTS (TO POSITION CLASSIFICATION/SALARY GRADES).

Positions are assigned to a Grade/Classification based upon a variety of factors,

including minimum requirements, span of control, extent of supervision or independent action needed, budgetary accountability, problem solving requirements, internal equity, and other job related factors essential to make an assignment determination.

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. 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): ~~A full-time regular LCPD or LCFD employee~~ Individuals, selected and recommended ~~by their~~by their respective Chief to serve at the will and pleasure of the Chief in the capacity of Deputy Chief.

    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~~The employee shall revert to their previous position including changes in pay that may have occurred during their term of appointment.

        ~~a.~~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 on an individual the using Department/Section will ~~meet~~ 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 prepare an ~~the~~ 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. The signed agreement is then sent to the Purchasing Manager for execution

and date of the completed agreement.

F. 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.

# SECTION 400

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# COMPENSATION

# SECTION 400 COMPENSATION

401. COMPENSATION PLAN. The Compensation Plan shall consist of monetary (wages/salaries) compensation and shall strive for fair market compensation.

402. TOTAL COMPENSATION. The combination of wages/salaries plus all other benefits of value to the employee which result in a cost to the City.

403. STANDARDS FOR DEVELOPMENT OF THE PAY COMPENSATION PLAN. The Compensation Pay Plan is directly tied to the Classification Plan and is determined on the basis of:

1. Uniformity of pay for each class.
2. Relative difficulty and responsibility of positions.
3. Prevailing wages within the identified relevant public and private sectors markets.
4. Cost of living index.
5. Financial policies of the municipality.
6. Difficulty in recruiting suitable employees.
7. Other economic considerations.

404. ADMINISTRATION AND AMENDMENTS OF THE PAY COMPENSATION PLAN. The Human Resources Department will be responsible for administering the Compensation Plan. The Human Resources Department will administer the plan and keep it current by periodic cost of living reviews and comparative wage surveys with other municipalities as well as the private sector. Geographic adjustments of comparative wage surveys may be made using the data compiled by the Economic Research Institute (ERI).

The Human Resources Department will recommend amendments to the City Manager as appropriate. If approved by the Manager, amendments may be recommended to the City Council for adoption.

405. ENTRY LEVEL PAY RATES. The entry level rate is the minimum rate in the pay grade for the position.

A Department Director, subject to approval by the City Manager, may recommend for appointment a candidate above the entry level rate, to the midpoint of the pay grade if:

1. There are a limited number of qualified applicants available at the entry level, or
2. The applicant has exceptional qualifications.

Above the mid-point if:

1. Multiple recruitments have failed to yield a qualified candidate, or
2. The applicant has qualifications which are unique or critical, or
3. A test of the market reveals that the City is not competitive.

406. PAY RATE ADJUSTMENTS.

1. Conditional Hires. If, after several recruitment attempts, 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, 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 Increases. Effective July 1, 2004 and the start of each subsequent fiscal year, all full- and part-time regular, non-contract employees, in good standing, and employees who were hired before December 1st of the preceding year, shall 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 December beginning December 2005.

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 December beginning December 2005.

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.

## 407. ~~REGULAR~~ HOURLY RATE, ~~PREMIUM~~ REGULAR RATE AND HOURS WORKED DEFINED AND EXCLUSIONS IDENTIFIED.

The ~~regular rate~~hourly rate is the ~~hourly~~ equivalent of ~~all~~ straight time compensation received by a non-exempt employee for work divided by the number of hours that money is intended to compensate.

The regular hourly rate of pay of an employee is determined by dividing an employee's total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked in that workweek for which such compensation was paid.~~The premium rate is the regular rate plus all other compensation for work made by the employer to, or on behalf of, the employee~~.

Hours worked includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work.

Exclusions from the ~~regular~~ hourly and ~~premium~~ regular rate include payment for occasional periods when no work is performed due to vacation, holiday, illness,

failure of employer to provide sufficient work, absence due to authorized leave, jury duty, leave without pay, or any payments to an employee which are not made as compensation for the employee's regular hours of employment.

408. ELIGIBILITY FOR OVERTIME PAY.

1. FLSA non-exempt employees (except seasonal workers) shall become eligible to be compensated at 1-1/2 times the ~~premium~~ regular rate per hour for all time worked in excess of 40 hours during a regularly scheduled seven-day work week (212 hours per 28-day period for 56-hour non-union fire service personnel). Occasional periods when no work is performed due to lack of work, paid leave or unpaid leave cannot be counted as time worked. Those periods, whether paid or not, must be deducted and cannot be included as time worked.

2. Waiting time; rest and meal periods; sleep; travel time during the course of the work day; out-of-town travel; pre-shift and post-shift activities; lecture and training time; civic and charitable time; and voting time may be counted as hours worked. Out-of-town travel expenses will be reimbursed in accordance with the FLSA, state law, and the City Manager's Travel Policy.

3. ~~Overtime pay for~~ FLSA exempt employees ~~will not be paid when those employees work more than 40 hours per 7-day period. (212 per 28 day period for 56 hours non-union fire service personnel.)~~are not eligible for overtime pay.

409. ELIGIBILITY FOR COMPENSATORY TIME OFF.

Management is authorized to compensate non-exempt employees with time off when they *work* in excess of 40 hours in a 7-day period (212 hours per 28 day period for 56 hour non-union fire service employees), or for work hours designated as eligible for premium overtime pay. Management must advise employees scheduled to work overtime that he/she will be rewarded monetarily at 1-1/2 times the regular rate for all time *worked* in excess of 40 hours in a 7-day period (212 hours per 28 day period for 56 hour non-union fire service employees) or with time off at 1-1/2 times all *time worked* in excess of 40 hours per 7-day period (212 hours per 28 day period for 56 hour non-union fire service employees).

1. The use of compensatory time off in lieu of cash overtime compensation for non-exempt employees must be by agreement or understanding between the employer and employee. This agreement must be reached before the work in question is performed.

2. Management shall not permit non-exempt employees who were compensated with time off to accrue more than:

   A. 480 hours of unused compensatory time (320 hours of overtime worked) if engaged in public safety or emergency response activities.

   B. 60 hours of unused compensatory time (40 hours of overtime worked) for ~~unrepresented~~ non-public safety employees.

   C. When employee's reach the maximum compensatory time accrual, they can no longer accrue compensatory time and must be paid in cash for all overtime hours worked.

3. Requests to use earned compensatory time shall be processed in the same manner as requests to use annual leave.

~~3.~~ An employee who has been approved for the use of earned compensatory time shall not change that leave to sick leave, when applicable, without presenting management with a physician's statement verifying the illness.

4.

5. ~~4.~~ Unused compensatory time earned during the twelve months of the fiscal year must be paid out at by the end of the fiscal year and cannot be carried forward, except with the written authorization of the City Manager.

6. ~~5.~~ Compensatory time off should be allowed when requested by the employee provided it does not unduly disrupt the activities of the Department/Section.

7. ~~6.~~ Sections/Departments may direct the use of compensatory time.

8. ~~7.~~ Upon termination for any reason, employees will be paid for unused compensatory time. Payment shall be computed by multiplying unused compensatory time by the employee's ~~final~~normal ~~regular~~ per hour rate.

9. ~~8.~~ If an employee demotes or transfers from one non-exempt position to another non-exempt position; or from one department/section to another within a classification eligible for compensatory time, the employee's accrued compensatory time off balance, up to the maximum allowable accrual will be carried forward with the employee. Any accrual in excess of the allowed maximum shall be paid at the time of promotion, transfer or demotion.

10. ~~9.~~ If an employee promotes from one non-exempt position to another non-exempt position, the employee's accrued compensatory time off balance shall be paid by the department/section the employee is promoting from at the employee's ~~current~~hourly ~~regular~~ rate of pay before promoting.

11. ~~10.~~ Compensatory time accrual balances will be paid by the department/section the employee is moving from at the employee's current ~~regular~~ hourly rate of pay before demoting or transferring when the new classification is not eligible for compensatory time or accruals of compensatory time exceed the maximum of the employee's new job classification.

12. FLSA exempt employees are not eligible for compensatory time off.

## 410. RECORD KEEPING UNDER FLSA.

All Sections must maintain and preserve records for three (3) years of:

1. Timesheets for each non-exempt employee and leave authorizations for all employees.
2. Authorization by the Section Administrator/Manager for all overtime worked.
3. The number of compensatory hours earned each workweek, or other applicable work period, by each employee. The hours must be calculated at a rate of one and one-half hours.

4. The number of hours of compensatory time used each workweek, by the employee.

411. STANDBY PAY. Standby pay will be used to compensate non-exempt employees required to make their time available to the City after regular working hours.

1. Definitions:

   A. Standby Employee: An individual who, though off duty, is required to be available and able to respond to inquiries by telephone, pager or radio and/or, if necessary, return to duty.

   B. Standby Pay. Compensation paid in addition to the hourly base rate to individuals required to be "on call." Extra compensation is paid to the on call employee for making their time available to the City after regular working hours.

   C. Standby Period - All those hours spent on call during a 24 hour period established by the department/section.

   D. Straight Overtime Rate – Calculated at ~~1-1/2~~1.5 the hourly ~~base~~ rate x the number of hours in excess of 40 hours worked per week.

   E. ~~Premium~~ Regular Rate - Regular hours + overtime hours x hourly rate + standby pay divided by total hours ~~x 1.5~~.

   F. Show Up Pay. Sometimes referred to as call-back pay. This payment is awarded to designated non-exempt employees who are not on stand-by but are required to report for duty from off-duty status and who are responding for less than two (2) hours of duty. It is calculated at 1.5 ~~0%~~ x hourly ~~base~~ rate x 2 hours.

2. Procedure:

   A. The Section Administrator/Manager will decide specifically which employee(s) in each job title will be assigned to take "standby duty" and receive the additional compensation. These decisions shall be made fairly and equitably using work and skill related factors, unless operational needs dictate otherwise.

   B. The employee should receive clear advance notice that he/she will be "on stand-by ".

   C. Standby period begins after the completion of the regularly scheduled work day and continues until resuming work the following work day, unless a defined length of time is determined prior to the time on call status begins. Stand-by status includes providing coverage during the lunch period.

   D. Employees on standby will be considered engaged by the City of Las Cruces at the time they leave home until the work is completed. This time will be counted as time worked time and will be recorded as such on the Standby Report by the employee. Travel time shall not apply when the employee is requested to report before or after their regular starting time. The employee will be paid 1-1/2 times their regular rate of pay for extra hours worked if it results in hours worked in excess of 40 hours for the pay period.

E. An employee who is stand-by must meet the following criteria:

1) Thoroughly check the working status of the beeper, cell phone or radio before "standby" status begins and maintain it in operational mode at all times;

2) Stay within beeper, cell phone or radio range;

3) When notified by beeper, radio or telephone, the employee must call in within five (5) minutes;

4) Must leave the location where the call is received within 10 minutes or less after receiving the call; and

5) Must arrive in "fit" condition.

Failure to adhere to these criteria may result in the loss of stand-by pay for the period.

F. If an employee does not meet the criteria defined in "E", he/she will forfeit "standby" pay from the time of the first attempt to contact him/her to the end of the standby period and may be subject to disciplinary action.

G. Each employee on standby after regular working hours will receive adequate compensation for standby status at the designated rate of $65/week or $9.29/day.

H. A standby employee who is called back to work for two hours or less, after leaving the worksite at the end of the regular work period, during the standby period will be paid two hours of show-up pay, except as defined in K" below.

J. If the employee remains at work following the expiration of the 2-hour period or is called back before its expiration, they will be compensation with overtime pay at the premium overtime rate for additional time worked beyond the two (2) hour period.

K. If the employee is released from work after the expiration of that 2 hour period, and re-called to work, the employee shall be compensated only for additional hours worked at the premium overtime rate.

L. A standby employee who remains at work directly at the end of a scheduled work shift or is called to report early (within two hours of their scheduled work time) or remain late when call out continues to the regular starting time, will be paid for straight overtime for the extra hours worked if the additional hours result in hours worked in excess of 40 hours in the work week.

M. The stand-by employee is expected to respond to telephone inquiries during the on call period without additional compensation.

N. An employee responding to a call-out shall assess the situation and need prior to calling out additional staff and shall describe the justification for additional staff on the Stand-By Form.

O. Employees called out shall complete the Stand-by Form for each situation and submit the completed forms to their immediate supervisor by the start of

the next business day.

3~~2~~. Miscellaneous:

A. Positions designated for standby status will be recommended and justified to the City Manager by Department Directors.

B. A listing of all positions designated for standby status and written approval from the City Manager will be sent to Finance (payroll section) and Human Resources Department in January ~~1st and June 1st~~ of each calendar year.

C. Time sheets will list approved personnel on standby status

D. An internal audit of all stand-by positions ~~will be conducted every six months~~ may be conducted by the Office of the Internal Auditor as assigned by the City Manager.

412. TRADING TIME PERMITTED. Employees may mutually agree to exchange scheduled work days, shifts or hours of work with the advance approval of their supervisor provided:

1. Both employees have given supervision prior notification regarding the trade.
2. It is voluntary on the part of both employees.
3. It is at the employee's request and not the employer's.
4. The trade must be between two employees who have the same type of job.
5. Such change does not result in the application of overtime or compensatory time off.

413. FLEXIBLE AND ALTERNATE WORK SCHEDULE

Employees may be allowed flexibility in scheduling their weekly and daily work hours with their supervisor's approval.

Alternate work schedules are for longer time periods. The selected schedule must be approved in writing by the employee's supervisor and Department Director and cannot be changed unless approved in advance by the supervisor. Alternate work schedules should not conflict with departmental staff meetings or other standing meetings in which the employee's attendance is necessary. The City Manager or Department Director may at any time change any or all the terms and conditions under which the employee is authorized to participate in an alternate work schedule, or withdraw authorization entirely. Alternate schedules should be coordinated in order to provide adequate coverage. An alternate work schedule is typically not suitable for those employees with responsibilities that require daily supervision of staff.

Exempt employees approved for an alternate work schedule must be available when business necessitates regardless of the approved alternate schedule.

414. JOINT EMPLOYMENT RELATIONSHIPS. Personnel employed by the City in more than one capacity and/or for more than one department, or section must be paid on the basis of total time worked. The exception to this extends to salaried non-exempt employees who volunteer to work after regular hours in City sponsored recreational activities or other casual assignments that are unrelated to the employee's regular position. No employee may volunteer to work for the City after regular hours when the volunteer activities are related to the employee's regular position.

** ***NOTE:*** *For more information specific to employees working in more than one job, please contact the Human Resources Department or refer to FLSA regulations governing joint employment relationships.*

415. MERIT INCREASES AND CASH INCENTIVES

Deleted March 15, 2004

416. MOTIVATION PAY. Motivation pay has been discontinued for all new hires and promotions effective July 1, 1999.

417. LONGEVITY PAY. Effective July 1, 2004 Longevity pay has been deleted.

Effective April 15, 2002, Las Cruces Police Sergeants and Lieutenants will not be eligible for longevity increases. Pay for sergeants, lieutenants and Deputy Chiefs shall be governed by pay tables for those positions.

Pay for Fire Department Battalion Chiefs and Deputy Chiefs will be governed by the pay table s for those positions.

418. PAY PRACTICE FOR ACTING APPOINTMENTS.

1. When an acting appointment exceeds 30 days, additional compensation to the minimum of the assigned pay grade or a 5% pay increase, whichever is greater, shall be awarded. Acting appointments shall not be continued for more than six months, except when, due to extraordinary circumstances.~~,~~ ~~the~~The City Manager may extend the acting appointment in writing,~~s~~ in increments not to exceed six months.
2. Employees appointed to acting positions may be eligible for additional compensation prior to the 30 day threshold if the acting assignment is significantly more responsible, difficult, or technical than the employee's regular duties.

419. RETIREE RECOGNITION AWARD.

In order to recognize retiring employees for their years of service to the City of Las Cruces, the City shall give a retiree an award as part of their compensation, as follows:

1. $110 for 15 to 20 years of service to the City.
2. $160 for 20 or more years of service to the City.

# SECTION 500

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# LEAVE AND HOLIDAYS

## SECTION 500 LEAVE, ATTENDANCE AND HOLIDAYS

501. LEAVE DEFINITIONS. An employee benefit made available by the City of Las Cruces for eligible employees. Each eligible employee must submit a written request in advance of the time he/she elects to be absent from regular duties. Exceptions may be made in cases of illness, accident, or emergency. Written requests for leave do not guarantee that the request will be approved. Supervision shall consider each request on a case-by-case basis. Approval shall be considered in terms of workload, staffing levels, availability of personnel, timeliness and other job-related factors.

502. REST PERIODS. Subject to work schedules and service delivery needs, full-time, non-exempt, unrepresented, non-public safety employees may be allowed a rest period of up to fifteen (15) minutes in each half of the work shift. Rest periods can not be accumulated from day to day and can not be used in conjunction with other paid time off, starting and quitting times, or the lunch period. Rest periods need to be strictly scheduled and are subject to cancellation and interruption by the supervisors, customers or service delivery needs. Rest periods shall be taken at their original time and can not be rescheduled due to interruptions or cancellations. These rest periods are to provide employees time away from their duties to return personal calls, check cell phone messages, smoke or to attend to other personal needs.

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.

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).

## 504. LEAVE AND PAY DEDUCTIONS FOR EXEMPT EMPLOYEES

1. FLSA Leave for Exempt Employees

   A. Pursuant to principles of public accountability, for employees who accrue annual leave, personal leave and sick leave, ~~A.~~ ~~E~~exempt employees shall receive deductions from their leave balance for any annual, sick or personal leave taken, whether or not the leave is for less than one full work day. ~~If the exempt employee does not have accrued leave to cover the absence, the employee will be placed on Leave with Pay for the day. However, such leave shall not be construed as approval by the City of such leave, nor shall the City be prohibited from taking appropriate disciplinary action.~~

   B. Exempt employees shall adhere to the same procedures followed by non-exempt employees governing requests and documentation of all leave.

2. FLSA Pay Deductions for Exempt Employee

   A. The FLSA allows for the following pay deductions for exempt employees:
      1) For penalties imposed for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees.
      2) For unpaid disciplinary suspension of one or more full days for infractions of serious work place conduct rules including discrimination, harassment, violence or violation of law.
      3) For Leave Without Pay while using FMLA for a qualifying event.

4) For partial work weeks during the initial or terminal week of employment. In these allowable situations, the city will pay a proportionate part of the employee's full salary for any time actually worked based on the hourly equivalent of the employee's full salary.

5) For absences for personal reasons or illness or injury when leave is not used by the employee because:

   a) Permission for use of accrued leave has not been sought or has been sought and denied;

   b) Accrued leave has been exhausted; or

   c) The employee chooses to use leave without pay

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, ~~on a pro rata basis~~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 |
|---|---|---|
| During 1st Year | 56 hrs/yr (7 days) | 56 hrs/yr |
| 2nd and 3rd 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 ~~the supervisor with~~ to management a physician's statement ~~that the employee became ill~~verifying the illness.

4. Exceptions to this policy can be made under extraordinary circumstances upon recommendation of the Department Director and approved by the City Manager.

506. ANNUAL LEAVE MAXIMUM ACCRUAL ALLOWANCE.

1. No more than 240 hours (30 days) of Annual Leave shall be carried forward from one calendar year to a subsequent calendar year (336 hours, for 56-hour non-union fire service personnel). All unused accrued Annual Leave in excess of these hours shall be forfeited ~~effective~~ at the beginning of the first full payroll of each calendar year,~~midnight, December 31 of each calendar year.~~

2. When an employee terminates for any reason, he/she shall be paid for all earned Annual Leave up to 240 hours (30 days) plus accrued Annual Leave for the current calendar year unused by date of termination.

~~3.~~ Employees who voluntarily retire and begin receiving a P.E.R.A. pension, will be paid for all accrued Annual Leave even if in excess of 240 hours, but not to exceed the aggregate of 30 days plus Annual Leave accrued but not used since the beginning of the calendar year (336 hours for 56 hour non-union fire service employees).

3.

4. Exceptions to this policy 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. 11.25 hrs per calendar year for 56 hour non-union fire service employees.

3. Part-time regular employees shall accrue personal leave on a ~~pro rata basis~~regular hours worked.

4. All unused personal leave shall be forfeited effective midnight, ~~December 31~~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 17, 2009. This leave will be forfeited if unused by June 27, 2010.

508. SICK LEAVE.

1. Sick Leave is an employee benefit provided by the City which provides time off from regular duty, with pay when an employee is unable to work due to illness, for an FMLA qualifying event, or for an illness in the immediate family. Immediate family shall be defined as spouse, minor child or stepchild (dependant), an individual for which the employee is a court appointed legal guardian, or domestic partner and their minor children. Employees using sick leave accruals shall submit a Leave Request Form prior to or immediately upon return to work. A supervisor may verify use of sick leave by requesting a physician's statement confirming the illness.

2. Sick Leave shall "accrue" to regular and probationary full-time employees ~~and on a pro rata basis~~, based on eligible hours worked, to regular and probationary part-time employees from date of regular appointment as follows:

   A. 96 hrs (12 days) for employees who work 40 hrs/week.

   B. 135.2 hrs (16.9 days) for non-union fire service employees who work 56 hrs/week.

3. Sick 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, not to exceed the amounts as stated in 508.2.

4. Abuse of Sick Leave may result in disciplinary action up to and including termination. Sick Leave abuse is defined as charging Sick Leave for work absences when not sick, except for an FMLA qualifying event or use of sick leave for doctor appointments. Any of the following conditions may indicate a need to review sick leave use:

   A. Patterns of use; e.g., after pay day, using the same day of the week repeatedly, the day before or after holidays, Annual Leave or weekends; or

   B. When attempting to contact an employee and finding the employee not home, reported or having been seen in an activity which belies the statement of illness, as well as other possible actions; or

   C. When a review of leave reveals that Sick Leave is being used at the same rate that it is being accrued.

5. Whenever an employee has been absent from duty because of an injury, or has been absent from duty for three (3) or more consecutive calendar days, the supervisor shall initiate the FMLA procedures.

6. All absences from the work station to visit a medical facility will be charged to available sick leave, ~~or~~ annual leave, personal leave or accrued compensatory time balances and are to receive prior approval by the supervisor.

509. SICK LEAVE MAXIMUM ACCUMULATION ALLOWANCE.

1. No more than 1,560 hours (195 days) of Sick Leave shall be carried forward from one calendar year to a subsequent calendar year. The maximum for non-union fire department personnel working a 56 hour schedule shall be 2184 hours (91 shifts).

2. Employees who have accumulated Sick Leave in excess of 300 hours (37.5 days) may, at their option, sell back to the City any hours in excess of 300 hours (37.5 days) in accordance with the following provisions:

   A. Notification of intent to sell Sick Leave must be given to the employee's supervisor between November 1 thru November 15. Maximum Sick Leave that may be sold back to the City in any given year will be 240 hours (30 days). Maximum sell back for non-union fire service employees working a 56-hour schedule shall be 336 hours. Maximum sell back for employees retiring from City government shall be 836 hours (104.5 days)

   B. The rate of exchange for Sick Leave will be at a ratio of 3:1 and will be paid in accordance with the following schedule:

      1) Employees who elect to convert to Annual Leave: Sick leave converted to Annual Leave will be posted to employee's record ~~January 1~~at the beginning of the first full pay period of the following year.

      2) Employees who elect to receive payment for Sick Leave: An extra payment will be made in the first 15 days in December~~.~~.

         EXAMPLE: An employee with accrued Sick Leave of 510 hours may sell 210 hours back to the City for 70 hours of Annual Leave or a payment to be computed as 70 hours at current hourly rate. In the case of payment, normal federal and state deductions will be withheld.

3. Voluntary Termination Provisions: Upon voluntary termination without prejudice, payments of unused Sick Leave in excess of 300 to a limit of 240 hours (336 hours for non-union fire employees working a 56 hour schedule) shall be made to employees in accordance with Section 509.2(A and B). No payment for Sick Leave shall be made to employees whose termination is involuntary or whose resignation is accepted with prejudice.

4. Retirement Provisions: Employees with ten or more years of service, who retire while on the active payroll, shall be paid for unused Sick Leave to a limit of 836 hours at a ratio of 2:1. Non-union fire service employees working a 56 hour schedule shall have a limit of 1170 hours. No payment for Sick Leave shall be made to employees whose resignation is accepted with prejudice.

5. Death Provisions: The beneficiary of an employee who dies while on active duty with ten or more years of service shall be paid for the deceased employee's unused Sick Leave at the retirement rate.

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. 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. 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. 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. 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 ~~time~~ 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. The leave recipient will continue to accrue annual and sick leave while receiving donated leave from the Sick Leave Bank, but such ~~accrued leave~~accruals shall be used as ~~it is~~they are ~~accrued~~earned. Leave hours will be withdrawn in increments of 80 hours per pay period minus any leave accrued during each pay period.

2. The confidentiality of the Sick Leave Bank applicants/recipients will be protected. Employees ~~may~~ 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), 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 ~~sick~~ leave. ~~and annual leave due to the catastrophic illness/injury~~.

F. A maximum of 12 weeks may be withdrawn from the Sick Leave Bank per calendar year.

511. BEREAVEMENT LEAVE. Employees may take up to three days paid Bereavement Leave (48 hours (2 shifts) for non-union firefighters working a 56 hour schedule) for a death in the immediate family. For the purpose of this Section, immediate family shall include: Parents, stepparents, spouse, children, stepchildren, siblings, step-siblings, grandparents, legal guardian or domestic partner or eligible dependent.

1. Payment for Bereavement Leave shall be computed at the bereaved employee's regular base rate.

2. Employees shall be granted one day paid Bereavement Leave for a death of their mother-in-law, father-in-law, aunt, uncle, grandparents-in-law, and grandchildren or mother or father of a qualifying domestic partner,

3. One additional Bereavement Leave day shall be allowed if the funeral is being held at a location greater than 300 miles from the City of Las Cruces.

4. If requested by the supervisor, an employee must present reasonable proof of death, relationship, and/or attendance at the service.

512. MILITARY LEAVE.
It is the policy of the City of Las Cruces to grant military leave of absence as required by state and federal law and to provide certain benefits to employees granted such leave. There are two types of military leave(s).

1. Definitions:

A. Persons Covered: USERRA covers a person, who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform "service" in a "uniformed service" and who separates from military service under "Honorable" conditions.

B. Service: The performance of duty on a voluntary or involuntary basis and includes the following:
   Active duty;
   Active duty for training;
   Inactive duty for training;
   Inactive duty training;
   Full-time National Guard duty; and
   Absence to take a fitness examination.

C. Uniformed Services:
   - The armed forces – Army, Navy, Marine Corps, Air Force, Coast Guard (including their respective reserve branches);
   - The Army and Air National Guard;
   - The commissioned Corps of the Public Health Service; and
   - Any other category designated by the President in time of war or emergency.

2. Military/Reserve Training

A. Active Duty/Active Duty for Training – for persons who are members, or become members, of the United States Armed Forces Reserve Units, National Guard or Naval Militia, and are on federally funded military duty. During a military service training leave (not to exceed a total of one hundred and sixty (160) hours in any federal fiscal year, unless otherwise approved by the City Manager for extenuating circumstances), employees will continue to receive their regular pay from the City, provided the reservist gives advance notice to the City that they will be absent from their position of employment to perform active duty or active duty training.

Procedure:

1) All employees ordered to active duty must present their orders, or other official military documentation validating military leave requirement, to supervision no later than three (3) days after orders were received. Upon receipt of such documentation from the employee, the supervisor will forward a copy to Human Resources for inclusion in the personnel folder and attach a copy to the leave request form for Payroll.

2) All employees, including, seasonal, temporary or provisional employees and those on probation status, shall be compensated at the base rate for all hours usually worked up to 160 hours of annual active duty or active duty training based on the federal fiscal year of October 1 through September 30.

3) The City may replace employees ordered to active duty or active duty training with other persons provided the employee is hired with full knowledge and understanding that the veteran returning from active duty has a right to his/her previous position with the City and the replacement worker will be separated.

4) Military leave is a special paid leave benefit and is not charged against the accumulated annual or sick leave balance, unless additional military duty is needed. Military leave in excess of one hundred and sixty (160) hours per year may be charged to annual, or leave without pay (excused) at the employee's option.

B. Inactive Duty Training
Military reservists and guards persons shall be allowed to attend Inactive Duty Training (IDT), however the City is not obligated to provide compensation for the period of IDT.

3. Military Service Leave for Tour of Duty – Applicable to any employee who enters active duty or is called to active duty.

The City will grant an authorized absence to employees who elect or are required to perform service in uniformed services, to the full extent required by the Uniformed Services Employment and Reemployment Rights Act (USERRA). An individual employee's service limitation, available benefits, and reemployment rights will be determined in accordance with applicable provisions of this law.

4. Notice Requirements:
All employees being called to military service must provide the City with advanced notice either written or orally. Unless otherwise impossible or unreasonable, an employee who fails to give notice prior to military service will not be afforded the protections offered by USERRA.

5. Health Insurance:
The City will provide continuation of existing health care benefits for a period of thirty (30) days to provide transition to military coverage. The veteran is then allowed to elect to continue health insurance during times of service for a maximum period of eighteen months beginning on the date in which the employee's absence begins; or the day after the date on which the employee fails to apply for or return to employment. An employee electing to continue health plan coverage under USERRA shall be required to pay up to 102% of the full premium paid by the other employees, except that an employee who performs military service for less than thirty-one (31) days may not be required to pay more than the employee's share for such coverage.

6. Duration of Rights:
The accumulated length of a person's absence from employment may not exceed five (5) years. Each time an employee is absent due to military service, the time the employee is absent will be counted against the five-year limit.

Certain categories of service are exempt from the five-year limitation and include:
- Service required beyond five years to complete an initial period of obligated service;
- Service from which a person through no fault of the person, is unable to obtain a release within the five-year limit;
- Required training for reservist and national guard members (the fourteen

or fifteen days of full time duty for training each year and the one weekend per month);

- Service under an involuntary order to, or to be retained on, active duty during a domestic emergency or national security-related situation;
- Service under an order to, or to remain on, active duty during a war, a national emergency declared by the president or Congress;
- Active duty in support of an "operational mission" for which selected reservists have been ordered to active duty without their consent;
- Service by persons who are ordered to active duty in support of a "critical mission or requirement"; and
- Federal service by members of the National Guard called into action by the President to suppress an insurrection, propel and invasion, or to execute the laws of the United States.

7. Returning to Work: Depending on the duration of the veteran's military service, USERRA grants windows during which a veteran released from active duty must return to work.

   A. Service Less than Thirty-One Days:
   A veteran serving less than thirty-one (31) days must report to work by the beginning of the first regularly-scheduled day that would fall eight hours after the veteran return home from military leave. If timely reporting back to work would be impossible or unreasonable, through no fault of the veteran, the veteran must report back to work as soon as possible.

   B. Absence for Fitness-for-Service Examination: For veterans who are absent to take a fitness test, the veteran must report to his/her employer by the beginning of the first regularly-scheduled work day that would fall eight hours after the veteran returns home.

   C. Service from Thirty-One to One Hundred Eighty Days:
   For veterans absent from employment for thirty-one (31) to one hundred and eighty (180) days, an application for reemployment must be submitted either orally or in writing no later than fourteen (14) days after completion of the veteran's service. If timely submission of an application is impossible or unreasonable, through no fault of the veteran, the veteran must submit the application as soon as possible.

   D. Service of One Hundred Eighty-One or More Days:
   For veterans serving for one hundred and eight-one (181) or more days, an application for reemployment must be submitted either orally or in writing, no later than ninety (90) days after completion of service.

   E. Extension of Deadlines:
   For veterans who are hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, the reporting or application deadlines are extended for up to two years. A veteran who does not timely report or submit an application for reemployment becomes subject to the employer's rules governing un-excused absences.

8. Documentation:
The City has the right to request documentation showing that a veteran is eligible for reemployment if that veteran has been absent for a period of service of thirty-one (31) days or more. The City is entitled to documentation showing the following:

   A. The veteran's application for reemployment is timely;

   B. The veteran has not exceeded the five-year service limitation; and

   C. The veteran's separation from service is under honorable conditions.

9. Undue Hardship:
The City is not required to reemploy a veteran if the City's circumstances have so changed to make such reemployment impossible or unreasonable. Undue hardship is defined as:

   A. Where reinstatement would require creation of a useless job or where there has been a reduction in workforce that reasonably would have included the veteran.

   B. When the veteran is not qualified for a position due to disability or another bona-fide reason after reasonable efforts have been undertaken to qualify the person.

10. Re-employment:
A regular full-time employee who has completed his or her initial employment period and who enlists, is drafted, or is called to active duty, and who is granted a military leave shall:

   A. When he/she returns from active service to the City, they will be added to the City's health plan on their return date without additional probationary period or delays on pre-existing conditions.

   B. Receive retirement service credit as though continuously employed by the City as per rules and regulation of the Public Employees Retirement Association of New Mexico (PERA).

   C. Be credited with continues accumulation of seniority for up to four years while on active duty.

   D. Be reinstated to the same job or one of similar seniority, status and pay (even if that means bumping or otherwise removing the employee's replacement). If the employee has; a) received an honorable discharge or satisfactory completion certificate; b) sought reemployment with the City within thirty-one days of discharge if the employee's tour of duty was less than twelve weeks or within ninety days if the tour of duty was longer than twelve weeks.

   E. Be placed in a position of similar status, pay, and seniority for which the

returning employee is qualified if he/she is no longer qualified for the position held prior to active duty because of a disability sustained while in the military unless the City's circumstances have so changed as to make it impossible or unreasonable to do so.

513. JURY DUTY OR COURT LEAVE.

1. Jury Duty with regular pay is authorized only when the employee is required to involuntarily serve as a juror.

   A. Jury Duty payment will be authorized only when the employee serves on a day which would have been a regularly scheduled workday. Payment shall not be authorized when employees serve on Jury Duty while on the inactive payroll, Annual Leave, or on days when he/she was not scheduled to work.

   B. If excused by the court during a regular workday, employees are expected to return to work if serving within the City.

   C. Upon returning from Jury Duty, the employee must present an attendance record, validated by the Court Clerk, to supervision. A copy of the summons, subpoena, or court order and the attendance record must accompany the employee's time sheet to the Payroll Department.

   D. Any fees and allowances paid to an employee by the court (except reimbursement for travel and actual out-of-pocket expenses) may be retained only if the employee is on Leave without Pay or Annual Leave status. Otherwise, all fees received from the court (except for travel or out-of-pocket expenses) shall be remitted to the Finance Director.

2. Court Leave with regular pay is authorized when an employee is required to testify on behalf of the City government in a matter that came about as a result of his/her employment. This benefit is not authorized in matters in which the employee is a private litigant.

514. FAMILY AND MEDICAL LEAVE.

1. Policy: The City of Las Cruces will provide up to 12 weeks of job-protected leave to eligible employees for family and medical reasons consistent with the Family and Medical Leave Act (FMLA), relevant State law, and collective bargaining agreements and plans.

2. Definitions:

   A. Rolling Calendar Year: The 12-month period is measured forward from the date any employee's first FMLA leave begins.

   B. Employee is Needed to Care for a Family Member: When the employee is needed to provide physical or psychological care which includes situations where:

1) Because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, nutritional or safety needs; or is unable to transport himself or herself to the doctor.

2) The employee is needed to provide psychological comfort and reassurance that would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

3) The employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

C. Health Care Provider:

1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices.

2) Others capable of providing health care services including only:

a) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in the State.

b) Nurse practitioners and nurse-midwives who are authorized to practice under State law.

c) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

d) Clinical Social Worker.

e) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

D. Incable of Self-Care: Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (ADLs).

E. Loco Parentis: Persons who are in loco parentis include those with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

F. Parents: A biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parent in law.

G. Physical or Mental Disability: A physical or mental impairment that substantially limits one or more of the major life activities of an individual.

H. Serious Health Condition: For purposes of the FMLA, serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

1) Inpatient care, i.e., an overnight stay in a hospital, hospice, or residential care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

2) Continuing treatment by a health care provider that involves:

a) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom) of more than three consecutive calendar days; and

b) Any subsequent treatment or period of incapacity relating to the same condition, that also involves:

c) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under order or, on referral by, a health care provider; or

d) One treatment session by a physician which results in a regimen of continuing treatment by a health care provider, or at least under the supervision of the health care provider; or

3) Pregnancy. Any period of incapacity due to pregnancy, or for prenatal care. This absence qualifies for FMLA leave even though the employee does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days; or

4) Chronic serious health condition. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. This absence qualifies for FMLA leave even though the employee or immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days.

5) Chronic serious health condition is defined as one which:

a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and

b) Continues over an extended period of time; and

c) May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.) or

6) Permanent or long term condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g. Alzheimer's, severe stroke, or at the terminal stages of a disease); or

7) Multiple treatments by a health care provider or a provider of health care services under order of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention such as cancer (radiation, chemotherapy, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

I. Son or Daughter: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

J. Spouse: A spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized.

K. Domestic Partner: 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.

L. Unable to Perform the Functions of the Position of the Employee: Where the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

M. Exigent Circumstances: allowing family members to help assist when a spouse, son, daughter, or parent is on "active duty or call to active duty" status or just returning from active duty.

3. Eligibility, Qualifying Reasons for Leave

A. Employee Eligibility:

1. The employee must have worked for the City of Las Cruces for at least one year; and

2. The employee must have worked at least 1,250 hours during the 12 months immediately preceding the request. The Fair Labor Standards Act requires employers to count hours of work only, not paid hours such as vacation, holidays, sick pay, unpaid leave of any kind, or period of layoff.

B. Reasons for Taking a Qualifying Leave:

1) For the birth of the employee's child, and to care for such child.

2) For the placement of a child for adoption or foster care.

3) Circumstances may require that leave for the birth of a child, or for placement for adoption or foster care, be taken prior to the actual birth or placement.

4) To care for the employee's seriously ill spouse, son or daughter, or parent or the qualifying domestic partner.

5) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of an employee's job.

6) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

~~1.~~7) Care for a covered servicemember.

4. Types of Leave

Based on a "rolling calendar year", the City of Las Cruces will provide up to 12 weeks of job-protected leave to eligible employees.

A. Full 12-Week Leave. This leave is taken in one block of 12 weeks due to a single qualifying event.

B. Intermittent Leave. This is leave taken in separate blocks of time due to a single qualifying reason. Leave may be taken for an hour or more to several weeks.

C. Reduced Leave Schedule. This is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

5. Qualifying Exigency Leave

A: Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on active duty or call to active duty status for one or more of the following qualifying exigencies:

1) Short-notice deployment.
   a) To address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment;
   b) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;
2) Military events and related activities.
   a) To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member; and
   b) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
3) Childcare and school activities.
   a) To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;
   b) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the active duty or call to active duty status of a covered military member for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;
   c) To enroll in or transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, when enrollment or transfer is necessitated by the active duty or call to active duty status of a covered military member; and
   d) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a

biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of a covered military member;

4) Financial and legal arrangements.
   a) To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and
   b) To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for a period of 90 days following the termination of the covered military member's active duty status;
5) Counseling. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;
6) Rest and recuperation.
   a) To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;
   b) Eligible employees may take up to five days of leave for each instance of rest and recuperation;
7) Post-deployment activities.
   a) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status; and
   b) To address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;
8) Additional activities. To address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

6. Care for a covered servicemember

A. Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

(1) A "serious injury or illness" means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

(2) "Outpatient status," with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(3) In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(4) A "son or daughter of a covered servicemember" means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(5) A "parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

(6) The "next of kin of a covered servicemember" is the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority:

a) Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;

b) Brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA;

c) When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the

covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

d) When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin;

e) Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin;

f) The City may require an employee to provide confirmation of covered family relationship to the covered servicemember.

B. An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a "single 12-month period."

(1) The "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any "single 12-month period.

(3) An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness.

(4) When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the "single 12-month periods" corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each "single 12-month period."

(5) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period" provided that the employee is entitled to no more than 12 weeks of leave for one or more of the following:

a) because of the birth of a son or daughter of the employee and in order to care for such son or daughter;

b) because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition;

c) because of the employee's own serious health condition; or

d) because of a qualifying exigency.

Thus, for example, an eligible employee may, during the "single 12-month period," take 16 weeks of FMLA leave to care for a covered servicemember and 10 weeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the "single 12-month period," even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered servicemember.

(6) A husband and wife, employed by the City, and who are eligible for FMLA leave may be limited to a combined total of 26 workweeks of leave during the "single 12-month period" if the leave is taken for:

a) The birth of the employee's son or daughter or to care for the child after birth;

b) For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement;

c) To care for the employee's parent with a serious health condition; or

d) To care for a covered servicemember with a serious injury or illness.

7. Transfer of Employee to an Alternative Position
If an employee needs intermittent leave or leave on a reduced leave schedule, the City of Las Cruces may require the employee to transfer temporarily, to an available alternative position for which the employee is qualified and which better accommodates recurring period of leave than does the employee's regular position.

8. Substitution of Paid Leave for FMLA Leave
The City of Las Cruces requires an employee to substitute paid leave for FMLA leave. Therefore, FMLA leave runs concurrently with any accrued paid leave such as annual leave or sick leave and with workers' compensation at a rate not less than 40 hours per pay period. Employees are not required to use any accrued sick leave when the FMLA qualifying event is for the serious health condition of a family member, or for paternity leave. Once accrued paid leave is exhausted, the employee, whether exempt ~~of~~ or non-exempt, shall be placed on Leave Without Pay. An exempt employee who has exhausted accrued paid leave who is taking intermittent FMLA leave shall be paid a proportionate part of the full salary for time actually worked.

9. Medical/Exigency Certification

A. Where FMLA qualifying leave is foreseeable and 30 days notice has been provided, an employee must provide ~~a~~the ~~medical~~ required certification before leave begins.

B. Where FMLA qualifying leave is not foreseeable, an employee must provide notice to the employer of the need for leave as soon as practicable (1 or 2 working days is expected except in extraordinary circumstances). The employee must then provide ~~medical~~ required certification within 15 working days.

C. The City of Las Cruces may require medical certification to support a FMLA qualifying leave request either to care for an employee's seriously ill family member, or for leave due to a serious health condition that makes the employee unable to perform the functions of his or her job.

D. Employees returning from FMLA leave for a qualifying event related to personal illness or injury must provide a medical release to return to work to the Human Resources Director prior to their return when practicable.

E. Employees qualifying for FMLA leave are required to provide medical updates to the Human Resources Director every 30 working days, or as needed and requested.

10. Designating Leave

A. The City of Las Cruces may make a preliminary designation of leave as FMLA qualifying if medical certification was not provided prior to the beginning of leave, or if the City is waiting for a second or third medical opinion.

B. Where the City of Las Cruces has knowledge that an employee's leave qualifies as FMLA leave and does not designate the leave as such, the City may not designate leave retroactively as FMLA leave unless:

1) The employee has been out of work and the employer does not learn of the reason for the leave until after the employee returns (in which case the City must designate the leave upon the employee's return to work); or

2) The City has provisionally designated leave as FMLA leave and awaits receipt of a medical certification or other reasonable documentation.

C. If the employee gives notice of the reason of the leave later than two days after returning to work, the employee is not entitled to the protections of the FMLA.

11. Job Benefits and Protection

A. During an FMLA qualifying leave, the employee and dependent health and dental insurance is maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.

B. An eligible employee returning from a FMLA qualifying leave is entitled to be restored to the same position and shift that the employee held when the FMLA qualifying leave began, or to an equivalent position and shift with equivalent benefits, pay and other terms and conditions of employment.

C. Provided the employee returns to work immediately following his/her FMLA qualifying leave, benefits must be resumed upon the employee's return to work at the same level as were provided when leave began. Any new or additional coverage or changes in health benefits must be made available to an employee while on FMLA qualifying leave.

12. Procedures and Responsibilities

A. Employee Requests
Employees must request FMLA leave 30 days in advance or as soon a practicable by completing the FMLA Leave Request Form and submitting it to their immediate supervisor. The form is then routed to the Human Resources Department within two (2) days of its receipt. If the employee is unable to complete the form, due to circumstances relating to a serious health condition, the form may be initiated by supervisory staff.

The employee must ensure that the Certification of Physician or Practitioner is completed immediately and submitted to the Human Resources Department.

B. Employer Initiation
The supervisor will notify Human Resources when an employee has been absent 3 consecutive calendar days (2 shifts for fire personnel working 53 or 56 hour shifts), at which time the Human Resources Department will make a preliminary designation of leave as FMLA qualifying if medical certification was not provided prior to the beginning of leave.

C. In either an employee initiated or employer designated FMLA leave, the Human Resources Department shall provide the employee with the following:

1) Notice describing the employee's obligations and explaining the consequence of a failure to meet the obligations.

2) Notice that the leave will be counted against the employee's twelve weeks of FMLA leave.

3) Medical certification requirements.

4) Employee's right to use paid leave and the employer's requirement of substitution of paid leave.

5) Requirements concerning payment of health insurance premiums.

6) The employee's potential liability for payment of health insurance premiums paid by the employer during FMLA leave if the employee fails to return to work for at least thirty (30) calendar days after taking the leave.

7) Requirements of a fitness-for-duty certificate for the employee to be restored

to employment.

8) The employee's rights to restoration to the same or an equivalent job upon return from FMLA leave.

9) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations the employee shall provide two (2) two business days written notice of the changed circumstances to the Human Resources Department, where foreseeable.

13. Appeal Process
If an employee believes that his/her rights under the FMLA have been violated, he/she may:

A. Internal
1) Contact the Human Resources Department

B. External
1) File or have another person file on his/her behalf, a complaint with the Secretary of Labor. The complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The complaint may be filed at any local office of the Wage and Hour Division; the address may be found in the telephone directory.
2) A complaint filed with the Secretary of Labor should be filed within a reasonable time after the employee discovers that his/her FMLA rights may have been violated, but in no event more than two (2) years from the date the alleged violation occurred, or within three (3) years in the case of an alleged willful violation.
3) File a private lawsuit pursuant to Section 107 of the FMLA.

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.

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.

517. HOLIDAYS.

1. Regular full-time, regular part-time, and probationary employees regularly scheduled to work, or working non-traditional shifts, will receive up to eight (8) hours of prorated holiday pay for eleven (11) regularly scheduled holidays as determined by the City Council.

2. Personnel required to work on a holiday shall be compensated in accordance with Section 518 of this Manual of Personnel Policies.

518. HOLIDAY PAY PROCEDURE.

1. If a paid holiday occurs while an employee is away on annual leave, the employee's supervisor will account for that day as a holiday on the employee's time sheet. Annual Leave may be combined with a holiday to the advantage of an employee, so long as prior approval by the supervisor is given.

2. If a holiday occurs on a day when an employee is not at work due to illness, that day should not be deducted from the employee's sick leave accrual, but will be charged as a holiday.

3. If an employee is sick the day before or the day after a paid holiday, a physician's written release to return to work may be required. An illness which occurs the day before or the day after a paid holiday may be investigated.

4. A non-exempt employee required to be on duty during a paid holiday shall be awarded another paid day away from work during the pay period.

5. If another day off with pay within the pay period is not possible, the non-exempt employee shall receive up to eight (8) hours of prorated holiday pay (computed at the hourly rate), plus one and one half (1-1/2) times their hourly rate for all time worked on that holiday.

6. Employees must be on paid status the day before and after the holiday to be eligible for holiday pay.

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

1. All 40 hour non-union fire service employees, whether on duty or not, shall be eligible to receive 8 hours holiday pay.

520. GOVERNMENTAL/PROFESSIONAL LEAVE.

Employees, who are members of governmental or professional organizations related to their City employment, are eligible to attend meetings during working hours and charge such leave as time worked when such meetings are held in Las Cruces. If such meetings are conducted outside the Las Cruces area, employees shall follow the City's Travel Policy.

Participation is contingent upon supervisor approval and shall not interfere with the proper execution of employees work related duties.

521. VOTING LEAVE.

All City employees who are registered to vote in primary, general and municipal elections will be allowed up to two hours off from work to vote, when applicable. Employees requesting time off to vote must be registered voters, living within the eligible voting area, and must ~~coordinate~~ make a formal request to their supervisor two days prior to Election Day, for absence from their duties during working ~~hours~~ hours~~with their supervisor~~, so as not to adversely impact City operations.

522. SEARCH AND RESCUE LEAVE

Employees who participate on Search and Rescue Teams recognized by the New Mexico State Police will be granted leave with pay for the time the employee is engaged in the State Police Certified search and rescue mission.

Before the employee will be granted any paid leave time for participation in a search and rescue mission, s/he must obtain written permission from the City Manager. A copy of the memo granting the leave will be placed in the employee's personnel folder and a copy sent to the Payroll Section.

Regular, full-time employee will be granted leave as follows:

1. If a mission is during work hours, the employee will be granted leave with pay for the time spent on the mission, including travel time to and from the location of the search.
2. If the mission is longer than four (4) hours and is at night prior to a work day, the employee will be granted eight (8) hours of paid leave to compensate for loss of sleep.

Employee participating in search and rescue missions shall assure that their immediate supervisor is informed of the mission and the absence from the workforce. Such notification shall be given no later than one hour after that employee is scheduled to arrive at the work site. Should notification not be received, the employee will not be granted the leave.

Employees participating in search and rescue missions must furnish a written statement, signed and dated by the mission coordinator and/or State Police mission initiator, and include the actual hours and date of the mission. The justification will be signed by the supervisor and attached to the time sheet for the pay period during which the leave is authorized.

523. EXTENDED LEAVE.

Extended leave for up to a maximum of an additional 12 weeks beyond approved FMLA leave will be provided for eligible employees. Extended leave provisions are intended to provide "eligible" full-time regular and part-time regular employees who have a serious health condition that requires on-going medical care by a health care professional in excess of the FMLA period and are unable to return to work, a period of extended leave.

1. Definitions:
   A. "*Serious Health Condition*:" An illness, injury, impairment, physical or mental condition that involves:
      1) Periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
      2) The health care provider has found the employee is unable to work at all, or is unable to perform any of the essential functions of the employee's position with or without reasonable accommodation.
   B. "Eligible:" Full-time regular and part-time regular employees who have completed their FMLA entitlement and have complied with the reporting requirements of the FMLA as outlined in the FMLA Notification Letter and policy.
   C. "Extended Leave:" A maximum of an additional 12 weeks of leave. The extended leave period does not protect the employee's position.
   D. Type of Leave:" Leave taken in one block of time due to the serious health condition.
2. Procedure:

A. At the end of the FMLA entitlement period, Human Resources will notify the employee in writing that:

1) Their job protected leave is over;

2) They are being placed on Leave Without Pay status if they have no accrued leave balance; or Leave With Pay status for the balance of their accrued leave, not to exceed 12 weeks.

3) They are required to continue to provide 30-day medical updates to the Human Resources Director and a fitness-for-duty certification prior to returning to work in the future.

B. If operational needs require the position to be filled, the employee will be separated from employment without prejudice. In this situation, if the employee is able to return to work within the 12 weeks of extended leave the Human Resources Department will review vacant positions for which the employee is qualified.

C. If a vacant position is identified, the employee will be reassigned to that position at the pay scale for that position at their same percentile rank or the maximum of the new pay grade, whichever is lower for unrepresented employees and to the pay scale for the position at the average wages of all employees within that position with a similar length of service with the City for represented employees. The employee being reassigned shall complete any tests required of an applicant for that position to demonstrate qualifications prior to being reassigned.

524. Domestic Abuse Leave

1. Leave time, for up to one hundred and forty hours in any calendar year, taken by an employee to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member.

2. Definitions:

A. Family member: a minor child of the employee or a person for whom the employee is a legal guardian;

B. Order of protection: a court order granted pursuant to the Family Violence Protection Act;

C. Retaliation: an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave.

3. Certification and Verification

A. The employee shall provide the Human Resources Department one of the following forms of verification through furnishing in a timely fashion:

(1) A police report indicating that the employee or a family member was a

victim of domestic abuse;

(2) A copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or

(3) The written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse.

4. Procedures:

A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give verbal or written notice to the employer within twenty-four hours of commencing the domestic abuse leave.

B. Notice shall be given to the employee's supervisor, the Human Resources Director or the Employee Assistance Program (EAP) Coordinator.

C. Verbal notice shall be formalized in writing as soon as practicable.

D. Employees will indicate to either their supervisor or the Human Resources Department which hours are being used for domestic abuse leave.

E. The Human Resources Department will track and notify employees when they have exhausted domestic abuse leave.

F. An employee may use accrued sick leave, annual leave, personal leave, accrued compensatory time or unpaid leave time.

G. The City shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave.

H. The City shall not include time taken for domestic abuse leave in calculating eligibility for benefits.

I. The City shall not disclose and shall maintain confidentiality of the fact that the employee or employee's family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave.

J. An employer may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law.

# SECTION 600

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# EMPLOYEE WORK RULES & PROCEDURES

# SECTION 600 EMPLOYEE WORK RULES & PROCEDURES

601. CITY WORK RULES - PURPOSE.

The orderly and efficient operation of the City requires that certain work rules be established. Work rules covering personal standards of conduct as well as standard operating procedures are necessary to protect the health and safety of all employees, maintain uninterrupted service, and protect the City's goodwill and property.

602. IMPLEMENTATION.

The Human Resources Department shall be responsible for the overall administration of the work rules to include recommending revisions, deletions, or adoption of new rules. Human Resources shall also be responsible for advising supervision on proper implementation of work rules.

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 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.

603A. E-MAIL, INTERNET AND PC USE

1. ELECTRONIC MAIL POLICY

Employees provided with E-mail accounts shall regularly read and respond to e-mail in the same way they respond to telephone calls. Employees who do not have E-mail accounts can apply for them through their Department Director. At the request of a Department Director, the Information Technology Department will assign a City E-mail address to an employee. This address is for E-mail purposes only and will not provide the user with browser based capabilities on the Internet.

In general, E-mail correspondence should be short, concise and withstand the scrutiny of public disclosure.

2. All E-mail is subject to the public records laws and will be deleted by City ordinance.

A. Internal E-mail generated by Outlook within the City of Las Cruces shall be for work-related activity only. Union activity via the City's E-mail system is prohibited.
B. All E-mail messages are the property of the City.
C. Jokes, sent/forward even to other City employees, and the like are not considered City business.
D. Harassing or obscene messages are strictly prohibited and will result in discipline by supervisors.
E. Sending of E-mail computer-wide or City-wide by City employees is prohibited unless approved by the City Manager or designee.

F. With the exception of Information Technology Department personnel relaying computer operational announcements, all City-wide and computer-wide E-mail correspondence must be approved by the City Manager (or designee).

G. Employees with network E-mail access are responsible for reading electronic mail messages in a timely manner. When an individual, who either has a personal electronic mailbox or is responsible for accessing another's personal electronic mailbox is away from work for a day or longer for any reason, it is their responsibility to set up and auto reply notifying sender.

H. The use of graphics alone or as background or animations, emoticons and highly stylized fonts are prohibited as it adds load to the system and can make them hard to read.

3. Monitoring of Electronic Mail

All electronic mail messages are the property of the City of Las Cruces. As a matter of general policy, the City will not read electronic mail messages. However, the City reserves the right to access messages under the following circumstances or when determined by the City Manager:

A. When necessary to investigate a possible violation of City policy;

B. When reasonable suspicion exists that a user has committed or is committing a crime; or

C. When internal or external investigations are requested by the City Manager; and

D. When necessary to support the City's need for supervision, control and efficiency in the workplace.

General computer monitoring is performed by the Internal Audit office. All City computers are monitored for excessive personal usage and inappropriate content. Computer monitoring may be performed by the Internal Audit Office at a more detailed level under the circumstances noted above.

When an employee ends employment with the City, the Human Resources Department shall notify the Information Technology Department immediately to ensure that the list of Internet users is kept up to date. The users' mail is accessed for the purpose of ensuring compliance with the public records law.

4. INTERNET POLICY

This policy is to ensure that privacy, security and legal issues concerning Internet access and use are addressed, and that guidelines are established to ensure proper use of this tool by City employees.

A. Requesting Internet Access

The Information Technology Department will grant an employee Internet browsing access at the request of the respective Department Director. Each user will sign the Computer Usage Form acknowledging the following:

1) The employee will follow the established Internet policies;
2) exchanges that occur in the course of conducting City business on the Internet will be considered a communication of the City and held to the same standards as formal letters; and
3) the Internal Audit Office has the responsibility to monitor the Internet activity.

B. Acceptable Use

The use of any City-provided publicly accessible computer network such as the Internet is a privilege. Unauthorized use of the Internet will result in the loss of access for the user and may result in disciplinary action, up to and including termination.

City employees have an obligation to use their Internet access in a responsible and informed way, conforming to network etiquette, customs and courtesies, and representing the City in a positive manner.

1) Performance of job responsibilities

During working hours, employees shall use the Internet for business and work-related communication only. Users may use internet access during lunch periods and after normal working hours for personal use providing such use does not violate the Prohibited Use portion of this policy.

Examples of job related responsibilities include: accessing external databases, searching online public access information, disseminating documents to individuals or groups, participating in electronic mail discussion groups on job related topics, and gaining access to software user support information utilized in City job.

2) Professional Development

The Internet may be used to maintain professional and career development activities.

Examples of appropriate use include: communicating with members of work-related professional organizations, collaborating on articles and other writing, reviewing information on professional or career development topics.

C. Rules for Use of the Internet

Messages transferred via the Internet are public information. If you desire to transmit confidential communications or sensitive information, do not use the Internet.

Material which is statutorily exempt from New Mexico State Statutes, shall NOT be entered on the Internet (i.e., home addresses, phone numbers, social security numbers, or other personal information for police officers or code enforcement officers).

Users are responsible and accountable for communications on the Internet and shall treat the Internet as a formal communications tool similar to the telephone or any written communications.

Computer network facilities outside the City may have their own policies governing the use of those resources. When accessing remote computers through City facilities, users are responsible for obeying both the policies set forth in this document and the policies of other organizations.

Computers shall not be left unattended in a state for long periods of time, which affords inappropriate access to City records, or otherwise compromises system security. All computers shall be shut-down and turned off at the end of the work day.

D. Anonymity on the Internet
The City's Domain Name Server is traceable to the City. Users using City-provided Internet accounts should not assume they are provided any degree of anonymity. Outside users who want to identify machines associated with the City can do so easily.

E. Downloading of Files
It will be prohibited to download from the internet including but not limited to such programs as Hotbar and Weatherbug, these programs install Spyware on the computer. Any form of music file is also prohibited because unless authorized by Information Technology, these files pose the risk of copyright infringements and use of resources.

Acceptable downloads are work-related documents used in performance of work duties.

F. Streaming Audio
The use of Streaming Audio uses valuable band width and may not be used for entertainment eg. Radio stations or other music services. It is however, permitted to use these services for official use such as training, conferencing, and listening to City Council meetings as approved by management.

G. Prohibited Use
Prohibited use of the Internet and Intranet includes, but is not limited to, the following:

1) Use of the Internet for profit-making activities is strictly prohibited;
2) Employees shall not use these services or resources to slander, defame, harass, discriminate or sexually offend others;
3) Employees shall not use Internet nor e-mail services to conduct non-city commercial activity;
4) Employees shall not use the Internet nor e-mail service to conduct other inappropriate activities, including but not limited to:
   a) Unlawful or malicious activities; or abusive or objectionable language;
   b) Misrepresentation of the City;
   c) Activities such as sending frivolous or non-city work related group messages, chain e-mails, jokes or participating in chat rooms;

d) Use of the Internet to access obscene, pornographic and X-rated materials, or using such computers for gambling, or entering contest;

e) Use of the Internet or e-mail for communications that contain ethnic slurs, racial epithets, or anything that may be construed as harassment or disparagement of others based on race, national origin, sex, sexual orientation, age, disability or religious beliefs;

f) Using systems to transmit or receive sexually explicit or otherwise offensive images, messages or cartoons;

- Threats;
- Political endorsements;
- Sending copies of documents in violation of copyright laws;
- Sending e-mail that appears to have come from someone else;
- Subscribing to automatic electronic mailings; other than professional organization that are City business;
- Posting on electronic bulletin boards material that violates existing laws or the City of Las Cruces Work Rules.

g) Attempting to monitor or tamper with another user's electronic communications, or reading, copying, changing, or deleting another user's files or software without the explicit agreement of the owner. Files owned by individual users are to be considered private property, whether or not they are accessible by other users;

h) Activities will not be considered misuse when authorized in writing by the City Manager for administrative purposes;

i) Programs and files are considered confidential unless they have explicitly been made available to other individuals. Information Technology Department and Internal Audit personnel may access files when necessary through the approval of Human Resources Department or the Department Director. While in accordance with the requirements of performing their assigned duties, if violations are discovered, they will be reported immediately to the director of that department and the Internal Audit Office; or

j) Downloading of software products from Internet sites is not permitted without the prior approval of the Information Technology Department.

Violations of these policies may result in disciplinary action, up to and including termination.

5. PC POLICY

A. During working hours, computer equipment is to be used only for the purpose for which it is assigned and is not to be used for non-governmental business unless approved by ~~your~~ the Department ~~d~~Director.

B. During non-working hours, employees may use their City supplied computer equipment for personal, non-business, use as long as they comply with the other provisions of these policies.

C. The following conditions apply to all computer users of the City. Violations of any of the conditions are considered unethical and may be unlawful. An individual's computer use privileges may be suspended immediately upon the discovery of a possible violation of these policies and the individual may be subject to discipline, up to and including termination. Suspected violations will be reported by the Information Technology Department or the Internal Audit Office to the appropriate director or designee.

6. NEW APPLICATIONS:

Users shall not install any applications onto a City PC. Users can request that special applications be installed to the network by submitting a problem request located on the Intranet under Information Technology through their Department Director. The software media, installation documentation and proof of license must accompany the request. The Information Technology Department adheres to all applicable software copyright policies and will not install software without a license. All outside diskettes received from third parties must be checked by the Information Technology Department for viruses. If an employee has access to the Internet from home or other sources, transport of files to the City network is strictly prohibited unless the Information Technology Department has checked and approved the diskettes.

7. PROHIBITED USE:

Prohibited uses of the PC includes, but is not limited to, the following:

A. Using the City of Las Cruces Network to gain unauthorized access to any computer system;
B. Knowingly or carelessly running or installing on any computer system or network, or giving to another user, a program intended to damage or to place excessive load on a computer system or network. This includes, but is not limited to, programs known as computer viruses, Trojan Horses, and worms;
C. Attempting to circumvent data protection schemes or uncover security loopholes. This includes creating and/or running programs that are designed to identify security loopholes and/or decrypt intentionally secure data. This also includes programs contained within a login, or under the ownership of a user that are designed or associated with security cracking;
D. Storing large files on the system which could compromise system integrity or preclude other users right of access to disk storage;
E. Masking the identity of a user or machine. This includes, but is not limited to, sending mail anonymously;
F. Using your login for any activity that is commercial in nature i.e. paid for by non-City of Las Cruces Funds. Commercial activities include, but are not limited to, consulting, typing services, and developing software for sale;
G. COMPUTER USERS AGREE TO RESPECT THE INTEGRITY OF THE SYSTEM. No one should deliberately attempt to degrade the performance of the computer.

H. Attempts to use other users ID's without authorization for other than the intended purpose.
I. Loopholes in computer security systems or knowledge of special passwords should not be used to damage computer systems, obtain extra resources, take resources from another user, gain access to systems or use systems which proper authorization has not been given.
J. Any attempt to overcome the security systems of the City of Las Cruces is strictly prohibited. Game playing is not allowed on the system during normal working hours.

8. Software Copyright Policies
Software copyright policies must be taken seriously. It is unlawful to copy software from third parties or provide unlicensed copies of software packages to other individuals. Computer users agree to the proprietary rights of all software. Computer software protected by copyright is not to be copies from, into or by using city computers, excepting as permitted by law or by contract with the owner of the copyright.

9. Hardware Policies
Users shall NOT attempt to change the configurations or setups for any City computers or workstations. This request is the sole responsibility of Information Technology Department personnel. Requests for changes can be made via electronic mail to Information Technology Department personnel or by submitting the request on a problem request form. The SCADA is exempted from this portion of the policy.

10. Backup of data
The default drive for your PC will be the mapped drive to the server. The network and MIS staff will do nightly backups of your data that resides on the server. You may make duplicate copies for your desktop. You may not change the default write settings of the PC unless permission has been given from Information Technology Department.

604. UNAUTHORIZED WORK TIME

Because of FLSA regulation, non-exempt employees are not to commence work prior to the scheduled starting time, work during their meal break, or work past the scheduled end of their shift without prior approval of their immediate supervisor.

FLSA non-exempt employees who work unauthorized overtime hours shall be counseled and if the practice continues, may be subject to disciplinary action.

605. PAYMENT FOR SERVICES RENDERED. No employee shall receive compensation for services not rendered to the City.

606. COLLECTION OF PAYMENTS. Employees who receive or collect payments for services are charged to ensure that the City receipts for those payments. No employee shall charge for services not rendered nor shall any employee convert payment for services to his/her own use.

607. ALTERATION OF RECORDS. Except to correct errors, employees are prohibited from changing any City record.

608. CONSTRAINT OF BUSINESS OPERATIONS. Employees have freedom of personal association. However, if such association results in unlawful constraint of City business by tactics such as work stoppage, work slow-down, or other such ploys, then affected employees may be subject to disciplinary action.

609. EXPECTATION OF LEGALITY. The municipal government can reasonably expect its employees to obey all City ordinances, state and federal laws. Employees who plead guilty or who are convicted for illegal activities shall be dealt with on a case by case basis and their employment status will be decided accordingly. Employees who are indicted or charged with criminal activity are presumed to be not guilty pending adjudication.

610. DISCIPLINARY ACTION. Employees who violate any of the work rules set forth may be subject to disciplinary action up to and including termination.

611. EMPLOYEE ETHICS POLICY
City employees may not use their positions for personal gain or to give unwarranted benefit or treatment to any person.

1. DEFINITIONS:

"*Benefit*" – Anything that furthers a person's financial interest or from which a person hopes to gain in any way.

"*Confidential Information*" – Information which by law or practice is not available to the public.

"*Financial Interest*" – Any property ownership, management, professional or private interest from which the employee (or family or household member) receives a financial benefit.

"*Official Position*" – An office or post of authority in the municipal government for which one has been hired.

"*Person*" – Any man or woman and is extended to include any firm, association, corporation or partnership.

2. Misuse of Official Position. City employees may not use their official position to:

A. Secure employment or obtain contracts from other organizations;

B. Accept pay from anyone other than the City for the performance of their official duties;

C. Take or withhold official action on a matter in which they have an outside personal or financial interest;

D. Use City time, equipment, property or facilities for personal and/or financial benefit; or

E. Coerce subordinates in any manner which will result in outside financial benefit to the supervisor.

3. Improper Gifts. City employees may not solicit or accept gifts of any value that benefit the employee's personal or financial interest if it can be reasonably inferred that the gift is intended to influence the employee's actions or judgment. Any gift with a value greater than fifty (50) dollars that is received by an employee whose action can affect the giver, must be reported to the employee's supervisor immediately. "Gift" includes: money, items of value, services, loans, travel, entertainment, hospitality and employment.

4. Improper Use or Disclosure of Information. No City employee may use or disclose any information gained from City employment if the use or disclosure could result in a financial or personal benefit to the employee (or to a family or household member), unless that information has already become public. No current employee may use or disclose confidential information acquired during employment.

5. Improper Influence in Grants, Contracts, Leases, or Loans. No City employee (or immediate family or household member) whose action or inaction can affect the award, administration of a City grant or contractor loan, may apply for, be a part to or have an interest in that City grant, contract or loan.

6. Improper Representation. No City employee may accept outside payment or financial benefit to represent, advise, or assist an individual in any matter being handled by the employee's administrative unit.

7. Outside Employment. No City employee may work outside of City employment if that work is incompatible or in conflict with the proper discharge of official duties. Every City employee must report and obtain prior approval from the City Manager or the City Manager's designee for any outside employment or services for which the employee is paid. Changes in paid outside employment or services must also be reported and approved by the City Manager of the City Manager's designee as they occur.

8. Conflicting Financial Interests. An employee who has substantial financial interests (or who acquires such financial interests) direct or indirect, or any corporation, firm, or person who contracts with the City will disclose that interest in writing to the City Manager.

9. Aiding a Violation of Employee Ethics Policy. Aiding another City employee to violate this policy is prohibited.

10. Conflict of Interest in General. City employees shall faithfully discharge their duties and shall refrain from engaging in any outside employment or matters of financial interest incompatible with the impartial, objective, and effective performance of their duties. They shall not realize personal gain in any form that would influence improperly the conduct of their City duties. They shall not knowingly use City funds, position or power for personal or political gain. They shall inform their supervisors in writing of reasonably foreseen potential conflicts.

11. Avoiding Appearance of Impropriety. City employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety, because appearances affect public confidence. Employees shall not engage in any activity, on or off the job, which reasonably brings into question their impartiality, objectivity, and effective

performance of their duties as City Employees.

12. PROCEDURE:

A. Notification of Potential Ethical Violations. When an employee is involved in a situation which may be in violation of the Employee Ethics Policy, the employee must not take official action related to that situation and must immediately disclose the matter in writing to the supervisor. The supervisor will provide a written determination of whether a violation exists or will exist. The supervisor may then reassign duties to avoid the violation, direct the removal by the employee of the conflicting personal or financial interest, ask the Ethics Policy Review Committee to evaluate the issue, or seek another solution. The notification form and supervisor response are then reviewed by the normal chain of command.

B. Complaints of Potential Ethical Violations.

1) Complaints about the ethical conduct of a current City employee will be filed with the City Manager's Office.

2) The City Manager will forward a copy of the complaint to the Ethics Policy Review Committee. The Ethics Policy Review Committee shall review the complaint and determine whether it warrants further investigation. If necessary, the Ethics Policy Review Committee shall investigate the complaint and report its findings and recommendations to the City Manager.

3) All complaints and investigations will be confidential to the extent allowed by law.

C. Ethics Policy Review Committee. The Ethics Policy Review Committee will consist of the Finance Director, the City Attorney and the Human Resources Director. The Committee will review in a timely manner questions of ethics violations that are forwarded by department personnel. The Ethics Policy Committee will review ethical questions on a case-by-case basis and provide recommendations that are consistent with the spirit of this Policy.

D. Discipline. Violation of this Policy will result in discipline up to and including termination. Employee discipline will be administered in accordance with the Manual of Personnel Policies and Procedures.

612. ACCIDENT/INJURY 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 an assignment in a different job classification, 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.

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 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, the supervisor shall be responsible to report to Risk Management.

   If the employee is removed from work by the treating physician, the Risk Management 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.

      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 shall contact the employee's Department Director, or a representative, and provide a report of all restrictions. The employee will 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 review the report while 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 prior to returning to the work site. The Workers' Compensation Coordinator will advise the Department Director of any changes in restrictions.

5) If no work is available consistent with the employee's restrictions, the employee shall be sent home.

6) The Workers' Compensation Coordinator shall maintain 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 such work, the employee shall report to that workstation.~~ 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 prior to returning to the work site. The Human Resources Director 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) 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. 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. 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.

613. LOSS OF EMPLOYEE LICENSE OR CERTIFICATION OTHER THAN DRIVER'S LICENSE (For Loss of Driver's License see Section 614)
These procedures apply to City of Las Cruces employees and departments in the event an employee loses a license, other than driver's license, or certification that is job related.

PROCEDURES:

1. It is the responsibility of the Employee to maintain and renew all job required licensure, certificate or other required credential.

~~1.~~2. Employee's holding job-related licenses or certifications shall report suspension or revocation or non-renewal of their license or certification to their immediate supervisor prior to starting the next work shift. Failure to comply with these reporting requirements will result in processing for immediate termination.

3. If the license or certification is a requirement of the job, the employee's supervisor or section administrator/manager 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. 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 leave he/she may opt to use it, otherwise, he/she will be placed on leave without pay (LWOP) status.

4. If the license or certification is not required by the job, but the employee is being compensated for it, the supervisor or department director will issue a Personnel Action Notice (PAN) reducing the employee's pay by 5% until such time as the license or certification is restored.

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 or certification 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 the license or certification cannot be re-instated at the end or the ninety (90) day period, the employee will be terminated

614. LOSS OF EMPLOYEE'S DRIVER'S LICENSE

1. 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

   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 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~~d~~ had~~s~~ 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 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.

~~2)Failure to comply with these reporting requirements will result in immediate termination.~~

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 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 must be checked before an employee is promoted, transferred, or reassigned into a driving position. An employee who does not have 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) ~~without the S restriction for all new hires~~ 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.

615. THREAT OF VIOLENCE IN THE WORKPLACE

1. POLICY:
The City of Las Cruces shall not tolerate any threat or act of violence within its work environment. The City shall enforce the level of discipline appropriate for any action of workplace threat of violence, harassment, intimidation or physical violence.

2. DEFINITIONS:

A. "*Harassment*" – Any behavior that creates a hostile work environment through unwelcome words, actions or physical contact.

B. "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.

C. "*Threat*" – Any expression of an intent to inflict harm. Any indication of impending danger or harm. Any signs or warnings of impending danger or harm.

D. "*Workplace Violence*" – hitting, shoving, pushing, kicking, and sexual assaults; this also includes verbal outbursts and can happen in the form of threats, harassment, abuse, bullying and intimidation.

E. "*Fitness For Duty Evaluation*" – A specialized assessment mandated by City of Las Cruces management, as a result of reasonable and documented concerns by the supervisors, of an employee's present ability to perform the duties of the job in a safe and conscientious manner.

3. PROCEDURES:
The following procedures do not take the place of appropriate disciplinary action, but are to work in conjunction with discipline if it is appropriate for the employee to return to the worksite.

A. The supervisor will inform his/her Department Director and the Human Resources Department of the events that have occurred. The Human Resources Department ~~may~~ shall assist the respective Department Director in determining appropriate disciplinary action, and ~~will~~ may enlist the

intervention of the Employee Assistance Program.

B. Employees that may have been affected by the incident will be recommended to meet with the EAP to discuss the effects the incident has had, as well as any residual emotional effects the incident may have in their work or personal situations.

C. If the incident does not result in termination of the employee(s), the supervisor, in accordance with the Fitness for Duty Policy, ~~will~~ shall arrange for the employee (s) to undergo an evaluation to determine the employee's ability to perform their essential job functions without posing a direct threat to self or others before they are allowed to return to any worksite.

D. If it is determined that the employee may return to work, the Supervisor(s), Human Resources Department Representative, and Employee Assistance Program Coordinator will develop a plan under which the employee may continue to work. This plan will include all recommendations that have come as a result of the Fitness for Duty Evaluation. The employee will provide a signed commitment to continue with the established plan. Failure to sign and/or comply with the established plan will result in further disciplinary action, up to, and including termination of employment.

1) Appropriate disciplinary action, ranging from verbal reprimand up to, and including termination, shall be determined by the level of workplace violence that has occurred, and past history of violence that has occurred with the employee, the results of a Fitness for Duty Evaluation (if performed) and all other information deemed relevant by the City.

E. Threatening violence against another person is a violation of the law. It is the employee's option to report the incident to the Police.

616. WEAPONS IN THE WORKPLACE

1. POLICY:

The City of Las Cruces prohibits all employees who enter City property from carrying a handgun, firearm, or prohibited weapon of any kind onto the property regardless of whether the person is licensed to carry the weapon or not.

A. This policy applies to all City employees. The only exceptions to this policy will be police officers, security guards, Fire Investigators or other persons who have been given written consent by the City Manager to carry a weapon on the property.

B. All City employees are also prohibited from carrying a weapon while in the course and scope of performing their job for the City, whether they are on City property at the time or not and whether they are licensed to carry a handgun or not. The only exceptions to this policy will be persons who have been given written consent by the City Manager to carry a weapon while performing specific tasks on the City's behalf. This policy also prohibits weapons at any City sponsored function such as parties or picnics.

C. Prohibited weapons include any form of weapon or explosive restricted under local, state or federal regulation. This includes all firearms, illegal knives or other weapons covered by the law. If you have a question about whether an item is covered by this policy, please call the Human Resources Department. You will be held responsible for making sure beforehand that any potentially

covered item you possess is not prohibited by this policy.

D. Failure to abide by this policy may result in discipline up to and including termination.

617. FITNESS FOR DUTY

1. POLICY:

The City of Las Cruces may require an employee to undergo a fitness-for-duty examination when there is a reasonable belief, based on objective information obtained or reasonably available, that the employee's ability to perform essential job functions will be impaired by a medical condition or that s/he will pose a direct threat due to a medical condition. The need for a medical evaluation must be clearly supported by the nature of the work and objective medical or other factual information. The examination shall be conducted by a medical professional selected by the City. All costs associated with such an examination will be borne by the Section in which the employee is assigned.

A. If an employee is impaired in his/her capability to safely and effectively complete work assignments, and a fitness-for-duty examination supports this conclusion, options may include:

1) Transferring the employee to a vacant position for which the employee is qualified and that accommodates his/her medical condition limitations;

2) Accommodating the employee is his/her current position by modifying work assignments and/or the work environment.

3) If an accommodation is not feasible in enabling the employee to perform the essential functions of the job held or vacant positions for which the employee is qualified; and if an accommodation does not reduce any direct threat issues to an acceptable level, the employee may be terminated.

2. PROCEDURE:

A. If a section has an employee with a medical condition which appears to impair his/her capabilities to safely and effective perform the essential functions of the job, or who poses a direct threat due to a medical condition, the Human Resources Director shall be contacted pertaining to a possible fitness for duty. The section must be prepared to discuss the following:

1) What objective evidence supports the need for a fitness for duty examination?

2) What is the reasonable belief that the employee's ability to perform essential job duties is impaired?

3) What is the basis for any belief of direct threat?

4) What knowledge exists that performance issues are linked to a medical condition?

B. A psychiatric examination or psychological assessment must be conducted in accordance with accepted professional standards by a licensed~~s~~ practitioner or physician authorized to conduct such examinations, and may only be used to make a legitimate inquiry into a person's mental fitness to successfully perform the essential functions of his/her position without direct threat to the individual or others.

C. The scope of any fitness for duty examination shall be limited to the specific medical condition and how such condition affects or may affect the employee's ability to perform essential functions or pose a direct threat.

D. All medical information obtained through the fitness for duty provisions shall be maintained by the Human Resources Department as strictly confidential and shall not be a part of the employee's personnel file.

E. When a section requests a medical examination, it must inform the employee in writing of its reasons for doing so and the consequences of failure to cooperate. The City will designate the examining physician or other appropriate practitioner, but will offer the individual an opportunity to submit medical documentation from his/her personal physician or practitioner. The City will review and consider all such documentation supplied by the individuals' personal physician or practitioner along with the documentation from the examining physician selected by the City. Should the employee wish to submit medical documentation from his/her personal physician or practitioner, the employee shall pay for all examinations or documentation charges.

F. Any employee who refuses to undergo a required fitness for duty examination shall be found insubordinate and subject to discipline up to and including termination.

# SECTION 700

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# EMPLOYEE TRAINING AND DEVELOPMENT

# SECTION 700 EMPLOYEE TRAINING AND DEVELOPMENT

701. PURPOSE. The City of Las Cruces believes that training and development are integral components of work performance, and are inherently tied to the City's mission, goals, workforce planning and the provision of services to the public. The City values the potential of its employees and believes that developing employee potential, though coaching, education and training, and on-the-job training is critical to organizational effectiveness. It is the responsibility of Department Director, the supervisor and the employee, working in partnership, to determine the work goals and training needs for each. Specific training is subject to management approval based on available resources. The program is intended to enables the City to potentially fill future ~~positions~~ employment needs from within its own ranks and provides for the professional growth of employees.

702. TRAINING AND EMPLOYEE DEVELOPMENT OBJECTIVES. The objectives shall be designed and established to achieve the following:

1. Improve the quality of services provided by the City through its staff.
2. Improve the quality of performance for each individual employee and the various departments and units of the City.
3. Prepare employees for career advancement.
4. Create a work force with the occupational skills necessary to meet current and future employment needs.
5. Keep employees current on changing technologies in the workplace.

703. DEVELOPMENT AND ADMINISTRATION. Development and administration falls under the general responsibility of the Training Office, but shall strongly depend on cooperation of all departments, and sections.

704. DEPARTMENT DIRECTORS. Department directors shall share in the responsibility for an effective personnel development program. Department directors will ensure that training and development plans are prepared, updated and discussed by supervisors and employee, as part of the employee performance management and is consistent with the mission and needs of the Department.

705. SECTION MANAGER/ADMINISTRATOR: Section Managers/Administrators have the primary responsibility for initiating communication about work unit training and individual development including but not limited to:

1. Working in partnership with individual employees to assess training needs and coordinate work unit and individual employee development plans as needed,
2. Ensuring implementation of employee development plans as needed, and
3. Incorporating training and development into the performance management process.

706. EMPLOYEE: City employees have responsibility for initiating discussion to identify and assess their own specific training needs including but not limited to:

1. Working in partnership with supervisors to meet the work unit and their own training and development needs.

2. City employees may identify, where possible, certain needs related to their individual work experiences which are required to meet all of the performance and advancement criteria which may be defined and established by City management.
3. Employees may apply for program participation and their participation shall be of the highest quality possible.
4. Employees may petition through established channels for specialized and subsidized programs.

707. PROGRAM DESIGN: Development programs shall be designed in a manner that will maximize the potential benefit of employee participation in the program. Further, the program shall ensure that the contents do not exclude any employee from participation. Employee development programs shall include, but not be limited to the following:

1. In-house general programs designed for all levels of personnel in the City service.
2. In-house programs designed to meet specific departmental requirements.
3. In-house programs designed to specific levels of personnel. Such determinations, however, shall ensure that unnecessary or unrealistic barriers are not imposed.
4. Programs provided by other agencies or entities with proven capabilities and expertise and which have been sanctioned and approved by administration and the Human Resources Department.
5. Specialized programs offered by other institutions or organizations that may be of benefit to individual employees.
6. Participation in formal institutionalized education and training efforts available outside of the City service.

708. EMPLOYEE REQUESTS FOR FLEXIBLE WORK SCHEDULES FOR CLASSES

All requests to deviate from the work schedule in order to attend classes should be made in writing to the department head. Each request will be evaluated in terms of negative impact to the department and other potential scheduling problems. Department Directors who wish to attend classes during working hours will forward requests directly to the City Manager.

Each employee's request should be given separate consideration in terms of individual merit. Requests to attend classes during working hours may be granted in accordance with these criteria:

1. The request may be granted only if the employee's absence during working hours does not affect service to the community or cause other personnel to assume burdensome work loads in order to accommodate school attendance.
2. Certain employee functions are one of a kind by virtue of the nature of the job. Therefore, it is frequently not possible to deviate an employee's work schedule in order to attend classes. No employee should expect a deviation of his/her work schedule because another employee enjoys that privilege.

3. When supervision is in doubt about permitting an employee to deviate from his/her schedule, the following criteria should be applied:

   A. No one shall be accorded the privilege of deviating from his/her work schedule for any reason if his/her absence from work shall result in delay of services or interruption of municipal services.

   B. Employees who wish to deviate from their work schedules to attend classes must have successfully completed all entry requirements and academic deficiencies in order to be eligible for consideration.

   C. The employee must be enrolled in an approved job related program in order to be eligible for consideration. No work schedule shall be deviated from in order to attend self-improvement or awareness courses, to complete entry requirements, or to overcome academic deficiencies.

   D. Employees may receive consideration if they are attending or plan to attend a trade or craft school directly related to their chosen vocational field. Department Directors will require written justification explaining how the training will be advantageous to the municipal service. Exceptions will be extended in cases when the department Director has suggested additional training or made such training mandatory.

   E. All approved requests to have a work schedule deviation shall be sent to the Human Resources Department for inclusion in the employee's personnel folder.

   F. Attendance in job related training courses which does not require makeup time must be approved by the immediate supervisor in advance. Time off for employee requested education must be made up.

709 CERTIFICATION EXAMINATION EXPENSES:

The City will pay expenses incurred for maintaining required certifications and licensures. The City may pay for initial certifications and licensures as recommended by the Department Director and approved by the City Manager. Expenses may include registration, lodging, travel and testing on City time.

1. The City Manager will review Request for Travel for initial examination expenses and, if deemed appropriate, will approve City payment of expenses incurred in obtaining the certification.
2. The City will pay only for expenses incurred relative to the first examination of any specific certification which is applicable to the employee's position within the City's organizational structure. If the employee fails the tests on his/her first attempt, all expenses related to subsequent testing to receive the certification will be the sole responsibility of the employee.
3. When the City pays expenses incurred in obtaining specialized job-related certification, the employee will incur an obligation to continue employment with the City for one year from the date of certification completion. If an obligated employee voluntarily resigns from City employment within a year after the end date of the certification completion, the employee will reimburse the City a prorated portion of the cost of the certification expenses.

710. TUITION EXPENSES.

1. POLICY

Employee requested tuition and/or special training costs may be reimbursed at the discretion of the City Manager. Employee education or training required by management does not come within the purview of this policy.

Courses or degree programs related to an employee's current position are eligible for 100% reimbursement, up to a maximum of $650 per class, as provided below. Courses or degree programs not related to an employee's current job, but related to other City of Las Cruces positions are eligible for 75% reimbursement up to $500 per class, as provided below. Courses or programs outside the scope of City employment are not eligible for reimbursement (except non-related courses that satisfy approved degree program requirements).

Training fees related to pursuing an education (e.g., registration, library, lab, graduation, or activity fees) are not reimbursable

Required book fees are reimbursable provided that after completion of the course the employee turns such materials, in unmarked condition, over to the City's Training Office for use by other City employees; and the cost of the books and tuition for each class are less than or equal to $650.

**PROCEDURE:**

1. Each fiscal year funds will be designated for tuition reimbursement in the City Manager's organizational unit during the budget process. The Finance Director will submit, in writing, a quarterly report on the fund status to the City Manager.
2. All requests for enrollment in courses or degree programs where tuition is to be reimbursed under this policy must be submitted **through the Section Administrator/Manager, Department Director** and approved by the **City Manager** ***prior*** to registration for the classes.
3. Eligible employees requesting tuition reimbursement will submit a written request to take courses or to enroll in a degree program (Associates, Bachelors, Masters, or Doctoral) to his/her Department Director

The request will include:

1. A statement that the employee has completed his/her probationary period at the time classes commence.
2. A statement that the course or program provides college credit from a regionally accredited institution. Tuition will not be reimbursed for courses taken from a non-accredited institution.
3. An explanation of how the course or program will enhance the employee's ability to perform his/her job, and/or how the course or degree program benefits the City. Courses or programs that are not related to City of Las Cruces employment are not reimbursable (except non-related courses that satisfy approved degree program requirements).
4. A declaration of the amount of tuition assistance (i.e., grants or scholarships) received or expected by the employee. The City will provide assistance up to

the amount of actual tuition costs and books, less any grants or scholarships received by the employee, not to exceed $500.

5. If the employee is enrolling in a degree program, he/she shall attach the core curriculum and electives. Elective courses taken to satisfy degree requirements for approved degree programs are reimbursable even if they are not job related.

6. Courses taken under the Tuition Assistance Program will be taken at the employee's initiative. The employee assumes responsibility for course selection, scheduling, and other matters that are traditionally the responsibility of the student.

7. Agreements for tuition reimbursement will be drawn up by the Human Resources Department on a first-come, first-served basis, for no more than two classes per agreement and four agreements per fiscal year. Agreements will not be drawn up once the total amount budgeted for tuition reimbursement is obligated. Agreements for tuition reimbursement can only be drawn up for classes that start in the current fiscal year. The fiscal year runs from July 1st through June 30th.

8. Upon completion of a pre-approved course, the employee shall be eligible to submit a claim for tuition reimbursement contingent upon:

   A. If an undergraduate, providing a copy of a transcript or official statement by the registrar that a "B" grade or better was earned by the student/employee (3.00 G.P.A. in a 4.00 G.P.A. system).

   B. If a graduate, providing a copy of a transcript or official statement by the registrar that a "B" grade or better was earned by the student/employee (3.00 G.P.A. in a 4.00 G.P.A. system).

   C. Providing a copy of a receipt showing that tuition was paid in full. The employee will also sign an affidavit which states the amount of financial aid (if any) that was received for grants and scholarships.

9. When the course work has been completed, the grade report, receipt for payment of tuition, and the Request for Tuition Reimbursement form will be submitted to the Human Resources Department, who will review it and, if complete and accurate, submit the appropriate paperwork to Accounts Payable for reimbursement. Part-time regular employees will receive a pro-rated reimbursement based on their normal hour per week schedules.

10. An employee who receives tuition reimbursement will incur an obligation to continue employment with the City for one year from the date of course completion. If more than one course is taken during a year, the employee incurs an obligation to continue employment for one year from the completion date of the last course. The employment obligation is not cumulative. If an obligated employee voluntarily resigns from City employment within a year after the end date of a reimbursed course, the employee shall reimburse the City a prorate portion of the tuition reimbursement received. The Tuition Reimbursement applies only to amounts received for courses for which the employee did not fulfill the one year employment obligation. For example, if an

employee receives tuition reimbursement for a course that ends December 31 and then resigns the following June 30, he/she shall reimburse the City one-half of the tuition reimbursement received.

# AGREEMENT FOR TUITION REIMBURSEMENT

**THIS AGREEMENT** is entered into this _____ day of _____, 20___, between the City of Las Cruces and _____, hereinafter referred to as Employee. The parties to this Agreement agree as follows:

Employee is currently a full-time or part-time regular employee of the City of Las Cruces, employed as a _____, in the _____ Department.

If part-time regular, employee regularly works _____ hours per week.

The City currently has in place a Tuition Reimbursement Policy, Section 710 in the City of Las Cruces Personnel Manual.

The City hereby agrees to reimburse Employee for the costs of tuition and books not to exceed $650 per class, in accordance with the Tuition Reimbursement Policy for the following course(s):

_____A. _____(___ cr.)

B. ~~B.~~ _____ (___ cr.)

C. _____(other)

TOTAL REQUEST FOR REIMBURSEMENT: $_____

Said tuition reimbursement is subject to the following conditions:

1. If Employee is an undergraduate he/she must, prior to being reimbursed by the City pursuant to this Agreement, submit a copy of a transcript of official statement by the registrar that a "B" grade or better was earned by the student/Employee for the course work mentioned herein above.
2. If a graduate, the Employee must provide a transcript or official statement by the registrar that a "B" grade or better was earned by the student/employee for the course work mentioned herein above.

Employee must also provide:

1. A signed copy of this Agreement.
2. A copy of a receipt which reveals that tuition was paid in full.
3. A copy of a receipt which reveals that study materials were paid in full.
4. A written statement from the Training Office indicating that the required study materials have not been defaced and are usable material for other city employees.
5. An affidavit which states the amount, if any, that he/she received in financial aid or scholarship that paid for any of the course work herein above referred to.

Employee will submit sufficient required documentation to the Human Resources Director who will review the documentation and if complete and accurate will submit to Accounts Payable for reimbursement. Said reimbursement shall occur within thirty (30) days after submitted and acceptance by the Human Resources Director or his/her representative. Employee agrees that from the date the City tenders a reimbursement check for said course work mentioned above. Employee agrees that for each course he/she is reimbursed pursuant to this Agreement he/she shall agree to not voluntarily terminate his/her employment with the City for one (1) year from the date of reimbursement, subject to paragraph 3 below.

In the event Employee voluntarily leaves his/her employment prior to repayment of

the amount authorized for tuition reimbursement under this Agreement, Employee agrees to repay the City, within ninety (90) days of his/her termination, the pro-rated amount the City reimbursed pursuant to this Agreement.

Employee hereby agrees that at the City's option, and in the event the Employee leaves the City owing reimbursement pursuant to this Agreement the City may, at its option, deduct the amount owed from Employee's final paycheck. Employee further agrees that said deduction may be made whether or not there is a dispute that exists concerning the amount of the deduction or the interpretation of this Agreement and it shall be Employee's duty, if a contested decision of the City with

regard to withholdings pursuant to this paragraph, to file suit or take other appropriate legal action to recover the same.

The City of Las Cruces may authorize installment payments of the sum due and owing pursuant to Paragraph 6 above at its option. The Employee must make arrangement for such installment payments within thirty (30) days of the date that Employee voluntarily leaves employment with the City of Las Cruces.

In the event of default on any installment payment or any sum due under this Agreement, the City will be entitled to reasonable attorney's fees and court costs for its collection efforts.

This Agreement constitutes the entire Agreement between the parties and there not other mutual understandings other than contained in this contract.

**CITY OF LAS CRUCES**

By: _____
City Manager

_____
Date

**EMPLOYEE**

By: _____
Employee

_____
Date

# SECTION 800

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# MANAGEMENT AUTHORITY AND RESPONSIBILITIES

## SECTION 800 MANAGEMENT AUTHORITY AND RESPONSIBILITIES

801. CITY MANAGER'S OPEN DOOR. The City Manager is available to any employee seeking to discuss work-related problems or concerns in an open and informal manner. When an employee has made a good faith effort to resolve difficulties with their Section Administrator/Manager and Department Director and feels that their concerns have not been adequately addressed, they have the right to meet with the City Manager without fear of reprisal or retaliation. The employee shall contact the City Manager's office to schedule an appointment. Once the date and time have been agreed upon, the employee shall inform his/her immediate supervisor of the scheduled meeting.

802. HUMAN RESOURCES DEPARTMENT. The Human Resources Department shall:

1. Have overall responsibility for establishing, maintaining, and coordinating personnel transactions and records management systems and procedures for all City employees consistent with state and federal laws.
2. Advise and assist supervision/management on all City personnel transactions and records management systems and procedures related to personnel.

803. MANAGEMENT AND SUPERVISION. Management and supervision shall:

1. Initiate personnel transactions for their employees, using forms prescribed by the Human Resources Department.
2. Maintain a written record of contracts with employees as they deem appropriate.
3. Direct and supervise all operations, functions and the work of the Employees.
4. Determine the place to report to work, to determine methods, processes, and manner of performing work.
5. Establish and revise schedules of work.
6. Assign shifts, work days, hours of work and work locations.
7. Designate, assign or reassign all work duties.
8. Evaluate and judge the skill, ability and efficiency and general work performance of Employees.
9. Take actions, as necessary, to carry out the mission of the Employer in emergencies.

804. EMPLOYEES. Employees shall receive a copy of all personnel transactions that affect their employment or personal status.

Each employee shall notify supervision and the Human Resources Department of any changes which may affect his/her employment or benefit status. Examples of changes in personal status include (but are not limited to):

1. Marital status.
2. Dependent status.

3. Legal name change.
4. Physical limitation.
5. Additional education, training or certification.
6. Revocation of license, permit certification, or other credentials required for the job.
7. Changes of address or telephone number

805. PERSONNEL RECORDS RETENTION. Official Personnel records will be retained for a period of time from date of receipt in compliance with the State Records Retention Act.

# SECTION 900

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# DISCIPLINARY ACTIONS/ TRANSFERS & TERMINATIONS

# SECTION 900 DISCIPLINARY ACTIONS/TRANSFERS & TERMINATIONS

901. PURPOSE. Employment practices encourage a productive and efficient work force. Retention, transfer, or termination of employees shall be based on work performance and potential for professional growth. In those situations where positions are to be eliminated or when there is a reduction in force, every reasonable effort will be made to retain those regular employees with demonstrated high job performance.

902. AUTHORITY TO TAKE DISCIPLINARY ACTION. Supervisory and managerial personnel shall have the authority to take disciplinary actions deemed necessary in accordance with the Personnel Manual.

903. VOLUNTARY TRANSFER. Regular full-time employees may compete for other regular full-time vacancies. Part-time, temporary, seasonal, or provisional employees are also eligible to compete for regular full-time positions.

Employees may transfer from one department to another only at the beginning of a pay period unless an exception is made by the Human Resources Director or City Manager.

904. INVOLUNTARY TRANSFER. Involuntary transfers of employees may be made to best use employee skills, education or experience. Transfer may involve employee relocation to another department within the City. Transfer may also consist of reassignment and reclassification of an employee from one job classification to another because of inability to perform essential job functions due to an ADA defined disability, reorganization, while under suspension from the employee's principal duty, or for other reasons. The Department Director of the transferring employee or his/her designee shall provide a written decision of the transfer and the conditions.

905. SUSPENSION AND OTHER DISCIPLINARY ACTIONS. An employee's failure to observe personnel policies or work rules, or other employee actions which adversely affect their job performance or the job performance of another employee may be grounds for one or more of the following disciplinary actions:

1. Verbal Reprimand. The supervisor will verbally notify the employee that since there has been a violation of work rules, City policy, or procedures, an official warning is being given.

2. Written Reprimand. A written reprimand, using the Notice of Disciplinary Action, given by the supervisor, approved by the Department Director and ratified by the City Manager shall be entered into an employee's personnel record, subject to the right of appeal and review in accordance with the procedures provided in Section 1100 of this manual.

3. Suspension. All suspensions from work shall be entered into an employee's personnel record. A supervisor may recommend to suspend an employee from work without pay for flagrant violation or disregard of work rules, personnel policies, and regulations for varying periods of time approved by the Department Director. Prior to implementation of a Suspension, the action must be ratified by the City Manager or designee within five (5) business days of receipt of the recommendation.

Any suspension of more than three (3) days will require that a predetermination (Loudermill) hearing be conducted and then ratified by the Human Resources Director and the City Manager prior to suspension. FLSA exempt employees may be suspended for one or more full days for infractions of workplace conduct rules or for infractions of safety rules of major significance.

906. TERMINATION. Is defined as separation of an individual from the work force, voluntarily or involuntarily, with resulting severance of all employee benefits.

1. Voluntary Termination. When an employee decides to leave employment, he/she shall submit written notice to their supervisor. Employees are encouraged to give at least two weeks notice prior to departure.

2. Involuntary Termination. This action may be initiated for a variety of reasons. Those reasons include, but are not limited to:

   A. Discovering during the probationary period that an employee is not capable of performing the job for which he/she was hired, or the employee is otherwise unsatisfactory in performance of his/her duties. This action is originated by a supervisor and may be initiated with or without cause as the employee is in an "at will" status.

   B. Conclusion of a provisional, seasonal, or temporary assignment.

   C. Incapacity or inability to perform the "essential job functions" for which the employee was hired, with or without reasonable accommodations.

   D. For cause or for violation of work rules, including but not limited to:

      1) Dereliction of duty.
      2) Failure to report any criminal conviction.
      3) Flagrant or continued failure to obey work rules and regulations, as set forth herein or as may be set forth in writing by Department Directors or City Manager.
      4) Inability to work with others.
      5) Dishonesty in the execution of job duties or dishonesty when participating in an administrative investigation.
      6) For other employee conduct which is detrimental or prejudicial to the best interests of the City government.
      7) For mis-use of City credit cards.

3. Notice Requirement. Employees who have completed probation must be presented with a "Termination Notice" prior to actual termination. The termination notice shall include:

   A. Written notice of the reason(s) for the proposed termination.

   B. Explanation of the facts in support of the proposed termination.

   C. An opportunity for the employee to participate in a predetermination (Loudermill) Hearing.

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 ~~shall~~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 is a direct-report to the City Manager, the Human Resources Department shall appoint the 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 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~~-, Department Director,~~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 ~~Department Director~~hearing officer shall forward ~~his~~ 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 ~~Department Director~~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.

908. EMPLOYEES INVOLVED IN JOB MISCONDUCT OR CRIMINAL ACTIVITIES. Employees charged with job misconduct or criminal activities may be placed on Administrative Leave with Pay or Leave Without Pay pending final determination, or may be assigned other duties pending a final outcome of the matter. Each situation under investigation will be administered on a case-by-case basis. The Legal Office shall review each case and advise the City Manager. Administrative Leave with Pay shall be reported as time worked on time sheets.

909. ABOLISHMENT OR NON-FUNDING OF POSITIONS.

1. The City Manager can recommend to abolish or not fund positions for the following reasons:

   A. When approved by the City Council.

   B. When a position is no longer required to provide service for the community.

   C. When there is insufficient revenue to support the position.

2. Reasonable attempts shall be made to reassign or transfer personnel designated for separation due to abolishment of jobs. Reassignment or transfer may be lateral, to a lower grade, or to a higher grade, depending upon:

A. Suitable vacancies for which the employee is qualified.

B. Ability of the employee to perform another function.

C. No job shall be abolished as a way to remove an individual from municipal service.

D. The following procedures will be utilized in dealing with displaced employees:

1) The Human Resources Department shall be notified of potential displaced employees due to organization changes.

2) Employment changes will be announced in sufficient time so that employees can voluntarily transfer to vacancies which occur. Department Directors and Program Administrators/Managers will inform employees a minimum of 90 days prior to the change in status.

E. Employees whose positions are targeted for elimination will be given the opportunity to transfer to positions for which they qualify on a non-competitive basis after those employees who qualify for priority referral due to ADA or Workers' Compensation. Whenever possible, transfer will take place at the current salary if the position is similar in value, at lower pay if the position has less responsibility, know-how, or accountability, or at a higher pay if it is a promotional opportunity.

F. Once affected employees have been identified, every vacancy which occurs will be screened first by the Human Resources Department to see if qualified potentially displaced candidates are available and there are not employees with priority referral due to Workers' Compensation or ADA requirements.

G. Employees who were unable to successfully compete for vacancies will be monitored by the Human Resources Department and may be transferred to related occupations as trainees to undergo on-the-job training. This action may require a reduction in pay if the position involves less know-how, problem solving, and accountability. Appointments may be non-competitive and transfers may be directed involuntarily. The sole purpose of this action is to salvage the person's employment with the City.

H. Employees, who cannot be placed within the City because positions do not exist, may be laid off involuntarily after 90 days from the date of ~~displacement~~notice. Employees laid off under this policy will depart in good standing and will be eligible for re-employment as positions become available for which they qualify. These employees will be eligible for normal separation benefits such as coverage under COBRA, unemployment compensation, and sell back of sick/annual leave according to City policy.

910. RE-ESTABLISHMENT OF POSITIONS. The City Manager may recommend reestablishment of positions:

1. When approved by the City Council.

2. When revenue is sufficient and a need for resuming the discontinued position or service is justifiable and essential.

3. When a position is reestablished, the person who was the incumbent when the position was abolished shall be given first consideration for appointment.

However, that person must be able perform the essential job functions of the position, with or without reasonable accommodation.

911. LAYOFF. Layoff is defined as severance of an employee from the work force due to lack of work. Layoff is made without prejudice and is no fault of the affected employee.

1. Selection for Layoff. When more than one employee is in a position which has been scheduled to be discontinued, the following criteria may be considered to identify which person is to be laid off:

   a. Versatility and/or value to the department.

   b. Overall job performance as compared to others within the department.

   c. Longevity within the department.

   d. Longevity with the City.

912. DISBURSEMENT OF FINAL PAY CHECK. When an employee resigns their position, the earned salary or wages plus any other compensation (such as annual leave accrual) shall be due and payable on the next regular payday. When an employee is dismissed from employment, the earned salary or wages plus any other compensation (such as annual leave accrual) shall be due and payable no later than the fifth (5th) calendar day following dismissal. Exempt employees will be paid a proportionate part of that employee's full salary for the time actually worked in last week of employment. The employee's final paycheck will be forwarded to the City's Human Resources Department for disbursal

# SECTION 1000

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# PERFORMANCE REVIEWS

# SECTION 1000 EMPLOYEE PERFORMANCE REVIEWS

1001. PURPOSE. To provide the format for the mutual exchange of information about performance between the supervisor and employee, to determine successful completion of the probationary period, and determine eligibility for merit compensation. Through performance evaluations, supervisors will communicate to individual employees their performance expectations and department goals. Supervisors will assess the employee's job-related performance and work to enhance overall job performance by providing direction and identifying training needs.

Performance reviews and performance improvement plans may also be used when considering personnel actions for a regular employee.

1002. PERIODS OF REVIEW.

1. Each regular employee shall be given a performance review during the probationary period. This can be done by completing the performance evaluation form or other documentation as appropriate.
2. A formal performance evaluation will be completed:
   A. At the completion of the probationary period; and
   B. During the months of July and August each year for staff functions;
      During the month of September for Managers, Supervisors and Administrators; and
   C. At such time when an updated evaluation is necessary.
3. If an employee changes assignment, position, or department during the performance cycle, performance up to that point will not be disregarded. The current supervisor shall complete an interim evaluation of the employee's performance. The interim evaluation should be completed by the supervisor prior to the employee's departure and sent with the Personnel Action Notice denoting the status change to the Human Resources Department for retention in the employee's personnel file.
4. The performance evaluation of Department Directors and Section Administrator/Managers shall include an evaluation of their compliance with this policy.

1003. RESPONSIBILITIES

1. Each supervisor is responsible to set and communicate clear performance standards for his/her employees and to observe and discuss employee performance at the beginning of and throughout the review period. Evaluations are based on job-related performance during the review period. Supervisors may use as the basis for the performance evaluation, all information believed to be relevant to an understanding of the work performance and the employee and that is consistent with the scope of the job description
2. The employee is responsible for understanding the duties and responsibilities required of the position, the employee work plan goals and measures, the core competencies and for asking any questions concerning those

expectations and/or the evaluation process.

3. Employees are responsible for contributing to the development of the performance objectives and for providing performance input throughout the evaluation period and explanation of actions occurring during the rating period.
4. Employees are encouraged to record their perceptions of their working environment as well as their performance, accomplishments, training requests and future goals and objectives. Supervisors should review and incorporate these into the evaluation as appropriate.
5. The employee shall receive a copy of the performance evaluation instrument delineating goals, objectives and core competencies to be evaluated and the year-end evaluation delineating performance The employee's refusal to sign the performance evaluation form does not make the performance evaluation unofficial.
6. At the end of the performance evaluation cycle, the supervisor will meet with each employee under his/her supervision and evaluate performance, discuss training needs and to establish goals and objectives for the next evaluation cycle.

1004. REVIEW COORDINATION. Primary responsibility for initiation of a performance review shall be the responsibility of the supervisor.

1. Each employee shall be afforded an opportunity to provide the supervisor with a self-assessment of his or her job performance for the rating period. The employee should be asked to provide a self-evaluation at least two weeks prior to the evaluation meetings. A supervisor must review and consider the self-assessment when completing each employee's performance evaluation.
2. The supervisor or section administrator/manager shall forward the completed staff evaluations to the Department Director for review by September 1 of each year.
3. The Department Director shall forward all completed evaluations for staff and managers, supervisors and administrators to the Human Resources Department by October 1 each year.
4. The Human Resources Department shall allocate the approved merit budget in accordance with the following matrix indicating the maximum amount for each score:

| Percentile Rank | | Performance Evaluation Score | | | | |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 0.00 | 0.25 | 0.00% | 0.00% | 4.00% | 5.00% | 6.00% |
| 0.26 | 0.50 | 0.00% | 0.00% | 3.00% | 4.00% | 5.00% |
| 0.51 | 0.75 | 0.00% | 0.00% | 2.00% | 3.00% | |
| 0.76 | 1.00 | 0.00% | 0.00% | 1.00% | 2.00% | 3.00% |
| 1.00 | + | 0.00% | 0.00% | 1.00% | 2.00% | 3.00% |

5. The Human Resources Department shall ensure that the evaluation results are made part of the employee's permanent personnel file.

1005. PERFORMANCE REVIEW COMMENTS. Each employee has the right to comment on their performance evaluation. If the employee chooses to do so in writing, such comments must be made during the evaluation period and will be included in their personnel folder.

1006. PERFORMANCE EVALUATION DISPUTE RESOLUTION. Under the City's merit program, the direct relationship between performance evaluations and pay has the potential to result in differences of opinion between employees and their supervisor.

Performance evaluations are not grievable. If an employee can demonstrate that the evaluation was arbitrary, capricious, illegally discriminatory, or wrong based on solid data, the employee can enter into dispute resolution with the Department Director.

1. PROCEDURE:

In order to ensure the speedy resolution of disputes related to the City's Merit Program, the following procedure shall be followed. The expedited process from immediate supervisor to final decision is intended to resolve disputes in a timely fashion so that awards granted under the Merit Program are finalized in time for December distribution each year.

A. The dispute resolution process is an open process that is not a grievance or appeal. No party has an absolute right to legal representation. The parties are expected to represent and speak for themselves.

B. The employee shall make every effort to discuss their performance review candidly with their supervisor, expressing any disagreements they may have with statements made by their supervisor.

C. The employee may add any comments they may have to the written performance appraisal for inclusion in the personnel file.

D. An employee wishing to initiate the process for dispute resolution shall do so within 10 working days of receiving the performance evaluation, by submitting a written memo to the Department Director stating the employee's wish to enter into dispute resolution and listing the specific parts of the supervisor's appraisal with which the employee disagrees and explaining the nature and extent of the disagreement. The employee shall attach copies of any relevant supporting documentation. If the employee wishes to have a meeting with the Department Director, the employee must request it in a written memorandum to the Department Director. A copy of the completed form shall be provided to the Department Director and to the Human Resources Department.

E. The Department Director will review the performance evaluation and all supporting documentation.

F. The Department Director may contact the employee and/or the supervisor to obtain clarification or additional information.

G. The Department Director will meet with the employee and/or supervisor if necessary or if the employee specifically requested a meeting within five (5) working days of receipt of the request for a dispute resolution meeting by the employee.

H. The Department Director shall then issue his/her written decision within five (5) working days. The response should indicate one of the following:

1) The Director agrees with the evaluation
2) The supervisor will revise the evaluation;
3) The supervisor will complete a new evaluation;
4) The Director will revise the evaluation; or
5) The Director will complete a new evaluation.

I. The decision issued by the Director shall be final and binding.

J. Employees who are direct reports to a Department Director may appeal their evaluations to the Assistant City Manager or another Director appointed by the Director of Human Resources.

# SECTION 1100

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# EMPLOYEE GRIEVANCES AND DISCRIMINATION COMPLAINTS

# SECTION 1100 EMPLOYEE GRIEVANCES AND DISCRIMINATION COMPLAINTS

1101. POLICY. It is the policy of the City to treat all employees fairly in matters affecting their employment. Every eligible employee shall have an opportunity to resolve matters which affect his/her employment. Every eligible employee with a grievance shall have the right to present the grievance in accordance with the following procedures without fear of reprisal.

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 Manager.

   C. Executive employees and any other employees who report directly to the City Manager shall follow the grievance procedures as outlined in this section.

   D. -The established grievance procedure shall be followed except for:

      ~~A.~~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.

   —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~~. Under these circumstances, the employee~~ 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.

D.

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.

~~A.~~B. The grievance must be filed on forms available on the intranet, ~~at~~ the Human Resources Department, City Clerk's Office, EEO/Training Office, and the Department Director' s Office.

~~B.~~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

~~1)~~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.

~~2)~~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~~grievance will be automatically appealed~~ to the Personnel Appeals Hearing Officer as outlined in Step 4.

Step 4

~~3)~~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.

~~A.~~1) The employee's written appeal to the Personnel Appeals Hearing Officer shall be filed with the City Clerk or his/her designee.

~~B.~~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).

~~C.~~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)~~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.

~~A.~~ 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.

2)

~~B.~~ An affirmative decision will allow the appeal to proceed. A denial will end the internal administrative remedies.

~~10. The established grievance procedure shall be followed except for:~~

~~A.~~ 3) ~~All collective bargaining units will follow the grievance procedures in their negotiated contracts.~~

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.

~~5)~~ 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.

~~6)~~ D. The hearing shall be closed to the public, unless the grieving party requests otherwise.

~~7)~~ E. The following shall constitute the conditions of representation during a hearing before the Personnel Appeals Hearing Officer:

~~A.~~ 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.

~~B.~~ 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.

~~D.~~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.

~~8)~~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.

~~A.~~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).

~~B.~~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.

~~C.~~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.

~~D.~~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.

~~9)~~J. The City will make an audio recording of the proceedings. A grieving party~~ing~~ desiring a complete verbatim transcript shall provide for such a report at his/her expense.

~~10)~~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.

~~A.~~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.

~~B.~~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.

~~11)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.~~

~~12)The EEO Officer, 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.~~

~~13)~~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.

~~14)~~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.

~~15)~~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.

~~16)~~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.

~~B.~~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.

~~C.~~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.

~~1)~~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 c~~C~~ity m~~M~~anager or municipal court presiding judge, after a whole record review, shall end the internal administrative remedies.

~~1)~~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.

~~23.~~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.

~~24.~~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.

~~25.~~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 that 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. <u>PROCEDURES</u>

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
         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]

1104. AMERICANS WITH DISABILITIES ACT and the ADA RESTORATION ACT POLICY:

The City of Las Cruces is committed to the fair and equal employment of qualified persons with disabilities. While many individuals with disabilities can apply for and perform jobs without accommodation, workplace barriers may keep others from entering and performing jobs without reasonable accommodation. It is the policy of the City of Las Cruces to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship.

1. Definitions:

A. "*Person with a Disability*" - For purposes of this policy, a person with a disability is one who:

1) Has a physical, mental or emotional impairment that substantially limits one or more major life activities. Those activities may include, but are not limited to, the following: caring for oneself; performing manual tasks; seeing; hearing; eating; sleeping; walking; lifting; bending; speaking; breathing; learning; reading; concentrating; thinking; communicating; working; and/or major bodily function.; or

2) Has a record of such an impairment; or

3) Is regarded as having such an impairment.

B. "*Qualified Person*" - A person who:

1) possesses the knowledge, skills, abilities, education, certification, licensure, and other requirements of the job currently held or desired; and

2) who, with or without reasonable accommodation, can perform the essential functions of the job currently held or desired.

C. "*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, without undue hardship.

D. "*Direct Threat*" - A direct threat is as a "significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation." The City will not hire nor retain an employee who poses a direct threat that cannot be reduced to an acceptable level or eliminated by providing a reasonable accommodation. An accommodation may still be refused if it would cause a direct threat to the worker or others.

The factors to consider in making a direct threat determination include:

1) Duration of the risk;
2) Nature and severity of the potential harm;
3) Likelihood that the potential harm will occur; and
4) Imminence of the potential harm.

~~D.~~

E. *"Undue Hardship"* -

An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the City.

Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of the following:

1) Nature and cost of the accommodation needed;
2) Overall financial resources of the facility or facilities involved; the number of persons employed at such facility; the effect on expenses and resources; or the impact otherwise of such accommodation;
3) Overall financial resources of the employer; overall business size with respect to number of employees; type of operation of the employer, including the composition, structure, function of its workforce; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the employer.

2. Procedures:

A. Notice to Applicants and Employees

Each functional unit of the City shall post and inform all employees of this reasonable accommodation policy and shall make the policy available in accessible formats upon request.

B. Starting the Reasonable Accommodation Process

A person with a disability, or his/her designee, may start the interactive process by making an oral or written request for a reasonable accommodation to his/her supervisor, a supervisor or manager in his/her immediate chain of command; the EEO Office; Human Resources Department; or ADA Coordinator; or, in connection with the application process, the Human Resources Department or hiring unit. This policy does not require people with disabilities to use particular words in their request; nor does it require the person with the disability to submit a written form. The form provided is for convenience only, and may be completed by either the requesting or receiving person.

C. Processing Requests

1) First-line supervisors are authorized to consider and approve requests for reasonable accommodation whenever possible. Within two working days of receiving a request for accommodation, the supervisor shall, in consultation with the individual:

a) Discuss the purpose and essential functions of the particular job involved.

b) Completion of a step-by-step job analysis may be necessary; the Human Resources Department shall be available to perform or assist in the completion of a job analysis,.

c) Determine the precise job-related limitation(s);

d) Identify the potential accommodation(s) and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job; and

e) Select and implement the accommodation that is the most appropriate for both the individual and the employer. While an individual's preference will be given consideration, the department can choose from among equally effective accommodations and may choose the one that is less expensive or easier to provide.

2) The supervisor will document this discussion on the attached Reasonable Accommodation Request Form and forward the completed form to the ADA Coordinator. The ADA Coordinator is available to provide technical assistance.

3) If the front-line supervisor is unable to make a definitive decision, for whatever reason, about providing the accommodation, he/she shall forward a written request for accommodation along with his/her recommendation to the ADA Coordinator within 5 working days following the employee's request.

4) If the ADA Coordinator is unable to make a definitive decision after receipt of all supporting documentation from the employee and/or physician, the ADA Coordinator will forward a written request, along with his/her recommendations to the City Manager within 5 working days from the date the supporting documentation has been received.

5) The City Manager will provide a decision in writing to the ADA Coordinator and employee within 5 working days.

D. Determination of Disability

The determination of whether or not an ADA disability is present will be made by the ADA Coordinator on a case-by-case basis. This determination is made on the basis of information provided by the employee/applicant and may include medical information by the treating physician, if required, and with or without consideration of mitigating or corrective measures.

E. Medical Information:

1) The City is entitled to know that an individual has a covered disability that requires a reasonable accommodation. Therefore, the City may ask for medical information about the disability, as it may impact~~, including~~:

a) The nature, severity and duration of the impairment;

b) The activity or activities that the impairment limits;

c) The extent to which the impairment limits the individuals' ability to perform the activity or activities/ and or

d) Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable

accommodation will be effective.

2) If the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the Ceity to make these determinations.

3) The City may also request supplemental documentation when the information already submitted is insufficient to document the disability and/or the functional limitations it causes. Failure to provide necessary documentation where it has been properly requested could result in a denial of reasonable accommodation.

4) Any medical documentation required, will be collected and maintained on separate forms and in separate files by the ADA Coordinator.

5) When medical information is requested and received, the information may be disclosed only to those involved in determining whether to grant the reasonable accommodation.

F. Timeframes

1) Within 30-days of a requested accommodation, the request will be granted or denied, absent extenuating circumstances, however, where a particular accommodation can be provided in less time, it shall be provided as promptly as possible.

2) Extenuating circumstances that would justify not processing a request for reasonable accommodation within the 30-day maximum, are factors that could not reasonably have been anticipated or avoided in advance of the request. These may include situations in which equipment must be ordered or if the individual's health professional fails to provided necessary documentation in a timely manner.

G. Reassignment

1) Reassignment is a form of reasonable accommodation for an employee who, because of a disability, can no longer perform the essential functions of the position s/he holds, with or without reasonable accommodation. Reassignment consideration will occur only after no effective accommodations that would enable the employee to perform the essential functions of his/her current job are identified, or if accommodations would impose an undue hardship. Reassignment is available only to employees, not to applicants.

2) Reassignments are made only to a vacant position for which the employee is qualified. An employee will be qualified if s/he (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position with or without reasonable accommodation.

3) If reassignment is determined to be the appropriate accommodation, the Human Resources Department shall first look for an equivalent vacant position in the City, equivalent to the one presently held by the employee in terms of pay and other job status.

4) If the employee is not qualified, with or without reasonable accommodation, for an equivalent vacant position (or a position the City knows will become vacant within a reasonable period of time) or no equivalent vacant position exists, the

City may reassign the individual as a reasonable accommodation to a lower graded vacant position for which the employee is qualified. If this occurs, the City is not required to maintain the individual's salary at the previous level.

5) The City is not required to create a new job or to bump another employee from a job in order to provide reassignment as a reasonable accommodation.

H. Denials of Reasonable Accommodation

Where a department denies an individual's request for a reasonable accommodation, it must notify the individual in writing of the denial and the reasons for it. The denial should be written in plain language with as much specificity as possible, and identify the employee or office that made the decision. All denials must notify the individual that s/he has the right to file an EEO complaint.

3. Job Application Process

A. The Human Resources Department shall post and notify all applicants of this accommodation policy and shall make this policy available in alternative formats upon request.

B. When a request for accommodation is received from an applicant, the Human Resources Department will discuss the needed accommodation and discuss possible alternatives with the applicant. The Human Resources Department is entitled to know that an individual has a covered disability that requires a reasonable accommodation. Therefore, the Human Resources Department may ask for information about the disability, as it may impact:~~including~~:

1) ~~The nature, severity and duration of the impairment;~~

2) The activity or activities that the impairment limits;

3) The extent to which the impairment limits the individuals' ability to perform the activity or activities/ and or

4) Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will be effective;

5) If the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the city to make these determinations.

C. The Human Resources Department will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

D. If the accommodation is not approved, the Human Resources Director will inform the applicant the reason for denial, in writing, within 3 working days of the decision.

4. Funding Accommodations:

Funding must be provided by the Department for accommodations which do not cause an undue hardship.

5. Undue Hardship:

A. Any department concluding a requested accommodation would result in an undue hardship shall meet with the Human Resources Director to discuss the requested accommodation.

B. The Human Resources Director, in conjunction with the Office of Budget and Management when the cost of the accommodation is considered, will determine undue hardship by considering:

1) The nature and cost of the accommodation in relation to the size, the financial resources, the nature and structure of the City's operation; and

2) The impact of the accommodation on the nature or operation of the City.

C. If the Human Resources Director determines the accommodation will impose an undue hardship, the Human Resources Director will forward an undue hardship analysis and recommendation to the City Manager within 5 working days following receipt of the request.

D. The City Manager will provide a decision in writing to the Human Resources Director, supervisor, and employee/applicant within 5 working days.

E. If the City concludes that the cost of an accommodation would impose an undue hardship and no funding is available from another source, an applicant or employee with a disability must be offered the option of paying for the portion of the costs that constitutes an undue hardship, or of providing the accommodation.

6. Complaint Process

A. Applicants or employees who believe they have a grievance under the ADA are encouraged to use the city's discrimination policy as outlined in the Manual of Personnel Policies. A copy of this policy is available upon request from the EEO Office or Human Resources Department.

B. Nothing in this procedure prevents any individual who believes they have a grievance under the ADA from taking other action to seek resolution. The complainant is informed that at any time prior to 300 days having elapsed from the date of occurrence, the complainant may file a formal charge with the U.S. Equal Employment Commission or within 180 days with the New Mexico Human Rights Division.

# SECTION 1200

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# BENEFITS

# SECTION 1200 BENEFITS

1200. EMPLOYEE INSURANCE BENEFITS. Full-time and part-time regular employees, and some contract and grant-funded employees budgeted to work 30 or more hours per week are eligible for the employer contribution of group insurance benefits as provided by the City and modified by the City Council. Information on employee benefits and eligibility requirements are available from the Human Resources Department.

Any full-time or part-time regular employee eligible for benefits who competes for and is accepted into the Police or Fire Academy will continue to receive their existing insurance and retirement benefits, without a break in service, as adopted by the City Council.

1202. MEDICAL PRIVACY.
From time to time the City may require and obtain employee medical information as it relates to that employee's ability to perform the essential functions of their position. This information may be obtained as a result of a Workers' Compensation injury, Family and Medical Leave qualifying event, request for reasonable accommodation under the Americans with Disabilities Act, or Fitness for Duty Evaluation.

It is the policy of the city to maintain strict confidentiality of all medical information obtained in accordance with all state and federal regulations and to use medical information obtained for the purposes stated in the Release of Information. Managers and supervisors will be informed of any current restrictions, however, medical information will only be released to those with a need to know.

1203. RETIREE HEALTH INSURANCE.
Effective July 1, 2004 all PERA eligible employees will contribute on a bi-weekly basis through payroll deductions to the New Mexico Retiree Health Care Authority in the amount prescribed by the New Mexico State Legislature and as amended from time to time as a term and condition of employment.

1204. COBRA POLICY:
The City of Las Cruces adheres to all requirements of the Consolidated Omnibus Budget Reconciliation Act (COBRA) as they apply to our employees. The City's COBRA policy is administered by the State of New Mexico General Services Department, Risk Management Division (RMD). Should an employee lose their medical, dental, or vision coverage under the plans offered through the State of New Mexico RMD as a result of a qualifying event, the employee and their eligible dependents will be given the opportunity to continue to purchase coverage as a group member for the legally-specified period of time following the loss of coverage.

Although employees' right to elect continuation coverage occurs upon a qualifying event, coverage is not automatic. Employees and / or their eligible dependents must make an affirmative election of coverage before coverage will begin. The State of New Mexico RMD will notify the employee and / or their eligible dependents of their rights and the stipulations necessary to continue coverage under COBRA. The election to continue coverage must be made within 60 days of the date coverage is lost or the date of the notice of eligibility, whichever is later.

1. Eligibility:
   Employees are eligible for continuation coverage if terminated from employment for any reason other than for gross misconduct or if a reduction in hours results in the loss of coverage under our group medical, dental, and vision plans. Continuation coverage will be available for 18-36 months, depending upon the qualifying event.

2. Qualifying Event:
   A qualifying event (QE) for purposes of continuation of coverage under COBRA occurs when:
   A. The employee is terminated for any reason other than gross misconduct on the employee's part. (QE for the employee, spouse, and dependent children, or domestic partner and dependent children).
   B. The employee's working hours are reduced to the point that he/she loses some or all of the benefits under the plan (QE for the employee, spouse, and dependent children, or domestic partner and dependent children).
   C. The employee is divorced or legally separated (QE for the employee's spouse and dependent children).
   D. The employee's spouse is divorced from the employee or obtains a legal separation (QE for the employee's spouse).
   E. The employee becomes entitled to Medicare (QE for the employee's spouse and dependent children, or domestic partner and dependent children).
   F. The employee's dependent child loses dependent status as defined by the plan (QE for that dependent child).
   G. The employee does not return to work after FMLA leave ends (QE for the employee, spouse, and dependent children, or domestic partner and dependent children).

3. Notice of Election:
   The City of Las Cruces Human Resources Department will notify the State of NM RMD of the qualifying event within 30 days of receipt of notification of the qualifying event. The employee or the employee's qualified beneficiary must notify the Benefits Coordinator within 31days of a divorce or legal separation or the date on which the employee's child ceases to be a dependent under the Benefit plan rules.

   The State of NM RMD will mail notice of the right to elect continuation coverage to the employee or his/her qualified beneficiary by first-class mail to his/her last known address or to the last known address of the qualified beneficiary.

4. Length of Coverage:
   The length of coverage depends on the type of qualifying event that occurs.

   A. 18-month period. Qualifying events include termination of employment, other than for gross misconduct, or a reduction of hours.

B. 29-month period. A qualified beneficiary is determined under the Social Security Act to have a disability at the time of a termination of employment or reduction in hours.

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C. 36-month period. This is given:

1) for the death of the covered employee;
2) for the loss of dependent child status under the plan;
3) when the covered employee becomes entitled to Medicare;
4) for divorce or legal separation of the covered employee;
5) for multiple qualifying events.

5. Coverage Termination:

Continuation coverage may be terminated prior to the end of the applicable coverage period if any of the following circumstances occur:

A. The qualified beneficiary (the employee, the employee's spouse or the employee's spouse on behalf of dependent children or domestic partner) fails to make timely payment of premiums for continuation coverage.

B. The qualified beneficiary becomes covered under another group health plan that is not maintained by the State of NM RMD, or City of Las Cruces and does not contain any pre-existing condition limitation or exclusion affecting the qualified beneficiary.

C. The qualified beneficiary becomes eligible for Medicare.

D. The City's group health plans are terminated.

E. The continuation period has been extended because the qualified beneficiary was a person with a disability but no longer has the disability.

F. For cause on the same basis that the coverage of similarly situation active employees may be terminated.

6. Cost:

The cost for continuation coverage will be determined by the State of NM RMD. .

Employees are responsible for the same deductibles and co-payments under the plans that the employees were responsible for before coverage was lost. Any amounts already incurred under the original plan will be credited to the employees' continuation coverage.

## 1205. EMPLOYEE ASSISTANCE PROGRAM

POLICY:

The City will provide professional and confidential assistance to any employee and their immediate family (spouse/domestic partner and dependent children) who may wish to consult with a professional counselor regarding a personal or family problem. The services

provided are confidential and are available at no cost to the individual.

1. SCOPE:

   EAP services provided are short-term, focused on problem solving and very practical in nature. In the instance where an individual is specifically in need of a great level of assistance, that person will be referred to the most appropriate professional as provided for in the employee benefit package.

   A. It is the responsibility of management to support this policy by remaining alert to job performance and behavior changes, and to bring these to the attention of the employee, along with an offer of assistance at the earliest indication of a recurrent problem. Directors, Administrators and Managers should not attempt to diagnose the nature of the personal problem, but should use the EAP to deal with work performance/work habit problems.

   B. Employees are encouraged to seek assistance through or accept referral to the EAP and to comply with the recommended action plan when personal problems are affecting the employee's work performance. An employee's continued failure to take action to resolve a work problem will be handled through the applicable City policies.

   C. Participation in the EAP in no ways relieves the employee of the responsibility to meet acceptable work performance and conduct standards. Normal corrective action procedures will continue during an employee's participation in the program.

2. REFERRALS:

   A. Employees may obtain professional assistance through the EAP by self-referral or Director/Manager or supervisor referral.

      1) Self-Referral:

         a) An employee, or dependent, who desires confidential assistance for a personal problem should call the EAP office and schedule an appointment.

         b) All communication between the employee, or dependent, and the EAP counselor is confidential. When the counselor becomes aware of a situation where the employee or dependent, presents a clear and present danger to themselves or others, the EAP counselor will take whatever action is deemed appropriate and necessary to mitigate the danger, pursuant to applicable state and federal laws.

      2) Director/Manager/Supervisor Referral:

         a) Referral to the EAP by a Director/Manager/Supervisor may be based upon an employee's request for assistance with a personal problem that may be affecting, or has the potential to affect, the employee's job performance. When an employee has come to a Director/Manager/Supervisor to seek advice regarding a personal problem, the Director/Manager/Supervisor should make the team member aware of the professional assistance available through the EAP and offer to assist the team member in arranging an appointment with the EAP counselor. Referral to EAP shall be strictly voluntary except when such referral is the result of a violation of the Violence in the Workplace Policy or Substance Abuse Policy.

         b) If the team member chooses not to accept assistance at this time, the Director/Manager/Supervisor should reinforce the organization's expectation

for improved performance or appropriate conduct and the consequences for failure to improve. Results of this meeting should be documented.

c) All information pertaining to an employee's referral to the EAP and information provided by the EAP counselor to the Director/Manager/Administrator should be accorded the same standards of confidentiality as applied to all mental health/substance abuse treatment related records and information.

3. Appointments During Working Hours: An employee can schedule meetings with the EAP counselor during normal working hours. For visits to an outside provider during work hours, the employee shall use leave accruals, if available, or Leave Without Pay if no leave accruals are available.

1206. WORKERS' COMPENSATION. To the extent provided by law, all City employees are covered under the provisions of the New Mexico Workers' Compensation Act. Workers' Compensation covers work-related injuries or illness arising out of and in the course of employment that requires medical, surgical, or hospital treatment.

1. PROCEDURES:

A. All on the job illnesses and injuries (no matter how minor an on-the-job injury may appear) which are work-related must be formally reported immediately or as soon as possible to the employee's immediate supervisor. The employee and the supervisor shall prepare a Notification of Accident form and the employee shall report to the Risk Management Office with the completed form. If an employee is injured during a period which Risk Management is not open, the employee should report to the emergency room for treatment if necessary, and notify their immediate supervisor as soon as possible. After emergency treatment has been received, the Notification of Accident form shall be completed and forwarded to Risk Management.

B. The City reserves the right to require a medical examination at any time during the Workers' Compensation absence and prior to the employee's return to work.

C. The City will not be liable for the payment of Workers' Compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, or athletic activity sponsored by the City.

D. FMLA leave runs concurrently with any workers' compensation leave.

E. Any questions regarding Workers' Compensation or on-the-job injuries should be directed to the City's Risk Manager.

1207. Domestic Partner Benefits. All City of Las Cruces employees that have a domestic partner as defined in A herein, shall be provided benefits on the same basis provided to legal spouses.

1. The City defined domestic partners as two (2) 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. There must be an exclusive mutual commitment similar to that of marriage, in which the partners agree to be financially responsible for each other's welfare and share financial obligations.

A. Qualifying Criteria

To be recognized as domestic partners by the City of Las Cruces, both individuals must meet all of the following criteria, sign an Affidavit of Domestic Partnership form, and submit necessary documentation to the Human Resources Department.

1) Both domestic partners must be unmarried.
2) Domestic partners must have been in a mutually exclusive relationship for the last twelve (12) months, intending to do so indefinitely, and must share the same primary residence.
3) Domestic partners must meet the age requirements for marriage in New Mexico and be mentally competent to consent to contract.
4) Domestic partners must not be related by blood to the degree prohibited in legal marriage in the State of New Mexico.
5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations An Affidavit of Domestic Partnership form signed to that effect and proof of three (3) of the following must be submitted to the Human Resources Department:
   a) Joint mortgage or lease
   b) Joint ownership of a motor vehicle
   c) Joint bank account
   d) Joint credit account
   e) Domestic partner named as beneficiary of the other's retirement benefits.
   f) Domestic partner named as beneficiary of the other's life insurance.
   g) Domestic partner named as primary beneficiary in the other's will.
   h) Domestic partner assigned durable property or health care power of attorney
6) Providing false information may result in disciplinary action, dismissal, and reimbursement of costs involved in providing benefit coverage.

B. Termination of Domestic Partnership

1) Individuals granted domestic partnership status must report any change in status that terminates the relationship to the Human Resources Department, within thirty-one (31) calendar days, by completing a Termination of Domestic Partnership form. Upon completion of a Termination of Domestic Partnership form, the employee would not be eligible to re-enroll a domestic partner until the plan's next open enrollment.

C. Qualifying as a Dependent of Domestic Partner

1) The child of a domestic partnership qualifies as an eligible dependent:
   a) If either of the domestic partners is the biological parent of the child;
   b) If either or both partners are adoptive parents of the child, or
   c) If the child has been placed in the domestic partner's household as part of an adoptive placement.

D. Services and Benefits

1) Domestic partners and their dependents, as defined within this section, shall be

granted all and the same services and benefits as those provided to married spouses and their dependent, except where expressly prohibited by law. All city policies that affect employees, spouses, and their families also apply to employees, domestic partners, and their families.

E. Taxability

1) The value of insurance benefits provided to the domestic partner is considered taxable income to the employee by the Internal Revenue Service and is subject to social security and federal and state income tax withholding.

# SECTION 1300

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# DEFINITIONS

# SECTION 1300 DEFINITIONS

## A

**Acting Appointment** - the City Manager may appoint an incumbent to a vacant position for a period of time not to 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.

## ~~B~~

~~**Board** - also known as "Personnel Appeals Board" consisting of three persons not employed by the City who are empowered to hear employee grievances. The "Board" is established by ordinance and is defined in Section 22-260 of the Personnel Ordinance.~~

## 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.

**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.~~Once an exempt employee uses all accrued annual and sick leave, the employee will not be subject to a salary reduction for absences of less than eight (8) hours~~.

**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 ~~poor working conditions,~~ 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 ~~non-exempt~~ employee for more than three (3) work days ~~and five (5) days for exempt employee~~.

**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 ~~fifteen(15)~~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 22-185 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**

**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** - ~~One (1) paid day or equivalent hours per fiscal~~Leave granted to employees ~~year~~ to be used at the employee's discretion subject to the supervisor's approval.

**Post-Disciplinary Hearing** - a hearing conducted by the Personnel Appeals ~~Board~~ 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**

**Reclassifiction**- 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~~, for example, certain ballfield workers for softball or swimming pool employees~~.

**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 ~~12~~ 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.

# ATTACHMENT C

# City of Las Cruces

# 2009

# Personnel Manual

Adopted August 17, 2009

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# SECTION 100

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# INTRODUCTION

# 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 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.

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 Policies.

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.

# SECTION 200

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# RECRUITMENT & SELECTION

# SECTION 200 RECRUITMENT AND SELECTION

201. POLICY. It is policy for the City of Las Cruces to recruit and select the most qualified persons for positions in the City's service. Recruitment and selection shall be conducted in a manner that will ensure open competition, provide equal employment opportunity, and prohibit discrimination or favoritism because of race, politics, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability, and in accordance with the City's Hiring Process: Application Review, Interviewing and Selection Guidance.

202. POSTINGS. When a request to fill a vacancy has been approved the following procedure shall be followed:

Job announcements will be posted in places available to the general public and all City employees. Postings will include pertinent job information, including minimum qualifications and entry level salary. All postings shall include the essential functions, work environment, physical and cognitive requirements, and selection criteria to be used, including any tests and/or skill assessment.

Job announcements shall be posted for not less than five business days. This period of time may be waived by the City Manager.

203. APPLICATION FORM. All applications for employment shall be made on forms or methods prescribed by the Human Resources Department. Although resumes that meet posted deadlines will be accepted, a City application form or release for reference check must also be completed by job applicants selected prior to or at the time of interview.

204. APPLICATION SUBMITTAL. All applications will be submitted to the Human Resources Department, unless authorized in writing by the Director of Human Resources.

205. REJECTION OF APPLICANTS. An applicant may be rejected if the applicant:

1. Does not meet the minimum qualifications for the position.
2. Has falsified, omitted, misrepresented or provided misleading information on an application or resume. (Employees who violate this section shall be subject to disciplinary action, up to and including dismissal).
3. Is unable to perform the essential functions of the position, with or without reasonable accommodations.
4. Has been convicted of a crime that renders him/her unqualified for the position to which he/she has applied.
5. Is under 18 years of age if being considered for Regular Full-time or Part-time employment.
6. Has established an unsatisfactory employment record.

7. Advocates the overthrow of the government of the United States by force or violence.
8. Submitted an application after an announcement closed or submitted an application for an unannounced position.
9. Submitted an incomplete application and/or failed to provide copies of documents cited in the job announcement prior to a final decision on hiring.
10. Receives a positive test result on a pre-employment drug test.
11. Failed background investigations.

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.
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 positions 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.

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 505-528-3100/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.

207. Employment Testing. The Human Resources Director (or designee) will review all written, skills and field testing procedures to assure that these tests are valid and conducted in a standardized and impartial manner and are job related. This review shall ensure that these tests can be quantitatively scored prior to being administered. The posted job announcement will indicate that applicant testing will be required, and an invitation to request any reasonable accommodation needed for the test. Requests for reasonable accommodation shall be processed in accordance with the City's Reasonable Accommodation Policy.

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

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

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

G. 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. The Department or Section completes reference checks on candidates prior to recommending the hire.

C. 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.

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

E. 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. *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 completed for academic credit and are usually one semester in duration.
   D. *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 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.

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

4. 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 NMSU, DABCC, and 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 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. 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. Probation

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. A new employee serves "at will" and can be dismissed with or without cause by the City for any legal reason.

1. New Hire Probation: Prior to the completion of the new hire probation period (12 months), management shall decide whether or not to recommend continued employment. If the decision is to discontinue employment, the incumbent shall be separated. If a decision is made to continue employment, a Personnel Action Notice shall be prepared by the hiring section changing the incumbent from probationary status to regular status.

211. Immigration Law Compliance

In compliance with the Immigration Reform and Control Act of 1986, each new or rehired employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility.

Non-citizen employees, whose work authorization has expired, will not be scheduled to work and will be placed on Leave Without Pay. The employee is responsible for obtaining Immigration and Naturalization documents verifying eligibility to work in the United States. Upon receipt of proper immigration documents, the I-9 form will be updated and the employee may be eligible for re-instatement.

212. Employee Orientation.

1. New Employee. New employees shall receive new employee orientation upon beginning City service. The purpose of orientation is to ensure maximum understanding of the requirements and conditions under which the individual is expected to function. The Human Resources Department will coordinate orientation for new employees.
2. Supervisor. Each Department Director will ensure that the section to which the new employee is to be assigned makes provisions for a supervisor to be available for specific orientation of the new employee regarding section functions, responsibilities, and unique requirements of the section using the City's new employee checklist. The form will be forwarded to the Human Resources Department, within seven (7) days, for inclusion into the employee's personnel file.

# SECTION 300

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# CLASSIFICATION PLAN

# SECTION 300 CLASSIFICATION PLAN

301. THE LAS CRUCES MUNICIPAL GOVERNMENT HAS AN ONGOING CLASSIFICATION PLAN WHICH IS DEFINED AS:

"The sum total of all class specifications in the municipal service."

302. CLASS SPECIFICATION IS:

A written description of a class, which includes the position, the title, a statement of duties and responsibilities, examples of typical duties performed, a statement of minimum qualification requirements, and a definition of working conditions.

303. THE TERM CLASS IS:

One or more positions which are sufficiently alike to warrant using the same or similar title, qualification requirements, specifications, and pay grade. It is commonly called "Classification."

304. ALLOCATION IS:

When the City Council appropriates personnel funds, the City Manager uses those funds to allocate positions where needed throughout the City work force.

305. RECLASSIFICATION IS:

1. The reassignment of a position from one class to a different class to correct an error in the original assignment or to recognize a significant change in the duties and responsibilities of a position.
2. When a reclassification is requested to recognize a significant change in the duties and responsibilities of a position, the recommending department shall complete and submit to Human Resources a job analysis worksheet/Position Analysis Questionnaire for evaluation and classification.
3. Reclassification shall not be used as a method of awarding an employee a salary increase. All reclassification recommendations or requests shall be presented to the City Manager. The City Manager may direct the Human Resources Department to analyze the position and make a recommendation.
4. Although there may be various instances when a position is reclassified, such as during reorganization or when directed by the City Manager, the customary time for submitting a request is at budget revision or prior to the budget cycle preparation. The ideal time is when the position is vacant.

306. CLASSIFICATION CATEGORIES. All regular positions in the municipal employment are assigned as salaried exempt (E) or non-exempt (N).

307. EXEMPT AND NON-EXEMPT DEFINED. Salaried exempt employees are those whose duties, responsibilities, and compensation render them exempt from overtime requirements of the Fair Labor Standards Act. Non-exempt employees are those

whose duties, responsibilities, and compensation cause them to not be exempt from overtime requirements of the same Act.

308. SALARIED EXEMPT "UPSET TESTS." The FLSA (2004 Amendments) requires that any position assigned as salaried exempt must satisfy each and every one of the "tests" cited in Section 309, Section 310, or Section 311, 312 or 313. Positions which do not satisfy the "tests" in one or more of those Sections must be classified as non-exempt".

309. EXECUTIVE. Those assigned as salaried exempt executives for the City of Las Cruces must meet all of the following requirements:

1. Compensation paid on a salary basis at a rate not less than $455 per week.
2. Primary duty is managing a customarily recognized department or subdivision.
3. Customarily and regularly directs the work of at least two or more other full-time employees or their equivalent; and
4. Has authority to hire or fire other employees, or make such recommendations that are given particular weight.

310. ADMINISTRATIVE. Persons assigned as salaried exempt administrative employees for the City of Las Cruces must meet all of the following requirements:

1. Compensation paid on a salary or fee basis at a rate not less than $455 per week;
2. Primary duty is the performance of office or non-manual work directly related to the management of general business operations of the City; and
3. Includes the exercise of discretion and independent judgment with respect to matters of significance.

311. PROFESSIONAL. Individuals assigned as salaried exempt professionals must meet all of the following requirements:

1. Compensated on a salary or fee basis at a rate not less than $455 per week;
2. Primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment; and
3. The advanced knowledge must be in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

312. COMPUTER. Individuals assigned as salaried exempt computer employees must meet all of the following requirements:

1. Compensated either on a salary or fee basis at a rate not less than $455 per week OR, if compensated on an hourly basis at a rate not less than $27.63 an hour; and
2. Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties as described below;
3. Primary duty must consist of:

A. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
B. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
C. A combination of the aforementioned duties, the performance of which requires the same level of skills.

313. HIGHLY COMPENSATED. Individuals assigned as salaried exempt highly compensated must meet all of the following requirements.

1. Total annual compensation of $100,000 or more, which must include at least $455 per week paid on a salary or fee basis;
2. Primary duty is the performance of office or non-manual work and is customarily and regularly perform at least one of the duties of an exempt Executive, Administrative or Professional employee as identified above.

314. FLSA EXEMPTION AND NOTIFICATION POLICY

1. FLSA exemptions to the overtime requirements do not apply to manual laborers who perform work involving repetitive operations with their hands, physical skill and energy. The exemptions also do not apply to First Responders as defined by the 2003 FLSA Amendments.

2. The City prohibits improper pay deductions for exempt employees and will reimburse employees for any improper deductions made. Any exempt employee who believes there have been improper pay deductions made shall immediately contact the Human Resources Department and present the relevant evidence of said deductions. The Human Resources Department will take immediate action to investigate the issue and, if founded, correct the improper deduction.

3. 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 because:

   A. permission for leave has not been sought or has been sought and denied;

   B. accrued leave has been exhausted; or

   C. the employee chooses to use leave without pay.

315. SUPERVISOR. An employee who devotes a substantial amount of work time in supervisory duties, who customarily directs the work of two or more employees and who has authority to recommend the hiring, retaining, promoting, disciplining, adjustment of grievances, or evaluation of other employees. Does not include an individual who occasionally assumes a supervisory role or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

316. POSITION ASSIGNMENTS (TO POSITION CLASSIFICATION/SALARY GRADES).

Positions are assigned to a Grade/Classification based upon a variety of factors,

including minimum requirements, span of control, extent of supervision or independent action needed, budgetary accountability, problem solving requirements, internal equity, and other job related factors essential to make an assignment determination.

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. 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.

    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 on an individual the using 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 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. The signed agreement is then sent to the Purchasing Manager for execution and date of the completed agreement.

F. 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.

# SECTION 400

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# COMPENSATION

# SECTION 400 COMPENSATION

401. COMPENSATION PLAN. The Compensation Plan shall consist of monetary (wages/salaries) compensation and shall strive for fair market compensation.

402. TOTAL COMPENSATION. The combination of wages/salaries plus all other benefits of value to the employee which result in a cost to the City.

403. STANDARDS FOR DEVELOPMENT OF THE PAY COMPENSATION PLAN. The Compensation Pay Plan is directly tied to the Classification Plan and is determined on the basis of:

1. Uniformity of pay for each class.
2. Relative difficulty and responsibility of positions.
3. Prevailing wages within the identified relevant public and private sectors markets.
4. Cost of living index.
5. Financial policies of the municipality.
6. Difficulty in recruiting suitable employees.
7. Other economic considerations.

404. ADMINISTRATION AND AMENDMENTS OF THE PAY COMPENSATION PLAN. The Human Resources Department will be responsible for administering the Compensation Plan. The Human Resources Department will administer the plan and keep it current by periodic cost of living reviews and comparative wage surveys with other municipalities as well as the private sector. Geographic adjustments of comparative wage surveys may be made using the data compiled by the Economic Research Institute (ERI).

The Human Resources Department will recommend amendments to the City Manager as appropriate. If approved by the Manager, amendments may be recommended to the City Council for adoption.

405. ENTRY LEVEL PAY RATES. The entry level rate is the minimum rate in the pay grade for the position.

A Department Director, subject to approval by the City Manager, may recommend for appointment a candidate above the entry level rate, to the midpoint of the pay grade if:

1. There are a limited number of qualified applicants available at the entry level, or
2. The applicant has exceptional qualifications.

Above the mid-point if:

1. Multiple recruitments have failed to yield a qualified candidate, or
2. The applicant has qualifications which are unique or critical, or
3. A test of the market reveals that the City is not competitive.

406. PAY RATE ADJUSTMENTS.

1. Conditional Hires. If, after several recruitment attempts, 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, 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 Increases. Effective July 1, 2004 and the start of each subsequent fiscal year, all full- and part-time regular, non-contract employees, in good standing, and employees who were hired before December 1st of the preceding year, shall 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 December beginning December 2005.

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 December beginning December 2005.

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.

## 407. HOURLY RATE, REGULAR RATE AND HOURS WORKED DEFINED AND EXCLUSIONS IDENTIFIED.

The hourly rate is the equivalent of straight time compensation received by a non-exempt employee for work divided by the number of hours that money is intended to compensate.

The regular hourly rate of pay of an employee is determined by dividing an employee's total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked in that workweek for which such compensation was paid..

Hours worked includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work.

Exclusions from the hourly and regular rate include payment for occasional periods when no work is performed due to vacation, holiday, illness, failure of employer to provide sufficient work, absence due to authorized leave, jury duty, leave without

pay, or any payments to an employee which are not made as compensation for the employee's regular hours of employment.

408. ELIGIBILITY FOR OVERTIME PAY.

1. FLSA non-exempt employees (except seasonal workers) shall become eligible to be compensated at 1-1/2 times the regular rate per hour for all time worked in excess of 40 hours during a regularly scheduled seven-day work week (212 hours per 28-day period for 56-hour non-union fire service personnel). Occasional periods when no work is performed due to lack of work, paid leave or unpaid leave cannot be counted as time worked. Those periods, whether paid or not, must be deducted and cannot be included as time worked.

2. Waiting time; rest and meal periods; sleep; travel time during the course of the work day; out-of-town travel; pre-shift and post-shift activities; lecture and training time; civic and charitable time; and voting time may be counted as hours worked. Out-of-town travel expenses will be reimbursed in accordance with the FLSA, state law, and the City Manager's Travel Policy.

3. FLSA exempt employees are not eligible for overtime pay.

409. ELIGIBILITY FOR COMPENSATORY TIME OFF.

Management is authorized to compensate non-exempt employees with time off when they *work* in excess of 40 hours in a 7-day period (212 hours per 28 day period for 56 hour non-union fire service employees), or for work hours designated as eligible for premium overtime pay. Management must advise employees scheduled to work overtime that he/she will be rewarded monetarily at 1-1/2 times the regular rate for all time *worked* in excess of 40 hours in a 7-day period (212 hours per 28 day period for 56 hour non-union fire service employees) or with time off at 1-1/2 times all *time worked* in excess of 40 hours per 7-day period (212 hours per 28 day period for 56 hour non-union fire service employees).

1. The use of compensatory time off in lieu of cash overtime compensation for non-exempt employees must be by agreement or understanding between the employer and employee. This agreement must be reached before the work in question is performed.

2. Management shall not permit non-exempt employees who were compensated with time off to accrue more than:

   A. 480 hours of unused compensatory time (320 hours of overtime worked) if engaged in public safety or emergency response activities.

   B. 60 hours of unused compensatory time (40 hours of overtime worked) for non-public safety employees.

   C. When employee's reach the maximum compensatory time accrual, they can no longer accrue compensatory time and must be paid in cash for all overtime hours worked.

3. Requests to use earned compensatory time shall be processed in the same manner as requests to use annual leave.

4. An employee who has been approved for the use of earned compensatory time shall not change that leave to sick leave, when applicable, without presenting management with a physician's statement verifying the illness.
5. Unused compensatory time earned during the twelve months of the fiscal year must be paid out at by the end of the fiscal year and cannot be carried forward, except with the written authorization of the City Manager.
6. Compensatory time off should be allowed when requested by the employee provided it does not unduly disrupt the activities of the Department/Section.
7. Sections/Departments may direct the use of compensatory time.
8. Upon termination for any reason, employees will be paid for unused compensatory time. Payment shall be computed by multiplying unused compensatory time by the employee's normal per hour rate.
9. If an employee demotes or transfers from one non-exempt position to another non-exempt position; or from one department/section to another within a classification eligible for compensatory time, the employee's accrued compensatory time off balance, up to the maximum allowable accrual will be carried forward with the employee. Any accrual in excess of the allowed maximum shall be paid at the time of promotion, transfer or demotion.
10. If an employee promotes from one non-exempt position to another non-exempt position, the employee's accrued compensatory time off balance shall be paid by the department/section the employee is promoting from at the employee's hourly rate of pay before promoting.
11. Compensatory time accrual balances will be paid by the department/section the employee is moving from at the employee's current hourly rate of pay before demoting or transferring when the new classification is not eligible for compensatory time or accruals of compensatory time exceed the maximum of the employee's new job classification.
12. FLSA exempt employees are not eligible for compensatory time off.

410. RECORD KEEPING UNDER FLSA.

All Sections must maintain and preserve records for three (3) years of:

1. Timesheets for each non-exempt employee and leave authorizations for all employees.
2. Authorization by the Section Administrator/Manager for all overtime worked.
3. The number of compensatory hours earned each workweek, or other applicable work period, by each employee. The hours must be calculated at a rate of one and one-half hours.
4. The number of hours of compensatory time used each workweek, by the employee.

411. STANDBY PAY. Standby pay will be used to compensate non-exempt employees required to make their time available to the City after regular working hours.

1. Definitions:

   A. Standby Employee: An individual who, though off duty, is required to be available and able to respond to inquiries by telephone, pager or radio and/or, if necessary, return to duty.

   B. Standby Pay. Compensation paid in addition to the hourly base rate to individuals required to be "on call." Extra compensation is paid to the on call employee for making their time available to the City after regular working hours.

   C. Standby Period - All those hours spent on call during a 24 hour period established by the department/section.

   D. Straight Overtime Rate – Calculated at 1.5 the hourly rate x the number of hours in excess of 40 hours worked per week.

   E. Regular Rate - Regular hours + overtime hours x hourly rate + standby pay divided by total hours.

   F. Show Up Pay. Sometimes referred to as call-back pay. This payment is awarded to designated non-exempt employees who are not on stand-by but are required to report for duty from off-duty status and who are responding for less than two (2) hours of duty. It is calculated at 1.5 x hourly rate x 2 hours.

2. Procedure:

   A. The Section Administrator/Manager will decide specifically which employee(s) in each job title will be assigned to take "standby duty" and receive the additional compensation. These decisions shall be made fairly and equitably using work and skill related factors, unless operational needs dictate otherwise.

   B. The employee should receive clear advance notice that he/she will be "on stand-by ".

   C. Standby period begins after the completion of the regularly scheduled work day and continues until resuming work the following work day, unless a defined length of time is determined prior to the time on call status begins. Stand-by status includes providing coverage during the lunch period.

   D. Employees on standby will be considered engaged by the City of Las Cruces at the time they leave home until the work is completed. This time will be counted as time worked time and will be recorded as such on the Standby Report by the employee. Travel time shall not apply when the employee is requested to report before or after their regular starting time. The employee will be paid 1-1/2 times their regular rate of pay for extra hours worked if it results in hours worked in excess of 40 hours for the pay period.

   E. An employee who is stand-by must meet the following criteria:

      1) Thoroughly check the working status of the beeper, cell phone or radio before "standby" status begins and maintain it in operational mode at all times;

2) Stay within beeper, cell phone or radio range;

3) When notified by beeper, radio or telephone, the employee must call in within five (5) minutes;

4) Must leave the location where the call is received within 10 minutes or less after receiving the call; and

5) Must arrive in "fit" condition.

Failure to adhere to these criteria may result in the loss of stand-by pay for the period.

F. If an employee does not meet the criteria defined in "E", he/she will forfeit "standby" pay from the time of the first attempt to contact him/her to the end of the standby period and may be subject to disciplinary action.

G. Each employee on standby after regular working hours will receive adequate compensation for standby status at the designated rate of $65/week or $9.29/day.

H. A standby employee who is called back to work for two hours or less, after leaving the worksite at the end of the regular work period, during the standby period will be paid two hours of show-up pay, except as defined in K" below.

J. If the employee remains at work following the expiration of the 2-hour period or is called back before its expiration, they will be compensation with overtime pay at the premium overtime rate for additional time worked beyond the two (2) hour period.

K. If the employee is released from work after the expiration of that 2 hour period, and re-called to work, the employee shall be compensated only for additional hours worked at the premium overtime rate.

L. A standby employee who remains at work directly at the end of a scheduled work shift or is called to report early (within two hours of their scheduled work time) or remain late when call out continues to the regular starting time, will be paid for straight overtime for the extra hours worked if the additional hours result in hours worked in excess of 40 hours in the work week.

M. The stand-by employee is expected to respond to telephone inquiries during the on call period without additional compensation.

N. An employee responding to a call-out shall assess the situation and need prior to calling out additional staff and shall describe the justification for additional staff on the Stand-By Form.

O. Employees called out shall complete the Stand-by Form for each situation and submit the completed forms to their immediate supervisor by the start of the next business day.

3. Miscellaneous:

A. Positions designated for standby status will be recommended and justified to the City Manager by Department Directors.

B. A listing of all positions designated for standby status and written approval from the City Manager will be sent to Finance (payroll section) and Human Resources Department in January of each calendar year.

C. Time sheets will list approved personnel on standby status

D. An internal audit of all stand-by positions may be conducted by the Office of the Internal Auditor as assigned by the City Manager.

412. TRADING TIME PERMITTED. Employees may mutually agree to exchange scheduled work days, shifts or hours of work with the advance approval of their supervisor provided:

1. Both employees have given supervision prior notification regarding the trade.
2. It is voluntary on the part of both employees.
3. It is at the employee's request and not the employer's.
4. The trade must be between two employees who have the same type of job.
5. Such change does not result in the application of overtime or compensatory time off.

413. FLEXIBLE AND ALTERNATE WORK SCHEDULE

Employees may be allowed flexibility in scheduling their weekly and daily work hours with their supervisor's approval.

Alternate work schedules are for longer time periods. The selected schedule must be approved in writing by the employee's supervisor and Department Director and cannot be changed unless approved in advance by the supervisor. Alternate work schedules should not conflict with departmental staff meetings or other standing meetings in which the employee's attendance is necessary. The City Manager or Department Director may at any time change any or all the terms and conditions under which the employee is authorized to participate in an alternate work schedule, or withdraw authorization entirely. Alternate schedules should be coordinated in order to provide adequate coverage. An alternate work schedule is typically not suitable for those employees with responsibilities that require daily supervision of staff.

Exempt employees approved for an alternate work schedule must be available when business necessitates regardless of the approved alternate schedule.

414. JOINT EMPLOYMENT RELATIONSHIPS. Personnel employed by the City in more than one capacity and/or for more than one department, or section must be paid on the basis of total time worked. The exception to this extends to salaried non-exempt employees who volunteer to work after regular hours in City sponsored recreational activities or other casual assignments that are unrelated to the employee's regular position. No employee may volunteer to work for the City after regular hours when the volunteer activities are related to the employee's regular position.

** ***NOTE:*** *For more information specific to employees working in more than one job, please contact the Human Resources Department or refer to FLSA regulations governing joint employment relationships.*

415. MERIT INCREASES AND CASH INCENTIVES

Deleted March 15, 2004

416. MOTIVATION PAY. Motivation pay has been discontinued for all new hires and promotions effective July 1, 1999.

417. LONGEVITY PAY. Effective July 1, 2004 Longevity pay has been deleted.

Effective April 15, 2002, Las Cruces Police Sergeants and Lieutenants will not be eligible for longevity increases. Pay for sergeants, lieutenants and Deputy Chiefs shall be governed by pay tables for those positions.

Pay for Fire Department Battalion Chiefs and Deputy Chiefs will be governed by the pay table s for those positions.

418. PAY PRACTICE FOR ACTING APPOINTMENTS.

1. When an acting appointment exceeds 30 days, additional compensation to the minimum of the assigned pay grade or a 5% pay increase, whichever is greater, shall be awarded. Acting appointments shall not be continued for more than six months, except when, due to extraordinary circumstances. The City Manager may extend the acting appointment in writing, in increments not to exceed six months.
2. Employees appointed to acting positions may be eligible for additional compensation prior to the 30 day threshold if the acting assignment is significantly more responsible, difficult, or technical than the employee's regular duties.

419. RETIREE RECOGNITION AWARD.

In order to recognize retiring employees for their years of service to the City of Las Cruces, the City shall give a retiree an award as part of their compensation, as follows:

1. $110 for 15 to 20 years of service to the City.
2. $160 for 20 or more years of service to the City.

# SECTION 500

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# LEAVE AND HOLIDAYS

## SECTION 500 LEAVE, ATTENDANCE AND HOLIDAYS

501. LEAVE DEFINITIONS. An employee benefit made available by the City of Las Cruces for eligible employees. Each eligible employee must submit a written request in advance of the time he/she elects to be absent from regular duties. Exceptions may be made in cases of illness, accident, or emergency. Written requests for leave do not guarantee that the request will be approved. Supervision shall consider each request on a case-by-case basis. Approval shall be considered in terms of workload, staffing levels, availability of personnel, timeliness and other job-related factors.

502. REST PERIODS. Subject to work schedules and service delivery needs, full-time, non-exempt, unrepresented, non-public safety employees may be allowed a rest period of up to fifteen (15) minutes in each half of the work shift. Rest periods can not be accumulated from day to day and can not be used in conjunction with other paid time off, starting and quitting times, or the lunch period. Rest periods need to be strictly scheduled and are subject to cancellation and interruption by the supervisors, customers or service delivery needs. Rest periods shall be taken at their original time and can not be rescheduled due to interruptions or cancellations. These rest periods are to provide employees time away from their duties to return personal calls, check cell phone messages, smoke or to attend to other personal needs.

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.

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).

## 504. LEAVE AND PAY DEDUCTIONS FOR EXEMPT EMPLOYEES

1. FLSA Leave for Exempt Employees

   A. Pursuant to principles of public accountability, for employees who accrue annual leave, personal leave and sick leave, exempt employees shall receive deductions from their leave balance for any annual, sick or personal leave taken, whether or not the leave is for less than one full work day.

   B. Exempt employees shall adhere to the same procedures followed by non-exempt employees governing requests and documentation of all leave.

2. FLSA Pay Deductions for Exempt Employee

   A. The FLSA allows for the following pay deductions for exempt employees:
      1) For penalties imposed for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees.
      2) For unpaid disciplinary suspension of one or more full days for infractions of serious work place conduct rules including discrimination, harassment, violence or violation of law.
      3) For Leave Without Pay while using FMLA for a qualifying event.
      4) For partial work weeks during the initial or terminal week of employment. In these allowable situations, the city will pay a proportionate part of the employee's full salary for any time actually worked based on the hourly equivalent of the employee's full salary.

5) For absences for personal reasons or illness or injury when leave is not used by the employee because:

a) Permission for use of accrued leave has not been sought or has been sought and denied;

b) Accrued leave has been exhausted; or

c) The employee chooses to use leave without pay

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 |
|---|---|---|
| During 1st Year | 56 hrs/yr (7 days) | 56 hrs/yr |
| 2nd and 3rd 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 this policy can be made under extraordinary circumstances upon recommendation of the Department Director and approved by the City Manager.

506. ANNUAL LEAVE MAXIMUM ACCRUAL ALLOWANCE.

1. No more than 240 hours (30 days) of Annual Leave shall be carried forward from one calendar year to a subsequent calendar year (336 hours, for 56-hour non-union fire service personnel). All unused accrued Annual Leave in excess of

these hours shall be forfeited at the beginning of the first full payroll of each calendar year,

2. When an employee terminates for any reason, he/she shall be paid for all earned Annual Leave up to 240 hours (30 days) plus accrued Annual Leave for the current calendar year unused by date of termination.

3. Employees who voluntarily retire and begin receiving a P.E.R.A. pension, will be paid for all accrued Annual Leave even if in excess of 240 hours, but not to exceed the aggregate of 30 days plus Annual Leave accrued but not used since the beginning of the calendar year (336 hours for 56 hour non-union fire service employees).

4. Exceptions to this policy 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. 11.25 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 17, 2009. This leave will be forfeited if unused by June 27, 2010.

508. SICK LEAVE.

1. Sick Leave is an employee benefit provided by the City which provides time off from regular duty, with pay when an employee is unable to work due to illness,

for an FMLA qualifying event, or for an illness in the immediate family. Immediate family shall be defined as spouse, minor child or stepchild (dependant), an individual for which the employee is a court appointed legal guardian, or domestic partner and their minor children. Employees using sick leave accruals shall submit a Leave Request Form prior to or immediately upon return to work. A supervisor may verify use of sick leave by requesting a physician's statement confirming the illness.

2. Sick Leave shall "accrue" to regular and probationary full-time employees, based on eligible hours worked, to regular and probationary part-time employees from date of regular appointment as follows:

   A. 96 hrs (12 days) for employees who work 40 hrs/week.

   B. 135.2 hrs (16.9 days) for non-union fire service employees who work 56 hrs/week.

3. Sick 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, not to exceed the amounts as stated in 508.2.

4. Abuse of Sick Leave may result in disciplinary action up to and including termination. Sick Leave abuse is defined as charging Sick Leave for work absences when not sick, except for an FMLA qualifying event or use of sick leave for doctor appointments. Any of the following conditions may indicate a need to review sick leave use:

   A. Patterns of use; e.g., after pay day, using the same day of the week repeatedly, the day before or after holidays, Annual Leave or weekends; or

   B. When attempting to contact an employee and finding the employee not home, reported or having been seen in an activity which belies the statement of illness, as well as other possible actions; or

   C. When a review of leave reveals that Sick Leave is being used at the same rate that it is being accrued.

5. Whenever an employee has been absent from duty because of an injury, or has been absent from duty for three (3) or more consecutive calendar days, the supervisor shall initiate the FMLA procedures.

6. All absences from the work station to visit a medical facility will be charged to available sick leave, annual leave, personal leave or accrued compensatory time balances and are to receive prior approval by the supervisor.

509. <u>SICK LEAVE MAXIMUM ACCUMULATION ALLOWANCE</u>.

1. No more than 1,560 hours (195 days) of Sick Leave shall be carried forward from one calendar year to a subsequent calendar year. The maximum for non-union fire department personnel working a 56 hour schedule shall be 2184 hours (91 shifts).

2. Employees who have accumulated Sick Leave in excess of 300 hours (37.5 days) may, at their option, sell back to the City any hours in excess of 300 hours (37.5 days) in accordance with the following provisions:

   A. Notification of intent to sell Sick Leave must be given to the employee's supervisor between November 1 thru November 15. Maximum Sick Leave that may be sold back to the City in any given year will be 240 hours (30 days). Maximum sell back for non-union fire service employees working a 56-hour schedule shall be 336 hours. Maximum sell back for employees retiring from City government shall be 836 hours (104.5 days)

   B. The rate of exchange for Sick Leave will be at a ratio of 3:1 and will be paid in accordance with the following schedule:

      1) Employees who elect to convert to Annual Leave: Sick leave converted to Annual Leave will be posted to employee's record at the beginning of the first full pay period of the following year.

      2) Employees who elect to receive payment for Sick Leave: An extra payment will be made in the first 15 days in December.

      EXAMPLE: An employee with accrued Sick Leave of 510 hours may sell 210 hours back to the City for 70 hours of Annual Leave or a payment to be computed as 70 hours at current hourly rate. In the case of payment, normal federal and state deductions will be withheld.

3. Voluntary Termination Provisions: Upon voluntary termination without prejudice, payments of unused Sick Leave in excess of 300 to a limit of 240 hours (336 hours for non-union fire employees working a 56 hour schedule) shall be made to employees in accordance with Section 509.2(A and B). No payment for Sick Leave shall be made to employees whose termination is involuntary or whose resignation is accepted with prejudice.

4. Retirement Provisions: Employees with ten or more years of service, who retire while on the active payroll, shall be paid for unused Sick Leave to a limit of 836 hours at a ratio of 2:1. Non-union fire service employees working a 56 hour schedule shall have a limit of 1170 hours. No payment for Sick Leave shall be made to employees whose resignation is accepted with prejudice.

5. Death Provisions: The beneficiary of an employee who dies while on active duty with ten or more years of service shall be paid for the deceased employee's unused Sick Leave at the retirement rate.

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. 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. 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. 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. 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. 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 be withdrawn in increments of 80 hours per pay period 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), 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.

511. BEREAVEMENT LEAVE. Employees may take up to three days paid Bereavement Leave (48 hours (2 shifts) for non-union firefighters working a 56 hour schedule) for a death in the immediate family. For the purpose of this Section, immediate family shall include: Parents, stepparents, spouse, children, stepchildren, siblings, step-siblings, grandparents, legal guardian or domestic partner or eligible dependent.

1. Payment for Bereavement Leave shall be computed at the bereaved employee's regular base rate.

2. Employees shall be granted one day paid Bereavement Leave for a death of their mother-in-law, father-in-law, aunt, uncle, grandparents-in-law, and grandchildren or mother or father of a qualifying domestic partner,

3. One additional Bereavement Leave day shall be allowed if the funeral is being held at a location greater than 300 miles from the City of Las Cruces.

4. If requested by the supervisor, an employee must present reasonable proof of death, relationship, and/or attendance at the service.

512. MILITARY LEAVE.
It is the policy of the City of Las Cruces to grant military leave of absence as required by state and federal law and to provide certain benefits to employees granted such leave. There are two types of military leave(s).

1. Definitions:

A. Persons Covered: USERRA covers a person, who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform "service" in a "uniformed service" and who separates from military service under "Honorable" conditions.

B. Service: The performance of duty on a voluntary or involuntary basis and includes the following:
Active duty;
Active duty for training;
Inactive duty for training;
Inactive duty training;
Full-time National Guard duty; and
Absence to take a fitness examination.

C. Uniformed Services:
- The armed forces – Army, Navy, Marine Corps, Air Force, Coast Guard

(including their respective reserve branches);

- The Army and Air National Guard;
- The commissioned Corps of the Public Health Service; and
- Any other category designated by the President in time of war or emergency.

2. Military/Reserve Training

A. Active Duty/Active Duty for Training – for persons who are members, or become members, of the United States Armed Forces Reserve Units, National Guard or Naval Militia, and are on federally funded military duty. During a military service training leave (not to exceed a total of one hundred and sixty (160) hours in any federal fiscal year, unless otherwise approved by the City Manager for extenuating circumstances), employees will continue to receive their regular pay from the City, provided the reservist gives advance notice to the City that they will be absent from their position of employment to perform active duty or active duty training.

Procedure:

1) All employees ordered to active duty must present their orders, or other official military documentation validating military leave requirement, to supervision no later than three (3) days after orders were received. Upon receipt of such documentation from the employee, the supervisor will forward a copy to Human Resources for inclusion in the personnel folder and attach a copy to the leave request form for Payroll.

2) All employees, including, seasonal, temporary or provisional employees and those on probation status, shall be compensated at the base rate for all hours usually worked up to 160 hours of annual active duty or active duty training based on the federal fiscal year of October 1 through September 30.

3) The City may replace employees ordered to active duty or active duty training with other persons provided the employee is hired with full knowledge and understanding that the veteran returning from active duty has a right to his/her previous position with the City and the replacement worker will be separated.

4) Military leave is a special paid leave benefit and is not charged against the accumulated annual or sick leave balance, unless additional military duty is needed. Military leave in excess of one hundred and sixty (160) hours per year may be charged to annual, or leave without pay (excused) at the employee's option.

B. Inactive Duty Training
Military reservists and guards persons shall be allowed to attend Inactive Duty Training (IDT), however the City is not obligated to provide compensation for the period of IDT.

3. Military Service Leave for Tour of Duty – Applicable to any employee who enters active duty or is called to active duty.

   The City will grant an authorized absence to employees who elect or are required to perform service in uniformed services, to the full extent required by the Uniformed Services Employment and Reemployment Rights Act (USERRA). An individual employee's service limitation, available benefits, and reemployment rights will be determined in accordance with applicable provisions of this law.

4. Notice Requirements:
   All employees being called to military service must provide the City with advanced notice either written or orally. Unless otherwise impossible or unreasonable, an employee who fails to give notice prior to military service will not be afforded the protections offered by USERRA.

5. Health Insurance:
   The City will provide continuation of existing health care benefits for a period of thirty (30) days to provide transition to military coverage. The veteran is then allowed to elect to continue health insurance during times of service for a maximum period of eighteen months beginning on the date in which the employee's absence begins; or the day after the date on which the employee fails to apply for or return to employment. An employee electing to continue health plan coverage under USERRA shall be required to pay up to 102% of the full premium paid by the other employees, except that an employee who performs military service for less than thirty-one (31) days may not be required to pay more than the employee's share for such coverage.

6. Duration of Rights:
   The accumulated length of a person's absence from employment may not exceed five (5) years. Each time an employee is absent due to military service, the time the employee is absent will be counted against the five-year limit.

   Certain categories of service are exempt from the five-year limitation and include:
   - Service required beyond five years to complete an initial period of obligated service;
   - Service from which a person through no fault of the person, is unable to obtain a release within the five-year limit;
   - Required training for reservist and national guard members (the fourteen or fifteen days of full time duty for training each year and the one weekend per month);
   - Service under an involuntary order to, or to be retained on, active duty during a domestic emergency or national security-related situation;
   - Service under an order to, or to remain on, active duty during a war, a national emergency declared by the president or Congress;
   - Active duty in support of an "operational mission" for which selected reservists have been ordered to active duty without their consent;
   - Service by persons who are ordered to active duty in support of a "critical mission or requirement"; and
   - Federal service by members of the National Guard called into action by

the President to suppress an insurrection, propel and invasion, or to execute the laws of the United States.

7. Returning to Work: Depending on the duration of the veteran's military service, USERRA grants windows during which a veteran released from active duty must return to work.

   A. Service Less than Thirty-One Days:
   A veteran serving less than thirty-one (31) days must report to work by the beginning of the first regularly-scheduled day that would fall eight hours after the veteran return home from military leave. If timely reporting back to work would be impossible or unreasonable, through no fault of the veteran, the veteran must report back to work as soon as possible.

   B. Absence for Fitness-for-Service Examination: For veterans who are absent to take a fitness test, the veteran must report to his/her employer by the beginning of the first regularly-scheduled work day that would fall eight hours after the veteran returns home.

   C. Service from Thirty-One to One Hundred Eighty Days:
   For veterans absent from employment for thirty-one (31) to one hundred and eighty (180) days, an application for reemployment must be submitted either orally or in writing no later than fourteen (14) days after completion of the veteran's service. If timely submission of an application is impossible or unreasonable, through no fault of the veteran, the veteran must submit the application as soon as possible.

   D. Service of One Hundred Eighty-One or More Days:
   For veterans serving for one hundred and eight-one (181) or more days, an application for reemployment must be submitted either orally or in writing, no later than ninety (90) days after completion of service.

   E. Extension of Deadlines:
   For veterans who are hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, the reporting or application deadlines are extended for up to two years. A veteran who does not timely report or submit an application for reemployment becomes subject to the employer's rules governing un-excused absences.

8. Documentation:
   The City has the right to request documentation showing that a veteran is eligible for reemployment if that veteran has been absent for a period of service of thirty-one (31) days or more. The City is entitled to documentation showing the following:

   A. The veteran's application for reemployment is timely;

   B. The veteran has not exceeded the five-year service limitation; and

C. The veteran's separation from service is under honorable conditions.

9. Undue Hardship:
The City is not required to reemploy a veteran if the City's circumstances have so changed to make such reemployment impossible or unreasonable. Undue hardship is defined as:
   A. Where reinstatement would require creation of a useless job or where there has been a reduction in workforce that reasonably would have included the veteran.

   B. When the veteran is not qualified for a position due to disability or another bona-fide reason after reasonable efforts have been undertaken to qualify the person.

10. Re-employment:
A regular full-time employee who has completed his or her initial employment period and who enlists, is drafted, or is called to active duty, and who is granted a military leave shall:

   A. When he/she returns from active service to the City, they will be added to the City's health plan on their return date without additional probationary period or delays on pre-existing conditions.

   B. Receive retirement service credit as though continuously employed by the City as per rules and regulation of the Public Employees Retirement Association of New Mexico (PERA).

   C. Be credited with continues accumulation of seniority for up to four years while on active duty.

   D. Be reinstated to the same job or one of similar seniority, status and pay (even if that means bumping or otherwise removing the employee's replacement). If the employee has; a) received an honorable discharge or satisfactory completion certificate; b) sought reemployment with the City within thirty-one days of discharge if the employee's tour of duty was less than twelve weeks or within ninety days if the tour of duty was longer than twelve weeks.

   E. Be placed in a position of similar status, pay, and seniority for which the returning employee is qualified if he/she is no longer qualified for the position held prior to active duty because of a disability sustained while in the military unless the City's circumstances have so changed as to make it impossible or unreasonable to do so.

513. JURY DUTY OR COURT LEAVE.

1. Jury Duty with regular pay is authorized only when the employee is required to involuntarily serve as a juror.

A. Jury Duty payment will be authorized only when the employee serves on a day which would have been a regularly scheduled workday. Payment shall not be authorized when employees serve on Jury Duty while on the inactive payroll, Annual Leave, or on days when he/she was not scheduled to work.

B. If excused by the court during a regular workday, employees are expected to return to work if serving within the City.

C. Upon returning from Jury Duty, the employee must present an attendance record, validated by the Court Clerk, to supervision. A copy of the summons, subpoena, or court order and the attendance record must accompany the employee's time sheet to the Payroll Department.

D. Any fees and allowances paid to an employee by the court (except reimbursement for travel and actual out-of-pocket expenses) may be retained only if the employee is on Leave without Pay or Annual Leave status. Otherwise, all fees received from the court (except for travel or out-of-pocket expenses) shall be remitted to the Finance Director.

2. Court Leave with regular pay is authorized when an employee is required to testify on behalf of the City government in a matter that came about as a result of his/her employment. This benefit is not authorized in matters in which the employee is a private litigant.

514. FAMILY AND MEDICAL LEAVE.

1. Policy: The City of Las Cruces will provide up to 12 weeks of job-protected leave to eligible employees for family and medical reasons consistent with the Family and Medical Leave Act (FMLA), relevant State law, and collective bargaining agreements and plans.

2. Definitions:

A. Rolling Calendar Year: The 12-month period is measured forward from the date any employee's first FMLA leave begins.

B. Employee is Needed to Care for a Family Member: When the employee is needed to provide physical or psychological care which includes situations where:

1) Because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, nutritional or safety needs; or is unable to transport himself or herself to the doctor.

2) The employee is needed to provide psychological comfort and reassurance that would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

3) The employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as

transfer to a nursing home.

C. Health Care Provider:

1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices.

2) Others capable of providing health care services including only:

a) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in the State.

b) Nurse practitioners and nurse-midwives who are authorized to practice under State law.

c) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

d) Clinical Social Worker.

e) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

D. Incable of Self-Care: Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (ADLs).

E. Loco Parentis: Persons who are in loco parentis include those with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

F. Parents: A biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parent in law.

G. Physical or Mental Disability: A physical or mental impairment that substantially limits one or more of the major life activities of an individual.

H. Serious Health Condition: For purposes of the FMLA, serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

1) Inpatient care, i.e., an overnight stay in a hospital, hospice, or residential care facility, including any period of incapacity or any subsequent

treatment in connection with such inpatient care; or

2) Continuing treatment by a health care provider that involves:

   a) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom) of more than three consecutive calendar days; and

   b) Any subsequent treatment or period of incapacity relating to the same condition, that also involves:

   c) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under order or, on referral by, a health care provider; or

   d) One treatment session by a physician which results in a regimen of continuing treatment by a health care provider, or at least under the supervision of the health care provider; or

3) Pregnancy. Any period of incapacity due to pregnancy, or for prenatal care. This absence qualifies for FMLA leave even though the employee does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days; or

4) Chronic serious health condition. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. This absence qualifies for FMLA leave even though the employee or immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days.

5) Chronic serious health condition is defined as one which:

   a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and

   b) Continues over an extended period of time; and

   c) May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.) or

6) Permanent or long term condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g. Alzheimer's, severe stroke, or at the terminal stages of a disease); or

7) Multiple treatments by a health care provider or a provider of health care services under order of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention such as cancer (radiation, chemotherapy, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

I. Son or Daughter: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

J. Spouse: A spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized.

K. Domestic Partner: 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.

L. Unable to Perform the Functions of the Position of the Employee: Where the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

M. Exigent Circumstances: allowing family members to help assist when a spouse, son, daughter, or parent is on "active duty or call to active duty" status or just returning from active duty.

3. Eligibility, Qualifying Reasons for Leave

A. Employee Eligibility:

1. The employee must have worked for the City of Las Cruces for at least one year; and

2. The employee must have worked at least 1,250 hours during the 12 months immediately preceding the request. The Fair Labor Standards Act requires employers to count hours of work only, not paid hours such as vacation, holidays, sick pay, unpaid leave of any kind, or period of layoff.

B. Reasons for Taking a Qualifying Leave:

1) For the birth of the employee's child, and to care for such child.

2) For the placement of a child for adoption or foster care.

3) Circumstances may require that leave for the birth of a child, or for placement for adoption or foster care, be taken prior to the actual birth or placement.

4) To care for the employee's seriously ill spouse, son or daughter, or parent or the qualifying domestic partner.

5) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of an employee's job.

6) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

7) Care for a covered servicemember.

4. Types of Leave

Based on a "rolling calendar year", the City of Las Cruces will provide up to 12 weeks of job-protected leave to eligible employees.

A. Full 12-Week Leave. This leave is taken in one block of 12 weeks due to a single qualifying event.

B. Intermittent Leave. This is leave taken in separate blocks of time due to a single qualifying reason. Leave may be taken for an hour or more to several weeks.

C. Reduced Leave Schedule. This is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

5. Qualifying Exigency Leave

A. Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on active duty or call to active duty status for one or more of the following qualifying exigencies:
   1) Short-notice deployment.
      a) To address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment;

b) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;

2) Military events and related activities.
   a) To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member; and
   b) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
3) Childcare and school activities.
   a) To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;
   b) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the active duty or call to active duty status of a covered military member for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;
   c) To enroll in or transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, when enrollment or transfer is necessitated by the active duty or call to active duty status of a covered military member; and
   d) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of a covered military member;
4) Financial and legal arrangements.

a) To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

b) To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for a period of 90 days following the termination of the covered military member's active duty status;

5) Counseling. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;

6) Rest and recuperation.

a) To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;

b) Eligible employees may take up to five days of leave for each instance of rest and recuperation;

7) Post-deployment activities.

a) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status; and

b) To address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;

8) Additional activities. To address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

6. <u>Care for a covered servicemember</u>

A. Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical

treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

(1) A "serious injury or illness" means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

(2) "Outpatient status," with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(3) In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(4) A "son or daughter of a covered servicemember" means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(5) A "parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

(6) The "next of kin of a covered servicemember" is the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority:

a) Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;

b) Brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA;

c) When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

d) When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has

not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin;

e) Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin;

f) The City may require an employee to provide confirmation of covered family relationship to the covered servicemember.

B. An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a "single 12-month period."

(1) The "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any "single 12-month period.

(3) An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness.

(4) When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the "single 12-month periods" corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each "single 12-month period."

(5) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period" provided that the employee is entitled to no more than 12 weeks of leave for one or more of the following:

a) because of the birth of a son or daughter of the employee and in order to care for such son or daughter;

b) because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition;

c) because of the employee's own serious health condition; or

d) because of a qualifying exigency.

Thus, for example, an eligible employee may, during the "single 12-month period," take 16 weeks of FMLA leave to care for a covered servicemember and 10 weeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the "single 12-month period," even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered servicemember.

(6) A husband and wife, employed by the City, and who are eligible for FMLA leave may be limited to a combined total of 26 workweeks of leave during the "single 12-month period" if the leave is taken for:

a) The birth of the employee's son or daughter or to care for the child after birth;

b) For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement;

c) To care for the employee's parent with a serious health condition; or

d) To care for a covered servicemember with a serious injury or illness.

7. Transfer of Employee to an Alternative Position
If an employee needs intermittent leave or leave on a reduced leave schedule, the City of Las Cruces may require the employee to transfer temporarily, to an available alternative position for which the employee is qualified and which better accommodates recurring period of leave than does the employee's regular position.

8. Substitution of Paid Leave for FMLA Leave
The City of Las Cruces requires an employee to substitute paid leave for FMLA leave. Therefore, FMLA leave runs concurrently with any accrued paid leave such as annual leave or sick leave and with workers' compensation at a rate not less than 40 hours per pay period. Employees are not required to use any accrued sick leave when the FMLA qualifying event is for the serious health condition of a family member, or for paternity leave. Once accrued paid leave is exhausted, the employee, whether exempt or non-exempt, shall be placed on Leave Without Pay. An exempt employee who has exhausted accrued paid leave who is taking intermittent FMLA leave shall be paid a proportionate part of the full salary for time actually worked.

9. Medical/Exigency Certification

A. Where FMLA qualifying leave is foreseeable and 30 days notice has been provided, an employee must provide the required certification before leave begins.

B. Where FMLA qualifying leave is not foreseeable, an employee must provide notice to the employer of the need for leave as soon as practicable (1 or 2 working days is expected except in extraordinary circumstances). The employee

must then provide required certification within 15 working days.

C. The City of Las Cruces may require medical certification to support a FMLA qualifying leave request either to care for an employee's seriously ill family member, or for leave due to a serious health condition that makes the employee unable to perform the functions of his or her job.

D. Employees returning from FMLA leave for a qualifying event related to personal illness or injury must provide a medical release to return to work to the Human Resources Director prior to their return when practicable.

E. Employees qualifying for FMLA leave are required to provide medical updates to the Human Resources Director every 30 working days, or as needed and requested.

10. Designating Leave

A. The City of Las Cruces may make a preliminary designation of leave as FMLA qualifying if medical certification was not provided prior to the beginning of leave, or if the City is waiting for a second or third medical opinion.

B. Where the City of Las Cruces has knowledge that an employee's leave qualifies as FMLA leave and does not designate the leave as such, the City may not designate leave retroactively as FMLA leave unless:

1) The employee has been out of work and the employer does not learn of the reason for the leave until after the employee returns (in which case the City must designate the leave upon the employee's return to work); or

2) The City has provisionally designated leave as FMLA leave and awaits receipt of a medical certification or other reasonable documentation.

C. If the employee gives notice of the reason of the leave later than two days after returning to work, the employee is not entitled to the protections of the FMLA.

11. Job Benefits and Protection

A. During an FMLA qualifying leave, the employee and dependent health and dental insurance is maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.

B. An eligible employee returning from a FMLA qualifying leave is entitled to be restored to the same position and shift that the employee held when the FMLA qualifying leave began, or to an equivalent position and shift with equivalent benefits, pay and other terms and conditions of employment.

C. Provided the employee returns to work immediately following his/her FMLA qualifying leave, benefits must be resumed upon the employee's return to work

at the same level as were provided when leave began. Any new or additional coverage or changes in health benefits must be made available to an employee while on FMLA qualifying leave.

12. Procedures and Responsibilities

A. Employee Requests
Employees must request FMLA leave 30 days in advance or as soon a practicable by completing the FMLA Leave Request Form and submitting it to their immediate supervisor. The form is then routed to the Human Resources Department within two (2) days of its receipt. If the employee is unable to complete the form, due to circumstances relating to a serious health condition, the form may be initiated by supervisory staff.

The employee must ensure that the Certification of Physician or Practitioner is completed immediately and submitted to the Human Resources Department.

B. Employer Initiation
The supervisor will notify Human Resources when an employee has been absent 3 consecutive calendar days (2 shifts for fire personnel working 53 or 56 hour shifts), at which time the Human Resources Department will make a preliminary designation of leave as FMLA qualifying if medical certification was not provided prior to the beginning of leave.

C. In either an employee initiated or employer designated FMLA leave, the Human Resources Department shall provide the employee with the following:

1) Notice describing the employee's obligations and explaining the consequence of a failure to meet the obligations.

2) Notice that the leave will be counted against the employee's twelve weeks of FMLA leave.

3) Medical certification requirements.

4) Employee's right to use paid leave and the employer's requirement of substitution of paid leave.

5) Requirements concerning payment of health insurance premiums.

6) The employee's potential liability for payment of health insurance premiums paid by the employer during FMLA leave if the employee fails to return to work for at least thirty (30) calendar days after taking the leave.

7) Requirements of a fitness-for-duty certificate for the employee to be restored to employment.

8) The employee's rights to restoration to the same or an equivalent job upon return from FMLA leave.

9) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally

anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations the employee shall provide two (2) two business days written notice of the changed circumstances to the Human Resources Department, where foreseeable.

13. Appeal Process
If an employee believes that his/her rights under the FMLA have been violated, he/she may:
A. Internal
1) Contact the Human Resources Department

B. External
1) File or have another person file on his/her behalf, a complaint with the Secretary of Labor. The complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The complaint may be filed at any local office of the Wage and Hour Division; the address may be found in the telephone directory.
2) A complaint filed with the Secretary of Labor should be filed within a reasonable time after the employee discovers that his/her FMLA rights may have been violated, but in no event more than two (2) years from the date the alleged violation occurred, or within three (3) years in the case of an alleged willful violation.
3) File a private lawsuit pursuant to Section 107 of the FMLA.

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.

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.

517. HOLIDAYS.

1. Regular full-time, regular part-time, and probationary employees regularly scheduled to work, or working non-traditional shifts, will receive up to eight (8) hours of prorated holiday pay for eleven (11) regularly scheduled holidays as determined by the City Council.

2. Personnel required to work on a holiday shall be compensated in accordance with Section 518 of this Manual of Personnel Policies.

518. HOLIDAY PAY PROCEDURE.

1. If a paid holiday occurs while an employee is away on annual leave, the employee's supervisor will account for that day as a holiday on the employee's time sheet. Annual Leave may be combined with a holiday to the advantage of an employee, so long as prior approval by the supervisor is given.

2. If a holiday occurs on a day when an employee is not at work due to illness, that day should not be deducted from the employee's sick leave accrual, but will be charged as a holiday.

3. If an employee is sick the day before or the day after a paid holiday, a physician's written release to return to work may be required. An illness which occurs the day before or the day after a paid holiday may be investigated.

4. A non-exempt employee required to be on duty during a paid holiday shall be awarded another paid day away from work during the pay period.

5. If another day off with pay within the pay period is not possible, the non-exempt employee shall receive up to eight (8) hours of prorated holiday pay (computed at the hourly rate), plus one and one half (1-1/2) times their hourly rate for all time worked on that holiday.

6. Employees must be on paid status the day before and after the holiday to be eligible for holiday pay.

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

1. All 40 hour non-union fire service employees, whether on duty or not, shall be eligible to receive 8 hours holiday pay.

520. GOVERNMENTAL/PROFESSIONAL LEAVE.

Employees, who are members of governmental or professional organizations related to their City employment, are eligible to attend meetings during working hours and charge such leave as time worked when such meetings are held in Las Cruces. If such meetings are conducted outside the Las Cruces area, employees shall follow the City's Travel Policy.

Participation is contingent upon supervisor approval and shall not interfere with the proper execution of employees work related duties.

521. VOTING LEAVE.

All City employees who are registered to vote in primary, general and municipal elections will be allowed up to two hours off from work to vote, when applicable. Employees requesting time off to vote must be registered voters, living within the eligible voting area, and must make a formal request to their supervisor two days prior to Election Day, for absence from their duties during working hours, so as not to adversely impact City operations.

522. SEARCH AND RESCUE LEAVE

Employees who participate on Search and Rescue Teams recognized by the New Mexico State Police will be granted leave with pay for the time the employee is engaged in the State Police Certified search and rescue mission.

Before the employee will be granted any paid leave time for participation in a search and rescue mission, s/he must obtain written permission from the City Manager. A copy of the memo granting the leave will be placed in the employee's personnel folder and a copy sent to the Payroll Section.

Regular, full-time employee will be granted leave as follows:

1. If a mission is during work hours, the employee will be granted leave with pay for the time spent on the mission, including travel time to and from the location of the search.

2. If the mission is longer than four (4) hours and is at night prior to a work day, the employee will be granted eight (8) hours of paid leave to compensate for loss of sleep.

Employee participating in search and rescue missions shall assure that their immediate supervisor is informed of the mission and the absence from the workforce. Such notification shall be given no later than one hour after that employee is scheduled to arrive at the work site. Should notification not be received, the employee will not be granted the leave.

Employees participating in search and rescue missions must furnish a written statement, signed and dated by the mission coordinator and/or State Police mission initiator, and include the actual hours and date of the mission. The justification will be signed by the supervisor and attached to the time sheet for the pay period during which the leave is authorized.

523. EXTENDED LEAVE.

Extended leave for up to a maximum of an additional 12 weeks beyond approved FMLA leave will be provided for eligible employees. Extended leave provisions are intended to provide "eligible" full-time regular and part-time regular employees who have a serious health condition that requires on-going medical care by a health care professional in excess of the FMLA period and are unable to return to work, a period of extended leave.

1. Definitions:
   A. "*Serious Health Condition*:" An illness, injury, impairment, physical or mental condition that involves:
      1) Periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
      2) The health care provider has found the employee is unable to work at all, or is unable to perform any of the essential functions of the employee's position with or without reasonable accommodation.
   B. "Eligible:" Full-time regular and part-time regular employees who have completed their FMLA entitlement and have complied with the reporting requirements of the FMLA as outlined in the FMLA Notification Letter and policy.
   C. "Extended Leave:" A maximum of an additional 12 weeks of leave. The extended leave period does not protect the employee's position.
   D. Type of Leave:" Leave taken in one block of time due to the serious health condition.
2. Procedure:
   A. At the end of the FMLA entitlement period, Human Resources will notify the employee in writing that:
      1) Their job protected leave is over;

2) They are being placed on Leave Without Pay status if they have no accrued leave balance; or Leave With Pay status for the balance of their accrued leave, not to exceed 12 weeks.

3) They are required to continue to provide 30-day medical updates to the Human Resources Director and a fitness-for-duty certification prior to returning to work in the future.

B. If operational needs require the position to be filled, the employee will be separated from employment without prejudice. In this situation, if the employee is able to return to work within the 12 weeks of extended leave the Human Resources Department will review vacant positions for which the employee is qualified.

C. If a vacant position is identified, the employee will be reassigned to that position at the pay scale for that position at their same percentile rank or the maximum of the new pay grade, whichever is lower for unrepresented employees and to the pay scale for the position at the average wages of all employees within that position with a similar length of service with the City for represented employees. The employee being reassigned shall complete any tests required of an applicant for that position to demonstrate qualifications prior to being reassigned.

524. Domestic Abuse Leave

1. Leave time, for up to one hundred and forty hours in any calendar year, taken by an employee to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member.

2. Definitions:

   A. Family member: a minor child of the employee or a person for whom the employee is a legal guardian;

   B. Order of protection: a court order granted pursuant to the Family Violence Protection Act;

   C. Retaliation: an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave.

3. Certification and Verification

   A. The employee shall provide the Human Resources Department one of the following forms of verification through furnishing in a timely fashion:

      (1) A police report indicating that the employee or a family member was a victim of domestic abuse;

      (2) A copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the

employee and the employee's advocate or attorney; or

(3) The written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse.

4. Procedures:

A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give verbal or written notice to the employer within twenty-four hours of commencing the domestic abuse leave.

B. Notice shall be given to the employee's supervisor, the Human Resources Director or the Employee Assistance Program (EAP) Coordinator.

C. Verbal notice shall be formalized in writing as soon as practicable.

D. Employees will indicate to either their supervisor or the Human Resources Department which hours are being used for domestic abuse leave.

E. The Human Resources Department will track and notify employees when they have exhausted domestic abuse leave.

F. An employee may use accrued sick leave, annual leave, personal leave, accrued compensatory time or unpaid leave time.

G. The City shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave.

H. The City shall not include time taken for domestic abuse leave in calculating eligibility for benefits.

I. The City shall not disclose and shall maintain confidentiality of the fact that the employee or employee's family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave.

J. An employer may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law.

# SECTION 600

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# EMPLOYEE WORK RULES & PROCEDURES

# SECTION 600 EMPLOYEE WORK RULES & PROCEDURES

601. CITY WORK RULES - PURPOSE.

The orderly and efficient operation of the City requires that certain work rules be established. Work rules covering personal standards of conduct as well as standard operating procedures are necessary to protect the health and safety of all employees, maintain uninterrupted service, and protect the City's goodwill and property.

602. IMPLEMENTATION.

The Human Resources Department shall be responsible for the overall administration of the work rules to include recommending revisions, deletions, or adoption of new rules. Human Resources shall also be responsible for advising supervision on proper implementation of work rules.

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 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.

603A. E-MAIL, INTERNET AND PC USE

1. ELECTRONIC MAIL POLICY

Employees provided with E-mail accounts shall regularly read and respond to e-mail in the same way they respond to telephone calls. Employees who do not have E-mail accounts can apply for them through their Department Director. At the request of a Department Director, the Information Technology Department will assign a City E-mail address to an employee. This address is for E-mail purposes only and will not provide the user with browser based capabilities on the Internet.

In general, E-mail correspondence should be short, concise and withstand the scrutiny of public disclosure.

2. All E-mail is subject to the public records laws and will be deleted by City ordinance.

A. Internal E-mail generated by Outlook within the City of Las Cruces shall be for work-related activity only. Union activity via the City's E-mail system is prohibited.
B. All E-mail messages are the property of the City.
C. Jokes, sent/forward even to other City employees, and the like are not considered City business.
D. Harassing or obscene messages are strictly prohibited and will result in discipline by supervisors.
E. Sending of E-mail computer-wide or City-wide by City employees is prohibited unless approved by the City Manager or designee.

F. With the exception of Information Technology Department personnel relaying computer operational announcements, all City-wide and computer-wide E-mail correspondence must be approved by the City Manager (or designee).

G. Employees with network E-mail access are responsible for reading electronic mail messages in a timely manner. When an individual, who either has a personal electronic mailbox or is responsible for accessing another's personal electronic mailbox is away from work for a day or longer for any reason, it is their responsibility to set up and auto reply notifying sender.

H. The use of graphics alone or as background or animations, emoticons and highly stylized fonts are prohibited as it adds load to the system and can make them hard to read.

3. Monitoring of Electronic Mail

All electronic mail messages are the property of the City of Las Cruces. As a matter of general policy, the City will not read electronic mail messages. However, the City reserves the right to access messages under the following circumstances or when determined by the City Manager:

A. When necessary to investigate a possible violation of City policy;

B. When reasonable suspicion exists that a user has committed or is committing a crime; or

C. When internal or external investigations are requested by the City Manager; and

D. When necessary to support the City's need for supervision, control and efficiency in the workplace.

General computer monitoring is performed by the Internal Audit office. All City computers are monitored for excessive personal usage and inappropriate content. Computer monitoring may be performed by the Internal Audit Office at a more detailed level under the circumstances noted above.

When an employee ends employment with the City, the Human Resources Department shall notify the Information Technology Department immediately to ensure that the list of Internet users is kept up to date. The users' mail is accessed for the purpose of ensuring compliance with the public records law.

4. INTERNET POLICY

This policy is to ensure that privacy, security and legal issues concerning Internet access and use are addressed, and that guidelines are established to ensure proper use of this tool by City employees.

A. Requesting Internet Access

The Information Technology Department will grant an employee Internet browsing access at the request of the respective Department Director. Each user will sign the Computer Usage Form acknowledging the following:

1) The employee will follow the established Internet policies;
2) exchanges that occur in the course of conducting City business on the Internet will be considered a communication of the City and held to the same standards as formal letters; and
3) the Internal Audit Office has the responsibility to monitor the Internet activity.

B. Acceptable Use

The use of any City-provided publicly accessible computer network such as the Internet is a privilege. Unauthorized use of the Internet will result in the loss of access for the user and may result in disciplinary action, up to and including termination.

City employees have an obligation to use their Internet access in a responsible and informed way, conforming to network etiquette, customs and courtesies, and representing the City in a positive manner.

1) Performance of job responsibilities

During working hours, employees shall use the Internet for business and work-related communication only. Users may use internet access during lunch periods and after normal working hours for personal use providing such use does not violate the Prohibited Use portion of this policy.

Examples of job related responsibilities include: accessing external databases, searching online public access information, disseminating documents to individuals or groups, participating in electronic mail discussion groups on job related topics, and gaining access to software user support information utilized in City job.

2) Professional Development

The Internet may be used to maintain professional and career development activities.

Examples of appropriate use include: communicating with members of work-related professional organizations, collaborating on articles and other writing, reviewing information on professional or career development topics.

C. Rules for Use of the Internet

Messages transferred via the Internet are public information. If you desire to transmit confidential communications or sensitive information, do not use the Internet.

Material which is statutorily exempt from New Mexico State Statutes, shall NOT be entered on the Internet (i.e., home addresses, phone numbers, social security numbers, or other personal information for police officers or code enforcement officers).

Users are responsible and accountable for communications on the Internet and shall treat the Internet as a formal communications tool similar to the telephone or any written communications.

Computer network facilities outside the City may have their own policies governing the use of those resources. When accessing remote computers through City facilities, users are responsible for obeying both the policies set forth in this document and the policies of other organizations.

Computers shall not be left unattended in a state for long periods of time, which affords inappropriate access to City records, or otherwise compromises system security. All computers shall be shut-down and turned off at the end of the work day.

D. Anonymity on the Internet
The City's Domain Name Server is traceable to the City. Users using City-provided Internet accounts should not assume they are provided any degree of anonymity. Outside users who want to identify machines associated with the City can do so easily.

E. Downloading of Files
It will be prohibited to download from the internet including but not limited to such programs as Hotbar and Weatherbug, these programs install Spyware on the computer. Any form of music file is also prohibited because unless authorized by Information Technology, these files pose the risk of copyright infringements and use of resources.

Acceptable downloads are work-related documents used in performance of work duties.

F. Streaming Audio
The use of Streaming Audio uses valuable band width and may not be used for entertainment eg. Radio stations or other music services. It is however, permitted to use these services for official use such as training, conferencing, and listening to City Council meetings as approved by management.

G. Prohibited Use
Prohibited use of the Internet and Intranet includes, but is not limited to, the following:

1) Use of the Internet for profit-making activities is strictly prohibited;
2) Employees shall not use these services or resources to slander, defame, harass, discriminate or sexually offend others;
3) Employees shall not use Internet nor e-mail services to conduct non-city commercial activity;
4) Employees shall not use the Internet nor e-mail service to conduct other inappropriate activities, including but not limited to:
   a) Unlawful or malicious activities; or abusive or objectionable language;
   b) Misrepresentation of the City;
   c) Activities such as sending frivolous or non-city work related group messages, chain e-mails, jokes or participating in chat rooms;

d) Use of the Internet to access obscene, pornographic and X-rated materials, or using such computers for gambling, or entering contest;

e) Use of the Internet or e-mail for communications that contain ethnic slurs, racial epithets, or anything that may be construed as harassment or disparagement of others based on race, national origin, sex, sexual orientation, age, disability or religious beliefs;

f) Using systems to transmit or receive sexually explicit or otherwise offensive images, messages or cartoons;

- Threats;
- Political endorsements;
- Sending copies of documents in violation of copyright laws;
- Sending e-mail that appears to have come from someone else;
- Subscribing to automatic electronic mailings; other than professional organization that are City business;
- Posting on electronic bulletin boards material that violates existing laws or the City of Las Cruces Work Rules.

g) Attempting to monitor or tamper with another user's electronic communications, or reading, copying, changing, or deleting another user's files or software without the explicit agreement of the owner. Files owned by individual users are to be considered private property, whether or not they are accessible by other users;

h) Activities will not be considered misuse when authorized in writing by the City Manager for administrative purposes;

i) Programs and files are considered confidential unless they have explicitly been made available to other individuals. Information Technology Department and Internal Audit personnel may access files when necessary through the approval of Human Resources Department or the Department Director. While in accordance with the requirements of performing their assigned duties, if violations are discovered, they will be reported immediately to the director of that department and the Internal Audit Office; or

j) Downloading of software products from Internet sites is not permitted without the prior approval of the Information Technology Department.

Violations of these policies may result in disciplinary action, up to and including termination.

5. <u>PC POLICY</u>

A. During working hours, computer equipment is to be used only for the purpose for which it is assigned and is not to be used for non-governmental business unless approved by the Department Director.

B. During non-working hours, employees may use their City supplied computer equipment for personal, non-business, use as long as they comply with the other provisions of these policies.

C. The following conditions apply to all computer users of the City. Violations of any of the conditions are considered unethical and may be unlawful. An individual's computer use privileges may be suspended immediately upon the discovery of a possible violation of these policies and the individual may be subject to discipline, up to and including termination. Suspected violations will be reported by the Information Technology Department or the Internal Audit Office to the appropriate director or designee.

6. NEW APPLICATIONS:

Users shall not install any applications onto a City PC. Users can request that special applications be installed to the network by submitting a problem request located on the Intranet under Information Technology through their Department Director. The software media, installation documentation and proof of license must accompany the request. The Information Technology Department adheres to all applicable software copyright policies and will not install software without a license. All outside diskettes received from third parties must be checked by the Information Technology Department for viruses. If an employee has access to the Internet from home or other sources, transport of files to the City network is strictly prohibited unless the Information Technology Department has checked and approved the diskettes.

7. PROHIBITED USE:

Prohibited uses of the PC includes, but is not limited to, the following:

A. Using the City of Las Cruces Network to gain unauthorized access to any computer system;
B. Knowingly or carelessly running or installing on any computer system or network, or giving to another user, a program intended to damage or to place excessive load on a computer system or network. This includes, but is not limited to, programs known as computer viruses, Trojan Horses, and worms;
C. Attempting to circumvent data protection schemes or uncover security loopholes. This includes creating and/or running programs that are designed to identify security loopholes and/or decrypt intentionally secure data. This also includes programs contained within a login, or under the ownership of a user that are designed or associated with security cracking;
D. Storing large files on the system which could compromise system integrity or preclude other users right of access to disk storage;
E. Masking the identity of a user or machine. This includes, but is not limited to, sending mail anonymously;
F. Using your login for any activity that is commercial in nature i.e. paid for by non-City of Las Cruces Funds. Commercial activities include, but are not limited to, consulting, typing services, and developing software for sale;
G. COMPUTER USERS AGREE TO RESPECT THE INTEGRITY OF THE SYSTEM. No one should deliberately attempt to degrade the performance of the computer.

H. Attempts to use other users ID's without authorization for other than the intended purpose.
I. Loopholes in computer security systems or knowledge of special passwords should not be used to damage computer systems, obtain extra resources, take resources from another user, gain access to systems or use systems which proper authorization has not been given.
J. Any attempt to overcome the security systems of the City of Las Cruces is strictly prohibited. Game playing is not allowed on the system during normal working hours.

8. Software Copyright Policies
Software copyright policies must be taken seriously. It is unlawful to copy software from third parties or provide unlicensed copies of software packages to other individuals. Computer users agree to the proprietary rights of all software. Computer software protected by copyright is not to be copies from, into or by using city computers, excepting as permitted by law or by contract with the owner of the copyright.

9. Hardware Policies
Users shall NOT attempt to change the configurations or setups for any City computers or workstations. This request is the sole responsibility of Information Technology Department personnel. Requests for changes can be made via electronic mail to Information Technology Department personnel or by submitting the request on a problem request form. The SCADA is exempted from this portion of the policy.

10. Backup of data
The default drive for your PC will be the mapped drive to the server. The network and MIS staff will do nightly backups of your data that resides on the server. You may make duplicate copies for your desktop. You may not change the default write settings of the PC unless permission has been given from Information Technology Department.

604. UNAUTHORIZED WORK TIME

Because of FLSA regulation, non-exempt employees are not to commence work prior to the scheduled starting time, work during their meal break, or work past the scheduled end of their shift without prior approval of their immediate supervisor.

FLSA non-exempt employees who work unauthorized overtime hours shall be counseled and if the practice continues, may be subject to disciplinary action.

605. PAYMENT FOR SERVICES RENDERED. No employee shall receive compensation for services not rendered to the City.

606. COLLECTION OF PAYMENTS. Employees who receive or collect payments for services are charged to ensure that the City receipts for those payments. No employee shall charge for services not rendered nor shall any employee convert payment for services to his/her own use.

607. ALTERATION OF RECORDS. Except to correct errors, employees are prohibited from changing any City record.

608. CONSTRAINT OF BUSINESS OPERATIONS. Employees have freedom of personal association. However, if such association results in unlawful constraint of City business by tactics such as work stoppage, work slow-down, or other such ploys, then affected employees may be subject to disciplinary action.

609. EXPECTATION OF LEGALITY. The municipal government can reasonably expect its employees to obey all City ordinances, state and federal laws. Employees who plead guilty or who are convicted for illegal activities shall be dealt with on a case by case basis and their employment status will be decided accordingly. Employees who are indicted or charged with criminal activity are presumed to be not guilty pending adjudication.

610. DISCIPLINARY ACTION. Employees who violate any of the work rules set forth may be subject to disciplinary action up to and including termination.

611. EMPLOYEE ETHICS POLICY
City employees may not use their positions for personal gain or to give unwarranted benefit or treatment to any person.

1. DEFINITIONS:

"*Benefit*" – Anything that furthers a person's financial interest or from which a person hopes to gain in any way.

"*Confidential Information*" – Information which by law or practice is not available to the public.

"*Financial Interest*" – Any property ownership, management, professional or private interest from which the employee (or family or household member) receives a financial benefit.

"*Official Position*" – An office or post of authority in the municipal government for which one has been hired.

"*Person*" – Any man or woman and is extended to include any firm, association, corporation or partnership.

2. Misuse of Official Position. City employees may not use their official position to:

A. Secure employment or obtain contracts from other organizations;

B. Accept pay from anyone other than the City for the performance of their official duties;

C. Take or withhold official action on a matter in which they have an outside personal or financial interest;

D. Use City time, equipment, property or facilities for personal and/or financial benefit; or

E. Coerce subordinates in any manner which will result in outside financial benefit to the supervisor.

3. Improper Gifts. City employees may not solicit or accept gifts of any value that benefit the employee's personal or financial interest if it can be reasonably inferred that the gift is intended to influence the employee's actions or judgment. Any gift with a value greater than fifty (50) dollars that is received by an employee whose action can affect the giver, must be reported to the employee's supervisor immediately. "Gift" includes: money, items of value, services, loans, travel, entertainment, hospitality and employment.

4. Improper Use or Disclosure of Information. No City employee may use or disclose any information gained from City employment if the use or disclosure could result in a financial or personal benefit to the employee (or to a family or household member), unless that information has already become public. No current employee may use or disclose confidential information acquired during employment.

5. Improper Influence in Grants, Contracts, Leases, or Loans. No City employee (or immediate family or household member) whose action or inaction can affect the award, administration of a City grant or contractor loan, may apply for, be a part to or have an interest in that City grant, contract or loan.

6. Improper Representation. No City employee may accept outside payment or financial benefit to represent, advise, or assist an individual in any matter being handled by the employee's administrative unit.

7. Outside Employment. No City employee may work outside of City employment if that work is incompatible or in conflict with the proper discharge of official duties. Every City employee must report and obtain prior approval from the City Manager or the City Manager's designee for any outside employment or services for which the employee is paid. Changes in paid outside employment or services must also be reported and approved by the City Manager of the City Manager's designee as they occur.

8. Conflicting Financial Interests. An employee who has substantial financial interests (or who acquires such financial interests) direct or indirect, or any corporation, firm, or person who contracts with the City will disclose that interest in writing to the City Manager.

9. Aiding a Violation of Employee Ethics Policy. Aiding another City employee to violate this policy is prohibited.

10. Conflict of Interest in General. City employees shall faithfully discharge their duties and shall refrain from engaging in any outside employment or matters of financial interest incompatible with the impartial, objective, and effective performance of their duties. They shall not realize personal gain in any form that would influence improperly the conduct of their City duties. They shall not knowingly use City funds, position or power for personal or political gain. They shall inform their supervisors in writing of reasonably foreseen potential conflicts.

11. Avoiding Appearance of Impropriety. City employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety, because appearances affect public confidence. Employees shall not engage in any activity, on or off the job, which reasonably brings into question their impartiality, objectivity, and effective

performance of their duties as City Employees.

12. PROCEDURE:

A. Notification of Potential Ethical Violations. When an employee is involved in a situation which may be in violation of the Employee Ethics Policy, the employee must not take official action related to that situation and must immediately disclose the matter in writing to the supervisor. The supervisor will provide a written determination of whether a violation exists or will exist. The supervisor may then reassign duties to avoid the violation, direct the removal by the employee of the conflicting personal or financial interest, ask the Ethics Policy Review Committee to evaluate the issue, or seek another solution. The notification form and supervisor response are then reviewed by the normal chain of command.

B. Complaints of Potential Ethical Violations.

1) Complaints about the ethical conduct of a current City employee will be filed with the City Manager's Office.

2) The City Manager will forward a copy of the complaint to the Ethics Policy Review Committee. The Ethics Policy Review Committee shall review the complaint and determine whether it warrants further investigation. If necessary, the Ethics Policy Review Committee shall investigate the complaint and report its findings and recommendations to the City Manager.

3) All complaints and investigations will be confidential to the extent allowed by law.

C. Ethics Policy Review Committee. The Ethics Policy Review Committee will consist of the Finance Director, the City Attorney and the Human Resources Director. The Committee will review in a timely manner questions of ethics violations that are forwarded by department personnel. The Ethics Policy Committee will review ethical questions on a case-by-case basis and provide recommendations that are consistent with the spirit of this Policy.

D. Discipline. Violation of this Policy will result in discipline up to and including termination. Employee discipline will be administered in accordance with the Manual of Personnel Policies and Procedures.

## 612. ACCIDENT/INJURY 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 an assignment in a different job classification, 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.

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 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, the supervisor shall be responsible to report to Risk Management.

   If the employee is removed from work by the treating physician, the Risk Management 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.

      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 shall contact the employee's Department Director, or a representative, and provide a report of all restrictions. The employee will 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 review the report while 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 prior to returning to the work site. The Workers' Compensation Coordinator will advise the Department Director of any changes in restrictions.

5) If no work is available consistent with the employee's restrictions, the employee shall be sent home.

6) The Workers' Compensation Coordinator shall maintain 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 prior to returning to the work site. The Human Resources Director 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) 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. 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. 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.

613. LOSS OF EMPLOYEE LICENSE OR CERTIFICATION OTHER THAN DRIVER'S LICENSE (For Loss of Driver's License see Section 614)
These procedures apply to City of Las Cruces employees and departments in the event an employee loses a license, other than driver's license, or certification that is job related.

PROCEDURES:

1. It is the responsibility of the Employee to maintain and renew all job required licensure, certificate or other required credential.

2. Employee's holding job-related licenses or certifications shall report suspension or revocation or non-renewal of their license or certification to their immediate supervisor prior to starting the next work shift. Failure to comply with these reporting requirements will result in processing for immediate termination.

3. If the license or certification is a requirement of the job, the employee's supervisor or section administrator/manager 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. 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 leave he/she may opt to use it, otherwise, he/she will be placed on leave without pay (LWOP) status.

4. If the license or certification is not required by the job, but the employee is being compensated for it, the supervisor or department director will issue a Personnel Action Notice (PAN) reducing the employee's pay by 5% until such time as the license or certification is restored.

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 or certification 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 the license or certification cannot be re-instated at the end or the ninety (90) day period, the employee will be terminated

614. LOSS OF EMPLOYEE'S DRIVER'S LICENSE

1. 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

   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 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 who has a status change in his/her driver's license for a period of more than ninety (90) days shall be terminated.

5. <u>EMPLOYEE RESPONSIBILITIES</u>:

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.

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. <u>HIRING PROCEDURES</u>

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 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 must be checked before an employee is promoted, transferred, or reassigned into a driving position. An employee who does not have a permissible driving history will not be placed into a driving position.

7. <u>DEFINITIONS</u>

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.

615. THREAT OF VIOLENCE IN THE WORKPLACE

1. POLICY:
The City of Las Cruces shall not tolerate any threat or act of violence within its work environment. The City shall enforce the level of discipline appropriate for any action of workplace threat of violence, harassment, intimidation or physical violence.

2. DEFINITIONS:

A. "*Harassment*" – Any behavior that creates a hostile work environment through unwelcome words, actions or physical contact.

B. "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.

C. "*Threat*" – Any expression of an intent to inflict harm. Any indication of impending danger or harm. Any signs or warnings of impending danger or harm.

D. "*Workplace Violence*" – hitting, shoving, pushing, kicking, and sexual assaults; this also includes verbal outbursts and can happen in the form of threats, harassment, abuse, bullying and intimidation.

E. "*Fitness For Duty Evaluation*" – A specialized assessment mandated by City of Las Cruces management, as a result of reasonable and documented concerns by the supervisors, of an employee's present ability to perform the duties of the job in a safe and conscientious manner.

3. PROCEDURES:
The following procedures do not take the place of appropriate disciplinary action, but are to work in conjunction with discipline if it is appropriate for the employee to return to the worksite.

A. The supervisor will inform his/her Department Director and the Human Resources Department of the events that have occurred. The Human Resources Department shall assist the respective Department Director in determining appropriate disciplinary action, and may enlist the intervention of the Employee Assistance Program.

B. Employees that may have been affected by the incident will be recommended to meet with the EAP to discuss the effects the incident has

had, as well as any residual emotional effects the incident may have in their work or personal situations.

C. If the incident does not result in termination of the employee(s), the supervisor, in accordance with the Fitness for Duty Policy, shall arrange for the employee (s) to undergo an evaluation to determine the employee's ability to perform their essential job functions without posing a direct threat to self or others before they are allowed to return to any worksite.

D. If it is determined that the employee may return to work, the Supervisor(s), Human Resources Department Representative, and Employee Assistance Program Coordinator will develop a plan under which the employee may continue to work. This plan will include all recommendations that have come as a result of the Fitness for Duty Evaluation. The employee will provide a signed commitment to continue with the established plan. Failure to sign and/or comply with the established plan will result in further disciplinary action, up to, and including termination of employment.

1) Appropriate disciplinary action, ranging from verbal reprimand up to, and including termination, shall be determined by the level of workplace violence that has occurred, and past history of violence that has occurred with the employee, the results of a Fitness for Duty Evaluation (if performed) and all other information deemed relevant by the City.

E. Threatening violence against another person is a violation of the law. It is the employee's option to report the incident to the Police.

616. WEAPONS IN THE WORKPLACE

1. POLICY:

The City of Las Cruces prohibits all employees who enter City property from carrying a handgun, firearm, or prohibited weapon of any kind onto the property regardless of whether the person is licensed to carry the weapon or not.

A. This policy applies to all City employees. The only exceptions to this policy will be police officers, security guards, Fire Investigators or other persons who have been given written consent by the City Manager to carry a weapon on the property.

B. All City employees are also prohibited from carrying a weapon while in the course and scope of performing their job for the City, whether they are on City property at the time or not and whether they are licensed to carry a handgun or not. The only exceptions to this policy will be persons who have been given written consent by the City Manager to carry a weapon while performing specific tasks on the City's behalf. This policy also prohibits weapons at any City sponsored function such as parties or picnics.

C. Prohibited weapons include any form of weapon or explosive restricted under local, state or federal regulation. This includes all firearms, illegal knives or other weapons covered by the law. If you have a question about whether an item is covered by this policy, please call the Human Resources Department. You will be held responsible for making sure beforehand that any potentially covered item you possess is not prohibited by this policy.

D. Failure to abide by this policy may result in discipline up to and including termination.

## 617. FITNESS FOR DUTY

1. POLICY:

The City of Las Cruces may require an employee to undergo a fitness-for-duty examination when there is a reasonable belief, based on objective information obtained or reasonably available, that the employee's ability to perform essential job functions will be impaired by a medical condition or that s/he will pose a direct threat due to a medical condition. The need for a medical evaluation must be clearly supported by the nature of the work and objective medical or other factual information. The examination shall be conducted by a medical professional selected by the City. All costs associated with such an examination will be borne by the Section in which the employee is assigned.

A. If an employee is impaired in his/her capability to safely and effectively complete work assignments, and a fitness-for-duty examination supports this conclusion, options may include:

1) Transferring the employee to a vacant position for which the employee is qualified and that accommodates his/her medical condition limitations;

2) Accommodating the employee is his/her current position by modifying work assignments and/or the work environment.

3) If an accommodation is not feasible in enabling the employee to perform the essential functions of the job held or vacant positions for which the employee is qualified; and if an accommodation does not reduce any direct threat issues to an acceptable level, the employee may be terminated.

2. PROCEDURE:

A. If a section has an employee with a medical condition which appears to impair his/her capabilities to safely and effective perform the essential functions of the job, or who poses a direct threat due to a medical condition, the Human Resources Director shall be contacted pertaining to a possible fitness for duty. The section must be prepared to discuss the following:

1) What objective evidence supports the need for a fitness for duty examination?

2) What is the reasonable belief that the employee's ability to perform essential job duties is impaired?

3) What is the basis for any belief of direct threat?

4) What knowledge exists that performance issues are linked to a medical condition?

B. A psychiatric examination or psychological assessment must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make a legitimate inquiry into a person's mental fitness to successfully perform the essential functions of his/her position without direct threat to the individual or others.

C. The scope of any fitness for duty examination shall be limited to the specific medical condition and how such condition affects or may affect the employee's ability to perform essential functions or pose a direct threat.

D. All medical information obtained through the fitness for duty provisions shall be maintained by the Human Resources Department as strictly confidential and shall not be a part of the employee's personnel file.

E. When a section requests a medical examination, it must inform the employee in writing of its reasons for doing so and the consequences of failure to cooperate. The City will designate the examining physician or other appropriate practitioner, but will offer the individual an opportunity to submit medical documentation from his/her personal physician or practitioner. The City will review and consider all such documentation supplied by the individuals' personal physician or practitioner along with the documentation from the examining physician selected by the City. Should the employee wish to submit medical documentation from his/her personal physician or practitioner, the employee shall pay for all examinations or documentation charges.

F. Any employee who refuses to undergo a required fitness for duty examination shall be found insubordinate and subject to discipline up to and including termination.

# SECTION 700

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# EMPLOYEE TRAINING AND DEVELOPMENT

# SECTION 700 EMPLOYEE TRAINING AND DEVELOPMENT

701. PURPOSE. The City of Las Cruces believes that training and development are integral components of work performance, and are inherently tied to the City's mission, goals, workforce planning and the provision of services to the public. The City values the potential of its employees and believes that developing employee potential, though coaching, education and training, and on-the-job training is critical to organizational effectiveness. It is the responsibility of Department Director, the supervisor and the employee, working in partnership, to determine the work goals and training needs for each. Specific training is subject to management approval based on available resources. The program is intended to enable the City to potentially fill future employment needs from within its own ranks and provides for the professional growth of employees.

702. TRAINING AND EMPLOYEE DEVELOPMENT OBJECTIVES. The objectives shall be designed and established to achieve the following:

1. Improve the quality of services provided by the City through its staff.
2. Improve the quality of performance for each individual employee and the various departments and units of the City.
3. Prepare employees for career advancement.
4. Create a work force with the occupational skills necessary to meet current and future employment needs.
5. Keep employees current on changing technologies in the workplace.

703. DEVELOPMENT AND ADMINISTRATION. Development and administration falls under the general responsibility of the Training Office, but shall strongly depend on cooperation of all departments, and sections.

704. DEPARTMENT DIRECTORS. Department directors shall share in the responsibility for an effective personnel development program. Department directors will ensure that training and development plans are prepared, updated and discussed by supervisors and employee, as part of the employee performance management and is consistent with the mission and needs of the Department.

705. SECTION MANAGER/ADMINISTRATOR: Section Managers/Administrators have the primary responsibility for initiating communication about work unit training and individual development including but not limited to:

1. Working in partnership with individual employees to assess training needs and coordinate work unit and individual employee development plans as needed,
2. Ensuring implementation of employee development plans as needed, and
3. Incorporating training and development into the performance management process.

706. EMPLOYEE: City employees have responsibility for initiating discussion to identify and assess their own specific training needs including but not limited to:

1. Working in partnership with supervisors to meet the work unit and their own training and development needs.

2. City employees may identify, where possible, certain needs related to their individual work experiences which are required to meet all of the performance and advancement criteria which may be defined and established by City management.
3. Employees may apply for program participation and their participation shall be of the highest quality possible.
4. Employees may petition through established channels for specialized and subsidized programs.

707. PROGRAM DESIGN: Development programs shall be designed in a manner that will maximize the potential benefit of employee participation in the program. Further, the program shall ensure that the contents do not exclude any employee from participation. Employee development programs shall include, but not be limited to the following:

1. In-house general programs designed for all levels of personnel in the City service.
2. In-house programs designed to meet specific departmental requirements.
3. In-house programs designed to specific levels of personnel. Such determinations, however, shall ensure that unnecessary or unrealistic barriers are not imposed.
4. Programs provided by other agencies or entities with proven capabilities and expertise and which have been sanctioned and approved by administration and the Human Resources Department.
5. Specialized programs offered by other institutions or organizations that may be of benefit to individual employees.
6. Participation in formal institutionalized education and training efforts available outside of the City service.

708. EMPLOYEE REQUESTS FOR FLEXIBLE WORK SCHEDULES FOR CLASSES

All requests to deviate from the work schedule in order to attend classes should be made in writing to the department head. Each request will be evaluated in terms of negative impact to the department and other potential scheduling problems. Department Directors who wish to attend classes during working hours will forward requests directly to the City Manager.

Each employee's request should be given separate consideration in terms of individual merit. Requests to attend classes during working hours may be granted in accordance with these criteria:

1. The request may be granted only if the employee's absence during working hours does not affect service to the community or cause other personnel to assume burdensome work loads in order to accommodate school attendance.
2. Certain employee functions are one of a kind by virtue of the nature of the job. Therefore, it is frequently not possible to deviate an employee's work schedule in order to attend classes. No employee should expect a deviation of his/her work schedule because another employee enjoys that privilege.

3. When supervision is in doubt about permitting an employee to deviate from his/her schedule, the following criteria should be applied:

   A. No one shall be accorded the privilege of deviating from his/her work schedule for any reason if his/her absence from work shall result in delay of services or interruption of municipal services.

   B. Employees who wish to deviate from their work schedules to attend classes must have successfully completed all entry requirements and academic deficiencies in order to be eligible for consideration.

   C. The employee must be enrolled in an approved job related program in order to be eligible for consideration. No work schedule shall be deviated from in order to attend self-improvement or awareness courses, to complete entry requirements, or to overcome academic deficiencies.

   D. Employees may receive consideration if they are attending or plan to attend a trade or craft school directly related to their chosen vocational field. Department Directors will require written justification explaining how the training will be advantageous to the municipal service. Exceptions will be extended in cases when the department Director has suggested additional training or made such training mandatory.

   E. All approved requests to have a work schedule deviation shall be sent to the Human Resources Department for inclusion in the employee's personnel folder.

   F. Attendance in job related training courses which does not require makeup time must be approved by the immediate supervisor in advance. Time off for employee requested education must be made up.

709 <u>CERTIFICATION EXAMINATION EXPENSES:</u>

The City will pay expenses incurred for maintaining required certifications and licensures. The City may pay for initial certifications and licensures as recommended by the Department Director and approved by the City Manager. Expenses may include registration, lodging, travel and testing on City time.

1. The City Manager will review Request for Travel for initial examination expenses and, if deemed appropriate, will approve City payment of expenses incurred in obtaining the certification.
2. The City will pay only for expenses incurred relative to the first examination of any specific certification which is applicable to the employee's position within the City's organizational structure. If the employee fails the tests on his/her first attempt, all expenses related to subsequent testing to receive the certification will be the sole responsibility of the employee.
3. When the City pays expenses incurred in obtaining specialized job-related certification, the employee will incur an obligation to continue employment with the City for one year from the date of certification completion. If an obligated employee voluntarily resigns from City employment within a year after the end date of the certification completion, the employee will reimburse the City a prorated portion of the cost of the certification expenses.

710. <u>TUITION EXPENSES</u>.

1. POLICY

Employee requested tuition and/or special training costs may be reimbursed at the discretion of the City Manager. Employee education or training required by management does not come within the purview of this policy.

Courses or degree programs related to an employee's current position are eligible for 100% reimbursement, up to a maximum of $650 per class, as provided below. Courses or degree programs not related to an employee's current job, but related to other City of Las Cruces positions are eligible for 75% reimbursement up to $500 per class, as provided below. Courses or programs outside the scope of City employment are not eligible for reimbursement (except non-related courses that satisfy approved degree program requirements).

Training fees related to pursuing an education (e.g., registration, library, lab, graduation, or activity fees) are not reimbursable

Required book fees are reimbursable provided that after completion of the course the employee turns such materials, in unmarked condition, over to the City's Training Office for use by other City employees; and the cost of the books and tuition for each class are less than or equal to $650.

**PROCEDURE:**

1. Each fiscal year funds will be designated for tuition reimbursement in the City Manager's organizational unit during the budget process. The Finance Director will submit, in writing, a quarterly report on the fund status to the City Manager.
2. All requests for enrollment in courses or degree programs where tuition is to be reimbursed under this policy must be submitted **through the Section Administrator/Manager, Department Director** and approved by the **City Manager** ***prior*** to registration for the classes.
3. Eligible employees requesting tuition reimbursement will submit a written request to take courses or to enroll in a degree program (Associates, Bachelors, Masters, or Doctoral) to his/her Department Director

The request will include:

1. A statement that the employee has completed his/her probationary period at the time classes commence.
2. A statement that the course or program provides college credit from a regionally accredited institution. Tuition will not be reimbursed for courses taken from a non-accredited institution.
3. An explanation of how the course or program will enhance the employee's ability to perform his/her job, and/or how the course or degree program benefits the City. Courses or programs that are not related to City of Las Cruces employment are not reimbursable (except non-related courses that satisfy approved degree program requirements).
4. A declaration of the amount of tuition assistance (i.e., grants or scholarships) received or expected by the employee. The City will provide assistance up to

the amount of actual tuition costs and books, less any grants or scholarships received by the employee, not to exceed $500.

5. If the employee is enrolling in a degree program, he/she shall attach the core curriculum and electives. Elective courses taken to satisfy degree requirements for approved degree programs are reimbursable even if they are not job related.

6. Courses taken under the Tuition Assistance Program will be taken at the employee's initiative. The employee assumes responsibility for course selection, scheduling, and other matters that are traditionally the responsibility of the student.

7. Agreements for tuition reimbursement will be drawn up by the Human Resources Department on a first-come, first-served basis, for no more than two classes per agreement and four agreements per fiscal year. Agreements will not be drawn up once the total amount budgeted for tuition reimbursement is obligated. Agreements for tuition reimbursement can only be drawn up for classes that start in the current fiscal year. The fiscal year runs from July 1st through June 30th.

8. Upon completion of a pre-approved course, the employee shall be eligible to submit a claim for tuition reimbursement contingent upon:

   A. If an undergraduate, providing a copy of a transcript or official statement by the registrar that a "B" grade or better was earned by the student/employee (3.00 G.P.A. in a 4.00 G.P.A. system).

   B. If a graduate, providing a copy of a transcript or official statement by the registrar that a "B" grade or better was earned by the student/employee (3.00 G.P.A. in a 4.00 G.P.A. system).

   C. Providing a copy of a receipt showing that tuition was paid in full. The employee will also sign an affidavit which states the amount of financial aid (if any) that was received for grants and scholarships.

9. When the course work has been completed, the grade report, receipt for payment of tuition, and the Request for Tuition Reimbursement form will be submitted to the Human Resources Department, who will review it and, if complete and accurate, submit the appropriate paperwork to Accounts Payable for reimbursement. Part-time regular employees will receive a pro-rated reimbursement based on their normal hour per week schedules.

10. An employee who receives tuition reimbursement will incur an obligation to continue employment with the City for one year from the date of course completion. If more than one course is taken during a year, the employee incurs an obligation to continue employment for one year from the completion date of the last course. The employment obligation is not cumulative. If an obligated employee voluntarily resigns from City employment within a year after the end date of a reimbursed course, the employee shall reimburse the City a prorate portion of the tuition reimbursement received. The Tuition Reimbursement applies only to amounts received for courses for which the employee did not fulfill the one year employment obligation. For example, if an

employee receives tuition reimbursement for a course that ends December 31 and then resigns the following June 30, he/she shall reimburse the City one-half of the tuition reimbursement received.

# AGREEMENT FOR TUITION REIMBURSEMENT

**THIS AGREEMENT** is entered into this _____ day of _____, 20___, between the City of Las Cruces and _____, hereinafter referred to as Employee. The parties to this Agreement agree as follows:

Employee is currently a full-time or part-time regular employee of the City of Las Cruces, employed as a _____, in the _____ Department.

If part-time regular, employee regularly works _____ hours per week.

The City currently has in place a Tuition Reimbursement Policy, Section 710 in the City of Las Cruces Personnel Manual.

The City hereby agrees to reimburse Employee for the costs of tuition and books not to exceed $650 per class, in accordance with the Tuition Reimbursement Policy for the following course(s):

A. _____ (___ cr.)

B. _____ (___ cr.)

C. _____ (other)

TOTAL REQUEST FOR REIMBURSEMENT: $_____

Said tuition reimbursement is subject to the following conditions:

1. If Employee is an undergraduate he/she must, prior to being reimbursed by the City pursuant to this Agreement, submit a copy of a transcript of

official statement by the registrar that a "B" grade or better was earned by the student/Employee for the course work mentioned herein above.

2. If a graduate, the Employee must provide a transcript or official statement by the registrar that a "B" grade or better was earned by the student/employee for the course work mentioned herein above.

Employee must also provide:

1. A signed copy of this Agreement.
2. A copy of a receipt which reveals that tuition was paid in full.
3. A copy of a receipt which reveals that study materials were paid in full.
4. A written statement from the Training Office indicating that the required study materials have not been defaced and are usable material for other city employees.
5. An affidavit which states the amount, if any, that he/she received in financial aid or scholarship that paid for any of the course work herein above referred to.

Employee will submit sufficient required documentation to the Human Resources Director who will review the documentation and if complete and accurate will submit to Accounts Payable for reimbursement. Said reimbursement shall occur within thirty (30) days after submitted and acceptance by the Human Resources Director or his/her representative. Employee agrees that from the date the City tenders a reimbursement check for said course work mentioned above. Employee agrees that for each course he/she is reimbursed pursuant to this Agreement he/she shall agree to not voluntarily terminate his/her employment with the City for one (1) year from the date of reimbursement, subject to paragraph 3 below.

In the event Employee voluntarily leaves his/her employment prior to repayment of

the amount authorized for tuition reimbursement under this Agreement, Employee agrees to repay the City, within ninety (90) days of his/her termination, the pro-rated amount the City reimbursed pursuant to this Agreement.

Employee hereby agrees that at the City's option, and in the event the Employee leaves the City owing reimbursement pursuant to this Agreement the City may, at its option, deduct the amount owed from Employee's final paycheck. Employee further agrees that said deduction may be made whether or not there is a dispute that exists concerning the amount of the deduction or the interpretation of this Agreement and it shall be Employee's duty, if a contested decision of the City with regard to withholdings pursuant to this paragraph, to file suit or take other appropriate legal action to recover the same.

The City of Las Cruces may authorize installment payments of the sum due and owing pursuant to Paragraph 6 above at its option. The Employee must make arrangement for such installment payments within thirty (30) days of the date that Employee voluntarily leaves employment with the City of Las Cruces.

In the event of default on any installment payment or any sum due under this Agreement, the City will be entitled to reasonable attorney's fees and court costs for its collection efforts.

This Agreement constitutes the entire Agreement between the parties and there not other mutual understandings other than contained in this contract.

| **CITY OF LAS CRUCES** | **EMPLOYEE** |
|---|---|
| By: _____ | By: _____ |
| City Manager | Employee |
| _____ | _____ |
| Date | Date |

# SECTION 800

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# MANAGEMENT AUTHORITY AND RESPONSIBILITIES

## SECTION 800 MANAGEMENT AUTHORITY AND RESPONSIBILITIES

801. CITY MANAGER'S OPEN DOOR. The City Manager is available to any employee seeking to discuss work-related problems or concerns in an open and informal manner. When an employee has made a good faith effort to resolve difficulties with their Section Administrator/Manager and Department Director and feels that their concerns have not been adequately addressed, they have the right to meet with the City Manager without fear of reprisal or retaliation. The employee shall contact the City Manager's office to schedule an appointment. Once the date and time have been agreed upon, the employee shall inform his/her immediate supervisor of the scheduled meeting.

802. HUMAN RESOURCES DEPARTMENT. The Human Resources Department shall:

1. Have overall responsibility for establishing, maintaining, and coordinating personnel transactions and records management systems and procedures for all City employees consistent with state and federal laws.
2. Advise and assist supervision/management on all City personnel transactions and records management systems and procedures related to personnel.

803. MANAGEMENT AND SUPERVISION. Management and supervision shall:

1. Initiate personnel transactions for their employees, using forms prescribed by the Human Resources Department.
2. Maintain a written record of contracts with employees as they deem appropriate.
3. Direct and supervise all operations, functions and the work of the Employees.
4. Determine the place to report to work, to determine methods, processes, and manner of performing work.
5. Establish and revise schedules of work.
6. Assign shifts, work days, hours of work and work locations.
7. Designate, assign or reassign all work duties.
8. Evaluate and judge the skill, ability and efficiency and general work performance of Employees.
9. Take actions, as necessary, to carry out the mission of the Employer in emergencies.

804. EMPLOYEES. Employees shall receive a copy of all personnel transactions that affect their employment or personal status.

Each employee shall notify supervision and the Human Resources Department of any changes which may affect his/her employment or benefit status. Examples of changes in personal status include (but are not limited to):

1. Marital status.
2. Dependent status.

3. Legal name change.
4. Physical limitation.
5. Additional education, training or certification.
6. Revocation of license, permit certification, or other credentials required for the job.
7. Changes of address or telephone number

805. PERSONNEL RECORDS RETENTION. Official Personnel records will be retained for a period of time from date of receipt in compliance with the State Records Retention Act.

# SECTION 900

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# DISCIPLINARY ACTIONS/ TRANSFERS & TERMINATIONS

# SECTION 900 DISCIPLINARY ACTIONS/TRANSFERS & TERMINATIONS

901. PURPOSE. Employment practices encourage a productive and efficient work force. Retention, transfer, or termination of employees shall be based on work performance and potential for professional growth. In those situations where positions are to be eliminated or when there is a reduction in force, every reasonable effort will be made to retain those regular employees with demonstrated high job performance.

902. AUTHORITY TO TAKE DISCIPLINARY ACTION. Supervisory and managerial personnel shall have the authority to take disciplinary actions deemed necessary in accordance with the Personnel Manual.

903. VOLUNTARY TRANSFER. Regular full-time employees may compete for other regular full-time vacancies. Part-time, temporary, seasonal, or provisional employees are also eligible to compete for regular full-time positions.

Employees may transfer from one department to another only at the beginning of a pay period unless an exception is made by the Human Resources Director or City Manager.

904. INVOLUNTARY TRANSFER. Involuntary transfers of employees may be made to best use employee skills, education or experience. Transfer may involve employee relocation to another department within the City. Transfer may also consist of reassignment and reclassification of an employee from one job classification to another because of inability to perform essential job functions due to an ADA defined disability, reorganization, while under suspension from the employee's principal duty, or for other reasons. The Department Director of the transferring employee or his/her designee shall provide a written decision of the transfer and the conditions.

905. SUSPENSION AND OTHER DISCIPLINARY ACTIONS. An employee's failure to observe personnel policies or work rules, or other employee actions which adversely affect their job performance or the job performance of another employee may be grounds for one or more of the following disciplinary actions:

1. Verbal Reprimand. The supervisor will verbally notify the employee that since there has been a violation of work rules, City policy, or procedures, an official warning is being given.

2. Written Reprimand. A written reprimand, using the Notice of Disciplinary Action, given by the supervisor, approved by the Department Director and ratified by the City Manager shall be entered into an employee's personnel record, subject to the right of appeal and review in accordance with the procedures provided in Section 1100 of this manual.

3. Suspension. All suspensions from work shall be entered into an employee's personnel record. A supervisor may recommend to suspend an employee from work without pay for flagrant violation or disregard of work rules, personnel policies, and regulations for varying periods of time approved by the Department Director. Prior to implementation of a Suspension, the action must be ratified by the City Manager or designee within five (5) business days of receipt of the recommendation.

Any suspension of more than three (3) days will require that a predetermination (Loudermill) hearing be conducted and then ratified by the Human Resources Director and the City Manager prior to suspension. FLSA exempt employees may be suspended for one or more full days for infractions of workplace conduct rules or for infractions of safety rules of major significance.

906. TERMINATION. Is defined as separation of an individual from the work force, voluntarily or involuntarily, with resulting severance of all employee benefits.

1. Voluntary Termination. When an employee decides to leave employment, he/she shall submit written notice to their supervisor. Employees are encouraged to give at least two weeks notice prior to departure.

2. Involuntary Termination. This action may be initiated for a variety of reasons. Those reasons include, but are not limited to:

   A. Discovering during the probationary period that an employee is not capable of performing the job for which he/she was hired, or the employee is otherwise unsatisfactory in performance of his/her duties. This action is originated by a supervisor and may be initiated with or without cause as the employee is in an "at will" status.

   B. Conclusion of a provisional, seasonal, or temporary assignment.

   C. Incapacity or inability to perform the "essential job functions" for which the employee was hired, with or without reasonable accommodations.

   D. For cause or for violation of work rules, including but not limited to:

      1) Dereliction of duty.
      2) Failure to report any criminal conviction.
      3) Flagrant or continued failure to obey work rules and regulations, as set forth herein or as may be set forth in writing by Department Directors or City Manager.
      4) Inability to work with others.
      5) Dishonesty in the execution of job duties or dishonesty when participating in an administrative investigation.
      6) For other employee conduct which is detrimental or prejudicial to the best interests of the City government.
      7) For mis-use of City credit cards.

3. Notice Requirement. Employees who have completed probation must be presented with a "Termination Notice" prior to actual termination. The termination notice shall include:

   A. Written notice of the reason(s) for the proposed termination.

   B. Explanation of the facts in support of the proposed termination.

   C. An opportunity for the employee to participate in a predetermination (Loudermill) Hearing.

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 is a direct-report to the City Manager, the Human Resources Department shall appoint the 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 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.

908. EMPLOYEES INVOLVED IN JOB MISCONDUCT OR CRIMINAL ACTIVITIES. Employees charged with job misconduct or criminal activities may be placed on Administrative Leave with Pay or Leave Without Pay pending final determination, or may be assigned other duties pending a final outcome of the matter. Each situation under investigation will be administered on a case-by-case basis. The Legal Office shall review each case and advise the City Manager. Administrative Leave with Pay shall be reported as time worked on time sheets.

909. ABOLISHMENT OR NON-FUNDING OF POSITIONS.

1. The City Manager can recommend to abolish or not fund positions for the following reasons:

   A. When approved by the City Council.

   B. When a position is no longer required to provide service for the community.

   C. When there is insufficient revenue to support the position.

2. Reasonable attempts shall be made to reassign or transfer personnel designated for separation due to abolishment of jobs. Reassignment or transfer may be lateral, to a lower grade, or to a higher grade, depending upon:

A. Suitable vacancies for which the employee is qualified.

B. Ability of the employee to perform another function.

C. No job shall be abolished as a way to remove an individual from municipal service.

D. The following procedures will be utilized in dealing with displaced employees:

1) The Human Resources Department shall be notified of potential displaced employees due to organization changes.

2) Employment changes will be announced in sufficient time so that employees can voluntarily transfer to vacancies which occur. Department Directors and Program Administrators/Managers will inform employees a minimum of 90 days prior to the change in status.

E. Employees whose positions are targeted for elimination will be given the opportunity to transfer to positions for which they qualify on a non-competitive basis after those employees who qualify for priority referral due to ADA or Workers' Compensation. Whenever possible, transfer will take place at the current salary if the position is similar in value, at lower pay if the position has less responsibility, know-how, or accountability, or at a higher pay if it is a promotional opportunity.

F. Once affected employees have been identified, every vacancy which occurs will be screened first by the Human Resources Department to see if qualified potentially displaced candidates are available and there are not employees with priority referral due to Workers' Compensation or ADA requirements.

G. Employees who were unable to successfully compete for vacancies will be monitored by the Human Resources Department and may be transferred to related occupations as trainees to undergo on-the-job training. This action may require a reduction in pay if the position involves less know-how, problem solving, and accountability. Appointments may be non-competitive and transfers may be directed involuntarily. The sole purpose of this action is to salvage the person's employment with the City.

H. Employees, who cannot be placed within the City because positions do not exist, may be laid off involuntarily after 90 days from the date of notice. Employees laid off under this policy will depart in good standing and will be eligible for re-employment as positions become available for which they qualify. These employees will be eligible for normal separation benefits such as coverage under COBRA, unemployment compensation, and sell back of sick/annual leave according to City policy.

910. RE-ESTABLISHMENT OF POSITIONS. The City Manager may recommend reestablishment of positions:

1. When approved by the City Council.

2. When revenue is sufficient and a need for resuming the discontinued position or service is justifiable and essential.

3. When a position is reestablished, the person who was the incumbent when the position was abolished shall be given first consideration for appointment.

However, that person must be able perform the essential job functions of the position, with or without reasonable accommodation.

911. LAYOFF. Layoff is defined as severance of an employee from the work force due to lack of work. Layoff is made without prejudice and is no fault of the affected employee.

1. Selection for Layoff. When more than one employee is in a position which has been scheduled to be discontinued, the following criteria may be considered to identify which person is to be laid off:

   a. Versatility and/or value to the department.

   b. Overall job performance as compared to others within the department.

   c. Longevity within the department.

   d. Longevity with the City.

912. DISBURSEMENT OF FINAL PAY CHECK. When an employee resigns their position, the earned salary or wages plus any other compensation (such as annual leave accrual) shall be due and payable on the next regular payday. When an employee is dismissed from employment, the earned salary or wages plus any other compensation (such as annual leave accrual) shall be due and payable no later than the fifth ($5^{th}$) calendar day following dismissal. Exempt employees will be paid a proportionate part of that employee's full salary for the time actually worked in last week of employment. The employee's final paycheck will be forwarded to the City's Human Resources Department for disbursal

# SECTION 1000

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# PERFORMANCE REVIEWS

# SECTION 1000 EMPLOYEE PERFORMANCE REVIEWS

1001. PURPOSE. To provide the format for the mutual exchange of information about performance between the supervisor and employee, to determine successful completion of the probationary period, and determine eligibility for merit compensation. Through performance evaluations, supervisors will communicate to individual employees their performance expectations and department goals. Supervisors will assess the employee's job-related performance and work to enhance overall job performance by providing direction and identifying training needs.

Performance reviews and performance improvement plans may also be used when considering personnel actions for a regular employee.

1002. PERIODS OF REVIEW.

1. Each regular employee shall be given a performance review during the probationary period. This can be done by completing the performance evaluation form or other documentation as appropriate.
2. A formal performance evaluation will be completed:
   A. At the completion of the probationary period; and
   B. During the months of July and August each year for staff functions;
      During the month of September for Managers, Supervisors and Administrators; and
   C. At such time when an updated evaluation is necessary.
3. If an employee changes assignment, position, or department during the performance cycle, performance up to that point will not be disregarded. The current supervisor shall complete an interim evaluation of the employee's performance. The interim evaluation should be completed by the supervisor prior to the employee's departure and sent with the Personnel Action Notice denoting the status change to the Human Resources Department for retention in the employee's personnel file.
4. The performance evaluation of Department Directors and Section Administrator/Managers shall include an evaluation of their compliance with this policy.

1003. RESPONSIBILITIES

1. Each supervisor is responsible to set and communicate clear performance standards for his/her employees and to observe and discuss employee performance at the beginning of and throughout the review period. Evaluations are based on job-related performance during the review period. Supervisors may use as the basis for the performance evaluation, all information believed to be relevant to an understanding of the work performance and the employee and that is consistent with the scope of the job description
2. The employee is responsible for understanding the duties and responsibilities required of the position, the employee work plan goals and measures, the core competencies and for asking any questions concerning those

expectations and/or the evaluation process.

3. Employees are responsible for contributing to the development of the performance objectives and for providing performance input throughout the evaluation period and explanation of actions occurring during the rating period.
4. Employees are encouraged to record their perceptions of their working environment as well as their performance, accomplishments, training requests and future goals and objectives. Supervisors should review and incorporate these into the evaluation as appropriate.
5. The employee shall receive a copy of the performance evaluation instrument delineating goals, objectives and core competencies to be evaluated and the year-end evaluation delineating performance The employee's refusal to sign the performance evaluation form does not make the performance evaluation unofficial.
6. At the end of the performance evaluation cycle, the supervisor will meet with each employee under his/her supervision and evaluate performance, discuss training needs and to establish goals and objectives for the next evaluation cycle.

1004. REVIEW COORDINATION. Primary responsibility for initiation of a performance review shall be the responsibility of the supervisor.

1. Each employee shall be afforded an opportunity to provide the supervisor with a self-assessment of his or her job performance for the rating period. The employee should be asked to provide a self-evaluation at least two weeks prior to the evaluation meetings. A supervisor must review and consider the self-assessment when completing each employee's performance evaluation.
2. The supervisor or section administrator/manager shall forward the completed staff evaluations to the Department Director for review by September 1 of each year.
3. The Department Director shall forward all completed evaluations for staff and managers, supervisors and administrators to the Human Resources Department by October 1 each year.
4. The Human Resources Department shall allocate the approved merit budget in accordance with the following matrix indicating the maximum amount for each score:

| Percentile Rank | | Performance Evaluation Score | | | | |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 0.00 | 0.25 | 0.00% | 0.00% | 4.00% | 5.00% | 6.00% |
| 0.26 | 0.50 | 0.00% | 0.00% | 3.00% | 4.00% | 5.00% |
| 0.51 | 0.75 | 0.00% | 0.00% | 2.00% | 3.00% | |
| 0.76 | 1.00 | 0.00% | 0.00% | 1.00% | 2.00% | 3.00% |
| 1.00 | + | 0.00% | 0.00% | 1.00% | 2.00% | 3.00% |

5. The Human Resources Department shall ensure that the evaluation results are made part of the employee's permanent personnel file.

1005. PERFORMANCE REVIEW COMMENTS. Each employee has the right to comment on their performance evaluation. If the employee chooses to do so in writing, such comments must be made during the evaluation period and will be included in their personnel folder.

1006. PERFORMANCE EVALUATION DISPUTE RESOLUTION. Under the City's merit program, the direct relationship between performance evaluations and pay has the potential to result in differences of opinion between employees and their supervisor.

Performance evaluations are not grievable. If an employee can demonstrate that the evaluation was arbitrary, capricious, illegally discriminatory, or wrong based on solid data, the employee can enter into dispute resolution with the Department Director.

1. PROCEDURE:

In order to ensure the speedy resolution of disputes related to the City's Merit Program, the following procedure shall be followed. The expedited process from immediate supervisor to final decision is intended to resolve disputes in a timely fashion so that awards granted under the Merit Program are finalized in time for December distribution each year.

A. The dispute resolution process is an open process that is not a grievance or appeal. No party has an absolute right to legal representation. The parties are expected to represent and speak for themselves.

B. The employee shall make every effort to discuss their performance review candidly with their supervisor, expressing any disagreements they may have with statements made by their supervisor.

C. The employee may add any comments they may have to the written performance appraisal for inclusion in the personnel file.

D. An employee wishing to initiate the process for dispute resolution shall do so within 10 working days of receiving the performance evaluation, by submitting a written memo to the Department Director stating the employee's wish to enter into dispute resolution and listing the specific parts of the supervisor's appraisal with which the employee disagrees and explaining the nature and extent of the disagreement. The employee shall attach copies of any relevant supporting documentation. If the employee wishes to have a meeting with the Department Director, the employee must request it in a written memorandum to the Department Director. A copy of the completed form shall be provided to the Department Director and to the Human Resources Department.

E. The Department Director will review the performance evaluation and all supporting documentation.

F. The Department Director may contact the employee and/or the supervisor to obtain clarification or additional information.

G. The Department Director will meet with the employee and/or supervisor if necessary or if the employee specifically requested a meeting within five (5) working days of receipt of the request for a dispute resolution meeting by the employee.

H. The Department Director shall then issue his/her written decision within five (5) working days. The response should indicate one of the following:

1) The Director agrees with the evaluation
2) The supervisor will revise the evaluation;
3) The supervisor will complete a new evaluation;
4) The Director will revise the evaluation; or
5) The Director will complete a new evaluation.

I. The decision issued by the Director shall be final and binding.

J. Employees who are direct reports to a Department Director may appeal their evaluations to the Assistant City Manager or another Director appointed by the Director of Human Resources.

# SECTION 1100

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# EMPLOYEE GRIEVANCES AND DISCRIMINATION COMPLAINTS

# SECTION 1100 EMPLOYEE GRIEVANCES AND DISCRIMINATION COMPLAINTS

1101. POLICY. It is the policy of the City to treat all employees fairly in matters affecting their employment. Every eligible employee shall have an opportunity to resolve matters which affect his/her employment. Every eligible employee with a grievance shall have the right to present the grievance in accordance with the following procedures without fear of reprisal.

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 Manager.

   C. Executive employees and any other employees who report directly to the City Manager shall follow the grievance procedures as outlined in this section.

   D. 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.

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 that 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
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]

1104. AMERICANS WITH DISABILITIES ACT and the ADA RESTORATION ACT POLICY:

The City of Las Cruces is committed to the fair and equal employment of qualified persons with disabilities. While many individuals with disabilities can apply for and perform jobs

without accommodation, workplace barriers may keep others from entering and performing jobs without reasonable accommodation. It is the policy of the City of Las Cruces to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship.

1. Definitions:

   A. "*Person with a Disability*" - For purposes of this policy, a person with a disability is one who:

      1) Has a physical, mental or emotional impairment that substantially limits one or more major life activities. Those activities may include, but are not limited to, the following: caring for oneself; performing manual tasks; seeing; hearing; eating; sleeping; walking; lifting; bending; speaking; breathing; learning; reading; concentrating; thinking; communicating; working; and/or major bodily function.; or

      2) Has a record of such an impairment; or

      3) Is regarded as having such an impairment.

   B. "*Qualified Person*" - A person who:

      1) possesses the knowledge, skills, abilities, education, certification, licensure, and other requirements of the job currently held or desired; and

      2) who, with or without reasonable accommodation, can perform the essential functions of the job currently held or desired.

   C. "*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, without undue hardship.

   D. *"Direct Threat"* - A direct threat is as a "significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation." The City will not hire nor retain an employee who poses a direct threat that cannot be reduced to an acceptable level or eliminated by providing a reasonable accommodation. An accommodation may still be refused if it would cause a direct threat to the worker or others.

      The factors to consider in making a direct threat determination include:

      1) Duration of the risk;
      2) Nature and severity of the potential harm;
      3) Likelihood that the potential harm will occur; and
      4) Imminence of the potential harm.

   E. *"Undue Hardship"* -

      An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the City.

      Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of the following:

1) Nature and cost of the accommodation needed;
2) Overall financial resources of the facility or facilities involved; the number of persons employed at such facility; the effect on expenses and resources; or the impact otherwise of such accommodation;
3) Overall financial resources of the employer; overall business size with respect to number of employees; type of operation of the employer, including the composition, structure, function of its workforce; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the employer.

2. Procedures:

A. Notice to Applicants and Employees

Each functional unit of the City shall post and inform all employees of this reasonable accommodation policy and shall make the policy available in accessible formats upon request.

B. Starting the Reasonable Accommodation Process

A person with a disability, or his/her designee, may start the interactive process by making an oral or written request for a reasonable accommodation to his/her supervisor, a supervisor or manager in his/her immediate chain of command; the EEO Office; Human Resources Department; or ADA Coordinator; or, in connection with the application process, the Human Resources Department or hiring unit. This policy does not require people with disabilities to use particular words in their request; nor does it require the person with the disability to submit a written form. The form provided is for convenience only, and may be completed by either the requesting or receiving person.

C. Processing Requests

1) First-line supervisors are authorized to consider and approve requests for reasonable accommodation whenever possible. Within two working days of receiving a request for accommodation, the supervisor shall, in consultation with the individual:

a) Discuss the purpose and essential functions of the particular job involved.
b) Completion of a step-by-step job analysis may be necessary; the Human Resources Department shall be available to perform or assist in the completion of a job analysis,.
c) Determine the precise job-related limitation(s);
d) Identify the potential accommodation(s) and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job; and
e) Select and implement the accommodation that is the most appropriate for both the individual and the employer. While an individual's preference will be given consideration, the department can choose from among equally effective accommodations and may choose the one that is less expensive or easier to provide.

2) The supervisor will document this discussion on the attached Reasonable

Accommodation Request Form and forward the completed form to the ADA Coordinator. The ADA Coordinator is available to provide technical assistance.

3) If the front-line supervisor is unable to make a definitive decision, for whatever reason, about providing the accommodation, he/she shall forward a written request for accommodation along with his/her recommendation to the ADA Coordinator within 5 working days following the employee's request.

4) If the ADA Coordinator is unable to make a definitive decision after receipt of all supporting documentation from the employee and/or physician, the ADA Coordinator will forward a written request, along with his/her recommendations to the City Manager within 5 working days from the date the supporting documentation has been received.

5) The City Manager will provide a decision in writing to the ADA Coordinator and employee within 5 working days.

D. Determination of Disability

The determination of whether or not an ADA disability is present will be made by the ADA Coordinator on a case-by-case basis. This determination is made on the basis of information provided by the employee/applicant and may include medical information by the treating physician, if required, and with or without consideration of mitigating or corrective measures.

E. Medical Information:

1) The City is entitled to know that an individual has a covered disability that requires a reasonable accommodation. Therefore, the City may ask for medical information about the disability, as it may impact:

   a) The nature, severity and duration of the impairment;

   b) The activity or activities that the impairment limits;

   c) The extent to which the impairment limits the individuals' ability to perform the activity or activities/ and or

   d) Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will be effective.

2) If the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the City to make these determinations.

3) The City may also request supplemental documentation when the information already submitted is insufficient to document the disability and/or the functional limitations it causes. Failure to provide necessary documentation where it has been properly requested could result in a denial of reasonable accommodation.

4) Any medical documentation required, will be collected and maintained on separate forms and in separate files by the ADA Coordinator.

5) When medical information is requested and received, the information may be disclosed only to those involved in determining whether to grant the reasonable accommodation.

F. Timeframes

1) Within 30-days of a requested accommodation, the request will be granted or denied, absent extenuating circumstances, however, where a particular accommodation can be provided in less time, it shall be provided as promptly as possible.

2) Extenuating circumstances that would justify not processing a request for reasonable accommodation within the 30-day maximum, are factors that could not reasonably have been anticipated or avoided in advance of the request. These may include situations in which equipment must be ordered or if the individual's health professional fails to provided necessary documentation in a timely manner.

G. Reassignment

1) Reassignment is a form of reasonable accommodation for an employee who, because of a disability, can no longer perform the essential functions of the position s/he holds, with or without reasonable accommodation. Reassignment consideration will occur only after no effective accommodations that would enable the employee to perform the essential functions of his/her current job are identified, or if accommodations would impose an undue hardship. Reassignment is available only to employees, not to applicants.

2) Reassignments are made only to a vacant position for which the employee is qualified. An employee will be qualified if s/he (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position with or without reasonable accommodation.

3) If reassignment is determined to be the appropriate accommodation, the Human Resources Department shall first look for an equivalent vacant position in the City, equivalent to the one presently held by the employee in terms of pay and other job status.

4) If the employee is not qualified, with or without reasonable accommodation, for an equivalent vacant position (or a position the City knows will become vacant within a reasonable period of time) or no equivalent vacant position exists, the City may reassign the individual as a reasonable accommodation to a lower graded vacant position for which the employee is qualified. If this occurs, the City is not required to maintain the individual's salary at the previous level.

5) The City is not required to create a new job or to bump another employee from a job in order to provide reassignment as a reasonable accommodation.

H. Denials of Reasonable Accommodation

Where a department denies an individual's request for a reasonable accommodation, it must notify the individual in writing of the denial and the reasons for it. The denial should be written in plain language with as much specificity as possible, and identify the employee or office that made the decision. All denials must notify the individual that s/he has the right to file an EEO complaint.

3. Job Application Process

A. The Human Resources Department shall post and notify all applicants of this accommodation policy and shall make this policy available in alternative formats upon request.

B. When a request for accommodation is received from an applicant, the Human Resources Department will discuss the needed accommodation and discuss possible alternatives with the applicant. The Human Resources Department is entitled to know that an individual has a covered disability that requires a reasonable accommodation. Therefore, the Human Resources Department may ask for information about the disability, as it may impact::

1) The nature, severity and duration of the impairment;

2) The activity or activities that the impairment limits;

3) The extent to which the impairment limits the individuals' ability to perform the activity or activities/ and or

4) Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will be effective;

5) If the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the city to make these determinations.

C. The Human Resources Department will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

D. If the accommodation is not approved, the Human Resources Director will inform the applicant the reason for denial, in writing, within 3 working days of the decision.

4. Funding Accommodations:

Funding must be provided by the Department for accommodations which do not cause an undue hardship.

5. Undue Hardship:

A. Any department concluding a requested accommodation would result in an undue hardship shall meet with the Human Resources Director to discuss the requested accommodation.

B. The Human Resources Director, in conjunction with the Office of Budget and Management when the cost of the accommodation is considered, will determine undue hardship by considering:

1) The nature and cost of the accommodation in relation to the size, the financial resources, the nature and structure of the City's operation; and

2) The impact of the accommodation on the nature or operation of the City.

C. If the Human Resources Director determines the accommodation will impose an undue hardship, the Human Resources Director will forward an undue hardship analysis and recommendation to the City Manager within 5 working days following receipt of the request.

D. The City Manager will provide a decision in writing to the Human Resources Director, supervisor, and employee/applicant within 5 working days.

E. If the City concludes that the cost of an accommodation would impose an undue hardship and no funding is available from another source, an applicant or employee with a disability must be offered the option of paying for the portion of the costs that constitutes an undue hardship, or of providing the accommodation.

6. Complaint Process

A. Applicants or employees who believe they have a grievance under the ADA are encouraged to use the city's discrimination policy as outlined in the Manual of Personnel Policies. A copy of this policy is available upon request from the EEO Office or Human Resources Department.

B. Nothing in this procedure prevents any individual who believes they have a grievance under the ADA from taking other action to seek resolution. The complainant is informed that at any time prior to 300 days having elapsed from the date of occurrence, the complainant may file a formal charge with the U.S. Equal Employment Commission or within 180 days with the New Mexico Human Rights Division.

# SECTION 1200

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# BENEFITS

# SECTION 1200 BENEFITS

1200. EMPLOYEE INSURANCE BENEFITS. Full-time and part-time regular employees, and some contract and grant-funded employees budgeted to work 30 or more hours per week are eligible for the employer contribution of group insurance benefits as provided by the City and modified by the City Council. Information on employee benefits and eligibility requirements are available from the Human Resources Department.

Any full-time or part-time regular employee eligible for benefits who competes for and is accepted into the Police or Fire Academy will continue to receive their existing insurance and retirement benefits, without a break in service, as adopted by the City Council.

1202. MEDICAL PRIVACY.
From time to time the City may require and obtain employee medical information as it relates to that employee's ability to perform the essential functions of their position. This information may be obtained as a result of a Workers' Compensation injury, Family and Medical Leave qualifying event, request for reasonable accommodation under the Americans with Disabilities Act, or Fitness for Duty Evaluation.

It is the policy of the city to maintain strict confidentiality of all medical information obtained in accordance with all state and federal regulations and to use medical information obtained for the purposes stated in the Release of Information. Managers and supervisors will be informed of any current restrictions, however, medical information will only be released to those with a need to know.

1203. RETIREE HEALTH INSURANCE.
Effective July 1, 2004 all PERA eligible employees will contribute on a bi-weekly basis through payroll deductions to the New Mexico Retiree Health Care Authority in the amount prescribed by the New Mexico State Legislature and as amended from time to time as a term and condition of employment.

1204. COBRA POLICY:
The City of Las Cruces adheres to all requirements of the Consolidated Omnibus Budget Reconciliation Act (COBRA) as they apply to our employees. The City's COBRA policy is administered by the State of New Mexico General Services Department, Risk Management Division (RMD). Should an employee lose their medical, dental, or vision coverage under the plans offered through the State of New Mexico RMD as a result of a qualifying event, the employee and their eligible dependents will be given the opportunity to continue to purchase coverage as a group member for the legally-specified period of time following the loss of coverage.

Although employees' right to elect continuation coverage occurs upon a qualifying event, coverage is not automatic. Employees and / or their eligible dependents must make an affirmative election of coverage before coverage will begin. The State of New Mexico RMD will notify the employee and / or their eligible dependents of their rights and the stipulations necessary to continue coverage under COBRA. The election to continue coverage must be made within 60 days of the date coverage is lost or the date of the notice of eligibility, whichever is later.

1. Eligibility:
   Employees are eligible for continuation coverage if terminated from employment for any reason other than for gross misconduct or if a reduction in hours results in the loss of coverage under our group medical, dental, and vision plans. Continuation coverage will be available for 18-36 months, depending upon the qualifying event.

2. Qualifying Event:
   A qualifying event (QE) for purposes of continuation of coverage under COBRA occurs when:
   A. The employee is terminated for any reason other than gross misconduct on the employee's part. (QE for the employee, spouse, and dependent children, or domestic partner and dependent children).
   B. The employee's working hours are reduced to the point that he/she loses some or all of the benefits under the plan (QE for the employee, spouse, and dependent children, or domestic partner and dependent children).
   C. The employee is divorced or legally separated (QE for the employee's spouse and dependent children).
   D. The employee's spouse is divorced from the employee or obtains a legal separation (QE for the employee's spouse).
   E. The employee becomes entitled to Medicare (QE for the employee's spouse and dependent children, or domestic partner and dependent children).
   F. The employee's dependent child loses dependent status as defined by the plan (QE for that dependent child).
   G. The employee does not return to work after FMLA leave ends (QE for the employee, spouse, and dependent children, or domestic partner and dependent children).

3. Notice of Election:
   The City of Las Cruces Human Resources Department will notify the State of NM RMD of the qualifying event within 30 days of receipt of notification of the qualifying event. The employee or the employee's qualified beneficiary must notify the Benefits Coordinator within 31days of a divorce or legal separation or the date on which the employee's child ceases to be a dependent under the Benefit plan rules.

   The State of NM RMD will mail notice of the right to elect continuation coverage to the employee or his/her qualified beneficiary by first-class mail to his/her last known address or to the last known address of the qualified beneficiary.

4. Length of Coverage:
   The length of coverage depends on the type of qualifying event that occurs.

   A. 18-month period. Qualifying events include termination of employment, other than for gross misconduct, or a reduction of hours.

B. 29-month period. A qualified beneficiary is determined under the Social Security Act to have a disability at the time of a termination of employment or reduction in hours.
.

C. 36-month period. This is given:

1) for the death of the covered employee;
2) for the loss of dependent child status under the plan;
3) when the covered employee becomes entitled to Medicare;
4) for divorce or legal separation of the covered employee;
5) for multiple qualifying events.

5. Coverage Termination:

Continuation coverage may be terminated prior to the end of the applicable coverage period if any of the following circumstances occur:

A. The qualified beneficiary (the employee, the employee's spouse or the employee's spouse on behalf of dependent children or domestic partner) fails to make timely payment of premiums for continuation coverage.

B. The qualified beneficiary becomes covered under another group health plan that is not maintained by the State of NM RMD, or City of Las Cruces and does not contain any pre-existing condition limitation or exclusion affecting the qualified beneficiary.

C. The qualified beneficiary becomes eligible for Medicare.

D. The City's group health plans are terminated.

E. The continuation period has been extended because the qualified beneficiary was a person with a disability but no longer has the disability.

F. For cause on the same basis that the coverage of similarly situation active employees may be terminated.

6. Cost:

The cost for continuation coverage will be determined by the State of NM RMD. .

Employees are responsible for the same deductibles and co-payments under the plans that the employees were responsible for before coverage was lost. Any amounts already incurred under the original plan will be credited to the employees' continuation coverage.

## 1205. EMPLOYEE ASSISTANCE PROGRAM

POLICY:

The City will provide professional and confidential assistance to any employee and their immediate family (spouse/domestic partner and dependent children) who may wish to consult with a professional counselor regarding a personal or family problem. The services

provided are confidential and are available at no cost to the individual.

1. SCOPE:

   EAP services provided are short-term, focused on problem solving and very practical in nature. In the instance where an individual is specifically in need of a great level of assistance, that person will be referred to the most appropriate professional as provided for in the employee benefit package.

   A. It is the responsibility of management to support this policy by remaining alert to job performance and behavior changes, and to bring these to the attention of the employee, along with an offer of assistance at the earliest indication of a recurrent problem. Directors, Administrators and Managers should not attempt to diagnose the nature of the personal problem, but should use the EAP to deal with work performance/work habit problems.

   B. Employees are encouraged to seek assistance through or accept referral to the EAP and to comply with the recommended action plan when personal problems are affecting the employee's work performance. An employee's continued failure to take action to resolve a work problem will be handled through the applicable City policies.

   C. Participation in the EAP in no ways relieves the employee of the responsibility to meet acceptable work performance and conduct standards. Normal corrective action procedures will continue during an employee's participation in the program.

2. REFERRALS:

   A. Employees may obtain professional assistance through the EAP by self-referral or Director/Manager or supervisor referral.

      1) Self-Referral:

         a) An employee, or dependent, who desires confidential assistance for a personal problem should call the EAP office and schedule an appointment.

         b) All communication between the employee, or dependent, and the EAP counselor is confidential. When the counselor becomes aware of a situation where the employee or dependent, presents a clear and present danger to themselves or others, the EAP counselor will take whatever action is deemed appropriate and necessary to mitigate the danger, pursuant to applicable state and federal laws.

      2) Director/Manager/Supervisor Referral:

         a) Referral to the EAP by a Director/Manager/Supervisor may be based upon an employee's request for assistance with a personal problem that may be affecting, or has the potential to affect, the employee's job performance. When an employee has come to a Director/Manager/Supervisor to seek advice regarding a personal problem, the Director/Manager/Supervisor should make the team member aware of the professional assistance available through the EAP and offer to assist the team member in arranging an appointment with the EAP counselor. Referral to EAP shall be strictly voluntary except when such referral is the result of a violation of the Violence in the Workplace Policy or Substance Abuse Policy.

         b) If the team member chooses not to accept assistance at this time, the Director/Manager/Supervisor should reinforce the organization's expectation

for improved performance or appropriate conduct and the consequences for failure to improve. Results of this meeting should be documented.

c) All information pertaining to an employee's referral to the EAP and information provided by the EAP counselor to the Director/Manager/Administrator should be accorded the same standards of confidentiality as applied to all mental health/substance abuse treatment related records and information.

3. Appointments During Working Hours: An employee can schedule meetings with the EAP counselor during normal working hours. For visits to an outside provider during work hours, the employee shall use leave accruals, if available, or Leave Without Pay if no leave accruals are available.

1206. WORKERS' COMPENSATION. To the extent provided by law, all City employees are covered under the provisions of the New Mexico Workers' Compensation Act. Workers' Compensation covers work-related injuries or illness arising out of and in the course of employment that requires medical, surgical, or hospital treatment.

1. PROCEDURES:

A. All on the job illnesses and injuries (no matter how minor an on-the-job injury may appear) which are work-related must be formally reported immediately or as soon as possible to the employee's immediate supervisor. The employee and the supervisor shall prepare a Notification of Accident form and the employee shall report to the Risk Management Office with the completed form. If an employee is injured during a period which Risk Management is not open, the employee should report to the emergency room for treatment if necessary, and notify their immediate supervisor as soon as possible. After emergency treatment has been received, the Notification of Accident form shall be completed and forwarded to Risk Management.

B. The City reserves the right to require a medical examination at any time during the Workers' Compensation absence and prior to the employee's return to work.

C. The City will not be liable for the payment of Workers' Compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, or athletic activity sponsored by the City.

D. FMLA leave runs concurrently with any workers' compensation leave.

E. Any questions regarding Workers' Compensation or on-the-job injuries should be directed to the City's Risk Manager.

1207. Domestic Partner Benefits. All City of Las Cruces employees that have a domestic partner as defined in A herein, shall be provided benefits on the same basis provided to legal spouses.

1. The City defined domestic partners as two (2) 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. There must be an exclusive mutual commitment similar to that of marriage, in which the partners agree to be financially responsible for each other's welfare and share financial obligations.

A. Qualifying Criteria

To be recognized as domestic partners by the City of Las Cruces, both individuals must meet all of the following criteria, sign an Affidavit of Domestic Partnership form, and submit necessary documentation to the Human Resources Department.

1) Both domestic partners must be unmarried.
2) Domestic partners must have been in a mutually exclusive relationship for the last twelve (12) months, intending to do so indefinitely, and must share the same primary residence.
3) Domestic partners must meet the age requirements for marriage in New Mexico and be mentally competent to consent to contract.
4) Domestic partners must not be related by blood to the degree prohibited in legal marriage in the State of New Mexico.
5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations An Affidavit of Domestic Partnership form signed to that effect and proof of three (3) of the following must be submitted to the Human Resources Department:
   a) Joint mortgage or lease
   b) Joint ownership of a motor vehicle
   c) Joint bank account
   d) Joint credit account
   e) Domestic partner named as beneficiary of the other's retirement benefits.
   f) Domestic partner named as beneficiary of the other's life insurance.
   g) Domestic partner named as primary beneficiary in the other's will.
   h) Domestic partner assigned durable property or health care power of attorney
6) Providing false information may result in disciplinary action, dismissal, and reimbursement of costs involved in providing benefit coverage.

B. Termination of Domestic Partnership

1) Individuals granted domestic partnership status must report any change in status that terminates the relationship to the Human Resources Department, within thirty-one (31) calendar days, by completing a Termination of Domestic Partnership form. Upon completion of a Termination of Domestic Partnership form, the employee would not be eligible to re-enroll a domestic partner until the plan's next open enrollment.

C. Qualifying as a Dependent of Domestic Partner

1) The child of a domestic partnership qualifies as an eligible dependent:
   a) If either of the domestic partners is the biological parent of the child;
   b) If either or both partners are adoptive parents of the child, or
   c) If the child has been placed in the domestic partner's household as part of an adoptive placement.

D. Services and Benefits

1) Domestic partners and their dependents, as defined within this section, shall be

granted all and the same services and benefits as those provided to married spouses and their dependent, except where expressly prohibited by law. All city policies that affect employees, spouses, and their families also apply to employees, domestic partners, and their families.

E. Taxability

1) The value of insurance benefits provided to the domestic partner is considered taxable income to the employee by the Internal Revenue Service and is subject to social security and federal and state income tax withholding.

# SECTION 1300

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# DEFINITIONS

# SECTION 1300 DEFINITIONS

## A

**Acting Appointment** - the City Manager may appoint an incumbent to a vacant position for a period of time not to 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.

**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 22-185 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**

**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**

**Reclassifiction**- 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.