



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 27Ordinance/Resolution# 2779For Meeting of April 4, 2016
(Ordinance First Reading Date)For Meeting of April 18, 2016
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 22 (PERSONNEL) OF THE LAS CRUCES MUNICIPAL CODE (LCMC), 1997, AS AMENDED, TO MAKE THE CITY MANAGER DIRECTLY RESPONSIBLE FOR ADMINISTRATION OF THE CITY OF LAS CRUCES PERSONNEL SYSTEM.

PURPOSE(S) OF ACTION:

Approve revisions to LCMC.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: William R. Babington Jr.	Department/Section: Legal/City Attorney	Phone: 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The authority to enact the City's Personnel Code emanates solely from the City's Charter. There it directs the council/mayor and the city manager as to how they participate in the City's personnel matters. The council/mayor's authority over the City's personnel begins with "Prohibitions" and "Limitations", to wit: they shall neither dictate the appointment or removal of any City employee appointed by the manager nor interfere in any manner with the powers of the manager conferred pursuant to Article III of the Charter (Charter, Sections 2.05(b) and (c)).

Article III of the Charter is devoted to the city manager's very broad authority as the "chief administrator of the city" concerning among other matters the employment and termination of "the organizational units" created by the council/mayor. Charter, Sections 3.01 and 3.02. There is a mention of the council's discretionary authority to adopt "personnel rules." Charter, Section 3.01(b). This provision; however, has to do with the city manager having limited access to the courts if terminated by the City Council. The city manager's all-encompassing authority to manage and control the organizational units created by the council/mayor is further confirmed at Charter, Sections 4.01(a), (b).

The city manager's direct authority over City employees is clearly stated by Charter, Section 4.02 which provides in summary that the council/mayor, by ordinance, shall establish "at a

(Continue on additional sheets as required)

minimum” the “personnel system,” which includes seven items. These seven items dovetail with the authority the Charter has already conferred upon the city manager. (e.g., Charter, Section 4.02(b)(1).) The council/mayor enact the classification of all City positions. See Charter, Section 4.01(b), and the organizational units (employees) are “...subject to the direction and supervision of the city manager.” See also, Charter, Section 3.02(a), Powers and (b), Duties of the city manager. (There is no place in the Charter that directs or mandates that the council/mayor shall enact a personnel manual.)

Concerning other personnel, the Charter further mandates that the city manager appoint a city attorney and a city clerk. Charter, Section 4.03 and 4.04. Lastly, the city manager’s authority over the city’s personnel system culminates in the city manager’s authority to present the budget to the council/mayor, which shall contain a “complete financial plan of all city funds and activities for the ensuing year.” Charter, Section 5.04.

In summary, in reviewing all the Charter provisions concerning the City’s “personnel system” it appears that the major direct authority and power over the control and management of that system is vested in the city manager.

The conclusion is inescapable that the City’s Personnel Code today is a hodgepodge of ordinances with some major inconsistencies (see LCMC, Sections 22-32 and 22-33) where both allow for “personnel manuals,” one to be enacted by the council/mayor and one to be enacted by the city manager. Then, LCMC, Section 22-34 provides for “supplemental rules and regulations” to be enacted by the city manager. The Personnel Code was assembled over a period of time by various City Councils, Mayors, and City staff without clearly looking to the Charter for the actual authority of the council/mayor and the city manager. The Personnel Code should be modified to clearly delineate the Charter-granted authority of the city manager over all personnel matters effecting City employees.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit “A”, Proposed LCMC, Chapter 22 (Personnel).
3. Attachment “A”, Existing LCMC, Chapter 22 (Personnel), shown in legislative format.

SOURCE OF FUNDING:

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

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the repeal of existing LCMC, Chapter 22 (Personnel), and enact the replacement LCMC, Chapter 22 (Personnel).
2. Vote "No"; this will keep existing LCMC, Chapter 22 (Personnel), in effect.
3. Vote to "Amend"; this will allow the City Council to modify provisions of replacement LCMC, Chapter 22 (Personnel).
4. Vote to "Table"; this will allow the City Council to table or postpone consideration of the Ordinance and to direct staff accordingly.

REFERENCE INFORMATION:

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

N/A



City of Las Cruces®

PEOPLE HELPING PEOPLE

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COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of April 4, 2016
(Ordinance First Reading Date)

For Meeting of April 18, 2016
(Adoption Date)

TITLE:

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 22 (PERSONNEL) OF THE LAS CRUCES MUNICIPAL CODE (LCMC), 1997, AS AMENDED, TO MAKE THE CITY MANAGER DIRECTLY RESPONSIBLE FOR ADMINISTRATION OF THE CITY OF LAS CRUCES PERSONNEL SYSTEM.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>[Signature]</i>	541-2128	14 MAR 2016
Department Director	<i>[Signature]</i>	541-2128	14 MAR 2016
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	541-2100 541-2107	3/14/2016 3-15-2016
Assistant City Manager/COO	<i>[Signature]</i>	541-2271	3-15-16
City Attorney	<i>[Signature]</i>	541-2128	14 MAR 2016
City Clerk	<i>[Signature]</i>	541-2115	3-22-16

COUNCIL BILL NO. 16-020
ORDINANCE NO. 2779

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 22 (PERSONNEL) OF THE LAS CRUCES MUNICIPAL CODE (LCMC), 1997, AS AMENDED, TO MAKE THE CITY MANAGER DIRECTLY RESPONSIBLE FOR ADMINISTRATION OF THE CITY OF LAS CRUCES PERSONNEL SYSTEM.

The City Council is informed that:

WHEREAS, the authority to enact the City's Personnel Code emanates solely from the City's Charter and directs the council/mayor and the city manager as to how they participate in the City's personnel matters; and

WHEREAS, the city manager's all-encompassing authority to manage and control the organizational units created by the council/mayor is further confirmed at Charter, Sections 4.01(a), (b); and

WHEREAS, the city manager's direct authority over City employees is clearly stated by Charter, Section 4.02 which provides in summary that the council/mayor, by ordinance, shall establish a personnel system; and

WHEREAS, in reviewing all the Charter provisions concerning the City's "personnel system" it appears that the major direct authority and power over the control and management of that system is vested in the city manager.

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

(I)

THAT existing LCMC, Chapter 22 (Personnel) in its entirety is hereby repealed.

(II)

THAT LCMC, Chapter 22 (Personnel), as shown on Exhibit "A," attached hereto and made a part of this Ordinance, is hereby enacted.

(III)

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

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:	_____
Councillor Gandara:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Eakman:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

Chapter 22 - PERSONNEL

ARTICLE I. - IN GENERAL

Sec. 22-1. - General policy.

This chapter establishes a merit system for the hiring, promotion, discharge and general regulation of city employees, known as the City of Las Cruces Personnel System and is adopted pursuant to NMSA 1978, sections 3-15-1 through 3-15-16 and 3-13-4. This ordinance is not applicable to city employees who through exclusive representation have entered into a collective bargaining agreement with the city pursuant to Las Cruces Municipal Code section 16.5-18. All rules and regulations drawn pursuant to the authority provided in this chapter shall be promulgated by the city manager, except as is otherwise provided.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-2. - Policy declared.

It is hereby declared that the personnel policy of the city shall consist of:

- (1) A system of rules which will:
 - a. Comply with all applicable state and federal laws;
 - b. Produce an effective city organization;
 - c. Establish a work environment which encourages employees to work productively and efficiently at maximum capability and potential;
 - d. Provide equal job opportunity and advancement for all qualified persons based on work performance, knowledge, education, and experience;
 - e. Ensure adequate incentives in the form of a merit system, provide competitive salaries, recognize exceptional work, reward long service, and provide retirement benefits;
 - f. Inspire public confidence in services provided; and
 - g. Establish equitable methods for administering discipline.
- (2) Procedures which foster effectiveness between the city council and city staff by:
 - a. Open communication;
 - b. Protecting employees from improper political interference by the city council; and
 - c. Jointly sharing responsibility and resolution of conflict in the best interests of all concerned.
- (3) Formulating policies to resolve internal personnel/organizational problems by establishing an employee grievance procedure.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-3. - Merit system scope of employment.

It is hereby declared that employment in the city government shall center around elements of a merit principle designed to:

- (1) Recruit, hire, and advance employees on the basis of ability, knowledge, and skill.

- (2) Base personnel actions on merit and performance principles such as:
 - a. Tests (written, performance, interview, skills, or other);
 - b. Experience, education, employment, and performance records; or
 - c. Observable on-the-job performance.
- (3) Provide equitable and adequate compensation.
- (4) Train employees on-the-job to assure high quality performance.
- (5) Retain employees on the basis of adequate performance, and separate employees whose inadequate performance cannot be corrected;
- (6) Assure that every employee complies with the spirit and intent of this personnel system.
- (7) Assure fair treatment and equal employment opportunity of applicants for employment (and employees) in all aspects of personnel administration without regard to race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity, and with proper regard for privacy and constitutional rights as citizens;
- (8) Assure that employees are not coerced to support or oppose particular candidates or electoral issues. Moreover, employees are prohibited from using their official authority for personal gain or for the purpose of interfering with, or affecting, the outcome of an election.

(Ord. No. 1741, § I, 5-17-99)

Sec 22-4. - Civil rights provision.

No city employee or job applicant shall be appointed, promoted, removed, or in any way favored or discriminated against because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity, or because of his/her political or religious affiliations.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-5. - Equal opportunity employer.

This city is an "equal opportunity employer." The following described act of discrimination on the part of any employee are expressly prohibited. If such discriminatory acts occur, the person committing these acts is subject to dismissal or suspension from city employment or to other appropriate disciplinary action. It is declared unlawful:

- (1) For any employee to give preference to or to discriminate against, any person because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, or sexual orientation or gender identity, unless based upon a bona fide occupational qualification;
- (2) For any employee to sexually harass any other employee or citizen by making unwelcome sexual advances, requesting sexual favors, or making verbal/physical overtures of a sexual nature, especially when such conduct has the effect of interfering with an individual's work performance or has the effect of creating a hostile or offensive work environment. Moreover, no employee shall make such conduct a condition of employment or use refusal to participate in such conduct a basis for employment decisions.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-6. - Definitions.

The following terms and phrases used in this chapter are defined as follows:

City means the municipal government, composed of the city council, the city manager, divisions, departments, agencies, and all employees which make up the organization designed to provide services for citizens.

City council means the duly elected (or appointed) officials who comprise the legislative body of the municipal government, with powers defined by New Mexico law and the City Charter.

City manager means the municipal government's chief executive officer, charged with responsibility for management of employees, facilities, and other resources as set forth by New Mexico law and the City Charter.

Personnel policy manual means personnel policies established and periodically amended by the city manager to interpret and implement the city personnel ordinance for employees not represented by collective bargaining units.

Personnel procedures manual means procedures established and periodically amended by the city manager to ensure the efficient and effective operation of the city.

(Ord. No. 1741, § I, 5-17-99)

Secs. 22-7—22-16. - Reserved.

ARTICLE II. - ADMINISTRATION

Sec. 22-17. - Administration of a personnel system.

- a. The city manager shall be responsible for proper administration of the personnel system pursuant to Las Cruces Municipal Code Charter sections 3.02 and 4.02.
- b. The city manager shall maintain a personnel system which shall include, at a minimum, reasonable provisions establishing:
 - (1) The classification of all city positions based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;
 - (2) A pay and benefit plan for all city positions;
 - (3) Methods for determining the competency and fitness of individuals for purposes of hiring, promotion, retention, demotion and termination;
 - (4) Policies and procedures regulating reduction in force and removal of employees;
 - (5) Procedures for the hearing and disposition of grievances;
 - (6) Equal employment opportunity;
 - (7) Other practices and procedures necessary to the administration of the city personnel system.

(Ord. No. 1741, § I, 5-17-99)

Chapter 22 - PERSONNEL

Footnotes:

--- (1) ---

Editor's note—Ord. No. 1741, § I, adopted May 17, 1999, amended the Code by repealing former ch. 22, §§ 22-1—22-12, 22-41—22-44, 22-71—22-76, 22-106—22-110, 22-141—22-146, 22-176—22-186, 22-216—22-227, 22-256—22-262, 22-291—22-300, and 22-331—22-335; and adding a new ch. 22 to read as set out herein. Former ch. 22 pertained to similar subject matter, and derived from the Code of 1988, §§ 24-1—24-4, 24-17—24-20, 24-32—24-37, 24-48—24-52, 24-63—24-68, 24-78—24-88, 24-118—24-129, 24-151—24-156, 24-189—24-195, 24-209—24-218, and 24-240—24-244; and Ord. No. 1687, adopted July 6, 1998.

Charter reference— Personnel, § 4.02.

Cross reference— Any ordinance prescribing the number, classification, benefits or compensation of any city officers, § 1-13(a)(10); officers and employees, § 2-56 et seq.; personnel appeals board, § 2-736 et seq.; labor-management relations, ch. 15; police, ch. 23.

State Law reference— Municipal home rule, Const. art. X, § 6; NMSA 1978, § 3-15-13.

ARTICLE I. - IN GENERAL

Sec. 22-1. - General policy.

This chapter establishes a merit system for the hiring, promotion, discharge and general regulation of city employees, known as the City of Las Cruces Personnel System and is adopted pursuant to NMSA 1978, sections 3-15-1 through 3-15-16 and 3-13-4. This ordinance is not applicable to city employees who through exclusive representation have entered into a collective bargaining agreement with the city pursuant to Las Cruces Municipal Code section 16.5-18. All rules and regulations drawn pursuant to the authority provided in this chapter shall be promulgated by the city manager resolution of the city council, except as is otherwise provided.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-2. - Policy declared.

It is hereby declared that the personnel policy of the city shall consist of:

- (1) A system of rules which will:
 - a. Comply with all applicable state and federal laws;
 - b. Produce an effective city organization;
 - c. Establish a work environment which encourages employees to work productively and efficiently at maximum capability and potential;
 - d. Provide equal job opportunity and advancement for all qualified persons based on work performance, knowledge-how, education, and experience;

- e. Ensure adequate incentives in the form of a merit system, provide competitive salaries, recognize exceptional work, reward long service, and provide retirement benefits;
 - f. Inspire public confidence in services provided; and
 - g. Establish equitable methods for administering discipline.
- (2) Procedures which foster effectiveness between the city council and city staff by:
- a. Open communication;
 - b. Protecting employees from improper political interference by the city council; and
 - c. Jointly sharing responsibility and resolution of conflict in the best interests of all concerned.
- (3) Formulating policies to resolve internal personnel/organizational problems by establishing an employee grievance procedure.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-3. - Merit system scope of employment.

It is hereby declared that employment in the city government shall center around elements of a merit principle designed to:

- (1) Recruit, hire, and advance employees on the basis of ability, knowledge, and skill.
- (2) Base personnel actions on merit and performance principles such as:
 - a. Tests (written, performance, interview, skills, or other);
 - b. Experience, education, employment, and performance records; or
 - c. Observable on-the-job performance.
- (3) Provide equitable and adequate compensation.
- (4) Train employees on-the-job to assure high quality performance.
- (5) Retain employees on the basis of adequate performance, and separate employees whose inadequate performance cannot be corrected;
- (6) Assure that every employee complies with the spirit and intent of this personnel system.
- (7) Assure fair treatment and equal employment opportunity of applicants for employment (and employees) in all aspects of personnel administration without regard to ~~political affiliation, race, religion, age, national origin, color, sex, sexual orientation or disability~~ race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity, and with proper regard for privacy and constitutional rights as citizens;
- (8) Assure that employees are not coerced to support or oppose particular candidates or electoral issues. Moreover, employees are prohibited from using their official authority for personal gain or for the purpose of interfering with, or affecting, the outcome of an election.

(Ord. No. 1741, § I, 5-17-99)

Sec 22-4. - Civil rights provision.

No city employee or job applicant shall be appointed, promoted, removed, or in any way favored or discriminated against because of his/her ~~race, sex, color, national origin, disability, age, sexual orientation~~ race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical

condition, spousal affiliation, sexual orientation or gender identity, or because of his/her political or religious affiliations.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-5. - Equal opportunity employer.

This city is an "equal opportunity employer." The following described act of discrimination on the part of any employee are expressly prohibited. If such discriminatory acts occur, the person committing these acts is subject to dismissal or suspension from city employment or to other appropriate disciplinary action. It is declared unlawful:

- (1) For any employee to give preference to or to discriminate against, any person because of ~~political affiliation, race, religion, age, national origin, color, sex, sexual orientation or disability~~ race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, or sexual orientation or gender identity, unless based upon a bona fide occupational qualification;
- (2) For any employee to sexually harass any other employee or citizen by making unwelcome sexual advances, requesting sexual favors, or making verbal/physical overtures of a sexual nature, especially when such conduct has the effect of interfering with an individual's work performance or has the effect of creating a hostile or offensive work environment. Moreover, no employee shall make such conduct a condition of employment or use refusal to participate in such conduct a basis for employment decisions.

(Ord. No. 1741, § I, 5-17-99)

Sec. 22-6. - Definitions.

The following terms and phrases used in this chapter are defined as follows:

City means the municipal government, composed of the city council, the city manager, divisions, departments, agencies, and all employees which make up the organization designed to provide services for citizens.

City council means the duly elected (or appointed) officials who comprise the legislative body of the municipal government, with powers defined by New Mexico law and the City Charter.

City manager means the municipal government's chief executive officer, charged with responsibility for management of employees, facilities, and other resources as set forth by New Mexico law and the City Charter.

Personnel policy manual means personnel policies and procedures established and periodically amended by the city manager to interpret and implement the city personnel ordinance for employees not represented by collective bargaining units.

Personnel procedures manual means procedures established and periodically amended by the city manager to ensure the efficient and effective operation of the city.

(Ord. No. 1741, § I, 5-17-99)

Secs. 22-7—22-16. - Reserved.

ARTICLE II. - ADMINISTRATION

Sec. 22-17. - Administration of a personnel system.

- a. The city manager shall be responsible for proper administration of the personnel system pursuant to Las Cruces Municipal Code Charter sections 3.02 and 4.02.
- b. The city manager shall maintain a personnel system which shall include, at a minimum, reasonable provisions establishing:
- (1) The classification of all city positions based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;
 - (2) A pay and benefit plan for all city positions;
 - (3) Methods for determining the competency and fitness of individuals for purposes of hiring, promotion, retention, demotion and termination;
 - (4) Policies and procedures regulating reduction in force and removal of employees;
 - (5) Procedures for the hearing and disposition of grievances;
 - (6) Equal employment opportunity;
 - (7) Other practices and procedures necessary to the administration of the city personnel system.

(Ord. No. 1741, § I, 5-17-99)

~~Sec. 22-18. - Personnel rules.~~

~~The council shall maintain by ordinance a personnel system which shall include, at a minimum, reasonable provisions establishing:~~

- ~~(1) The classification of all city positions based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;~~
- ~~(2) A pay and benefit plan for all city positions;~~
- ~~(3) Methods for determining the competency and fitness of individuals for purposes of hiring, promotion, retention, demotion and termination;~~
- ~~(4) Policies and procedures regulating reduction in force and removal of employees;~~
- ~~(5) Procedures for the hearing and disposition of grievances;~~
- ~~(6) Equal employment opportunity;~~
- ~~(7) Other practices and procedures necessary to the administration of the city personnel system.~~

(Ord. No. 1741, § I, 5-17-99)

~~Sec. 22-19. - Establishment of a human resources department.~~

~~Subject to authorization by the city council, the city manager will ensure the establishment and operation of a human resources department. The human resources department, (a staff support agency) under supervision of a human resources director, shall perform functions designated by the city manager, in accordance with state and federal law, the provisions of this chapter, and the rules and regulations promulgated hereunder.~~

(Ord. No. 1741, § I, 5-17-99)

~~Sec. 22-20. Appointment of human resources director.~~

~~The city manager shall have the authority to hire a human resources director and to delegate duties in the manager's discretion in accord with rules and regulations of the personnel manual.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-21. Authority of the city manager.~~

~~The city manager is charged with the following responsibilities:~~

- ~~(1) Sole authority to employ and discharge all municipal employees pursuant to the authority cited in section III, article 3.02 of the city Charter.~~
- ~~(2) To recommend revisions to the personnel manual.~~
- ~~(3) To recommend the organizational structure and salary plan for the work force.~~
- ~~(4) To appoint an acting city manager when absent or otherwise unable to manage, for less than 30 days.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-22. Authority of the city council.~~

~~The city council, in accord with the provisions of city Charter article II, section 2.05 (c), shall not perform, collectively nor individually, any executive functions in the administration of the personnel system except those assigned by law. Such executive functions, and authority of the city council as a whole, are set forth as follows:~~

- ~~(1) To employ or remove the city manager, according to city Charter article III, section 3.01 (a) & (b);~~
- ~~(2) To make collective recommendations to the city manager on general personnel policies;~~
- ~~(3) To adopt revisions to the personnel manual by resolution.~~
- ~~(4) To approve, through the budgetary process, the organizational structure, salary plan, new or additional municipal divisions, departments, or sections. To direct the reorganization or deletion of divisions, departments, or sections which are no longer needed by the community.~~
- ~~(5) To appoint an acting city manager during a vacancy pending appointment of a regular city manager.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-23—22-31. Reserved.~~~~ARTICLE III. RULES AND REGULATIONS~~~~Sec. 22-32. City manager rules and regulations.~~

~~The city manager has the authority to formulate and implement personnel rules, regulations, and procedures to carry out the intent of this chapter and compile same in a personnel manual, so long as said rules, regulations, and procedures are not in conflict with any personnel rules enacted by the governing body.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-33. Adoption of personnel manual by the city council.~~

~~The city council shall adopt a personnel manual consisting of personnel rules, regulations and procedures, by resolution. The personnel manual shall be filed in the city clerk's office, in the human resources office, and shall be available to all municipal employees and the public during normal business hours.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-34. Availability of supplemental rules and regulations.~~

~~Supplemental rules and regulations issued and set forth by the city manager shall be on file and available for inspection during normal business hours in the city clerk's office, the human resources office, and all department head and division director offices.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Secs. 22-35—22-47. Reserved.~~

~~ARTICLE IV. COMPENSATION AND CLASSIFICATION~~

~~Sec. 22-48. Compensation plan.~~

~~The compensation plan shall consist of wages, salaries, and all other benefits of value to an employee which result in a cost to the city.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-49. Classification plan.~~

~~The classification plan shall group all positions in the municipal service into classes, based on duty, responsibility, authority, and other qualifications required for satisfactory performance. Experience, education, licenses, certification, skills, and other specifications shall be established for every position in each class.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-50. Salary plan.~~

~~A salary plan shall be incorporated as part of each year's budget after recommendation by the city manager and approval by the city council. The salary plan shall include salary schedules for salaried exempt and salaried non-exempt employees that reflect:~~

- ~~(1) Minimum and maximum salaries within salary grades;~~
- ~~(2) Overtime compensation or compensatory time (for non-exempt employees);~~
- ~~(3) Call-back pay;~~

~~(4) Standby pay (sometimes referred to as on-call pay).~~

Further, the salary plan may provide for:

- ~~(5) Periodic cost-of-living salary adjustments;~~
- ~~(6) Merit increases, certification increases;~~
- ~~(7) Longevity;~~
- ~~(8) Life, health, and disability insurance;~~
- ~~(9) Other benefits that the city council deems appropriate.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-51. Exceptions.~~

~~The city manager has discretion to review an individual's salary and compare it with other incumbents in identical comparable positions and salary grades. The city manager may adjust a salary, in the interest of parity or equity, especially when such adjustment will ensure retention of an incumbent. In other instances, adjustment of an incumbent's salary may be done when it is apparent that the salary varies greatly from salaries of peers in the same grade and position and/or of subordinates. Such salary adjustments are extraordinary and unusual and are to be considered, without precedent, on a case-by-case basis.~~

~~Downward salary adjustments shall not be less than entry level of the salary grade to which the position is classified.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-52. Salary offer.~~

~~The city manager may offer an applicant a salary in excess of a salary grade entry level, or in excess of an advertised amount, in order to ensure employment of qualified candidates or acknowledge special credentials in excess of requirements.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-53—22-62. Reserved.~~

~~ARTICLE V. EMPLOYEE CLASSIFICATION~~

~~Sec. 22-63. Classification of employees.~~

~~All regular, full-time employees in the city service shall be divided into three general categories: chief executive officer, salaried exempt, and salaried non-exempt. These categories exclude elected and appointed officials and members of boards, commissions, and authorities who are not for any purpose considered employees of the city. The city manager is responsible for developing and maintaining a current classification plan for all positions which shall be binding on all city boards, commissions and committees. Positions substantially similar with respect to duties, responsibilities, authority, and character of work shall be included in the same class and salary schedule. The classification plan may be amended as duties, responsibilities, and employment conditions change.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1859, § I, 3-5-01; Ord. No. 1883, § I, 8-6-01)~~

~~Sec. 22-64. Chief executive officer.~~

~~The city manager is the chief executive officer. The city manager is not a regular employee.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1859, § II, 3-5-01)~~

~~Sec. 22-65. Salaried exempt employees.~~

- ~~(a) Salaried exempt employees shall include department directors, special staff, certain professional staff, and others who satisfy each and every upset test for administrator, executive, and/or professional (29 CFR, Subpart A, §§541.0, §§541.1, §§541.2, and §§541.3) defined by the Fair Labor Standards Act (FLSA, 1985 (P.L. 99-159)) as being exempt from overtime requirements.~~
- ~~(b) The assistant city manager, fire chief, police chief, finance director, community development director, facilities director, human resources director, information technology director, public services director, public works director, utilities director, and city attorney are regular salaried exempt employees. These executive employees shall be subject to the protection of the personnel system and the rules and regulations promulgated thereunder except as limited by this article. These executive employees may negotiate for conditions, fees, benefits, and other terms of employment. These executive employees shall not be entitled to across-the-board pay increases normally afforded to regular employees.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1859, § III, 3-5-01; Ord. No. 2201, § 1, 6-6-05)~~

~~Sec. 22-66. Salaried non-exempt employees.~~

~~This category shall include all other employees who must be paid overtime when they exceed 40 hours worked in a seven (7) day period. It also includes fire suppression department emergency services personnel and police officers assigned to plain clothes section, with work periods different from 40 hours worked per seven (7) day period. Different work periods are found in the manual of personnel policies and pertinent salary schedules.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-67. Certain exceptions to merit system and Fair Labor Standards Act.~~

~~Salaried exempt employees shall be entitled to all rights, privileges, and benefits to which other employees are entitled, except for the following:~~

- ~~(1) The chief executive officer, also known as the city manager, shall serve at the pleasure of the city council and may be terminated for any reason without recourse to the grievance procedure. Further, the city council will enter into a written contract with the city manager when hired, which will establish salary, benefits, and conditions of employment.~~
- ~~(2) Regular salaried exempt employees will have recourse to the grievance procedure but shall be exempt from provisions of this chapter with respect to work time and payment for overtime. However, payment of overtime to salaried exempt employees may be awarded upon recommendation of a division director and approval of the city manager.~~
- ~~(3) Executive employees will have recourse to the grievance procedure but may only grieve terminations and disciplinary actions which result in loss of pay.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1859, § IV, 3-5-01)~~

~~Sec. 22-68. Preservation of status of present employees.~~

~~All employees holding positions in the city service on the effective date of this personnel system shall retain their positions until discharged, demoted, promoted, or transferred in accordance with procedures established in the personnel system. All new hires to city service, on or after the effective date thereof, shall be employed in accordance with this personnel system and the rules and regulations promulgated thereunder.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-69—22-77. Reserved.~~

~~ARTICLE VI. APPOINTMENTS TO MUNICIPAL SERVICE⁽²⁾~~

Footnotes:

~~—(2)—~~

~~**Editor's note**—Ord. No. 1741, § I, adopted May 17, 1999, repealed former Article VI in its entirety. Former Art. VI pertained to personnel standards of the city and derived from Code 1988, §§ 24-78—24-88.~~

~~**Note**—See sections 200 and 300 of the personnel manual.~~

~~Sec. 22-78. Nepotism.~~

~~No person shall be hired, promoted, demoted or transferred to a position which is under the direct supervision in the departmental chain of command of a relative who is related by blood, adoption or by marriage to the third degree of kindred. The third degree of kindred includes spouses, parents, children, brothers, sisters, grandparents, grandchildren, aunts, uncles, nieces and nephews. The restriction shall also apply to relationships having the characteristics of a family relationship, and to members of the same household. In the event two employees are in a position of direct supervision through any departmental chain of command or either of the two employees establish a relationship, then the affected employee or employees may request a transfer to alleviate the situation or the city manager may transfer or demote one of any two affected employees to a position removed from the supervisory control of the other. However, the city manager may waive the restrictions in this section if, in the opinion of the city manager, it is clearly in the city's best interest. An applicant who willfully and knowingly failed to disclose incumbents who are related by blood or marriage will not be hired. An incumbent who willfully fails to reveal (or remains silent about) a relative who applies for employment, or requests transfer to his/her unit, shall be subject to disciplinary action.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-79. Additional provisions.~~

~~The personnel rules, regulations, and procedures may add further standards and procedures to govern matters of appointments, temporary positions, or revisions authorized by this article which do not conflict with this chapter.~~

(Ord. No. 1741, § I, 5-17-99)

~~Secs. 22-80—22-117. Reserved.~~

~~ARTICLE VII.—SEPARATION, TRANSFERS, REASSIGNMENTS AND DISCIPLINE⁽³⁾~~

~~Footnotes:~~

~~—(3)—~~

~~Editor's note—Ord. No. 1741, § I, adopted May 17, 1999, repealed former Art. VII in its entirety. Former Art. VII pertained to personnel standards of the city and derived from Code 1988, §§ 24-118—24-129.~~

~~Note—See section 900 of personnel manual.~~

~~Sec. 22-118.—Termination of employment.~~

~~An employee may be terminated for the good of the city by the city manager. Termination may be voluntary or involuntary for any of, but not limited to, the following reasons:~~

- ~~(1) Unsuitability during the probationary period;~~
- ~~(2) Dismissal of the regular employee for cause (see sections 600 and 900 of the city personnel manual);~~
- ~~(3) Termination of a provisional special, acting, or temporary assignment;~~
- ~~(4) Resignation, incapacity, disability, or inability to perform essential job functions, retirement, or death.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1829, § I, 9-18-00; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-119.—Termination for cause.~~

~~City employees may be terminated for cause. "For cause" includes, but is not limited to, the reasons cited in section 600 (work rules violations) and section 900 of the city personnel manual.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1829, § I, 9-18-00; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-120.—Termination for other reasons.~~

~~Termination for cause is not restricted only to the reasons cited in sections 600 and 900 of the personnel manual, but may be effected for other serious reasons not in the best interest of the employment. Every regular employee recommended for involuntary termination, must be provided with advance notice, be given reasons for severance, and be allowed due process prior to severance, in accordance with U.S. Supreme Court ruling entitled, Cleveland Board of Education vs. James Loudermill, 84 L.Ed 2nd 494 (1985).~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-121. --Disabled employees.~~

~~An employees who incurred a permanent disability in performing duties for the city, or who has been determined to be a qualified individual with a disability in accordance with the Americans with Disabilities Act, and is unable to perform their essential job duties with or without reasonable accommodation, will be transferred or reassigned to a vacant position for which they are qualified in accordance with the provision of the manual of personnel policies. If no vacant position exists for which the employee is qualified, the employ will be terminated.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-122. --Termination during probationary period.~~

~~Except when terminated for cause, probationary employees terminated during probation may be considered for re-employment, transfer or reassignment, if it is decided that they have good potential for performing in other positions. The city manager may approve the transfer or re-employment of a terminated probationary employee after considering the recommendations of division directors.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Secs. 22-123, 22-124. --Reserved.~~

Editor's note—Ord. No. 1870, § I, adopted June 4, 2001 repealed §§ 22-123 and 22-124 in their entirety. Former §§ 22-123 and 22-124 pertained to adverse personnel actions, regular employees; and voluntary demotions, respectively, and derived from Ord. No. 1741, § I, adopted May 17, 1999.

~~Sec. 22-125. --Voluntary resignations.~~

~~The voluntary resignation of an employee may be accepted with or without prejudice, in accordance with the following procedure:~~

- ~~(1) Any employee in good standing may resign without prejudice if sufficient notice is given as required by the manual of personnel policies;~~
- ~~(2) Voluntary resignations may be accepted with prejudice if the employee:

 - ~~a. Has given insufficient notice as provided in the manual of personnel policies; or~~
 - ~~b. Resigns to avoid dismissal or other disciplinary action.~~~~
- ~~(3) If resignation is accepted with prejudice, the employee may not be eligible for reemployment by the city and will be so notified.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-126. --Transfers and reassignments.~~

~~Transfers and reassignments shall provide for the shifting of employees within the organization to permit best use of skills, experience, and education; in positions for which they are qualified for the benefit of the organization. Any employee may be transferred or reassigned to:~~

- ~~(1) Equivalent or comparable positions;~~
- ~~(2) More responsible or skilled positions;~~

- ~~(3) Less responsible or less skilled positions;~~
- ~~(4) Employees whose positions are targeted for elimination will be transferred to vacant positions for which they qualify on a non-competitive basis when it has been determined by human resources staff that there are no employees who qualify for priority referral due to ADA or workers' compensation.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Sec. 22-127. Disciplinary actions.~~

~~An employ who violates personnel policies, work rules, or other policies which provide for disciplinary action, may be subject to one or more of the following disciplinary actions:~~

- ~~(1) Verbal reprimand;~~
- ~~(2) Written reprimand;~~
- ~~(3) Suspension;~~
- ~~(4) Termination in accordance with article VII of this chapter.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01)~~

~~Secs. 22-128, 22-129. Reserved.~~

Editor's note— Ord. No. 1870, § I, adopted June 4, 2001, repealed §§ 22-128, 22-129, in their entirety. Former §§ 22-128, 22-129 pertained to authority to take disciplinary actions; and definition of supervisory and managerial personnel, respectively, and derived from Ord. No. 1741, § I, adopted May 17, 1999.

~~Note— See section 900 of personnel manual.~~

~~Secs. 22-130—22-150. Reserved.~~

~~ARTICLE VIII.—EMPLOYEE-GRIEVANCES~~

~~Sec. 22-151. Right to grievance.~~

~~It is the policy of the city government to treat all employees equitably in matters affecting their employment. Every eligible employee shall have an opportunity to resolve matters which affect his/her employment as set forth in section 1100 of the personnel manual.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01; Ord. No. 1908, § II, 2-19-02)~~

~~Secs. 22-152, 22-153. Reserved.~~

Editor's note— Ord. No. 1870, § I, adopted June 4, 2001, repealed §§ 22-152, 22-153, in their entirety. Former §§ 22-152, 22-153 pertained to grievance eligibility; and definitions, respectively, and derived from Ord. No. 1741, § I, adopted May 17, 1999.

~~Sec. 22-154. Personnel appeals hearing officer.~~

- (a) ~~Pursuant to the provisions of LCMC, § 24-1, et seq., the City of Las Cruces shall appoint a New Mexico licensed attorney who has a background in employment law to act as personnel appeals hearing officer to serve for a term of two years.~~
- (b) ~~Requirements for selecting the hearing officer shall be as follows: The hearing officer appointed shall be a New Mexico licensed attorney experienced in employment law for a private or public concern employing more than 50 employees.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1870, § I, 6-4-01; Ord. No. 1908, § II, 2-19-02; Ord. No. 2525, § II, 6-1-09)~~

~~Sec. 22-155. Personnel appeals hearing officer—Duties.~~

~~The personnel appeals hearing officer shall have responsibility to hear appeals, receive evidence, determine facts, approve, disapprove, or modify with the consent of the parties, a decision made by a supervisor, department director or municipal court supervisor, except in grievances which deal with a termination. The decision of the personnel appeals hearing officer shall be based on a preponderance of the evidence presented at the hearing. The burden of going forward initially rests with the city. Determinations of the personnel appeals hearing officer which deal with a termination shall be presented to the city manager in matters involving city employees or to the municipal court presiding judge in matters involving municipal court employees in the form of a recommendation. The city manager or municipal court presiding judge shall, after a whole record review, either accept or reject the recommendation of the personnel appeals hearing officer. If the recommendation is rejected, after a whole record review, by the city manager or municipal court presiding judge, the grieving party shall have no further recourse for internal remedy. Decisions rendered by the personnel appeals hearing officer on the grievance issues of loss of pay, written reprimand, suspension or demotions, reclassifications, transfers, reassignments and changes in shift rotations resulting from a disciplinary action shall be final and binding on all parties.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1843, § I, 11-6-00; Ord. No. 1870, § I, 6-4-01; Ord. No. 1908, § II, 2-19-02; Ord. No. 1984, § I, 3-3-03; Ord. No. 2525, § II, 6-1-09)~~

~~Sec. 22-156. Waiver of grievance.~~

~~Any grievance not filed pursuant to the provisions of this procedure within seven business days of the event or circumstance upon which such grievance is based shall be deemed to have been waived, and no relief shall be granted thereon.~~

~~(Ord. No. 1741, § I, 5-17-99; Ord. No. 1908, § II, 2-19-02; Ord. No. 2525, § II, 6-1-09)~~

~~Sec. 22-157. Appeal of personnel appeals hearing officer's decision.~~

~~The employee or the city may appeal the decision of the personnel appeals hearing officer or the city manager's rejection of a 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 shall be affirmed unless the decision 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 statutory authority or jurisdiction of the personnel appeals hearing officer.~~

~~(Ord. No. 2525, § II, 6-1-09)~~

~~Secs. 22-158—22-188.—Reserved.~~

~~ARTICLE IX.—PROHIBITIONS~~

~~Sec. 22-189.—Political activities.~~

~~Certain political activities are judged inconsistent with merit principles and are not in the best interests of the city or its employees. Therefore, the following activities are prohibited or restricted:~~

- ~~(1) No city employee shall hold a political position or engage in political activity which is incompatible or in conflict with the person's city employment.~~
- ~~(2) No city employee shall participate in political or electoral issues during regular work hours.~~
- ~~(3) No city employee shall use the person's position or the prestige of the person's office, either direct or implied, to influence others for political purposes.~~
- ~~(4) City employees shall not be coerced to support or oppose any political or electoral issue or candidate for public office, during regular work hours or while in the performance of the person's duties.~~

~~(Ord. No. 2163, § I, 1-3-05)~~

~~Sec. 22-190.—Noninterference of employee political activities during off-duty hours.~~

~~Nothing in this article shall be construed to restrict off-duty political activity or to prohibit any employee from making voluntary contributions to political candidates or electoral issues. Further, off-duty employees shall not be restricted from expressing opinions, voting pro or con, or meeting attendance on political or electoral issues.~~

~~(Ord. No. 2163, § I, 1-3-05)~~

~~Sec. 22-191.—Involvement in civic activities.~~

~~Notwithstanding the restrictive sections of this article, which shall be observed, all employees are encouraged to become involved in religious and civic affairs if they choose, and to assist in the promotion and improvement of the community.~~

~~(Ord. No. 2163, § I, 1-3-05)~~

~~Secs. 22-192—22-208.—Reserved.~~

~~ARTICLE X.—PERSONNEL RECORDS⁽⁴⁾~~

Footnotes:

~~—(4)—~~

~~Note—See section 600 of the personnel manual.~~

~~Editor's note—Per request from the city, the title of article X has been changed to "personnel records." The former title of article X was "prohibitions," and derived from Ord. No. 1741, § I, adopted May 17, 1999.~~

~~Sec. 22-209.—Personnel records.~~

~~Personnel records shall be maintained in the human resources department and shall be open to inspection by the public according to applicable state law. The employee, the employee's supervisors, employees of the human resources department, the personnel appeals board, legal department, and the EEO officer shall have access to the individual employee's personnel file. No personnel files or portions thereof shall be removed from the human resources department without the human resources director's concurrence or the employee's written permission.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-210.—Personnel records that are public.~~

~~The following data in a personnel folder are public and may be revealed by the human resources department:~~

- ~~(1) Resume;~~
- ~~(2) Employee's job title;~~
- ~~(3) Date of hire;~~
- ~~(4) Department in which employee works;~~
- ~~(5) Employee's salary or wage;~~
- ~~(6) Human resource department employees are authorized to redact confidential information from these documents.~~

~~(Ord. No. 1741, § I, 5-17-99)~~

~~Sec. 22-211.—Personnel records that are not public.~~

~~The following personnel records, consistent with New Mexico law are not public records:~~

- ~~(1) Doctor's opinions and other medical records in personnel folders;~~
- ~~(2) Records of illness, injury, disability, inability to perform a job task, and sick leave;~~
- ~~(3) Letters of reference;~~
- ~~(4) Documents concerning infractions and disciplinary actions;~~
- ~~(5) Personnel evaluations (personal opinions);~~
- ~~(6) Opinions as to whether a person would be rehired or reasons why a person was not initially hired;~~
- ~~(7) Social security number;~~
- ~~(8) As otherwise provided by law.~~

~~The custodian of the files is not obliged to produce these or other private data except when properly served by subpoena.~~

~~(Ord. No. 1741, § I, 5-17-99)~~