

**CITY OF ESPAÑOLA**  
**ADMINISTRATIVE MANUAL**

Article III, Division 4 of the Española Municipal Code may be cited as the City Personnel Ordinance which provides the framework for Personnel administration and operation of City Government.

Pursuant to Section 3-13-4 NMSA 1978 and Section 2-89 of the Española Municipal Code, City Personnel Ordinance, the following Rules and Regulations are adopted by the Governing body of the City of Española by Resolution No. 90-28.

The purpose of these Rules and Regulations is to translate the broad language of the City Personnel Ordinance into specific rules and regulations concerning such basic matter as recruitment, selection, classification, compensation, training, appeal right and many other aspects of City employment.

These Rules and Regulations are a contractual agreement between the City and its employees. Generally, this document describes what is to done rather than how to do it; however, this document may be supplemented by an administrative manual, interpretive memoranda, and supervisory training.

Every consideration shall be given to the rights and interest of employees, supervisors and administrators, consistent with the best interests of the organization and the public. The City Personnel Ordinance and Rules and Regulations are not construed to invest any “rights” in any employee that would impair or infringe on the rights of another employee, supervisor, the governing body or the public.

Continuous employment, advancement and transfer of employees covered by this personnel system shall be subject to good behavior, performance of work, loyalty, necessity for the performance of work, cooperation and the availability of funds.

These Rules and Regulations are subject to revision by the governing body as necessary by duly adopted resolution or as otherwise provided herein.

1. DEFINITION – The following definitions shall be used for descriptive purposes; in the event of any conflict between these definitions and the rule or regulation to which the definition applies the latter shall take precedence.

“Acting City Manager” means the person appointed from time to time by the City Manager who shall act as the Manager when the short term absence or incapacity of the City Manager requires, The Acting City Manager shall have all the duties, Authority and responsibility of the City Manager during the temporary tenure.

“Allocation” means the action taken to assign a position to an appropriate classification.

“Bona Fide Occupational Qualification (BFOQ)” As used herein, “bona fide occupational qualification” means a qualification reasonably related to the satisfactory performance of the duties of a job and for which there is a factual basis for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety or efficiency.

“Candidate” means any person who has qualified under these Rules for appointment to positions in a specific classification.

“Certification” means the act of submitting to an employer the names of candidates on a “list of eligibles” for the purpose of making an appointment to a position.

“City” means the, City Personnel Services creates by the Personnel Ordinance and includes all organizational units and position therefore covered by the Personnel Ordinance.

“City Manager” means the chief administrative officer of the City, appointed by the Mayor with the approval of the governing body.

“Classification” means one or mores positions so similar in the essential character of their duties and responsibilities that the same pay range, title and qualification requirements can be applied.

“Classification Process” means research and analysis based on a comparative duties, responsibilities, and qualifications by with appropriate classification are determined.

“Classification Reduction” means a change from a classification with a higher salary range to a classification with a lower salary range.

“Classification Position” means a job which requires regularly assigned combination of duties to be performed by one employee in the City and a position which is no temporary, term or exempt.

“Demotion” means the change of an employee from a position in one classification to a position in a classification with a lower salary range for which the employee qualified. This may result in a lower pay rate for the employee.

“Department” means the administrative grouping of Divisions, Sections and Units under a consolidated designation or body as specified by the current city organizational structure.

“Department Director” means the head of an administrative department as specified by the current City organizational structure.

“Director” means the Personnel Director or the director’s designee.

“Dismissal” means the involuntary separation of an employee for disciplinary reasons.

“Employee” means any authorized and appointed incumbent or a position in the municipal service.

“Employee Relations” means all matters that are subject to consultation, negotiation and communication among employees between employees and supervisors or between the governing body and Administrative, supervisory or other employees.

“Employer” means the hiring of a person into a position.

“Exempt Position” means any City Office, job, or position of employment as defined in subsection 2.4.

“Fact Finding” means the identification of the major issues in particular dispute; the review of the position of parties; the resolution of formal difference by one or more impartial fact finders, and, in the discretion of the fact finders, the making of recommendations for settlement.

“Fair Labor Standards Act (FLSA)” means the Federal Law (29 CFR 541) Setting forth minimum wage, overtime pay, equal pay, record keeping and child labor standards for employees who are covered by the Act.

“Grievance” refer to subsection 8.3.

“Handicapped Person” means anyone who has a medically documented physical or mental impairment which substantially limits one or more of his or her major life activities or has a record of such an impairment or is regarded as having such an impairment.

“Hatch Act” means that Federal Law (5 USC, Section 1505 to 1508) strictly prohibits certain partisan political activity by an employee whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency.

“Hearing” means the process by which all sides of a grievance are presented and reviewed.

“Immediate Family” means the parent, legal guardian, grandparent, spouse, child, sister or brother, father-in-law, mother-in-law and grandchild of the employee.

“Ingrate Hire” means the authorized hiring of an employee at a rate higher than the initial or beginning rate in the pay range assigned to a position.

”Job Description” means a written statement of duties responsibilities which characterizes a job and includes the education, experience, knowledge and ability required to perform the duties of the job.

“Just Cause” means any conduct, action or inaction arising from, or directly connected with the employee’s work which is inconsistent with the employee’s obligations to the employer and reflects the employee’s disregard of the employer’s interests.

“Layoff” means the involuntary separation, without prejudice, of an employee when a classified position has been abolished because of insufficient funds, because of lack of work resulting from a reduction in force or reorganization, or because of other reasons deemed to be in the best interest of the City, as determined by the City Manager and approved by the governing body.

“Leave” refer to section 13.

”List of Eligible” means a list of names certified by the Director from which a candidate may be selected for employment.

“Management” means the collective body of those who direct or administer within the City’s organization of Department, Division and Units.

“Market Adjustment” means the adjustment of salary ranges based upon prevailing market rates, internal equity, and other related factors.

“Office” means the City Personnel Division

“Overfill” means an incumbent who is being compensated at a rate higher than the maximum for the classification he/she holds.

“Overtime” means time an employee is directed and authorized to work in excess of the standard work week or; in the case of sworn police personnel, the standard work period.

”Para-Professional” means an incumbent who occupies a position which involves furnishing aid or support to the category of those incumbents of professional positions.

“Pay Plan” refer to Section 6.

“Personnel Matters” means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints of charges against any employee.

“Position” means an individual job within the City.

1. Regular full-time position is authorized for full-time work which has no expiration date, unless due to layoff, and which has been approved by the governing body.
2. Regular part-time position is authorized for full-time work (usually less than forty (40) hours per week) which has no expiration date, unless due to layoff, and which has been approved by the governing body.
3. Term position is a full-time or part-time position which has a fixed expiration date usually associated with funding or a specific project.
4. Temporary position is a position which can be full-time or part-time. Temporary positions do not earn any of the rights or leave benefits accrued by regular positions. If the position is established for more than six (6) consecutive months in a calendar year, it will be covered by the Public Employees Retirement Association.
5. Casual position is a position whose functions normally perform less than twenty (20) hours of scheduled work within a forty (40) hour work week but whose work week may exceed twenty (20) hours per week from time to time during a twelve (12) month period. A list of casual employees may be maintained by the Director so such employees can be called on an “as needed” basis.

“Probationary Period” means a period of time served by an employee in a classified or term position during which the employee must prove her/his ability to adequately perform job. See Subsection 4.6.

“Professional Employee” means employees engaged in work in which the employee’s primary duty must be either:

1. Work required acknowledge of an advanced nature in a field of science or learning, typically obtained by a prolonged course of specialized instruction and study; or
2. Work that is original and creative in character in a recognized field of artistic endeavor, the result of which depends primarily on the employee’s invention, imagination, or talent; or
3. The employee must consistently exercise discretion and judgment; or
4. The employee must perform work that is predominantly intellectual and varied as distinguished from routine mental, manual, mechanical, or physical duties; or

5. The employee must not spend more than twenty (20) percent of the time worked in the work week on activities not essentially a part of and necessarily incident to the professional duties.

“Promotion” means the change of an employee from a position in one classification usually to a position in a classification with a higher salary range.

“Protective Services” includes positions such as police officers, dispatchers or jailers which involve guarding, shielding or saving dispatchers or jailers which involve guarding, shielding, or saving activities through the Police Department (other than administrative support).

“Property Rights” means that which is peculiar or proper to any person, an aggregate of legal rights which are guaranteed and protected, both corporeal and incorporeal...

“Reclassification” means the process of analysis by which an established position is reviewed to determine whether the duties and responsibilities of that position warrant a change in classification designation.

“Regular Appointment” means a classified position in which the employee has successfully completed the probationary period.

“Regular Employee” means a person in a classified position who has successfully completed the probationary period.

“Regular Position” means a full or part-time position that is funded as regular and has been designated in the annual budget to receive leave and other benefits.

“Re-employment” means the re-hiring of a former employee who has been separated for a period of twelve (12) months or less, or as otherwise specified in subsection 4.3.

“Reprimand” means the formal, written censure of an employee by a supervisor with the approval of the City Manager. This includes documented oral admonishments.

“Resignation” means a voluntary separation from the City at the request of the employee.

“Rules” means the Personnel Rules and Regulations promulgated in accordance with the provisions of the Personnel Ordinance.

“Salary Range” means a division of the salary schedule to which classifications are assigned.

“Selection” means the choosing of a candidate for employment.

“Seniority” means a status attained by length or continuous service in the City.

“Separation” means the cessation of employment with the City.

“Sexual Harassment” means an unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature.

“Status” means position or rank in relations to other.

“Supervisory Employee” means an employee having the authority to exercise independent judgment in performance of work; to recommend hiring, transferring, suspending, layoff, recalling, promoting; or discipline employee; or one who has the responsibility to adjust employee grievance.

“Suspension” means the involuntary separation without pay for a designated time not to exceed thirty calendar days of an employee for disciplinary reasons.

“Termination” means the voluntary or involuntary end of employment for an employee.

“Test” means a method of measuring qualification, fitness and ability, and includes tests that are written, rated, oral, physical or in the form of a demonstration of skill or any combination thereof.

“Transfer” means the movement of an employee from one position to another position in the same classification with the same salary range without any break in service.

“Veteran” means any person except one receiving a retirement annuity, who served in the United State Armed Forces for at least one hundred eighty (180) days and/or was separated under other than dishonorable conditions. An individual separated from the Armed Forces prior to completing one hundred eighty (180) days of service for a service-connected disability shall not be considered a veteran.

“Worker’s Compensation” means the fund established to provide benefits to employees injured on the job.

## 2. GENERAL PROVISIONS

- 2.1 Prior Rules. The Personnel Rules and Regulations in effect prior to these Rules and Regulations and all amendments thereto and hereby repealed.

- 2.2 Compliance. All persons operating under the provisions of these Rules shall conform to, comply with, and aid in all proper ways in carrying out the provisions of these Rules.
- 2.3 Purpose. These Rules are prescribed for the purpose of implementing the Española Municipal Code (EMC) provisions to assure the continuance of the merit system and to provide a modern personnel system thereby promoting efficiency in the conduct of public business and assuring fair and impartial treatment for all applicants for employment and all employed by the City.
- 2.4 Coverage. The Personnel Ordinance and Rules and Regulations cover all positions except:
- A. Officials elected by popular vote or appointed to fill vacancies in elective offices; member of City boards, commissions and committees appointed by the Mayor and approved by the governing body; and those on professional services contract;
  - B. Those employees designated as exempt, not necessarily FLSA exempt, are covered by the Personnel Ordinance and the Personnel Rules and Regulations and entitled to the same rights and privileges afforded other employees, except for the rights and privileges of selection, appeal of disciplinary action, grievance procedures or dismissal. Such employees include:
    - 1. The City Manager, City Attorney, City Clerk, Chief of Police, and directors of departments and employees with base salaries over \$36,000 or designated exempt by the City Manager and approved by the governing body; and
    - 2. Employee in the Municipal Court
- 2.5 Duties of the City Manager. In accordance with the provision of Section 2-86 of the EMC, the City Manager shall be responsible for the administration of the City Personnel system.
- 2.6 Duties of the Director. The Director shall administer all personnel activities regarding the Rules and Regulations.
- 2.7 Merit Principals.
- A. The City of Española shall govern in all personnel practices and adopts the following merit standards.
    - 1. Recruiting, selecting, and advancing employees will be on the

basis of their relative ability, knowledge, and skill, including open consideration of qualified candidates for initial employment.

2. Equitable and adequate compensation will be provided.
3. Employee will be trained as needed to assure high quality performance.
4. Employee will be retained on the basis of the adequacy of their performance and provisions will be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.
5. Fair treatment of candidates and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap, or other non-merit factors, and with proper regard for their primary and, constitutional rights as citizens will be assured.
6. Employee will be informed of their political rights and prohibited practices under the Hatch Act by the Director.

2.8 Interpretive Memoranda. The City Manager and Director may issue such interpretive memoranda as are necessary to interpret the provisions of these Rules.

2.9 Procedures. The Director shall establish and maintain procedures for the operation of the office and the implementation of these Rules.

### 3. EMPLOYMENT

#### 3.1 Recruitment

- A. Recruitment shall be tailored to the number and nature of authorized positions to be filled and to labor market conditions. The recruiting efforts of the Director and Department management will be coordinated and carried out in a timely manner so as to permit successful competition with other employers.
- B. Special emphasis will be placed on recruiting efforts to attract local residents, minorities, women, veterans, the handicapped, or other underrepresented groups to help assure they will be among the candidates considered for employment.
- C. Subject to budgetary and other valid constraints, the Director may:
  1. Utilize trade journals, newspapers, radio and television media to publicize job opportunities.
  2. Maintain and use mailing lists of schools, vocational counseling offices, organized occupational groups, and other

- special applicant interest groups for the dissemination of data about job and career opportunities;
3. Invite individuals so specify their vocational interests for future reference;
  4. Prepare and distribute written information on job opportunities in the City; and
  5. Make periodic visits, displays, and programs directed at schools in order to interest students in jobs with the City.
- 3.2 Preference. Candidates may, as provided, be given preference for appointment positions if they are present employees, minorities, women, veterans, the handicapped, or other under-represented groups.
- 3.3 Proof of Qualification. Proof of eligibility for veteran or handicapped preference shall be presented to the Personnel Office at the time of the application if filled.
- 3.4 Filing.
- A. All applications for positions with the City shall be made on forms prescribed by the Director. Such applications shall include information which the director may deem necessary or as mandated by City, State and Federal law, regulations, and guidelines. All applications shall be signed, dated, and the truth of all statements contained therein certified by the candidate's signature.
  - B. No question on any form of application shall be so worded as to elicit information concerning the sex, age, race, physical or mental handicap, national or ethnic origin, political or religious opinions or affiliation of any candidate except that information required to assist with equal employment opportunity effort, nor shall inquiry be made concerning such origin, opinions or affiliations during any interview, and all such disclosures thereof shall be disregarded, unless such information is deemed a bona fide occupational qualification.
- 3.5 Rejection.
- A. The Director may reject any application if the candidate:
    1. Fails to meet the required minimum qualifications as stated in the job description;
    2. has been convicted of a felony or a misdemeanor and the provisions of the Criminal Offender Employment Act, Sections 28-2-1, et seq. NMSA 1978, permit such rejection:
      - a. Subject to the provisions of the Criminal Offender Employment Act, in determining eligibility for employment, the Department may take into consideration the conviction;

however, such conviction shall not operate as an automatic bar to obtaining public employment unless otherwise provided by law to the contrary.

- b. The following criminal records shall not be used, distributed, or disseminated in connection with an application for any public employment:
    - i. records of arrest not followed by a valid conviction; and
    - ii. misdemeanor convictions not involving moral turpitude
  - c. The City manager may refuse to grant or renew, or may suspend or revoke the application of any candidate or employee for City employment for any of the following causes:
    - i. where the candidate or employee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment;
    - ii. where the candidate or employee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment and if the City Manager determines, after investigation, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.
  - d. The Director shall explicitly state in writing the reasons for a decision which prohibits the person for engaging in the employment, if the decision is based on whole or part on conviction of any crime described in subparagraph 2 of paragraph A of this Section. Completion of probation or parole, supervision, or expiration of a period of three years after final discharge of release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purpose of subparagraph © of this section.
  - e. The Criminal Offender Employment Act (28-2-1 through 28-2-5 NMSA 1978) is not applicable to the City law enforcement entity; however, nothing herein shall be construed to preclude a law enforcement entity in its discretion from adopting the policy set forth herein.
3. Has made any false statement or produced any false document in support of the application, including INS Form 9
  4. has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of

affecting the rights or prospects of any person with respect to employment with the city;

5. has failed to complete the application correctly or submit the application within prescribed time limits;
6. has submitted an application for a classification that is closed for recruitment, except that present employees may submit applications for any classification at any time; or
7. has otherwise violated the Personnel Ordinance of these Rules.

B. The Director shall notify each candidate whose application is rejected.

3.6 Supplemental Information. The Director may hold an application without processing it until such time as transcripts, supplemental application questionnaires, or other required information are received by the Director.

3.7 Examinations. Examinations shall be confined to those matters which test the candidate's ability to be trained for the position and which are directly job-related and which fairly, validly and reliably test the capacity and fitness of the applicants to successfully discharge the duties of the position for which the examination is administered. Examination may be written, oral, physical, performance test, rating of training experience, or any combination of these

3.8 Exemption.

- A. The Director may exempt from competitive entrance tests those professional and technical persons who possess recognized registration or certification who are applying for classified positions which require such registration or certification.
- B. The Director may also exempt from competitive entrance tests classifications where job-related ranking measures are not practical or appropriate. These classifications shall be limited to unskilled positions with no identifiable entrance requirements or experience or education as noted in the applicable, job description.

3.9 Character.

- A. Testing for a position in the City may be accomplished rating of education, training and experience; oral tests, assessment center, performance tests, or any other appropriate selection device.
- B. New tests will be developed in accordance with established professional techniques and relevant federal laws critical to important knowledge, skills, abilities, job duties, work behavior, or work necessary for successful job performance.

- C. No question or other mode of inquiry in any examination shall be so ordered or designed to elicit information that may discriminate for or against any applicant for reasons of sex, age, race, physically oriented handicap, national or ethnic origin, political or religious opinions of affiliation of any candidate, and all disclosures thereof shall be disregarded. No test shall be administered by a Department to a candidate for employment without such test having been approved by the Director.

### 3.10 Administration.

- A. The Director may designate such proctors and oral examiners of recognized qualified competence in the area to be tested as may be necessary for the proper administrations of tests.
- B. Oral tests will be administered by oral examiners, appointed by the Director, who do not hold any political office who do not make the final hiring decisions at the Department level for the position in question.
- C. The Director shall assign an identification number to each examinee and this number shall be used to identify all of an examinee papers.
  - 1. Any test papers bearing an identification number other than the one assigned to the examinee shall be rejected.
  - 2. The Director shall notify an examinee that the test has been rejected.
- D. If the conduct of any examinee is improper during any phase of a test, the proctor may remove such an examinee from the test such conduct will be brought to the attention of the Director who may bar the examinee from future tests. The Director may require any examinee to retest if there is reason to believe the examinee has received prior knowledge of confidential information about the test content, has made false representation at the test administration or whose conduct during test administration was such as to obtain an unfair advantage.
- E. The Director shall make reasonable accommodations for any examinee who has difficulties with the English language, is blind or deaf, or has another handicap or disability that would affect the examinee's ability to take the prescribed test.

- 3.11 Scoring. The Director shall compute a final test score acceptable testing practices. Where a combination of testing procedures is used, failure on any part of the procedures may constitute failure for the entire test.
- 3.12 Notice of Results. The Director shall notify each examinee of the examinee's score. Such notification may be in writing and made within thirty (30) calendar days of the test date.
- 3.13 Retesting. Examinees who pass the test may elect to retest at the first scheduled testing date for the classification which is at least thirty (30) calendar days after the examinee's text. The examinee's highest score shall be the score of record. Examinees who fail the test may elect to retest at the next scheduled testing date for the classification which is at least thirty (30) days after the previous test.
- 3.14 Confidentiality. The Director shall maintain the security of all tests. Written tests, oral test questions, performance tests, rating formulas or any related material that would compromise the content of a test shall be confidential except as otherwise prescribed under state law or the Federal Freedom of Information Act.
- 3.15 Register. The Director shall maintain an official roster of candidates eligible for appointment to a classification.
- 3.16 Establishment. A separate register shall be established and maintained for each classification in the City.
- 3.17 Names. The name of candidates with passing test scores shall be places on the appropriate register in alphabetical order.
- 3.18 Supplemental Registers. The Director shall periodically make a review of existing to determine whether there are an adequate number of candidates available to meet the needs of the City. When it is determined by the Director that a particular register is inadequate or may become inadequate in a short period of time, the Director shall order recruitment and testing; if necessary for that classification.
- 3.19 Duration of Names. A candidate's name shall be retained on a register for six months or as otherwise determined by the Director.
- 3.20 Removal of Names.
- A. The Director may remove the name of a candidate from a register if the candidate:

1. is appointed from the register or any other register at the same or higher salary range, except for temporary appointments
2. advises the Director or an employer of unwillingness to accept an appointment for a position in that classification;
3. fails to respond within a reasonable period of time by mail or telephone inquiry as to availability for appointment; or
4. fails to appear for a scheduled interview without a valid reason.

B. Candidates may elect:

1. not to be considered for employment for a specific period of time; or
2. to designate willingness to accept part-time or temporary employment.

3.21 Restoration of Names. The Director may restore a candidate's name to the register upon showing of just cause.

3.22 Request for Hire. Whenever a vacancy or an anticipated vacancy occurs in a position and the Department desires, to fill the vacancy with a new hire, a request for a list of eligibles shall be submitted by the Department head or his designee to the Director on prescribed forms, unless otherwise provided by the Director.

3.23 Methods of Certification.

- A. Upon receipt of a request for a list of eligibles, the Director shall certify and may submit in writing to the employer the names of no more than the top five (5) candidates from the appropriate register:
1. The name of the top candidate's will be listed in alphabetical order. If a scored test is requested for the classification, then the names of the top candidates will be listed in rank order.
  2. In those instances when there is more than one vacancy for the same classification in the Department, the Director shall certify enough candidates so that the employment list should contain at least five (5) candidates, plus two candidates for each additional vacancy.
- B. The Director may permit selective certification when the position to be filled requires certain specific skills and abilities. The Director shall not authorize such certification when the stated selective factors are incompatible with merit principals.

1. Only those candidates who meet the approved selective factor, if the Director agrees that the selective certification is justified will be certified. If an employment list of less than four candidates is produced, the Director may also certify candidates from other registers with closely related skills.
2. The Director may authorize an emergency appointment if these measures fail to produce available candidates.

### 3.24 Other Factors of Employment

- A. Dress Code: The City of Española employees are encouraged to dress in a manner that is appropriate for the work place. All clothing and accessories should be functional and safe for the type of work performed.
  1. Employee not required to wear uniforms should wear clothing which is neat, clean, and suitable for business.
  2. Employees required to wear uniforms shall wear uniforms at all times while on duty that are clean, fresh, and mended if necessary. Uniforms bearing a City identification patch may not be worn during off-duty hours.
- B. Upon separation from the City, any and all City issued equipment to include but not limited to uniforms, identification patches, badges, and keys must be returned to the City. Failure to do so will result in wages being garnished in the amount due the City including any administrative costs which may be incurred.

## 4. SELECTION

### 4.1 General

- A. Selection for appointments to positions in the City shall be made from lists of eligibles.
- B. Interviewers are encouraged to contact and interview, as appropriate, all candidates ranked at the same score or higher on the list of eligibles.
- C. Applicants shall be selected who are best suited for positions without regard for race, age, religion, color, national origin, ancestry, sex, political opinion or affiliation, or physical or mental handicap, or other non merit factors.
- D. Those candidates interviewed but not selected shall be notified in writing or by telephone of their non-selection by the interviewer in a timely fashion.

### 4.2 Use of Lists of Eligibles.

- A. Interviewer shall:
  - 1. request a current list of eligibles when a position becomes available;
  - 2. use lists of eligibles with consideration of those candidates eligible to be promoted or rehired and eligible employees wishing to transfer;
  - 3. selection must be made from list of eligibles;
  - 4. return the list of eligibles to the office with a requested date of hire.

#### 4.3 Exceptions to Use of List of Eligibles

- A. Former employees who were separated from the City without prejudice may be re-employed by the City within six (6) months from the date of separation without recourse to a list of eligibles provided the individual submits an application for the classification.
  - 1. Such individuals may be re-employed to their former classification or a lower classification in the same series, without having to meet the current minimum qualifications providing that the individual had record of satisfactory or better service.
  - 2. Such individuals may be re-employed in a classification at the same or lower salary range than the one held at the time of separation provided the individual meets the current minimum qualifications and may attain the same seniority and/or rank, and provided the position has not been filled.
  - 3. Such individuals may be re-employed in a classification, provided the individual meets the current minimum qualifications.
- B. Former regular employees who were laid off as a result of a reduction in force shall be offered re-employment by the City in the reverse order of layoff. If employees are laid off at the same time, those with the most seniority will be hired first, if a position at the same or lower salary range for which they qualify becomes vacant within twelve (12) months of the layoff under the following conditions:
  - 1. A former regular employee which is offered and accepts re-employment after layoff must accept the position within fourteen (14) days and then must fill the position within fourteen (14) days of accepting the offer of re-employment or forfeit the right to re-employment.

2. Any individual who refuses or fails to respond to an offer of re-employment in the same or comparable position from which laid off will be removed from the City re-employment list.
  3. Employment lists for positions requested by a Department for which the City is maintaining a re-employment list will contain only those individuals eligible to be re-employed.
- C. Employees in the Department where a vacancy exists may be transferred or promoted into that vacancy, provided the employee meets the minimum qualifications for the positions, without recourse to a list of eligibles.
- D. An existing list of eligibles that is no more than six (6) months old may be used to hire for a position with the same classification.
- E. Any employee, other than one in exempt, term, temporary or emergency status who separates from the City to enter the Armed Forces of the United States, National Guard, or an organized reserve unit and whose military service does not exceed five (5) years, shall, upon request, be re-employed so as to give such individual seniority status, and pass as the individual would have attained had the individual not entered the Armed Forces of the United States, the National Guard who are called to active duty by the President of the United States, or the governor shall also be entitled to re-employment right under this Rule.
1. In order to be re-employed under this Rule, an individual must:
    - (a) have been separated from active duty condition other than dishonorable;
    - (b) apply to be re-employed within ninety (90) days of separation from active duty or release from hospitalization that extended no more than one year after separation from active duty; and
    - (c) be able to perform all of the duties of the position or another position which the individual is qualified to perform and which will provide such individual like seniority status and pay, or the nearest approximation thereof Consistent with the circumstance in such individual's case if the individual is not qualified to perform the duties of the previous position by reason of disability sustained.

- F. Any person employed in temporary status after having passed the appropriate test and having been selected from employment list may be employed in the same classification and status in succeeding years on a seasonal basis without recourse to a list of eligibles.
- 4.4 Re-employment After Layoff. Vacant positions of the same level or lower must be offered to qualified candidates who were laid off by the City and are eligible to be re-employed after layoff before consideration can be given to other candidates.
  - 4.5 Required Data. The Director may prescribe data to be reported on lists of eligibles concerning the response of candidates and the outcome of interviewer contacts with Candidates.
  - 4.6 Probationary Appointment.
    - A. A probationary period of six (6) months shall be required of all employees, except for protective service employees (police officers, dispatchers, jailers plus other designated positions) whose probationary period shall be one (1) year.
      - 1. Supervisors may use up to two additional ninety (90) day periods of evaluation if necessary.
      - 2. The employee's signature on the Personnel Action Request Form will acknowledge willingness to accept a term position
      - 3. The duration of the appointment will be dependent upon the funding for the project or programs.
    - B. An employee may be separated from the City without right of appeal or hearing at any time during the probationary period.
    - C. A request must be made by the Department Director on a Personnel Action Request Form and approved by the City Manager and the governing body for an employee's status to change from probationary to regular status provided that the process is completed within ten (10) working days after the employee completes his/her probationary period.
  - 4.7 Term Appointment.
    - A. A term appointment is the employment of a person when the need for an employee's service is for a designated period of time, usually in excess of one (1) year.
      - 1. Selection shall be made from a list of eligibles.

2. The employee's signature on the personnel Action Request Form will acknowledge willingness to accept a term position.
3. The duration of the appointment will be dependent upon the funding for the project or programs.

B. Employees of term status who satisfactorily complete the probationary period shall be afforded all the privileges of regular employees, except for right of appeal regarding expiration of appointment.

C. Employee in term position may be converted to probationary or regular status in a vacant regular position.

#### 4.8 Temporary Appointment.

A. A temporary appointment is the employment of a person when the need for an employee's services is for a period of less than one year or is on a seasonal basis.

1. Temporary appointments shall be made from the appropriate list of eligibles.
2. The employee's signature on the Personnel Action Request Form will acknowledge willingness to accept a temporary appointment.
3. Employee's of temporary status may be converted to probationary status in the same classification and credited with up to six months services towards completion of the probationary period at the time of the conversion from temporary status to probationary status.
4. The expiration of a temporary appointment shall not be considered to be a layoff or of disciplinary action.

B. Persons who are employed in the City through student cooperative training programs, including Intern Programs, shall hold temporary appointment.

#### 4.9 Casual Appointment. See the definition of "Position", subsection 5.

#### 4.10 Emergency Appointment.

A. An emergency appointment is the employment of a person when an emergency condition exists, and there are no candidates available on an appropriate register.

1. If no candidates are available for the classification, the employer may hire a qualified person without testing.
  2. Prior to appointment, the employer shall submit a Personnel Action Request Form together with the employee's application to the Director.
  3. An emergency appointment may be converted to probationary, term, or temporary appointment if the employee:
    - (a) passes the appropriate test; or
    - (b) has taken but not passed the appropriate test, the Department certifies that the employee is performing at a satisfactory level and there are no available candidates for the position.
- B. Employees in emergency status shall be paid at the same salary range as other employees in the classification.
- C. No individual shall hold an emergency appointment longer than ninety (90) days in any twelve (12) month period.

#### 4.11 Promotion-Eligibility.

- A. Any employee, except those in emergency status, who has demonstrated at least six (6) months of continuous satisfactory service, may be eligible to be promoted.
1. Employees may be eligible to be promoted to any classification within the same career ladder for which they meet the minimum qualifications without having to take the test for that classification.
  2. Employees may be eligible to be promoted to any classification outside of their career ladder if they meet the minimum qualifications and pass the appropriate test, if applicable.
- B. Employers may select any candidate from the appropriate list of eligibles for promotion,
- C. Employees hired in accordance with the provisions of subsection 4.10 are not eligible to be promoted until such time as they pass the appropriate test, or if the Department certifies that the employee is performing at a satisfactory level.
- D. Employees will receive a ten (10) percent salary increase or the minimum rate of the new salary range, whichever is greater.

4.12 Promotion-Effective Date. Promotions approved by the Director and City Manager will be effective at the beginning of the pay period during which the Personnel Action Form is approved by the City Manager.

4.13 Promotion-Prior to Completion of Probationary Period. Employees who are promoted prior to the completion of the probationary period for the initial appointment to a higher level position will have to complete the probationary period in the higher position.

4.14 Promotion-Temporary

A. An employer may fill a temporarily vacant, regular, or term position by the temporary promotion of an employee who meets the minimum qualification from within the City.

1. A temporary promotion must be for a period of at least thirty (30) calendar days but no more than twelve (12) months.

2. The employee shall receive ten (10) percent salary increase or the minimum rate, whichever is greater.

3. At the end of the temporary promotion period, the employee will revert to the employee's previous classification and salary without right of appeal or hearing, with any salary increases that may have fallen due.

4.15 Transfers-Intra-Department.

A. The Department, with approval of the City Manager, may permanently transfer an employee from one work site, position or division within the Department with written notification to another without the employee's written consent, if deemed in the best interest of the City, provided the employee meets the minimum qualifications for the new position.

1. An employee with at least ninety (90) days of consecutive service is eligible to transfer to another available position in the same classification or to another classification with the approval of the department head and the City Manager.

4.16 Transfers-Intra-Department.

A. An employee with six (6) months of continuous service may transfer from one Department to a regular position in another Department,

after selection for the position, upon two (2) weeks notice to the Department from which the employee is transferring.

1. An employee shall retain all accrued annual and sick leave upon transfer.
2. Any compensatory time will be taken prior to the transfer or shall be compensated in accordance with subsection 6.10.

B. When, by legislative action or administrative order, a Department or Division is to be transferred to another Department, or reorganized within the same Department, the regular employees will be transferred to a comparable position within that Department with no loss in compensation or change in status. Classifications may be reviewed and changed to reflect the structure of the newly organized Department, Division or Unit.

4.17 Transfer. – Light Duty Assignments for Disabled Employees. Employees who have suffered work related disability or who have reached an age at which they cannot perform their Classified duties may be placed in light duty as deemed necessary by the Department Director.

4.18 Medical Examination.

A. Any candidate recommended for appointment to a full-time or part-time city position may be required to undergo a city-funded medical examination by a city designated physician. This examination shall be prior to appointment in order to determine whether the applicant is physically capable of satisfactorily performing the duties of his/her specific position. The medical examination requirement may be waived at the discretion of the director when medical-surgical prehistory indicates compatibility with job requirements. The city manager may at any time also require a physical or mental examination of any city employee, to be funded by the city and performed by a city designated physician, to certify that the employee is capable of satisfactorily performing his/her assigned duties. An employee may be placed on administrative suspension with pay pending the medical examination results. Is shall be cause for termination if the result of a physical or mental examination indicates that the employee is no longer capable of satisfactorily performing his/her duties.

B. Drug and Alcohol Testing

1. Drugs to be Tested For: When drug and alcohol screening is required under the provisions of the Rules and Regulations, a urinalysis test will be given to detect the presence of the

following drugs: Alcohol (ethyl), amphetamines (e.g., speed), barbiturates (e.g., amobarbital, butabartial, Phenobarbital, secobarbital, cocaine, methqualone (e.g. Quaalude), opiates (e.g. codeine, heroin, morphine, hydromorphone, hydrocodone), phencyclidine (PCP), THC (Marijuana).

2. Candidates Testing: General Standard. Candidates offered safety sensitive position and positions which allow access to sensitive information will be required to undergo a drug and alcohol test as part of a pre-employment medical examination prior to their employment.
3. Current Employee Testing: General Standard. The City may require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during working hours. For purposes of this section, “reasonable suspicion” means an articulable belief based on specific objective facts and reasonable inferences drawn from those facts; “Under the influence” means having the presence of a drug or alcohol at or above the level of a positive test result. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to: a patter of abnormal or abnormal or erratic behavior; information provided by a reliable and credible source; direct observation of drug or alcohol use; or presence of the physical symptoms of drug or alcohol use (i.e. glossy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and slow reflexes). Supervisors are required to detail in writing the specific facts, symptoms, or observations which formed the basis of their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be referred to the appropriate department head or designee. The facts underlying the determination of reasonable suspicion should be disclosed to the employee at the time the demand is made.
4. Supervisor Training. The City shall develop a program of training to assist supervisory personnel in identifying drug and alcohol use among employees. Such training will be directed towards helping supervisors to recognize the conduct and behavior giving risk to a reasonable suspicion of drug or alcohol use, to identify employees who need counseling the employee assistance programs, and to be aware of those employees who pose an immediate safety threat.

5. **Prior Notice of Testing Policy.** The City shall provide written notice of its drug and alcohol testing policy to all employees and job candidates. The notice shall contain the following information: The need for drug and alcohol testing; the circumstances under which testing may be required; the procedure for confirming an initial positive drug test result; the consequences of a confirmed positive test result; the consequences of refusing to undergo a drug and alcohol test; the right to explain a positive test result and the appeal procedures available; and the availability of drug abuse counseling and referral service.
6. **Consent.** Before a drug and alcohol test is administered, employees and job candidates will be asked to sign a consent form authorizing the test and permitting release of test results to those City officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy. Employees and applicants may at this time provide a list of those medications that he or she has recently used. The list of medications, if provided, shall be sealed and held as confidential until there has been a positive test result, the list of medications shall only be disclosed to the medical official who will determine whether the positive result was due to the lawful use of any of the listed medications. Employees and Candidates may choose to provide such a list after being notified of a confirmed positive result.

The consent form shall also set forth the following information: the procedure for confirming an initial positive test result; the consequence of a Confirmed positive test result; the right to explain a confirmed positive test result and the appeal procedure available; and the consequences of refusing to undergo a drug and alcohol test.

7. **Refusal to Consent: Candidates.** A candidate who refuses to consent to a drug and alcohol test will be denied employment with the City.
8. **Refusal to Consent: Employees.** An employee who refused to a drug and alcohol test when reasonable suspicion of drug and alcohol use has been identified is subject to corrective-disciplinary action up to and including termination. An employee, upon written request to the appropriate

department head within two (2) days of his or her refusal, shall be entitled to a hearing before the City Manager prior to the City's decision that such refusal warrants corrective disciplinary action. The reasons for the refusal shall be considered in determining the appropriate corrective-disciplinary action.

9. Confirmation of Testing Results. An employee or candidate whose drug test yields a positive result shall be given a second test using a gas chromatography/mass spectrometry (GC/MS) test. The second test shall use a portion of the same test sample withdrawn from the employee or candidate for use in the first test.

If the second test confirms the positive test result, the employee or candidate shall be notified of the results in writing by the appropriate department head or director. The letter of notification shall identify the particular substance found and its concentration level.

An employee or candidate whose second test confirms the original positive test result may, at the employee's or candidate's own expense, have a third test conducted using the same sample at a laboratory selected by the City.

10. Consequences of a Confirmed positive Test Result.

Candidates: Candidate will be denied employment with the City if their initial positive test results have been confirmed. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive drug test result.

Employees: If an employee's positive test result has been confirmed, the employee is subject to corrective disciplinary action up to and including termination. Factors to be considered in determining the appropriate corrective-disciplinary response include the employee's work history, length of employment, current job performance, and the existence of past corrective-disciplinary actions.

11. Grievance Procedures. If an employee's positive test result has been confirmed, and eligible employee is entitled to grievance procedures pursuant to Section 8.

No adverse personnel action may be taken against an employee based on a confirmed positive drug test result

unless the grievance review board finds by a preponderance of the evidence that:

- (a) the employee's supervisor has reasonable suspicion to believe that the employee was under the influence of drug or alcohol while on the job; and
- (b) the employee's drug test results are accurate.

12. Mandatory Employee Assistance Program. (EAP) Referral. Upon the first confirmed determination that an eligible employee has been under the influence of drugs or alcohol, the City shall refer the employee to an Employee Assistance Program (EAP) for assessment, counseling, and rehabilitation unless the employee's drug and alcohol use has resulted in an accident serious enough to warrant dismissal. Participation in an EAP is voluntary and no corrective-disciplinary action may be taken against an employee for failure to begin or complete an EAP Program. Corrective-disciplinary action based on a violation of the City's drug and alcohol policy is not automatically suspended by an employee's participation in an EAP and may be imposed when warranted.

Voluntary participation in an EAP prior to a positive confirmed test result is encouraged. No corrective-disciplinary action will be brought as a result of volunteering to participate in such a program. Employees, who, prior to a positive test result, voluntarily identify themselves as drug or alcohol users and obtain counseling and rehabilitation through the City's EAP shall not be disciplined for their drug and/or alcohol use if they thereafter refrain from violating the City's policy on drug and alcohol abuse. All employees, however, can be disciplined for any incidents resulting from their violation of the City's policy on drug and alcohol abuse.

13. Confidentiality of Test Results. All information from an Employee's or Candidate's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee or candidate. The results of a positive drug test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

14. Laboratory Testing Requirements. All drug and alcohol testing of employees and candidates shall be conducted at medical facilities or laboratories selected by the City. To be considered as a testing site, a medical facility or lab must submit in writing a description of the procedures that will be used to maintain test samples. The City shall not select a test facility that does not employ

- (a) Testing procedures that ensure privacy to employees and applicants consistent with the prevention of tampering;
- (b) Methods of analysis that ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
- (c) Chain-of-custody procedures that ensure proper identification, labeling and handling of test samples; and
- (d) Retention and storage procedures that ensure reliable results on confirmatory tests or original samples.

4.19 Prohibited Employment-Nepotism.

- A. No person shall be employed as a clerk, deputy or assistant whose compensation is to be paid out of public funds by any person elected or appointed to any public office, if the person is related, by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the governing body (section 10-1-10 NMSA 1978). A person employed in violation of this subsection shall be null and void (section 10-1-11 NMSA 1978).
- B. No person shall be hired, promoted, or transferred to a position which is under the direct supervision or the departmental chain of command of a relative by consanguinity or affinity within the third degree.
- C. In the event two employees are (1) in positions of director or in direct supervision through any departmental chain of command or (2) positions in the Police Department where their job duties may require them to be in communication with each other during emergency response situation, and these two employees establish a relationship by marriage, other operation of law, or through lifestyle accommodations being the equivalent of a family relationship, then the City Manager may transfer one of the employees to a position removed from the supervisory control of the

other if it is determined that such transfer will serve the best interests of the City.

- D. Except as provided in A and B above, no applicant or employee who is a relative of another City employee shall be prohibited from seeking and holding a position or from promotion within the city service provided such recruitment or promotion is conducted in accordance with the provisions of these personnel rules and any applicable administrative regulations.
- E. Relationships by consanguinity or affinity within the third degree include parents, children, grandparents, grandchildren, brothers, sisters, great-grandparents, great-grandchildren, aunts and uncles, and nieces and nephews of the employee and his/her spouse.

## 5. CLASSIFICATION PLAN

5.1 Preparation of. The Director shall prepare and maintain a Classification Plan which provides for a grouping of all positions in the City into classification on the basis of duties, responsibilities, and minimum qualifications required.

### 5.2 Content of.

- A. The Classification Plan shall include the descriptions for the various classifications which may be subdivided or grouped as deemed proper by the Director.
- B. The Director shall prepare and/or revise written descriptions for each classification which may be amended as necessary, and these descriptions shall include:
  - 1. The title of classification;
  - 2. Examples of typical tasks performed, responsibilities, and working conditions of positions allocated to the classifications;
  - 3. A statement of the minimum qualifications required, including the kind and amount of training and experience, knowledge, skills, and abilities, physical requirements, and job related personal attributes that an employee should possess; and
  - 4. a signature by the Director and the date of the last revision.

### 5.3 Revisions to.

- A. Whenever to creation, abolition, subdivision, or consolidation of classification appears necessary due to the creation of a new

position, change in organization, or change in the duties of an individual position, the Director, after conferring with the appropriate supervisory employees, shall prepare classification descriptions for the City Manager's approval. The City Manager shall afford those affected Departments and interested parties an opportunity to express their viewpoints concerning such revisions.

- B. Any revision reflecting a major change in policy shall be subject to approval by the City Manager who shall afford those affected Departments and interested parties an opportunity to express their viewpoints concerning such revisions.
- C. The Director may make revisions to classification descriptions. The Director shall report such revisions to the City Manager.
- D. When a classification is revised, the title of the classification, and in some cases the range of assignment but not the salary of the employee in that class, may be affected.
- E. The Director shall conduct periodic audits to determine whether or not positions are properly allocated. If it is determined that a position is improperly allocated, the Director shall reallocate it to its proper classification.
- F. When a new position is contemplated, the Director shall request establishment of the position before it may be filled. Except as otherwise provided by these Rules, no person shall be appointed to or employed in a position until the position has been allocated to a classification and approved by the Director and City Manager or until the Classification Plan has been amended to provide for it.
- G. When the duties of a position are changed substantially, the Director shall order a review of the position. Upon completion of the review, the Director shall order that the position be allocated to a more appropriate Classification. Temporary assignment of additional duties shall not justify the reallocation of a position.
- H. The Director shall advise a Department, in Writing, of the specific reasons for allocating or reallocating a position to a classification if different from that proposed by the Department.

## 6. PAY PLAN.

- 6.1 Policy. It is the express policy of the City of Española that the comprehensive Pay Plan for all classification of the City are subject and limited to availability of funding as may be determined by the governing body. The governing body shall be the final arbiter of available funds.
- 6.2 Preparation. The Director shall prepare a comprehensive Pay Plan for all classifications in the City. The Pay Plan shall take into consideration experience in recruiting for positions in the City, prevailing rates of pay for the services performed and for comparable services in public and private employment, cost of living, maintenance or other benefits received by employees in the City, and the City's financial condition and fiscal policies.
- 6.3 Adoption. The Pay Plan shall be prepared by the director for the city manager and adopted by resolution by the governing body.
- 6.4 Revision. The Pay Plan may be revised upon the recommendation of the city manager and the approval of the governing body.
- 6.5 Administration.
- A. The Approved Compensation Pay Plan shall constitute the official schedule of salaries for all classification in the City to which such Compensation Pay Plan is applicable. The rates of pay for all persons in the City shall be approved by the City manager and no salaries shall be approved unless they conform to the approved Compensation Pay Plan.
  - B. No employee in the City shall be paid a salary less than the minimum nor greater than the maximum of the salary range for the classification as fixed by the Compensation Pay Plan unless otherwise provided for in the Rules.
    - 1. Employees work on an hourly or part-time basis and shall be paid at the hourly or part-time rate, whichever is applicable.
    - 2. The entrance rate payable to any employee on first appointment to a position in the City shall be the minimum rate in any applicable salary range, unless a higher rate is authorized by the City Manager because of the candidate's exceptional qualifications, difficulty in recruitment, or other valid reason.
    - 3. The salary of an employee who is promoted shall be adjusted to the new salary range with a ten (10) percent increase in pay, unless the employee's salary prior to promotion was less than minimum pay rate of the new salary range of the classification to which the employee is being promoted.

4. The salary of an employee who is demoted for disciplinary reasons or takes a classification reduction shall be reduced by at least one step and by no more than three ranges, but never below the newly assigned range.
5. The salary of an employee who is transferred to a position shall remain the same.
6. The salary of an employee who is re-employed after being called to active duty on accordance with the provisions of subsection 4.3E shall be at a rate equal to what the employee would have attained had the employee not been called to active duty.

C. Market adjustments will be awarded based upon a market adjustment formula as approved by the governing body.

6.6 Salary Schedule. The salary schedule shall include a series of salary ranges to which the various classifications in the City are to be allocated with the range of each classification consistent with the functions outlined in the job descriptions. Each salary range shall include minimum and maximum rates of pay.

6.7 Salary Increases.

A. Merit increases shall not be granted on an automatic basis but shall be granted upon the demonstrated quality of performance as promulgated in the EMC Personnel Ordinance.

1. Exempt, classified, regular, and term-regular employees who are considered to be deserving as evidenced by average or above job performance may be granted a merit increase based on a productivity formula as approved by the governing body as may be determined periodically, except those overfilling a position may be granted a merit increase within the limits of the salary range after one (1) year from the date of:

- a. Re-employment;
- b. Initial appointment
- c. The last merit increase; or
- d. Promotion

2. Any period of leave without pay in excess of thirty (30) calendar days shall not be credited as continuous service toward eligibility for a merit increase.

3. Service in emergency, term, or temporary status, when followed without a break in service by probationary

appointment to the same classification, will be credited toward eligibility for a merit increase.

- B. When an employee's salary reaches the top of the pay rant for his/her position, the employee will be eligible for longevity pay to be paid at the beginning of each fiscal year after his/her fifteenth (15<sup>th</sup>) consecutive year of service but applied to all consecutive years of service. The rate of pay will be determined by the governing body each year and will be awarded if funding is available.

#### 6.8 Salary Decreases.

- A. A Department may decrease the salaries of all employees in any Department uniformly and equitably for budgetary reasons with the approval of the City Manager and governing body.
- B. Notice of intention to affect a salary decrease, and a plan for affecting such decrease, shall be given in writing to the Director at least thirty (30) calendar days in advance of the proposed effective date. This notice shall contain a thorough explanation.
- C. Affected employees shall be given at least twenty – eight (28) calendar days notice.
  - 1. In no case shall a salary be reduced below the minimum rate in the salary range.
  - 2. Employee's salary decreases shall, be made, when necessary; in the following order:
    - (a) Emergency
    - (b) Temporary
    - (c) Probation
    - (d) Term-granted funded
    - (e) Regular
- D. Restoration of an employee's salary may be made to any rate in the salary range that is not higher than the employee would have attained had the salary not been decreased.

- 6.9 Classification Reduction. An employee may, as the result of reorganization or when deemed in the best interest of the City, receive a reduction from his/her current classification to a lower classification with salary adjustments as set forth in subsection 6.5 B 4.

- 6.10 Overtime Compensation. In order to meet the demands of work, employees may be required to work in excess of the hours designated in their normal work week. Overtime compensation will be paid to employees as spelled out below only for actual hours worked.
- A. Any employee, except those designated by the Director to be professional or supervisory who is authorized and required to work in excess of the normal work week; forty (40) hours, or for police the standard work period, fourteen (14) days or eighty (80) hours, shall be compensated for such excess time at one and one-half (1 ½) times their hourly rate or unless, otherwise specified in the Fair Labor Standards Act (FLSA) compensation shall be paid overtime unless the employee elects to receive compensatory time in lieu of paid overtime. Such compensatory time shall be accrued at time and one-half. If compensatory time cannot be taken within thirty (30) days of accrual, then the employee shall be paid overtime.
  - B. Professional, supervisor, and other employees designated by the FLSA as exempt who work in excess of the normal work week, forth (40) hours, shall not be compensated or such hours unless approved by the City Manager. Such compensation shall be compensatory time on an hour-for-hour basis. Exempt employees will not be allowed to accrue compensatory time unless approved by the Mayor.
  - C. Any type of non-ordinance time including leave without pay, absence without leave, annual leave, sick leave, compensatory time taken, emergency/injury leave, administrative leave, temporary disability leave and military leave shall not be credited towards the normal work week for purpose of overtime compensation.
  - D. In some cases, compensatory time may be granted in lieu of cash payment. Employees who work in public safety or emergency response can accrue up to four hundred eighty (480) hours of compensatory time, while all others may accrue up to two hundred forty (240) hours of compensatory time.
    - 1. An employee who separates from the City shall be compensated for all accrued compensatory time in accordance with FLSA 553.27, except for employees designated as FLSA exempt.
- 6.11 Shift Dirrerential. Shift differential is intended to compensate those employees who report to work between the hours of 6:00 p.m. and 6:00 a.m. to relieve the previous shift. Shift work is recognized where

more than one group of employees report to work during the same twenty-four (24) hour work day.

- A. Employees who work a shift between the hours of 6:00 p.m. and 6:00 a.m. shall receive an additional five percent (5%) of their hourly salary for the entire shift.

6.12 Holiday Pay.

- A. The holiday schedule as approved in subsection 12.6 is the official holiday schedule.
- B. All employees who are required to work a holiday shall be compensated at the rate of one and one-half (1 ½) times their hourly rate, except for employees designated as FLSA exempt.

6.13 Call Back and Standby Time. Employees who are required to report to their jobs after the conclusion of their normal shift and prior to the beginning of their next shifts, or who remain on standby after their normal shift, shall be compensated as set fourth by the policy adopted by the governing body.

6.14 Work Breaks. Departments may provide for work breaks during the working day. No more than two such breaks shall be granted, not to exceed fifteen minutes each, including related travel time. Work breaks shall not be considered to accumulate if they are not taken and shall not be used to shorten the normal workday. The granting of such breaks depend on the constraints of working conditions within each department.

7. CORRECTIVE ACTION, SUSPENSION, DEMOTION, AND SEPARATION

7.1 Tenure of Employment. The tenure for all employees in the City shall be continuous during productive behavior as evidenced by satisfactory performance appraisal reports. However, this provision shall not be interpreted to prevent the layoff of an employee by the City because of just cause, lack of funds or curtailment of work, when made in accordance with these Rules.

7.2 Resignation. An employee who resigns shall present the reasons in writing to the Department at least two (2) weeks in advance. The original letter of resignation shall be forwarded to the Director. Failure to comply may affect future re-employment with the City, and/or job references. The Department Director may waive the two (2) week requirement.

7.3 Reduction in Force.

- B. The City may prepare a reorganization of the Department into organizational units for purposes of layoff as a result of a reduction in force by submitting to the City Manager a written plan for such reorganization together with the reasons thereof, and the City Manager shall present it to the governing body. The governing body shall consider such a proposal and the needs of the City and may recognize organizational units within the Department. Such organizational units may be recognized on the basis of funding source or functions.
- C. The City Manager shall notify the Department or recognized organizational units and such units shall thereafter be used for layoffs.
- D. The governing body may withdraw recognition of such units upon notice to the Department at any time prior to the formal announcement of layoff by the City.

7.4 Order of Layoff.

- A. Employees will be laid off by type of appointment in the following order:
  - 1. Emergency
  - 2. Temporary
  - 3. Probationary
  - 4. Term-Grant Funded
  - 5. Regular
- B. Whenever there are two or more regular employees in the classification from which a layoff is to be made, employees in the classification with a summary performance appraisal or unacceptable for the evaluation period preceding the layoff shall be the first laid off.
- C. Layoff, or reeducation in classification in lieu of layoff, for all other employees in that classification shall be in the inverse order or based on summary performance appraisals and seniority.
- D. Determination of Seniority, Seniority constitutes length of certified status within a classification of the classified service.

1. When two or more employees have the same length of time in the classification, the employee with the longest certified City employment shall be the senior.
2. If a tie still exists, the employee with the least amount of leave of absence without pay (excluding leave of absence due to sickness, injury or military service) shall have the greatest amount of seniority.
3. Dismissal shall have the greatest amount of seniority.

#### 7.5 Notice of Layoff.

- A. No employee shall be laid off or reduced in Classification in lieu of layoff until the employee has been given written notice, personally or by certified mail, or the date upon which the layoff or the reduction in classification will be effective and the reasons for the action. Such notices shall be served at least thirty (30) calendar days before the layoff or reduction in classification become effective.
- B. No layoff or reduction in classification due to reduction in force shall be affected without prior approval of the City Manager and the governing body.
- C. In similar manner, after three (3) years the employee may request that a written reprimand be removed from his/her personnel file.

#### 7.6 Oral/Written Reprimands

- A. Supervisor may reprimand an employee for just cause. Oral reprimands shall be documented on a form prescribed by the Director. Written reprimands shall be approved or disapproved for just cause by the City Manager upon recommendation of the Department and the Director.
- B. If after one (1) year the employee has shown improvement that documentation of the oral reprimand be removed from his/her personnel file. Such requests should be made to the Director and approved by the respective Department Director.
- C. In a similar manner, after three (3) years the employee may request that a written reprimand be removed from his/her personnel file.

#### 7.7 Dismissals, Demotions, and Suspension Procedures

- A. An employee in temporary or emergency status may be dismissed, suspended, or demoted for any reason the employer deems appropriate with at least three (3) days written notice, unless waived by the City Manager. A probationary employee may be dismissed, demoted or suspended for any reason the employer deems appropriate with seven (7) calendar days written notice, unless waived by the City Manager in accordance with the provision of subsection 7.8:
  - 1. Employee must be advised in writing of the reasons for the dismissal, demotion, or suspension.
  - 2. The Personnel Action Request Form must be approved by the Director and City Manager prior to the effective day of the dismissal, demotion or suspension, unless a waiver has been approved in accordance with the provision of subsection 7.8.
  
- B. Regular employees may be dismissed, demoted, or suspended only for just cause. Just cause includes but is not limited to:
  - 1. violation of or failure to comply with the Federal or State constitution, Statutes, or City Rules and Regulations and City Ordinances;
  - 2. careless, negligent, or improper use of city property, equipment, or funds;
  - 3. failure to comply with or accept a reasonable proper order/assignment from an authorized supervisor;
  - 4. inability to perform job requirement;
  - 5. disorderly conduct or treats or abuse of other;
  - 6. chronic tardiness;
  - 7. use of undue influence to attempt to gain promotion, leave favorable assignment, or other individual benefit or advantage;
  - 8. unauthorized leave;
  - 9. failure to obtain and maintain a current license or certificate as a condition of employment;

10. intentional falsification or mishandling of City records or documents, (written or magnetic media);
  11. illegal use, sale, or possession of alcohol or illegal drugs, or being under the influence of such substance while on duty;
  12. sexual harassment or physical or mental intimidation of any person; or
  13. action which reflects negatively upon the integrity of the City.
- C. The dismissal, demotion or suspension of a regular employee shall be accomplished according to the following procedures in accordance with the provisions of subsection 7.8
1. The Department Director or his/her designee shall have an initial meeting with the employee prior to making a recommendation for corrective-disciplinary action to the Director.
    - (a) Prior to the initial meeting the employee shall receive notice of the pending dismissal, demotion, or suspension, the specific reason for the proposed action, and date, time, and place of the initial meeting.
    - (b) At the initial meeting, the employee shall have the grounds and the proposed corrective-disciplinary action explained to him/her and shall have the right to respond. Documentation of the initial meeting shall be made on forms prescribed by the Director.
  2. The employee will be given a copy of the Corrective Disciplinary Action Report by the Director. If it cannot be delivered personally, it will be sent by certified mail, with return receipt requested, to the employee's last address on record. The Corrective-Disciplinary Action Report shall state that the employee has seven (7) calendar days from receipt of the Corrective-Disciplinary Action Report in which to answer the Director in writing.
  3. Within fifteen (15) calendar days after the seven (7) calendar days notice period, the Director shall review any extenuating circumstances which the employee alleges and consider any reasons used to deny the charges cited in the Corrective-Disciplinary Action Report and shall make a recommendation to the City Manager who will provide written notice to the employee.

4. The written notice must:
  - (a) Document the date and time of the initial meeting;
  - (b) Identify the specific allegation;
  - (c) Specify the recommended corrective-disciplinary action, if any, to be taken
  - (d) Specify the effective date of the dismissal, demotion, or suspension which must be at least seven (7) calendar days after the date of the written notice;
  - (e) Inform the employee that the corrective-disciplinary action may be appealed to the Director, in writing, within fifteen (15) calendar days of the effective date of the dismissal, demotion, or suspension; and
  - (f) Be delivered personally to the employee by certified mail, with return receipt requested, to the employee's last address on record.
5. Submit a Personnel Action Request Form with a copy of the Corrective-Disciplinary Action Report to the Director. The Personnel Action Request Form must be approved prior to the effective date, unless the City Manager has waived the fifteen (15) calendar days notice in accordance with subsection 7.8.
- D. If after three (3) years the employee has shown improvement and no other infraction has occurred, he/she may request that documentation of the suspension or demotion be removed from his/her file. Such requests should be made to the Department Director for a waiver of the required notices.

#### 7.8 Waivers.

- A. If the Department Director believes that it would be in the interest of the City for the dismissal, demotion, or suspension of a regular employee to be effective immediately, the Department Director may make a written request to the Director for a waiver of the required notices.
  1. After a pre-disciplinary interview is conducted and while a written request is being make, the employee may be placed on administrative leave or reassigned duties and responsibilities, pending approval by the City Manager.
  2. The City Manager may grant a waiver of the notice periods.
- B. The Department Director shall present written notice to the employee or send a written notice by certified mail, with return

receipt requested, informing the employee of the waiver of the notice periods.

7.9 Demotion. An employee may, for disciplinary reasons, be changed from position in one classification with a lower salary range and pay rate for which the employee qualifies.

7.10 Medical Layoff.

- A. The medical layoff of an employee from the City may be initiated for the following reasons;
  - 1. the certification is obtained from a physician that the employee is physically incapable of performing the duties of his or her position and such certification shall include a diagnosis; or
  - 2. the lack of a position for which the employee is qualified.

## 8. GRIEVANCE PROCEDURE

8.1 Purpose. The Purpose of this procedure is to secure, in an atmosphere of courtesy and cooperation, an equitable solution to personnel matters, employment practices, or job-related conflicts that may arise.

8.2 Jurisdiction.

- A. All regular and term-grant funded, non-probationary employees within the City are afforded the right to utilize the Grievance Review Board.
- B. Hearing of the Board or governing body on personnel matters shall be closed pursuant to the Open Meeting Act [section 10-15-1 E (2) NMSA 1978] provided that this section shall not be construed as to exempt final actions on personnel from being taken at open public meeting; nor shall it preclude an aggrieved employee from demanding a public hearing.
- C. All conversation and materials submitted by an employee in the grievance process shall remain confidential, unless the grievant has demanded a public hearing.
- D. When two or more appeals by an employee are filed which require investigations of a common question of law or fact arising out of the same circumstances, the City Manager may consolidate them into one grievance. The informal grievance process shall remain confidential.

- E. Grievances must be current, concerning matters having taken place within ten (10) days of the initial action notification date.
- F. Case files and record keeping of hearing are the Director's responsibility.

8.3 Definition. A grievance may be considered as an expressed dissatisfaction, whereby an employee believes that he/she has been unfairly treated in violation of the City's Personnel Ordinance, or Rules and Regulations regarding personnel matters or employment practice.

8.4 Rights.

- A. Grievances may also file under these Rules which allege discriminatory practices which would constitute a violation of the New Mexico Human Rights Act (section 28-1-1. et. Seq. NMSA 1978). Allegations of these violations may be submitted to the New Mexico Human Rights Commission for handling pursuant to the provisions of the Human Rights Act.
- B. At any stage during the presentation of the complaint, including the counseling stage the appellant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the rights to be accompanied, represented, and advised by a representative of his/her own choosing.

8.5 Relevant Facts.

- A. The grievance must contain at a minimum the following defined facts:
  - 1. The data on which the alleged violation of the City Personnel Ordinance or Rules and Regulation took place.
  - 2. The specific violation of the City Personnel Ordinance or Rules and Regulations about which the Complaint is made.
  - 3. Facts and other pertinent information to support the allegations.
  - 4. The remedial action sought by the grievant.
- B. The lack of complete information at the time of filing shall not constitute grounds for refusal to accept a grievance.

8.6 Procedure. The time limits set forth in this procedure maybe subject to exceptional circumstances as determined by the City Manager. In processing the grievance, the following procedure shall apply.

- A. Employee submits, in writing, his or her grievance in regard to a violation of the City Personnel Ordinance or Rules and Regulations within ten (10) calendars days of the initial act to the Director.
- B. After receipt of the written grievance, the Director shall meet with the grievant respondent, or other persons within ten (10) days, if necessary, in an effort to resolve the grievance.
- C. If the grievance has been resolved to the satisfaction of the grievant, this concludes the procedure at this point. Record keeping of the grievance is maintained by the office and the following is documented;
  - 1. Statement of grievance.
  - 2. Concerns of involved parties.
  - 3. The solution reached.
- D. If the grievance is not resolved to the satisfaction of grievant, the Director shall arrange for a hearing before the Grievance Review Board.

8.7 Responsibilities of the Grievance Review Board

- A. The Grievance Review Board conducts a formal hearing which shall consist of interviews with the grievant, respondent, any witnesses, or review of documents or materials relevant to the grievance. Hearings are taped and the tapes are maintained by the Office.
- B. The hearing does not have to follow the “rules of evidence” procedure as used in courts of law; however, it will limit testimony that is irrelevant or unduly repetitious. At no time will badgering of the Board be allowed.
- C. The decision as to allow or disallow testimony will be made by the board.

1. The Board will rule on whether evidence or exhibits may be admitted into the record and on any motions or objections made.
  2. Once the Board has ruled on an issue in questions, no further argument on the issue will be allowed.
- D. Each party to the grievance shall present a statement of his or her case and explanation to the board.
- E. Witnesses pertinent to the grievance may be called and will be sworn in by the Board prior to giving testimony.
1. Witnesses will identify themselves for the records, giving their names, addresses, and any other information that may be pertinent to the grievance.
  2. After a witness has testified, the Board shall permit the opposing party to the grievance; to examine the witness.
  3. At no time badgering of the witness be allowed.
- F. The Board will conclude with a Finding of Fact and render a decision within a ten (10) calendar day period, and submit its decision in writing to the City Manager.
- G. The decision rendered by the Grievance Review Board is final.
- H. Upon receipt of the decision, the City Manager shall notify the Director who shall notify the grievant or his/her representatives and the respondent.

8.8 Appointment of the Grievance Review Board.

- A. The Grievance Review Board is appointed by the Mayor, with the approval of the City Council, and shall be selected and serve under the criteria specified in the City Personnel Ordinance (Section 2-105 and 2-106 of the Española Municipal Code).

9. POLITICAL ACTIVITY

9.1 Permitted.

- A. All employees:
1. are encouraged to register and vote;

2. have a right to express their opinions on all political subjects and candidates;
3. may serve as convention delegates, provided the employee is on authorized leave;
4. may attend political
5. may engage in political activity on their own time to include signing nominating petitions and making voluntary contributions to political organizations;
6. may serve as an election official, provided the employee is on authorized leave; and
7. may be member of a local education or community college board, which shall not be construed to be either holding political office or being an officer of a political organization, provided the employee is on authorized leave.

## 9.2 Prohibited.

### A. All employees are prohibited from:

1. using official authority or influence for the purpose, of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose;
2. directly or indirectly coercing, attempting to coerce, commanding or advising an employee to pay; lend, or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
3. threatening to deny promotion to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund-raising events, advising employees to take part in political activity and matters of a similar nature; and
4. engaging in political activity while on duty.

## 9.3 Public Office.

- A. Employees covered by the provisions of the Hatch Act may be candidates in nonpartisan elections, if, upon filing or accepting the nomination and during the entire campaign, the employee is on authorized leave.
- B. Employee covered by the provisions of the Hatch Act may not be a candidate in partisan elections.

- C. Employees not covered by the provisions of the Hatch Act may be candidates for any public office, if upon filing or accepting the nomination and during the entire campaign, the employee is on authorized leave.
- D. Employees may not hold political office during employment with the City.
- E. In accordance with the provisions of Section 10-9-21 (8) NMSA 1978, being a member of a local school board or community college board shall not be construed to be holding political office.
- F. Election to Municipal Office. Any employee elected to municipal office in the City shall resign from the employee of the City.

## 10. PERFORMANCE APPRAISAL

### 10.1 Performance and Development

- A. The performance of each employee will be appraised by the immediate supervisor on at least an annual basis. This appraisal will be documented on a form approved by the Director and will become a part of the employee's personnel record.
- B. Departments may prepare performance and development plans whenever it is deemed appropriate, such as when a supervisor wishes to make an employee's performance a matter of record and upon change of supervisors.
- C. The Director will provide a training program in the proper method of appraisal for those supervisory employees who appraise the performance of other employees.

10.2 Acknowledgment of Receipt of Plan. Employees will acknowledge in writing, receipt of performance and development plans. In instances where an employee declines to sign such acknowledgment, the department will verify in writing that the employee received the performance and development plan.

10.3 Rebuttal Employees may submit rebuttal statements to performance and development plans which will be attached to and become a part of performance and development plan.

## 11. TRAINING

- 11.1 Responsibility For. The prime responsibility for in-service training shall be assumed by Department Management. Departments will utilize performance and development plans as an indicator of an employee's need for training. Supervisors should consult with employees during the preparation of their performance and development plans regarding their training needs.
- 11.2 Needs. The Director shall assist Departments in determining their training needs and in devising and establishing programs to meet such needs.
- 11.3 Education and Training Program. The Director shall develop, implement, and monitor the Education and Training Program for employees. Identified training needs should be acted on by following the City's Education and Training Program Procedures.

## 12. WORK HOURS AND HOLIDAYS

- 12.1 Normal Work Week. The normal work week shall consist of forty (40) hours on consecutive days, except for police officers whose work period shall consist of eighty (80) hours on consecutive days in a fourteen (14) day work period.
- 12.2 Normal Work Day. The normal work day or work period shall be determined by the City Manager as recommended by the department head to best meet the needs of each Department.
- 12.3 Overtime. In order to meet the demands of work, employees may be required to work in excess of the hours designated as their normal work week or work period, as applicable. Any employee who is authorized or requires to work beyond the normal work week shall be compensated in the manner prescribed in subsection 6.10.
- 12.4 Outside Employment. No employee shall engage in any other employment either public, private, or self-employment during the hours the employee is scheduled to work for the City without authorized leave. Violations of this section are grounds for corrective-disciplinary action.
- 12.5 Outside Employment
  - A. To assure no conflict of interest exists, employees who engage in employment in addition to their City employment are required to obtain written approval on an authorization form from the City Manager.

- B. Before an employee may work for any other organization or engage in business for himself/herself, approval of the City Manager is necessary to determine that:
  - 1. Neither the employee nor his/her subordinates shall conduct any business connected with the employee's outside employment while on duty.
  - 2. There is no conflict between the employee's official duties with the City and the proposed outside employment.
  - 3. The employee is serving the City satisfactorily and will be able to continue to do so if he/she undertakes outside employment.
- C. Approval authorizes outside employment for a period of one (1) year from the time of approval.
- D. In the case of injury or occupational disease due to outside employment, which prevents the employee from performing his duties with the City, time off will be taken from the employee's earned accrued sick, annual or compensatory leave.
- E. Authorization to engage in outside employment shall be suspended during periods of sick and injury leave.

#### 12.6 Legal Holiday.

- A. The following are days which are adopted as legal holidays by the governing body:
  - 1. New Years Day, January 1;
  - 2. Martin Luther King's Birthday, third Monday in January;
  - 3. President's Day, third Monday in February;
  - 4. Memorial Day, last Monday in May;
  - 5. Independence Day, July 4;
  - 6. Labor Day, first Monday in September;
  - 7. Columbus Day, second Monday in October;
  - 8. Veterans Day, November 11;
  - 9. Thanksgiving Day, fourth Thursday in November, and
  - 10. Christmas, December 25.
- B. Whenever a legal public holiday falls on a Saturday, it will be observed on the preceding Friday, and whenever a legal public

holiday falls on a Sunday, it will be observed on the following Monday.

- C. Employees whose day off falls on the observed holiday may be given an additional vacation day, compensatory time or at the discretion of the Department Director, employees may be given a compensatory day off to be used within the following ten (10) days.
- D. Employees required to work on the day a holiday is observed shall be compensated for such work in accordance with the provision of subsection 6.12.

13. LEAVE.

13.1 Requesting Leave of Absence. All request for leaves of absence, with or without pay, shall be made to the immediate supervisor for approval on forms prescribed by the Director. All requests shall be submitted in advance of the beginning date of the leave as set forth in subsection 13.28 (except requests for unanticipated sick leave which shall be submitted for approval as set forth in subsection 13.3C) and the duration and kind of leaves shall be recorded on the payroll which is subject to the Department Director's approval. Paid leaves of absence are subject to the type of accrued leave balance an employee has and the scheduling of vacation of subject to the control of the Department Director. All requests of leave without pay not in excess of ten (10) working days shall be subject to approval of the department head, Director and City Manager.

13.2 Annual Leave. This is a category of leave which shall include, in addition to normal vacation time, all other periods of approved absence with pay from regularly scheduled work which are not chargeable to some other category of leave.

- A. Employees in exempt, probationary, regular, classified part-time, and term status are eligible for annual leave accrual and shall accrue annual leave as per hours worked and during paid leave in accordance to the following schedule(s):

<u>hours/month</u>	<u>working days/year</u>
1 <sup>st</sup> -5 <sup>th</sup> years 8.0 hours	12 days (96 hours)
6 <sup>th</sup> year + 12.0	18 days (144 hours)

- B. An employee eligible to accrue annual leave, pursuant to these Rules, may request and be granted use of accrued leave at the discretion of employer. Annual leave for one (1) day must be requested and approved twenty-four (24) hours in advance. Leave requested in excess of two (2) days must be requested and approved by the supervisor and department head at least five (5) working days in advance. No annual leave shall be advanced by the employer.
- C. Only complete calendar months of service before and after interruptions or breaks shall be counted. In computing the total number of years or service by which an employee is allowed to progress from one graduated rate of accrual to another, the following Rules shall apply.
  - 1. Where he/she has been employed with the City without any interruption or break in continuity of service, the date from which his/her years of tenure are counted shall be the first day of the first completed calendar month worked.
  - 2. Periods of services as a City employee prior to a break or interruption in continuity of service shall not be counted except when the break or interruption was of less than twelve (12) months duration and was not the result of disciplinary action.
  - 3. Periods of leave without pay in excess of thirty (30) days shall not be counted as service.
- D. An eligible employee shall be allowed to progress from one graduated date of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.
- E. The amount of accrued annual leave that will be allowed to be carried over from one calendar year to the next shall not exceed 288 hours. Exempt employees will be allowed to carry over all unused leave.
- F. The City may buy back that portion of an employee's annual leave that exceed his/her maximum carry-out at the end of each calendar year providing the following criteria is met:
  - 1. A maximum of eighty (80) hours can be sold back in any one year, providing the balance will remain at the respective maximum carry - over at the end of each calendar year.

2. The employee must state in writing to the director, no sooner than March 1<sup>st</sup> and no later than April 30<sup>th</sup> of each calendar year his/her intention to sell back the annual leave in excess of the respective maximum carry – over balance.

3. Sufficient City funding is available.

G. Upon separation of his/her employment, an employee shall be compensated for all unused and un forfeited annual leave.

H. Upon death of an eligible employee, compensation for unused total annual leave shall be payable to the employee’s estate.

13.3 Sick Leave. This is a category of leave which shall include any period of approved absence with pay from regularly scheduled work resulting from an:

1. employee having an illness or injury which renders him/her unable to perform his/her duties, or an
2. employee having a medical examination, consultation, or treatment by a licensed practitioner; or an
3. employee’s immediate family member requiring his/her presence because of injury, illness or medical treatment (not to exceed one (1) working day per occurrence).

A. Employee’s in exempt, probationary, regular, classified part-time, and term status are eligible for sick leave as per hours worked and during paid leave in accordance to the following schedule:

<u>Hours/month</u>	<u>working days/year</u>
8.0 hours	12 day ~ (96 hours)

B. An employee eligible to accrue sick leave, pursuant to these Rules and Regulations, may request and be granted use of accrued leave provided that such use is applicable sick leave.

C. An employee who abuses sick leave by using it for purpose other than those authorized in subsection 13.4 shall have the absence changed as Leave Without Pay and may be subject to corrective-disciplinary action.

- D. Only complete calendar months of service before and after interruptions or breaks shall be counted. In computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual to another, the following rules shall apply:
  - 1. Where he/she has been employed with the City without any interruption or break in continuity of service, the date from which his/her years of tenure are counted shall be the first day of the first complete calendar month worked.
  - 2. Periods of leave without pay in excess of thirty (30) days shall not be counted as service.
  
- E. The City may buy back sick leave on a yearly basis providing the following criteria is met:
  - 1. An employee shall have and/or maintain a minimum balance at the end of each calendar year of seven hundred (700) hours before a buy-back may occur.
  - 2. An employee must state in writing to the Director, no sooner than March 1<sup>st</sup> and no later than April 30<sup>th</sup> of each calendar year, his/her intentions to sell back the sick leave.
  - 3. A maximum of ninety-six (96) hours may be sold back in anyone year, never allowing the balance to drop below the minimum.
  - 4. The conversion ration shall be one (1) hour of pay for every three (3) hours sick leave.
  - 5. Sufficient City funding in available.

#### 13.4 Leave Without Pay.

- A. Department Director may approve justifiable leave without pay for up to ten (10) working days upon the written request of the employee. A request by an employee for justifiable leave without pay in excess of ten (10) working days must also be approved by the Director and City Manager.
  
- B. Leave without pay, when requested, may be granted only when the Department Director can assure a position of like status and

pay at the location upon the return of the person from leave without pay.

- C. If the Department cannot assure a position in the same location, and the employee agrees in writing to waive that requirements, leave without pay may be granted.
- D. Leave without pay may not exceed thirty (30) consecutive calendar days in the case of a probationer or six (6) consecutive months in the case of a regular employee. Either period may be extended for justifiable reasons by the Department with the approval of the Director and City Manager upon request of the employee.
- E. Employees on leave without pay in excess of thirty (30) calendar days will be credited with only thirty (30) calendar days towards eligibility for a productivity increases or regular status, except for employees who were called to active duty on accordance with the provisions of subsection 3.8.
- F. Employees shall not accrue sick or annual/leave while on leave without pay.
- G. Leave without pay will be reported on a Personnel Action Request Form only if it exceeds ten (10) working days, otherwise it shall be reported on the standard Leave Request Form
- H. Failure to report to work upon the expiration of approved leave without pay may be grounds for corrective-disciplinary action in accordance with the provisions of subsection 7.7
- I. Return from leave without pay in excess of ten (10) working days will be reported on a Personnel Action Request Form.

### 13.5 Absence without Leave.

- A. Employees who fail to appear at work without authorized leave may be considered to be absent without leave. Unauthorized absence may be grounds for corrective-disciplinary action in accordance with the provisions off subsection 7.7.
- B. An employee who fails to appear at work after three (3) consecutive days shall be considered to have abandoned his/her position and is considered to have resigned.

### 13.6 Administrative Leave.

- A. The Director or a Department Director may recommend an employee leave with pay; under unusual circumstance, when it is in the best interests of the City to do so for a period not to exceed five (5) consecutive days with the approval of the City Manager.
- B. In Accordance with the provision of Section 1-12-42 NMSA 1978, employees who are registered voters may be absent themselves from work for up to two (2) hours for the purpose of voting between the opening and closing times of the polls.
  - 1. The employer may specify the hours during this period in which the employee may be absent.
  - 2. These provisions do not apply to any employee whose day begins more than two (2) hours subsequent to the opening of the polls, or ends more than three (3) hours prior to the closing of the polls.
  - 3. An employee who abuses administrative leave by requiring its use for purposes other than traveling to and from the polling place and voting may be charged with Leave Without Pay and subject to corrective-disciplinary action.
- C. A person shall be entitled to leave with pay for serving on a federal or state grand or petit jury. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the Finance Department.
  - 1. An employee who is released from jury duty shall report to work upon release or contract their supervisor if it would not be feasible to return to work. Failure to adhere to this provision will be considered unauthorized absence and may result in corrective-disciplinary action.
- D. An employee may be excused from duty with pay, only for the normal work day or portions thereof, in emergency situation; Examples of emergencies would be extreme weather conditions, disasters such as fire, flood or other natural phenomena to work, breakdown of machinery or equipment, and emergency rescue or protection work.
- E. An employee under unique circumstances, such as an investigation purporting a conflict of interest with his city work or other civil or criminal action by the City or other parties, may be granted administrative leave or reassigned duties at the discretion of the City Manager pending the outcome of a formal investigation

or judicial proceeding. Leave so granted, will not exceed the time period listed in paragraph A above unless the City Manager deems it in the best interests of the City to grant additional leave beyond the five (5) day period,

### 13.7 Educational Leave

- A. The purpose of such leave is to permit an employee to pursue special training directly related to the employee's employment and which will improve the employee's competence and capacity with the City. Such training must be directly job-related and limited to providing knowledge or skill which cannot be provided through available in-service training, pursuant to the City's Education and training program procedures.
- B. A Department Director, with the approval of the City Manager, may grant an employee educational leave with pay in accordance with the Education and Training Program procedures.
- C. An employee may request up to three (3) hours educational/leave per week for class attendance for courses that are scheduled during normal working hours.

### 13.8 Military Leave.

- A. In accordance with the provision of Section 20-4-7 NMSA 1978, all employees except those in temporary or emergency status, who are members of organized units of Army, Air national Guard or Air Force, Coast Guard, Navy or Marine reserves, shall be given up to fifteen (15) working days military leave with pay per federal fiscal year in addition to other authorized leave when they are ordered to duty for training with such organized units.
- B. In accordance with the provisions of Section 20-5-14 NMSA 1978, all employees, except those in temporary or emergency status, who are members of the National Guard (State Defense Force) shall be given up to fifteen (15) working days military leave with pay per federal fiscal year in addition to other authorized leave when they are ordered by the Adjutant General to cadre duty with such organized units.
- C. In all instances where such leave with pay is granted, the Director shall maintain a copy of the official orders in the employee's personnel folder.

### 13.9 Emergency/Injury Leave.

- A. In the event of death in the immediate family, an employee may be granted emergency leave, chargeable to any accrued leave, not to exceed three (3) working days for in-state and five (5) working days for out-of-state, per occurrence. In the event of the employee having no accrued leave, the leave shall be leave without pay.
  
- B. An employee sustaining an on-the-job injury shall be subject to the following injury leave provisions:
  - 1. If the injury or occupational disease prevents an employee from returning to work; injury leave shall be granted as follows: the first seven calendar days from the day of the injury shall be accounted for as sick leave or leave without pay as appropriate under the same terms and conditions as non-job related sickness;
  - 2. While on injury leave, an employee shall not accrue sick, holiday or annual leave.
  - 3. No employee shall be otherwise employed nor gainfully occupied while he/she is on injury leave.
  - 4. Doctor's statement – Any work related injury which does result in injury leave shall require the employee to promptly submit a form specified by the director from the treating physician stating the cause and nature of the injury and the probable duration of the disability: Upon returning to work, or earlier if possible, the employee shall submit the physician's statement stating the date when the employee became fit for either regular or restricted duty, and if restricted duty, the nature of the work which can be performed and the probable duration of fitness for regular duty, shall be submitted upon medical eligibility. Copies of these statements shall be placed in the employee's worker's compensation file.
  - 5. Any employee injured on the job shall immediately report the injury to his/her supervisor who shall report the injury to the Director. An accident report shall be completed by the employee or supervisor and submitted to the Director within twenty-four (24) hours of the accident. If medical attention is required, the procedures set forth in administrative regulation shall be followed.

6. When injury leave is exhausted, the employee is eligible to take annual or other accrued leave or to take temporary disability leave (leave without pay) according to the regulations governing each type of leave until the employee shall receive from the worker's compensation fund any disability or worker's compensation monies.
7. Notwithstanding the above, should the employee by the willful failure or neglect of his/her actions be responsible for the accident, he/she will be subject to corrective-disciplinary action.

#### 13.10 Temporary Disability Leave.

- A. Temporary disability leave shall constitute a period of leave without pay during which the employee shall retain his or her position and status as an employee with the City. Temporary disability leave shall not exceed ninety (90) calendar days and if the period of leave exceeds beyond fourteen (14) calendar days, the employee will not accumulate credited hours of service for purposes of seniority or step increases. The employee will not be subsidized for any benefits; however, if the employee wishes to pay for insurance coverage, he/she must contact the Director to arrange to do so.
- B. Only exempt or regular employees who have completed their probationary period and who meet the following condition shall be eligible for this leave. Any eligible employee wishing to take temporary disability must provide the Director and Department head with a doctor's statement of the medical reason for the temporary disability leave.
  1. an employee who has sustained an on-the-job injury and has exhausted injury leave;
  2. an employee who, for reasons of pregnancy, childbirth or other related medical condition, elects to take a temporary leave of absence;
  3. an employee who has become ill.
- C. Before electing to take temporary disability leave, an employee meeting any of the conditions cited in paragraph B may choose to exhaust any accrued leave, unless the employee has first exhausted injury leave. The decision to first use accrued leave shall rest with the employee.

## 14. RECORDS AND REPORTS

### 14.1 City Personnel Records

The official personnel records for each employee of the City shall be maintained in the office. Such records shall include a copy of the employee's applications, the original copy of each Personnel Action Request Form, performance appraisal reports, and any other pertinent information. Such records shall be made available to the employee, his/her supervisors, or any person employed by the City authorized by the Director for inspection.

### 14.2 Rights.

Employees shall be provided a copy of any material placed in their official or unofficial personnel record upon written receipt and may present a written response to any material in the record to be attached to the original material.

### 14.3 Department Personnel Records.

Department may maintain unofficial personnel records for their employees, which may include a copy of each Personnel Action Request Form, attendance and leave records, performance appraisal reports, and other pertinent information. Such records shall be made available for inspection by the employee and by any person employed by the City authorized by the Director to do so.

### 14.4 Confidentiality of Records.

- A. Personnel records are not subject to public inspection unless designated as such under state law or the Federal Freedom of Information Act. Supervisors within the employee's permission.
- B. For the purpose of preserving the confidentiality of records, certain records may be publicly inspected only with the written permission of the employee. These records include:
  - 1. records pertaining to physical or mental examinations and medical treatment of person confined to any institution;
  - 2. letters of reference concerning employment, licensing, or permits.
  - 3. letters or memoranda which are matter of opinion;

4. documents concerning infractions and disciplinary action;
5. performance appraisals;
6. college transcripts; and
7. military discharge if other than honorable.

15. MODIFICATIONS AND REVISIONS

15.1 Temporary Modifications. The governing body may temporarily modify or waive any of these Rules and Regulations, if it would be reasonable, appropriate, lawful and necessary for the orderly and efficient administration of the City.

15.2 Revisions.

- A. Proposed revisions of these Rules shall be circulated by the Director to all Departments at least fourteen (14) calendar days in advance of consideration for final approval by the governing body. Such notice shall provide opportunity for comment and shall include the date and place of the meeting at which the governing body intends final consideration.
- B. Revisions to the Rules shall become affective upon approval by the governing body by a duly adopted resolution.

15.3 Annual Review These Personnel Rules and Regulations shall be reviewed at least on an annual basis by the Director.