



PERSONNEL RULES & REGULATIONS

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SECTION 1: GENERAL PROVISIONS

- 1.1** These rules and regulations are applicable to all employees of the City, except as otherwise specifically provided in these Rules and Regulations and the City of Gallup Ordinances, and except to the extent they conflict with an applicable Collective Bargaining Agreement. Responsibility and authority for the implementation and administration of these Rules and Regulations is vested in the City Manager. The City at any time, with or without advance notice to employees, may amend these Rules and Regulations as the City deems necessary. Amendments shall be made by the City Manager.
- 1.2** As a condition of employment, employees are required to comply with the provisions of these Personnel Rules and Regulations, all City of Gallup Ordinances, Executive Orders, and Administrative Instructions, and all relevant laws, statutes, ordinances, regulations and collective bargaining agreements governing employment with the City of Gallup.
- 1.3** These Personnel Rules shall be interpreted as a whole rather than interpreting individual sections or sentences in isolation and out of context. Official interpretations of these Regulations shall be made by the Human Resources Director.
- 1.4** These Rules and Regulations are not intended to address all personnel issues that may arise.
- 1.5** These Rules and Regulations are not a contract, or an offer to enter into a contract, express or implied.
- 1.6** A copy of these Rules and Regulations will be maintained in each Department and shall be available to all employees during normal business hours. In addition, a copy of these Rules and Regulations shall be given to each employee and each new employee on or about their first week of work. Each employee shall sign for having received the Rules and Regulations and shall read the Rules and Regulations. These Rules and Regulations apply to all employees of the City, regardless of whether an employee signs the acknowledgment of receipt. If any employee has any questions regarding the Rules and Regulations, the employee shall request assistance from the employee's supervisor.
- 1.7** Subject to applicable Ordinances, Resolutions, or Policies of the City Council, the City Manager has and retains all rights to administer the affairs of the City, either personally or through subordinates. These rights include but are not limited to:
 - A.** Establishing the standard of work and employee conduct, suspending, discharging or otherwise disciplining employees;

- B. Hiring, promoting, demoting, reclassifying, and transferring employees;
- C. Evaluating employees' skill, ability, efficiency, and performance;
- D. Determining work hours and schedules;
- E. Assigning work and determining the size and composition of the work force;
- F. Revising, eliminating, combining, or establishing new positions, jobs, classifications, reclassifications, and/or pay rates;
- G. Establishing, closing down, or expanding, the operation of any facility, department, or division.
- H. Reducing, increasing, altering, combining, transferring, or ceasing a department's operation, equipment, or service;
- I. Contracting with non-employees to perform or receive municipal services and determining the services to be rendered, bought, or sold;
- J. Introducing technological changes, new, improved, or modified services, methods, techniques, and equipment;
- K. Managing City operations;
- L. Directing the City work force; and
- M. Exercising judgment on all matters not specifically prohibited by law or Ordinance.

1.8 The City Manager may adopt, amend, or rescind written administrative procedures, rules, regulations, or interpretations consistent with the Ordinance on Personnel Policies. Such procedures, rules, regulations, or interpretations shall be effective on the dates specified by the City Manager and shall be placed on record in the Human Resources Office, to be open to public inspection during normal working hours. Any amendments to these rules must be in writing. Neither the City Manager nor any City employee has authority to enter into verbal contracts with employees, or to enter into agreements to modify or depart from these rules.

1.9 In adopting these Rules and Regulations, specific gender pronouns for male and female, singular and plural, have generally not been used. However, a masculine or feminine pronoun is intended to refer to both male and female employees, a singular pronoun shall include the plural, and a plural pronoun shall include the singular.

1.10 Severability. If any part or application of the Personnel Rules and Regulations is held invalid, the remainder of its application to other situations or persons shall not be affected.

SECTION 2: DEFINITIONS

The following definitions shall be used for descriptive purposes. If there is any conflict between the definition and the rule or regulation to which it applies, the latter shall take precedence.

At-Will Employment: An employment relationship whereby either the City or the employee can terminate employment at any time, for any reason or no reason, with or without notice or cause.

City Manager: The Chief Administrative Officer of the City.

Class Specification: A written statement of the characteristic duties, responsibilities, and qualification requirements that distinguish a given class from other classes.

Class Title: The designation of a class which becomes the official title of all positions allocated to that class for personnel purposes.

Classification (noun): One or more positions so nearly alike in the essential character of their duties, responsibilities, and qualifications that they may be designated a class with the same pay grade and title.

Classification (verb): Process of analysis based on comparative duties, responsibilities, and qualifications by which appropriate classes are determined.

Classification Plan: A schematic list of classes supported by class specifications.

Classified Employees: Classified employees are employees entitled to all the rights and benefits described in these Personnel Rules and Regulations. Unless otherwise expressly designated, regular full-time employees, and regular part-time employees, are classified employees.

Demotion: A voluntary or involuntary move to a position with a lower rate of pay.

Director: One of two levels of Department Heads reporting directly to the City Manager.

Employee: An authorized and appointed incumbent of a position in the municipal service.

Executive Director: One of two levels of Department Heads reporting directly to the City Manager.

Exempt Employees: Employees whose job duties meet the tests established by the Fair Labor Standards Act (FLSA), 29 U.S.C. §§201 *et seq.*, and state law for exemption from overtime pay requirements.

For-Cause Employee: Non-at-will, non-probationary employee, who may be terminated only for just cause.

Fringe Benefits: Cash or non-cash compensation to employees in addition to salary or compensation paid for services rendered.

Grievance: A written, formal complaint by an employee in accordance with the Grievance Procedure set forth in these Rules and Regulations.

Job Vacancy: An unoccupied position for which funds are allocated, which the City decides to fill.

Lay-Off: The separation of an employee from the City due to elimination of position, shortage of work, shortage of funds, reorganization, or any other reason where the termination of employment is based on business need, and not on employee performance.

Leave: A management-authorized absence from regularly scheduled work for reasons specified in the Personnel Rules and Regulations.

Management: The City Manager, Executive Directors, and Directors.

Non-exempt Employee: Employees whose job duties have been determined by the City not to meet the tests established by the Fair Labor Standards Act (FLSA), 29 U.S.C. §§201 *et seq.*, and state law for exemption from overtime pay requirements.

On Call Assignment: An off-duty employee assigned by a supervisor to a status in which the employee is; (1) required to be available for recall to duty, and (2) required to carry a pager or cell phone in order to be contacted, or required to leave contact information with a supervisor.

Overtime: Management-authorized time worked by a non-exempt employee in excess of that employee's standard work week or work period (firefighters have a 28-day work period), as per the FLSA.

Part-Time Employee: Part-time employees work less than forty (40) hours per week. The City recognizes two classes of part-time employees: regular part-time employees, and casual part-time employees.

Regular part-time employees work not less than twenty-one (21) hours and not more than thirty-nine (39) hours per week, are categorized as classified unless otherwise specified, and may be entitled to insurance coverage in accordance with the Patient Protection and Affordable Care Act, and PERA retirement.

Casual part-time employees are hired to work twenty (20) hours or less per week, or forty (40) hours or less per pay period, for a period not to exceed nine (9) consecutive months. Such employees are employed at will, and are not entitled to any fringe benefits.

Pay or Compensation Plan: The aggregate of pay rates (either single rates or ranges) assigned to each class of positions in the classification plan.

Pay Range: All pay rates from minimum to maximum established for a class in the pay or compensation plan.

Pay Rate: A designated single rate of pay within a pay range of the approved compensation plan.

Performance Evaluation: Written evaluation of the job performance of an employee by a supervisor.

Position: Any position of employment with the City, including but not limited to, regular full-time appointment, regular part-time employment, temporary appointment, or term appointment, in the City's budget approved by the City Council.

Probationary Employee: Probationary employees are employees subject to a defined probationary period (typically twelve (12) months for police officers and firefighters, and six (6) months for other employees hired to fill classified positions). Probationary employees are employed at will, may be terminated for any reason, or no reason, at any time, have no expectation of continued employment with the City, and have no grievance rights.

Promotion: The change of an employee from a position in one grade to a position in a higher grade level with a pay rate higher than pay rates of the prior position.

Reclassification: Process of analysis by which an established position is reviewed by the Personnel Department to determine whether the duties and responsibilities of that position require a change in class and/or pay range designation.

Resignation: The voluntary separation of an employee from employment.

Retirement: The voluntary separation of an employee who has become eligible for retirement under the Public Employees Retirement Act (PERA), NMSA 1978 §§10-11-1 *et seq.*

Safety Committee: The advisory committee that monitors the safety and health of City of Gallup workers by setting and enforcing standards for improvement in workplace safety and health.

Seasonal Employee: Seasonal employees are hired to provide services for a defined period of time not to exceed nine (9) consecutive months. Seasonal employees are employed at will, have no grievance rights, and are not entitled to any fringe benefits

Transfer: The appointment or assignment of an employee to a different position and/or classification at the same classification level and the same pay range.

Unclassified Employees: Unclassified employees are employed at will and serve at the discretion of the City. Unclassified employees do not have any expectation of continued employment, do not have a contract of employment, may be terminated for any reason or no reason, and do not have grievance rights. Unclassified employees include probationary employees, casual part-time employees, seasonal employees, and those employees holding any position expressly designated as unclassified by the City.

Workers' Compensation: Required benefits paid to eligible employees who sustain covered on-the-job injuries.

SECTION 3: POLICY STATEMENTS

3.1 Equal Employment Opportunity. It is the policy and intent of the City of Gallup to provide equality of opportunity in employment, fully consistent with applicable local, state, and federal laws. This means that in all matters affecting employment and applications for employment, the City will ensure that each employee or applicant, regardless of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, sexual orientation or gender identity, will be accorded equal treatment with respect to the terms and condition of employment, the administrations of rate of compensation, access to various kinds of training, participation in social and recreational programs, and access to opportunities for both lateral movement and advancement with the City (including those cases where there is a bona fide occupational statutory requirement or qualification).

The City reaffirms its commitment to comply with applicable federal and state laws regarding nondiscrimination in employment. Unlawful discrimination against any person in recruitment, examination, hiring, classification, training, promotion, retention, assignment of duties, granting of rights and benefits, or any other terms and conditions of employment because of race, color, religion, sex, age, mental or

physical handicap, serious medical condition, national origin, ancestry, veteran status, sexual orientation, or gender identity is prohibited. The City further reaffirms its intent to provide reasonable accommodation, where appropriate, for written documented disabilities of employees or employment applicants.

3.2 Sexual Harassment. It is the policy of the City of Gallup to maintain a working environment free from all forms of sexual harassment.

- A. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or advancement;
 - 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- B. Unwelcome physical contact, foul language, sexually-oriented propositions, jokes, remarks, obscene gestures, the display of sexually explicit pictures, cartoons or other materials, and staring, may be considered offensive to another employee and, thus, are prohibited.
- C. An employee who believes to have been the victim of sexual harassment shall immediately report the matter to the Personnel Department or the City Manager. Any director, supervisor, manager, or Department Head who becomes aware of any possible sexual harassment shall immediately advise the Personnel Department or City Manager, who will handle such matters in a lawful manner to ensure that such conduct does not continue.
- D. Any employee who has witnessed sexual harassment is urged to promptly report the matter to the Human Resources Director or City Manager.
- E. All complaints of harassment will be investigated discreetly, and confidentiality will be maintained to the extent possible. An investigation may include interviews with all those involved, including the complainant, the accused, and potential witnesses. All employees are expected to be honest and cooperative during the investigation.
- F. If an investigation confirms that sexual harassment has occurred, the City will promptly take action to address the harassment.

- G. Any employee who violates this policy will be subject to appropriate disciplinary action, up to and including termination. A determination of appropriate action will be made from the facts on a case-by-case basis. The City need not apply progressive discipline in addressing the harassment, but rather, may take any action it deems appropriate to address harassment in the first instance.
- H. No person will be adversely affected in employment with the City as a result of bringing complaints of sexual harassment. Any employee who discriminates or retaliates against an employee for reporting sexual harassment will be subject to appropriate disciplinary action, up to and including termination.

3.3 Other Harassment. It is the policy of the City of Gallup to maintain a working environment free from harassment in any form.

- A. Harassment consists of any unwelcome verbal or physical conduct that disparages or shows disrespect toward a person based on race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap, pregnancy, genetic history, or medical condition.
- B. An employee who believes to have been a victim of harassment shall immediately report the matter to the Human Resources Director or the City Manager. Any director, supervisor, manager, or Department Head who becomes aware of any possible harassment shall immediately advise the Personnel Department or City Manager, who will handle such matters in a lawful manner to ensure that such conduct does not continue.
- C. Any employee who has witnessed harassment is urged to promptly report the matter to the Human Resources Director or City Manager.
- D. All complaints of harassment will be investigated discreetly, and confidentiality will be maintained to the extent possible. An investigation may include interviews with all those involved, including the complainant, the accused, and potential witnesses. All employees are expected to be honest and cooperative during the investigation.
- E. If an investigation confirms that harassment has occurred, the City will promptly take action to address the harassment.
- F. Any employee who violates this policy will be subject to appropriate disciplinary action, up to and including termination of employment with the City. A determination of appropriate action will be made from the facts, on

a case-by-case basis. The City need not apply progressive discipline in addressing harassment, but rather, may take any action it deems appropriate to address harassment in the first instance.

- G. No person will be adversely affected in employment with the City as a result of bringing complaints of harassment. Any employee who discriminates or retaliates against an employee for reporting sexual harassment will be subject to appropriate disciplinary action, up to and including termination of employment with the City.

3.4 Immigration Reform and Control Act (IRCA). In compliance with the Immigration Reform and Control Act of 1986, 8 U.S.C. §§ 1101 *et seq.*, the City requires all newly hired employees to present documented proof of identity and eligibility to work in the United States. Employees will be required to furnish this information within three (3) working days of hire date. Failure to verify a new employee’s identity and employment eligibility will result in the termination of employment for that employee.

3.5 Americans with Disabilities Act, (ADAAA). The Americans with Disabilities Act Amendments Act, 42 U.S.C. §§12101 *et seq.*, prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. Employment discrimination under the ADA is prohibited against “qualified individuals with disabilities.” A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position and can perform the essential functions of the position with or without reasonable accommodation.

In accordance with the requirements of Title II of the Americans with Disabilities Act, the City will not discriminate against qualified individuals with disabilities on the basis of disability in the City’s services, programs, or activities. In employment, the City does not discriminate on the basis of disability in its hiring or employment practices, and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

The City is only required to accommodate a “known” disability of a qualified applicant or employee. An individual with a disability who desires a reasonable accommodation should complete and submit a request for accommodation to the Human Resources Director.

3.6 Safety. Employees are responsible for performing duties in the safest possible manner, using all available safety precautions and devices to prevent injury to themselves and others.

Employees must comply with all applicable laws, statutes, regulations, ordinances, and safety standards.

Employees must immediately report any potentially unsafe condition to a supervisor, and where appropriate and safe for the employee, intervene to correct an unsafe condition.

3.7 Violence in the Workplace

The City is committed to providing a safe workplace environment, and will not tolerate acts of violence in the workplace. Employees are expected to display positive behavior and treat others in a professional manner with respect and dignity.

- A. Prohibited workplace behavior includes acts of violence, intimidation, verbal threats, physical assault, vandalism, arson, sabotage, unauthorized display, possession, or use of weapons in the workplace, jokes or comments regarding violent acts, threats to inflict physical or mental harm, damage to property, and any aggressive behavior that would cause a reasonable person to feel threatened with physical or mental harm. Such behavior is prohibited whether directed at employees of the City, customers, vendors, or members of the public.
- B. All City employees, other than those required to carry weapons or destructive devices as part of their employment, are prohibited from possessing in the workplace weapons or other objects designed or adapted for purposes of inflicting death or serious injury. Any employees required to carry weapons or destructive devices must at all times comply with departmental standards concerning those devices, and with all applicable law.
- C. All employees experiencing or witnessing workplace violence must report the violence to their Department Head and immediate supervisor. Department Heads must inform the Human Resources Director of all reported incidents of workplace violence. All complaints and reports of workplace violence will be diligently and timely investigated. In the event of a serious incident, the Safety Officer or Human Resources Director may assemble a Threat Management Team consisting of staff from the Personnel Department, City Manager's Office, City Attorney's Office, and/or the affected Department to evaluate and resolve the issues.
- D. On an annual basis, and whenever the physical layout of a work space is significantly altered, Department Heads and the Safety Officer must examine escape routes. Any changes must be communicated by Department Heads to all members of their departments. On an as-needed basis,

Department Heads and the Safety Officer may request a security audit from the Police Department.

- E. Department Heads and supervisors may offer the services of the City's Employee Assistance Program to any employee affected by workplace violence.
- F. An employee who violates this policy may be removed from City property, and is subject to disciplinary action, up to and including termination.

3.8 Union Activity. Employees may join a representative employee organization or union. No employee shall be intimidated, coerced, threatened or pressured in connection with decisions to join any union or other organization.

Union representatives and activities may not interfere with the normal course of City business.

The City will not discriminate or retaliate against any employees based on union status or activities. Any employee who discriminates or retaliates based on union status or activities is subject to appropriate discipline, up to and including termination.

SECTION 4: DRUG AND ALCOHOL USE

4.1 Statement of Purpose.

- A. To set standards for the implementation of drug testing programs in employment;
- B. To ensure that drug testing procedures are implemented in a manner that is fair to employees and that will achieve reliable results;
- C. To educate employees about the dangers of drug and alcohol abuse in the work place and to provide employees who have drug or alcohol abuse problems an opportunity for assessment and rehabilitation;
- D. To advise all City employees that the unlawful manufacture, distribution, dispensation, possession, or use of drugs or alcohol is prohibited in the work place;
- E. To specify the actions that may be taken against employees for violations;
- F. To advise all employees of the dangers of drug use in the work place and of the employment consequences of drug use; and

- G. To ensure that all Elected Officials and Department Heads are charged with the responsibility of supporting and publicizing this policy.

4.2 Policy Statement

- A. All City employees are strictly prohibited from:
 1. Using or being under the influence of illegal drugs to any degree during working hours or while actively engaged in the duties of employment, including but not limited to, lunch periods, breaks, or while on call;
 2. Consuming alcohol or having sufficient quantities of alcohol in their systems to impair mental or bodily functions to any degree during working hours or while actively engaged in the duties of employment, including, but not limited to, lunch periods, breaks, or while on call;
 3. Using or being under the influence of prescription or over-the-counter drugs during working hours or while actively engaged in the duties of employment to the extent that the use of any such legal drug may affect the safe and efficient performance of the employee's job duties, or may endanger the safety of co-workers or members of the public;
 4. Possessing, selling, transferring, or purchasing illegal drugs during working hours, while on City property, or while operating City-owned vehicles or equipment.
- B. The City maintains an Employee Assistance Program (EAP) for employees. Employees with problems pertaining to substance abuse are encouraged to seek assistance under this program on a voluntary basis.

4.3 Employee Drug/Alcohol Testing. A continuing relationship of employment with the City necessitates that an employee comply with the City's Drug and Alcohol Policy. Refusal to submit to testing, to produce an adequate specimen, or tampering with a specimen, is cause for appropriate discipline up to and including termination.

Under the City of Gallup Drug/Alcohol Testing Policy, employees are classified as either "high-risk" or "regular" employees.

- A. **High Risk Category Position.** A position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety. High-risk employees are subject to all forms of testing described herein. For the purposes of this policy a high risk category position shall encompass:

1. All sworn employees of the police department and any employee, probationary or otherwise, with authorization to carry a firearm or other weapon.
2. Any civilian employee of the police department who has access to information that could affect the outcome of police duties in the area of drug enforcement, and anyone working in close proximity with the police regarding drug interdiction, enforcement, or investigation.
3. All City employees who are employed as correction officers or detention officers.
4. All employees of the Fire Department who engage in firefighting, respond to calls for emergency medical assistance, or receive such calls and dispatch the services of the Fire Department.
5. Any employee who is authorized to routinely transport passengers on behalf of the City in a motor vehicle.
6. Any employee who operates heavy and/or hazardous equipment, and any employee routinely working in close physical proximity to such equipment.
7. Any employee who performs mechanical maintenance or repair work on City vehicles, or heavy or hazardous equipment, or who handles hazardous material.
8. Any employee who is required to maintain a commercial driver's license as a condition of employment.
9. Any employee who performs the duties of a lifeguard at any of the City's swimming pools.

B. Authorized Testing

1. Pre-employment Drug Testing. All offers of employment for regular positions or high-risk category positions, whether full-time, part-time, seasonal, or temporary exceeding 29 days, are extended subject to the condition of the applicant passing a drug test. The test results shall be considered as part of the pre-employment screening. The Personnel Department shall be notified solely upon the basis of the pass/fail results of the drug test.

2. **Random Drug Testing.** All City employees are subject to periodic random drug testing. Employees to be tested will be randomly selected by a computer program, which provides equal probability in regard to individual or group selection. Urinalysis will be used for random testing.
3. **Mandatory Mass Drug Testing.** Employees holding high-risk category positions are subject to period mass drug testing, in which an entire specified group or subgroup of employees is required to undergo drug testing. Urinalysis will be used for random testing.
4. **Reasonable Suspicion Drug and Alcohol Testing.** All City employees are subject to drug testing based on reasonable suspicion of a supervisor, director, Executive Director, Department Head, or the City Manager. In such a case, the employee will be transported to the collection site by the Drug Test Coordinator or designee. Reasonable suspicion means a belief based on objective facts sufficient to lead a prudent person to conclude that a particular employee's job performance may be compromised due to drug or alcohol impairment. In making a determination of reasonable suspicion, the factors to be considered include, but are not limited to the following:
 - a. Observable phenomena based upon specific, present observations concerning the appearance, behavior, speech, or body odors of the employee;
 - b. Abnormal conduct or erratic behavior while at work, absenteeism, tardiness, or deterioration in work performance;
 - c. A report of drug/alcohol use provided by a credible eye-witness with first-hand knowledge;
 - d. Evidence that an individual has tampered with a drug/alcohol test while in the employ of the City;
 - e. Evidence that an employee has caused, or contributed to an accident while at work;
 - f. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs while working for the City or while on the City's premises, operating a City vehicle, or operating City machinery or equipment.
5. **For Cause Drug and Alcohol Testing.** All City employees are subject to for-cause drug and alcohol testing. When for-cause testing is utilized,

the Drug Test Coordinator or agent of the Drug Test Coordinator has discretion to order that an alcohol breath test, blood sample, and/or urine specimen be taken. An employee must submit to for-cause testing when a supervisor, director, Executive Director, Department Head, or the City manager concludes that:

- a. Credible evidence exists that an employee has caused or contributed to an accident while operating any equipment, vehicle, or machinery belonging to the City.
- b. Credible evidence exists that an employee has engaged in the use or sale of drugs while in the employ of the City. Such evidence without limitation shall include evidence of a conviction for a drug related offense or a report of drug use provided by reliable and credible sources.
- c. There is cause for suspicion that the employee has tampered with a urine specimen.
- d. The employee has discharged a firearm or other deadly weapon in the course of employment and that employee or another person has been injured.

C. Appeal

1. Any employee who is adversely affected by a finding described in this policy may, after submitting to ordered testing, file a grievance in accordance with the Grievance Procedure set out in these Personnel Rules and Regulations, or in an applicable Collective Bargaining Agreement.
2. Any employee filing a grievance will waive the confidentiality of any drug test results, and either the employee or City may disclose the results to the necessary and appropriate parties.
3. The City will be able to use the drug test results in any hearing or legal proceeding to support its proposed disciplinary action.

4.4 Drug Free Work Place Act Notifications. Any employee convicted of a drug or alcohol violation shall inform the Drug Testing Coordinator, the employee's immediate supervisor, and the Human Resources Director, in writing of the conviction no later than five (5) calendar days after the conviction. If required by law, the Drug Test Coordinator shall inform the appropriate federal or state agency of the conviction.

4.5 Education and Training

- A. Supervisors and managers will receive drug and alcohol related training designed to promote necessary skills to:
 - 1. Inform employees of this policy;
 - 2. Enforce the policy;
 - 3. Identify the signs of drug and/or alcohol use;
 - 4. Intervene constructively; and
 - 5. Integrate an employee effectively back into a work group following intervention and/or treatment.

- B. Non-supervisory employees will receive a minimum of sixty (60) minutes of training on the effects and consequences of prohibited drug and alcohol use on personal health and safety, and the work environment.

SECTION 5: APPOINTMENT PROCESS

5.1 Recruitment and Application Process

- A. **Announcement of Vacancies.** The Personnel Department shall prepare job announcements using such publicity as deemed appropriate to reach prospective qualified applicants for the position to be filled. All job announcements and other publications concerning position vacancies shall explicitly state that the City is an Equal Employment Opportunity Employer.

- B. **Application.** All persons wishing to apply for employment with the City must meet the minimum specified qualifications for the position, complete an approved job application form, and submit the form to the Personnel Department before the position posting period closes. A separate application must be submitted for each position for which a person wishes to be considered. Such forms shall provide applicant information concerning training, experience, references, and other job-related data.

- C. **Ineligibility for Employment.** Applicants are ineligible for City employment for any of the following:
 - 1. Making a fraudulent or false statement on an application or failing to provide required information;

2. Engaging in fraudulent conduct in connection with an examination or interview;
3. Failing to comply with a requirement to be fingerprinted and/or photographed;
4. Failing to provide required documentation;
5. Prior employment with the City resulting in termination for cause, unless approved by the City Manager; or
6. In the City's discretion, in accordance with the Criminal Offender Employment Act, NMSA 1978 §§ 28-2-1 *et seq.*, prior conviction of a felony or prior conviction of a misdemeanor involving moral turpitude.

5.2 Nature and Types of Examinations

- A. Selection Techniques. The selection techniques used in the examination process shall be job-related, objective, neutral, and practical. The techniques must relate to those factors which, upon the review of the Human Resources Director, can reasonably be expected to measure the job-related abilities of the applicant to perform the duties and responsibilities of the position. Selection techniques may include written tests, personal interviews, oral boards, assessment centers, evaluation of daily work performance, work samples, investigation of references, or any combination of these or other factors considered by the Human Resources Director or supervisor involved in the selection process.
- B. Open Competitive Examination. Open competitive examinations may be given for those positions determined to require testing within the municipal service unless the needs of the service require a promotional examination.
- C. Promotional Examination. Whenever an adequate number of candidates are available, as determined by the Human Resources Director and the appropriate Director with the approval of the City Manager, a promotional examination may be held as a means of establishing qualified employees for promotion to fill existing or future vacancies. Promotional examinations may include any of the selection techniques mentioned in this section, or any combination of them.
- D. Right of Appeal. Any applicant or candidate believing to have been denied appointment because of a discriminatory selection may request a review by the Human Resources Director or his designee, who shall investigate and make recommendations to the City Manager. The decision of the City Manager shall be final and binding.

5.3 Employment Lists

- A. The Human Resources Director may establish employment lists as a means of recommending qualified individuals to fill existing or future vacancies. Employment lists shall be of three types:
 - 1. A list of qualified applicants identified by the Personnel Department consisting of employees and/or non-employees.
 - 2. Open competitive employment lists, which shall include the names of persons who have successfully completed a class or position examination that was announced as an open competitive examination.
 - 3. Promotional employment lists, which shall include the names of those employees who have successfully completed a promotional examination for a position or a class of work. Placement on an employment list shall not entitle an applicant or candidate to appointment to any position.
- B. Placement on an employment list shall not entitle an applicant or candidate to appointment to any position, or to interview for any position.
- C. Duration of Lists. Employment lists for all positions shall remain effective for six (6) months. At the request of an Executive Director, the effective duration of an employment list may be extended by the Human Resources Director for up to an additional 90 calendar days.
- D. Recall Lists. The names of qualified individuals who have been laid off shall be placed on appropriate recall lists in order of total continuous cumulative time served with the City of Gallup including probationary and non-probationary regular, full-time status. Employees on recall lists shall receive preference for employment over any other equally-qualified employee seeking promotion or transfer. Placement on a recall list does not, however, entitle an applicant to appointment to a position, and the City retains discretion to select better-qualified candidates over those on the recall list. Recall lists shall remain in effect for twelve (12) months.
- E. Removal of names from list. The name of any person appearing on an employment or recall list shall be removed by the Human Resources Director if the person requests removal in writing; if the person fails to respond to a notice of appointment or recall mailed to the person's last known address; or when the list expires, as specified in these rules. The names of persons who resign shall automatically be dropped from promotional employment lists.

- F. Waivers. When a candidate has submitted a written waiver waiving appointment, that candidate's name shall automatically be dropped from any employment lists.

5.4 Position Vacancies

- A. Method of Filling Vacancies. Any vacancy authorized to be filled for any position in the municipal service shall be filled by reemployment recall, transfer, promotion, demotion, or by the selection of an individual certified by the Human Resources Director from an appropriate employment list.
- B. Appointment. All persons shall be selected on the basis of job-related criteria. No person shall be selected for employment without the approval of a Director, with concurrence of the Human Resources Director and the authorization of the City Manager. Notification of employment shall be done by the Human Resources Director.

5.5 Medical Examinations and Medical Inquiries

- A. Examinations after an offer of employment has been made. The City may require a medical, mental health, or psychological evaluation, examination, or inquiry after an offer of employment has been made and prior to the commencement of employment. The City may condition the offer of employment on the results of such examination.
- B. Post-employment Medical Inquiries. After employment commences, the City may require an employee to undergo a medical, or mental health examination, or inquiry if job-related and consistent with business necessity, as determined by the City.
- C. Refusal of the applicant or employee to complete the evaluation, examination, or inquiry, or to provide medical records, is just cause for withdrawing the employment offer or for disciplinary action up to and including termination.
- D. Results of all medical examinations, and medical records will be kept confidential.

- 5.6 Acting Duty Pay.** Compensation for Acting Duty may be provided to full-time employees on a temporary basis for assuming the duties and responsibilities of another position from which an incumbent is absent, while retaining duties associated with his/her own position when the following conditions have been met:

- A. The employee is assigned by the appointing authority to perform a majority of the significant duties of a budgeted, higher-paid position, from which the incumbent is absent.
- B. The duties of the higher-paid position are assigned to, and performed by, the designated employee for thirty (30) or more calendar days.
- C. The employee selected for acting duty has all the competencies, qualifications, experience, and licensure to enable the employee to carry out the acting duty role effectively.
- D. The assignment is approved in advance by the City Manager.

The following procedures apply to Acting Duty Pay:

- A. Employees who perform the duties of a higher-paid position under the above provisions shall receive acting pay beginning on, or retroactive to, the first day of the assignment.
- B. Employees shall be paid acting pay at the first step of the compensation grade of the position being filled, or that rate which is at least one step above the employee's current pay. In no case shall an employee receive a salary greater than the top step of the salary range of the higher classification.
- C. Acting pay shall not be requested by the appointing authority if the departmental budget has insufficient appropriation to meet the expense.
- D. Except in exceptional circumstances, acting pay shall not be authorized in grades GS10 and below to assume the responsibilities of vacant management positions.
- E. Except as authorized by the City Manager, acting pay shall not apply to any paid leave taken or accrued in excess of three (3) days during the assignment.

5.7 Probation and Evaluations

- A. Firefighters and sworn police officers shall be subject to a twelve (12) month probationary period. The probationary period shall apply to the original appointment or rehire following thirty (30) calendar days of separation from City employment.
- B. All employees hired into a classified position other than those identified in paragraph A above shall be subject to a six (6) month probationary period. If a temporary employment is converted to a regular employment or term

employment, the employee will be subject to a complete probationary period beginning on the date temporary employment is converted to regular employment.

- C. The starting pay for probationary employees will be the appropriate grade and step, depending on experience. Upon successful completion of the six-month probationary period and a satisfactory evaluation, the employee will advance one numeric step within the pay grade. This excludes firefighters and police officers.
- D. If a temporary employment is converted to a regular employment or term employment, the employee will be subject to a complete probationary period beginning on the date temporary employment is converted to regular employment.
- E. Employment during a probationary period is at will. Probationary employees have no expectation of continued employment, have no grievance rights, and may be terminated by the City for any reason, or no reason, at any time.
- F. The employee's supervisor will conduct a performance review during the first 90-day period and at the end of the six-month probationary period. A satisfactory six-month evaluation will be considered a recommendation for further employment. The supervisor will submit such evaluation to the Personnel Department for action to retain employee's full-time, regular status.
- G. Leave without pay, and injury leave or sick leave in excess of two (2) weeks, will not be counted toward the completion of the probationary period.

5.8 Nepotism

- A. Direct Supervision
 - 1. No person shall be hired, promoted, demoted or transferred to a position which is under the direct supervision in the departmental chain of command of a relative who is related by blood, adoption, or by marriage to the third degree of kindred.
 - 2. The third degree of kindred includes spouses, parents, children, brothers, sisters, grandparents, grandchildren, aunts, uncles, nieces and nephews. The restriction shall also apply to relationships having the characteristics of a family relationship and to members of the same household.

B. Indirect Supervision

1. No person shall be hired, promoted, demoted or transferred to a position at the level of Executive Director or above who is related by blood, adoption, or marriage to the second degree of kindred to any of the following individuals: Mayor, City Councilor, City Manager, City Attorney, or any employee at the level of Executive Director of a department and above.
2. The second degree of kindred includes spouses, parents, children, brothers and sisters.
3. These restrictions shall not apply to anyone employed by the City of Gallup prior to July 1, 2003, or to seasonal employees or part-time employees who work 1,000 hours or less per year, or to grant-funded positions.
4. Any employment violating these restrictions shall be null and void, and any person giving or allowing such employment shall be liable to the City of Gallup for any and all money paid out.

SECTION 6: CLASSIFICATION AND PAY PLAN

- 6.1 Class Designation.** Except for the position of the City Manager and City Attorney, each position within the City shall be part of the classification plan, shall be identified by a class specification and class title. All positions within the same classification shall be subject to the same pay range, except that the pay of the Executive Director or Director shall not have a specific range and is negotiable. The classification plan is subject to the approval of the City Manager.
- 6.2 New Positions.** Subject to the availability of funds, no person shall be employed by the City to fill a position within any classification or pay range not included in the approved classification plan until the plan has been approved by the City Manager to include such classification or pay range. Such approved position must be included in the annual budget.
- 6.3 Maintenance of Classification Plan.** The City Manager may periodically instruct the Human Resources Director to review the duties and responsibilities of any or all positions within the City.

6.4 Reclassification

- A. Reclassifications may be made when, the Human Resources Director determines that a position requires substantially different duties, responsibilities, skills, or qualifications.
- B. Administration of the Reclassification Process. The Personnel Department is responsible for the evaluation of positions within the City's Classification System.
- C. A supervisor, with approval from the Department Head, may make a written request to the Human Resources Director to have a position's present job duties analyzed to determine if the duties are substantially different, and to determine if a different classification is warranted.
- D. Reclassification requests will be reviewed by the Human Resources Director. All reclassifications are subject to the approval of the City Manager.
- E. The reclassification of a position to a lower or higher pay range does not require a pay adjustment for an employee holding that position if the employee's pay rate falls within the reclassified pay range.
- F. If an increase in pay is required as a result of the employee's pay being lower than the lowest rate of pay for the reclassified pay range, the pay increase will become effective the first full pay period following the approval of the reclassification.
- G. When there is a reclassification request that does not follow the above-outlined rules, a written request to include a justification for a reclassification shall be submitted to the Human Resources Director, who will review the request and submit a recommendation to the City Manager. Such requests are subject to the approval of the City Manager.

6.5 Establishment and Review of Compensation. The City Manager may instruct the Human Resources Director to review and recommend changes to the pay and benefits plans.

6.6 Pay Rates Assigned. All employees shall be paid in accordance with the approved pay or classification plan. The City Manager shall have final authority with respect to the assignment or change in assignment of pay.

- 6.7 Pay Rates at Initial Employment.** Upon initial employment, all persons shall be paid at the entry rate within the grade for the classification. An Executive Director has discretion, however, to authorize starting pay at rate higher than the entry rate within the designated pay grade up to the third step of the pay plan, based upon experience and qualifications. Any pay recommendations beyond the third step must be approved by the City Manager.
- 6.8 Pay Increases within Assigned Salary Ranges.** The City Council may authorize any general wage increase including an annual advancement in the wage plan for employees. The City Manager shall have final review of all pay increases within assigned salary ranges. Employees on performance improvement plans who have had less than satisfactory performance during the previous twelve (12) months are not eligible for a pay increase. The City Manager will determine pay increases for Department Heads (Directors and Executive Directors).
- 6.9 Performance Evaluations.** Performance evaluations are intended to communicate with an employee as to performance standards and critical elements of the employee's position. Performance evaluations are conducted annually on the anniversary of the employee's hire date or as designated by the City Manager.
- A. Employees will be evaluated prior to the completion of their probationary period.
 - B. The performance of non-probationary employees may be evaluated on a periodic basis, in the discretion of an employee's supervisor.
 - C. Non-probationary employees' performance shall be documented when their performance is considered by their supervisor to be below satisfactory. The documentation shall consist of an evaluation which will be identified as a "Performance Improvement Plan" (PIP). The PIP shall include the following:
 - 1. The deficiencies amounting to unsatisfactory performance;
 - 2. The improvement necessary for the employee to achieve satisfactory status;
 - 3. The time period in which the improvement must occur;
 - 4. The consequences of the failure to correct the deficiencies; and
 - 5. The signature of the employee and the supervisor. The signature of the employee only acknowledges receipt of the performance improvement plan.

- D. A PIP is not a contract of employment or a guaranty of continued employment during the period of compliance with the PIP.
- E. Failure to comply with the requirements of a PIP, or to satisfactorily address performance issues identified in routine performance evaluations, may subject an employee to disciplinary action, up to and including termination.

6.10 Completion of Probationary Period. Affirmative action is required by a supervisor to convert a probationary employee to a regular employee upon completion of the probationary period.

6.11 Salary Based Employees. Employees exempt from the Fair Labor Standards Act as executive, administrative, or professional employees are paid on a “salary basis.” “Salary basis” means that an exempt employee regularly receives, each pay period and on a weekly or less frequent basis, a “predetermined amount” of compensation that cannot be reduced because of variations in the quality or quantity of work performed.

- A. Deductions. A salary-based employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. The City may, however, make deductions from salary of exempt employees in the following situations (*see* 29 C.F.R. § 541.602):
 1. An absence from work for one or more full days for personal reasons, other than sickness or disability;
 2. An absence from work for one or more full days due to sickness or disability if deductions are made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences;
 3. As a penalty imposed in good faith for violating safety rules of major significance, including those relating to the prevention of serious danger in the workplace or to other employees;
 4. As an unpaid disciplinary suspension of one or more full days imposed in good faith for violations of workplace conduct rules;
 5. To pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment;
 6. When an employee takes unpaid leave under the Family and Medical Leave Act.

SECTION 7: CHANGES IN EMPLOYMENT STATUS

7.1 Transfers and Pay upon Transfers

- A. When a vacancy is announced, any qualified employee may apply for transfer to the position. All qualified applicants are assured consideration, although no employee is assured an interview or selection.
- B. An employee may request a transfer to a properly announced vacant position within the employee's department or division or to a different division or department within the City subject to the employee meeting the minimum required qualifications of the announced vacant position. All transfers are subject to the approval of the City Manager.
- C. Upon transfer to a higher grade, an employee shall be considered promoted and shall receive one step above the employee's current rate of pay, in accordance with Section 7.2.
- D. Upon transfer to a lower grade, an employee shall receive pay at the same step, but in the appropriate lower grade, which may result in lower pay.
- E. Upon lateral transfer within the same grade, an employee shall receive the same pay rate.
- F. The City Manager may transfer an employee within a department or division or to a different department or division within the same classification (title and pay). Upon such transfer, the employee shall receive the same pay rate.

7.2 Promotion and Pay upon Promotion. An employee upon promotion shall receive one step above the current rate of pay in the appropriate grade of the new position.

7.3 Demotion and Pay upon Demotion

- A. The City retains the right in its sole discretion to change the status of a particular employee, or a class of employees, for any reason, including but not limited to, budgetary constraints, reorganizations, reductions in force, reassignment, deficiency in job performance, or misconduct of the employee.
- B. Upon demotion, an employee shall be paid at the nearest step of the lower grade below the employee's prior pay rate.

7.4 Resignations/Dismissal/Layoffs

- A. Resignations. Any employee wishing to voluntarily terminate employment with the City shall give written notice to the employee's immediate supervisor before termination.
- B. Dismissal. Employee terminations or dismissals from employment shall be guided by the provisions of Section 10.5.
- C. Layoff. The City Manager may, for the good of the service, reduce the work force and lay off employees. Within each division, the order of layoff shall be determined by the City Manager on the basis of factors including but not limited to, qualification and seniority. All regular full-time employees laid off within a division shall be placed on a recall list for one year and within that year may be returned to work within the division in reverse order of layoff, provided a vacancy exists and the employee is qualified to perform the job to be filled. Any employee so re-employed shall retain any seniority accrued up to the date of the layoff and any benefits and leave accrued and not cashed in up to the time that the employee was laid off.
- D. Pay at Separation
 - 1. Resignation. If an employee resigns, any remaining compensation due will be paid at the next regularly-scheduled payday.
 - 2. Dismissal. If an employee is terminated, any remaining compensation due will be paid within five (5) days of termination.

SECTION 8: HOURS OF WORK, STANDARD WORK WEEK, AND OVERTIME

8.1 Work Week. The regular work week for all employees, except public safety personnel and firefighters, shall consist of forty (40) hours worked over seven (7) consecutive calendar days beginning Monday at 12:01 a.m. and ending Sunday at midnight. The work week for public safety personnel and firefighters will be in accordance with 29 U.S.C. § 207(k).

8.2 Overtime

- A. Non-exempt employees shall be paid overtime as required by the Fair Labor Standards Act. Overtime at the rate of one and one half the regular rate of pay will be paid for actual hours worked in excess of the regular workweek for eligible employees as follows:

Non-public safety employees will be paid overtime for actual hours worked in excess of forty (40) hours within a seven (7) consecutive day period as identified in Section 8.1 above.

Sworn Police Officers and Corrections Officers will be paid overtime for actual hours worked in excess of Eighty-four (84) hours within a fourteen (14) consecutive day period as per the Police Department S.O.P.

Firefighters assigned to the fifty-six (56) hour workweek will be paid overtime for hours worked in excess of two hundred and twelve (212) hours within a twenty-eight day (28) cycle as per the Fire Department S.O.P.

- B. The City Manager will designate those employees whose job duties qualify them as eligible for overtime compensation and those employees whose positions are exempt. It will be the responsibility of the Human Resources Director to review and make recommendations according to the requirements of the Fair Labor Standards Act (FLSA) regarding the designations of positions as FLSA exempt or non-exempt.
- C. Employees may be required to work overtime as a condition of employment.
- D. Responses to reasonable requests for overtime work outside regular business hours is a strict condition of employment for all employees.
- E. Working overtime without prior approval is considered just cause for disciplinary action up to and including termination.

8.3 Compensatory Time Off

- A. In lieu of monetary overtime compensation required under Section 8.2, compensatory time off may be given in accordance with the procedures established herein and applicable law. Non-exempt employees may agree in advance and in writing to take compensatory time off for irregular or occasional overtime, and will earn compensatory time off of one and one-half hours for every hour of authorized overtime work. Compensatory time off will be paid at the employee's regular hourly rate and will not count as hours worked for overtime calculation purposes in the work week in which this leave is taken. As the compensatory time earned by an employee constitutes a legal liability for the City, no employee may accumulate more than 75 hours of compensatory time (equivalent to 50 hours of overtime worked). The City has discretion to require use of compensatory time or to substitute cash overtime to ensure employees do not accumulate more than 75 hours. As the needs of each department vary, the procedures for utilization of the earned compensatory time will be established by an Administrative Regulation.

- B. An employee who has accrued compensatory time must use that time before sick leave and vacation time.
- C. Upon termination of employment, an employee's transfer to another department, or an employee's reclassification from non-exempt to exempt status, the employee will be paid for unused compensatory time off in accordance with the Fair Labor Standards Act.
- D. Exempt employees cannot accumulate compensatory time.

8.4 Work Breaks. The Executive Director or his designee may provide for work breaks during the working day. No more than one lunch period, and two breaks not to exceed fifteen (15) minutes each, may be granted. The granting of such breaks shall depend on the constraints of working conditions within each department, and regulations regarding such breaks may be set forth by the Executive Director or Director of a department, to be reviewed by the City Manager.

Supervisors shall be responsible for scheduling and may limit breaks if, in their opinion, continuous work is required because of an emergency or unusual condition. An unpaid lunch break of at least thirty (30) minutes will be provided. In the event a non-exempt employee is required to work during their lunch period, this time will be compensated in accordance with the Fair Labor Standards Act (FLSA). Lunch periods and breaks may not be accumulated and used at other times or for other purposes.

8.5 FLSA Exempt Employees

- A. Salaried exempt employees are those whose duties, responsibilities and compensation cause them to be exempt from overtime requirements of the Fair Labor Standards Act, (FLSA). All other employees are non-exempt.
- B. Positions in the following classes are considered exempt:
 - 1. Executive. An employee is employed in an executive position if the employee is compensated on a salary basis pursuant to 29 C.F.R. § 541.600 at a rate per week of not less than the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region (as updated by the United States Secretary of Labor pursuant to 29 C.F.R. § 541.607), exclusive of board, lodging or other facilities; the employee's primary duty is management of the City or a department, division, or subdivision of the City; the employee supervises at least two or more full-time employees; and the employee has the authority to hire

or fire employees, or to have recommendations on hiring and firing given particular weight.

2. Administrative. An employee is employed in an administrative position if the employee is compensated on a salary or fee basis pursuant to 29 C.F.R. § 541.600 at a rate per week of not less than the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region (as updated by the United States Secretary of Labor pursuant to 29 C.F.R. § 541.607), exclusive of board, lodging or other facilities; the employee's primary duty is the performance of office or non-manual work directly related to the management of general business operation of the City; and the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
3. Professional. An employee is employed in a professional position if the employee is compensated on a salary or fee basis pursuant to 29 C.F.R. § 541.600 at a rate per week of not less than the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region (as updated by the United States Secretary of Labor pursuant to 29 C.F.R. § 541.607), exclusive of board, lodging or other facilities; the employee's primary duty is the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by prolonged course of specialized intellectual instruction, or requires invention, imagination, originality or talent, in a recognized field of artistic or creative endeavor.
4. Computer. An employee is employed in a computer position if the employee is compensated on a salary or fee basis pursuant to 29 C.F.R. § 541.600 at a rate per week of not less than the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region (as updated by the United States Secretary of Labor pursuant to 29 C.F.R. § 541.607), exclusive of board, lodging or other facilities, or on an hourly basis at a rate of not less than \$27.63 per hour; and the employee is employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker whose primary duty must consist of:
 - a. The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications;
 - b. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs,

including prototypes, based on and related to user or system design specifications;

- c. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - d. A combination of the duties described above which require the same level of skills.
5. Highly Compensated. An employee is considered highly compensated if the employee receives total annual compensation of at least the annualized earnings amount of the 90th percentile of full-time nonhourly workers nationally; the employee's compensation includes a weekly amount of compensation on a salary or fee basis pursuant to 29 C.F.R. § 541.600 at a rate per week of not less than the 40th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage Census Region (as updated by the United States Secretary of Labor pursuant to 29 C.F.R. § 541.607); exclusive of board, lodging or other facilities; , and the employee's primary duty is the performance of at least one of the duties of an exempt Executive, Administrative, or Professional employee (as outlined above).

SECTION 9: LEAVE AND FRINGE BENEFITS

9.1 Insurance and Retirement

- A. Health Insurance. The City will make health insurance available to employees, in accordance with applicable law.
- B. Life Insurance. The City may make life insurance available to employees. The cost of participation, coverage, and terms will vary from time to time according to the contracts entered.
- C. Retirement (PERA). The City is subject to the provisions of New Mexico law concerning participation in the state program for public employee retirement and disability. *See* NMSA 1978 §§ 10-11-1 *et seq.* Participation is mandatory, except as expressly allowed by State law. The terms for participation of the City and its employees may, within the provisions of State law, vary from time to time. Benefits shall be those provided under State law. Employees are encouraged to contact the PERA Office for specific information regarding their membership.

- D. The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 provides for the continuation of health care coverage for a covered employee and covered dependents due to a qualifying event that causes loss of health coverage. Should an employee, or covered dependent lose health coverage, employee or dependent will be given the opportunity to continue to purchase insurance for a legally-specified period of time.

Coverage is not automatic. The person(s) losing coverage will receive notice of their rights to elect continuation of coverage, and information on how to enroll.

Employees and dependents are required to notify the City's Personnel Department of a divorce, legal separation, or change in the status of a dependent child within sixty (60) days after the date of the event. If notification is not received within this time period, COBRA continuation coverage will not be provided.

9.2 Holiday Leave

- A. Legal Public Holidays for the City are:

- New Year's Day
- Martin Luther King, Jr. Holiday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Eve
- Christmas Day

- B. Each year the City Manager shall publish the dates on which the legal public holidays shall be observed.
- C. For employees subject to collective bargaining agreements, any compensation for holiday pay will be governed by the terms of the collective bargaining agreement.
- D. Regular full-time and term employees not subject to a collective bargaining agreement are eligible for holiday pay.
- E. Legal public holidays occurring during a period of vacation or bona fide sick leave will be counted as holiday leave, and not as vacation or sick leave, for

regular full-time and term employees not subject to collective bargaining agreements.

9.3 Vacation/Annual Leave

- A. Vacation and Annual Leave accruals for regular full-time employees not subject to collective bargaining agreements are as follows:

Months
of Service

0-60 mos. 3.077 hrs per pay period

61-180 mos. 4.616 hrs/pp

181 mos. + 6.15 hrs/pp

Max accrual: 280 hours

- B. Director rank and higher shall accrue 160 hours per year.
- C. Accruals for employees subject to a collective bargaining agreement will be in accordance with any specific terms of the collective bargaining agreement, and in the absence of such terms, in accordance with paragraph A.
- D. Non-emergency vacation requests shall be submitted at least ten (10) working days prior to the first day of vacation.
- E. Vacation/Annual Leave may be canceled as a result of an emergency declared by the Department Head.
- F. Part-time employees are not entitled to annual leave, but may be authorized by their supervisors to take unpaid leave.

9.4 Sick Leave

- A. Accrual Rate. Regular full-time, forty (40) hour work week employees not subject to a collective bargaining agreement will accrue sick leave at the rate of 3.69 hours per pay period. Sick leave accrual is limited to a maximum of 1500 hours.

- B. Employees subject to collective bargaining agreement shall accrue sick leave in accordance with any specific terms of the collective bargaining agreement, and in the absence of such terms, in accordance with paragraph A.
- C. No payment shall be made for accrued sick leave at separation from service with the City except as follows:
1. As provided in Early Retirement/Sick Leave provisions described in Section 9.8
 2. Annual Sale of Sick Leave.
 - a. Employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty (50%) percent of their hourly rate of pay up to the specified maximum.

96 Maximum hours for 40 hour workweek employee
100 Maximum hours for 42 hour workweek employee
127 Maximum hours for 53-54 hour workweek employee
 - b. Payment for excess sick leave may be made only once per calendar year on the first payday in December.
 3. Employees who qualify for or initiate an application for any retirement plan under PERA or other qualified retirement program are entitled to be paid for unused sick leave at a rate equal to thirty-three percent (33%) of their hourly rate for up to 1,000 hours of sick leave.
 4. Re-Employed Retirees under PERA or other qualified retirement program upon resignation are entitled to be paid for unused sick leave at a rate equal to thirty-three percent (33%) of their hourly rate for up to 1,000 hours of sick leave.
- D. The City recognizes that employees and members of employees' immediate family may become sick or injured, and that a reasonable period of time off with pay should be granted to employees during such periods. Paid sick leave is a benefit provided by the City for the use of employees during period of illness, sickness or medical treatment of the employee or that of an immediate family member that prevent the employees from performing their assigned duties and for purposes identified in this section dealing with sick leave. Sick leave can only be used for the specific purposes defined herein and is not to be used in the same way as earned annual leave.

Accrued sick leave should be retained by employees to ensure continued pay in cases of extended illness or injury. Eligible employees accrue, use, and are paid for sick leave according to the provisions of these rules.

- E. **Eligible Employees.** The provisions of this section apply to all employees who are classified as regular full-time employees. Part-time, seasonal, and temporary employees are not eligible.
- F. **Authorized Use of Sick Leave.** Sick leave is used only for the specific purposes defined below.
- G. **Personal Illness, Injury, or Medical Treatment.** Time off due to personal illness, injury, or medical treatment (including pregnancy, and child birth), prescheduled doctor and dentist appointments, and other related medical conditions may be charged to sick leave. Absence from work to care for an ill or injured member of one's immediate family may also be charged to sick leave.
- H. **Immediate Family Member.** Immediate family member means an employee's spouse or domestic partner, children (natural, step, adopted, or foster), parents, persons under an employee's legal guardianship (as appointed by a court of general jurisdiction or by power of attorney as allowed by the laws of the State of New Mexico), and individuals in a position of loco parentis with the employee.
- I. **Parental Leave.** Time off for caring for and bonding with a child who has recently joined the household (by birth or adoption) may be charged to sick leave. Employees may also take annual leave or unpaid FMLA leave to care for and bond with a child who has recently joined the household.
- J. **Documentation of Sick Leave.** The City reserves the right to require medical documentation at any time concerning the nature, severity, and duration of an illness or injury to verify proper use of sick leave. Supervisors may also request documentation for sick leave used for pre-scheduled doctor's appointments. If the request for sick leave is due to an employee's own illness, the supervisor may request documentation certifying whether or not the employee is physically able to return to work, the date the condition commenced, and the expected duration of the condition. The City may also request a second medical opinion at the City's expense.

If the request for sick leave is to care for an immediate family member, the supervisor may request medical documentation concerning the nature, severity, and duration of the illness or injury.

If the request for sick leave is for caring for and bonding with a child who has recently joined the household, the supervisor may request documentation of the birth, adoption, or placement of the child.

The employee will be required to provide medical documentation for all absences longer than five (5) consecutive business days.

- K. **Sick Leave Abuse.** At the discretion of the City, if an employee uses sick leave for purposes contrary to this policy, the employee may be subject to discipline, up to and including termination.

9.5 Sick Leave Bank

- A. The intent of the Sick Leave Bank is to provide employees who have exhausted all paid leave (including sick leave and vacation leave) with some additional sick leave when a serious illness or disability occurs that prevents the eligible employee from performing assigned duties for a significant period of time.
- B. The Sick Leave Bank is an available pool of leave contributed to by employees for use by other employees when they have incurred a serious health condition, which has depleted their accrued sick leave. To be eligible to join the Sick Leave Bank, an employee must:
 - 1. Be a full-time regular employee;
 - 2. Have completed at least six (6) months of service with the City of Gallup;
 - 3. Have accrued at least fifteen (15) days of sick leave at any time during the employee's last continuous employment period;
 - 4. Have donated the equivalent of one regular shift of sick leave to the Bank; and
 - 5. Have no written record of disciplinary action for leave abuse or misuse within the past twelve (12) months.
- C. When sick leave is donated to the Sick Leave Bank, what is transferred is a credit for the hours of leave that an employee may take as sick leave. Donations to the Sick Leave Bank are irrevocable.
- D. Leave from the Sick Leave Bank may be granted in the event of a catastrophic illness, extended illness, or extended medical condition of an employee or the employee's immediate family member.

1. “Catastrophic illness, extended illness or extended medical condition” means an illness, injury, impairment, physical condition, mental condition or such an illness or condition of an immediate family member, which (a) results in the employee’s inability to work; (b) requires the services of a licensed medical practitioner for a prolonged period of time; and (c) forces the employee to exhaust all leave time earned and be on leave-without-pay status;
2. “Immediate family member” means an employee’s spouse or domestic partner, child (natural, step, adopted, or foster), parent who is under the employee’s legal guardianship (appointed by a court or by power of attorney).

E. To request leave from the Sick Leave Bank, an employee must:

1. Meet the eligibility requirements for membership in the Sick Leave Bank pool;
2. Have exhausted all accumulated sick and annual vacation leave;
3. Have a catastrophic illness, extended illness, or extended medical condition;
4. Submit a request to use leave from the Bank by completing an Application for Request of SLB Hours Form, specifying the number of sick leave days being requested, and submit it to the Human Resources Department;
5. Provide a health care provider’s statement, including a description of the illness or condition, and identifying the beginning and anticipated ending date of care; and
6. Obtain approval of the employee’s supervisor or Department Head to take leave.

F. Employees may be granted a maximum of twelve (12) total weeks (sixty (60) days) from the Sick Leave Bank per calendar year. Employees may request up to twenty (20) working days on each application.

G. Request to use leave from the Sick Leave Bank are reviewed by the Sick Leave Bank Committee, which is composed of the City Manager, the Human Resources Director, and one Executive Director designated by the City Manager. The decisions of the Committee are final and not grievable. No appeal may be taken from the decision of the Sick Leave Committee.

- H. In evaluating whether to approve a request for Sick Leave Bank Time, the Committee may consider whether the request is based on serious injury or illness of the employee or the employee's immediate family, the employee's performance, the amount of leave requested, prior use of Sick Leave Bank time, and any other factor relevant to whether allowing use of Sick Leave Bank time is in the best interests of the employee and the City.
- I. Decisions to grant request for Sick Leave Bank leave are contingent upon availability of hours in the Bank.
- J. FMLA qualifying leave will run concurrently with leave used from the Sick Leave Bank. Anyone using the Sick Leave Bank must provide the Human Resources Department with an FMLA Certificate of Health Care Provider, completed by the employee or the employee's immediate family member's treating physician.
- K. Payroll deductions, including insurance premiums will continue while receiving Sick Leave Bank benefits.
- L. Any balance of days approved by the Sick Leave Bank Committee, but not required by an employee will remain in the Sick Leave Bank.
- M. Requests, the basis of requests, and decisions concerning requests to utilize leave from the Sick Leave Bank will be confidential.
- N. The Human Resources Department is responsible for maintaining the Sick Leave Bank, handling donations, and convening the Sick Leave Bank Committee.
- O. Sick Leave may be donated to the Bank during the first pay period of April, and during the first pay period of October. The City Manager has discretion to allow donations at other times.

9.6 Direct Sick Leave Donation

- A. **Purpose.** On occasion, a City employee may encounter an emergency medical condition. Under such a condition, an employee is entitled to direct sick leave donations in accordance with NMSA 1978 § 10-7-22.
- B. **Recipient**
 - 1. The recipient must be a non-probationary employee.

2. The recipient must have used all of his or her available earned sick and vacation leave.
3. The recipient must have an emergency medical condition established by a certified document by a licensed health provider describing the nature, severity, and anticipated duration of the emergency medical condition, and including a statement that the recipient is unable to work all or part of the recipient's normal work hours.

C. Donor

1. The donor may donate a maximum of ten (10) days per individual recipient, per year
2. The donor must donate in one (1) day blocks.

D. General Provisions

1. Leave granted through direct donations from the Sick Leave Bank is limited to a combined total of twelve (12) weeks per calendar year per employee.
2. FMLA qualifying leave will run concurrently with leave acquired through the Sick Leave Bank or through direct donations.
3. Donated sick leave not used during the course of the recipient's emergency medical condition will be restored to all donor's accounts by the ratio of each donor's donation to total hours donated based on donor's pay rates.
4. Because donated sick leave may result in additional time away from work by the recipient, the recipient's supervisor must agree to any donation of sick leave exceeding a total of six (6) weeks.
5. Sick leave may not be donated to an employee who is in an employment category that does not accrue sick leave.
6. Terminating employees (including those retiring with an excess of accrued sick leave) may not donate in excess of ten (10) days of sick leave).
7. This policy does not apply to time off due to a job-related injury covered by Workers' Compensation

8. Nothing in this section will override a collective bargaining agreement between the City and a Union

9.7 Workers' Compensation

- A. Any employee who sustains an injury by accident arising out of and in the course of City employment may apply for, and will be considered for Workers' Compensation by the State as per the New Mexico Workers' Compensation Act, NMSA 1978 §§ 52-1-1 *et seq.*
- B. The City of Gallup will allow employees to use sick or vacation hours for the first seven days of an injury arising out of and in the course of employment with the City and thereafter will, for thirty (30) days ensure that the employee has no loss in pay or benefits.
- C. Employees with job incurred injuries shall be eligible for group insurance provided they notify the City within two (2) weeks of receipt of workers' compensation benefits and pay the entire premium after the third full calendar month after the injury. For the first three months the City will pay the same percentage of group insurance paid prior to the injury or as required by federal and/or State statute upon settlement.
- D. Employees receiving workers' compensation benefits shall not receive vacation leave or sick leave for the same time period.
- E. During the initial injury leave or succeeding workers' compensation leave, vacation or sick leave, the City may require the employee to respond to any requests for confirmation of continued eligibility for leave under this section.
- F. Workers Compensation time is not counted towards P.E.R.A. time.
- G. The City will not discriminate or retaliate against an employee for filing a workers' compensation claim. Any employee who discriminates or retaliates against an employee for pursuing a workers' compensation claim is subject to appropriate discipline, up to and including termination.

9.8 Family and Medical Leave Act

- A. The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 *et seq.* (FMLA) allows eligible employees to take up to twelve (12) work weeks off from work in any twelve (12) month period while retaining their job and health insurance coverage. The FMLA permits an employee to take unpaid leave to care for the employee's child after birth, or placement for adoption or foster care. The FMLA also permits unpaid leave to care for an immediate family

member, (spouse, son, daughter, parent, or individual with whom the employee has a relationship defined as *in loco parentis*) with a serious health condition or for the employee's own serious health condition when the employee is unable to work. Upon returning to work from family and medical leave, the employee will generally be restored to the same or equivalent position as the one they occupied prior to taking leave.

- B. In accordance with the National Defense Authorization Act of 2008, the following forms of leave are also authorized:
 - 1. **Military Caregiver Leave.** Eligible employees who are family members (spouse, so, daughter, parent, or next of kin) of covered service members may take up to twenty-six (26) work weeks of leave in single twelve (12) month period to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty. This special provision extends FMLA leave beyond the twelve (12) weeks available to FMLA-eligible employees.
 - 2. **Qualifying Exigency Leave.** This form of military leave helps families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. This provision makes the twelve (12) weeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation.
- C. **Eligibility.** Employees who have worked for the City for at least one (1) year and have worked at least 1250 hours over the previous twelve (12) months are eligible for FMLA benefits.
- D. Employees are eligible to take intermittent FMLA leave, or to utilize FMLA leave to work a regular reduced schedule, when the employee's own serious health condition makes the employee unable to perform the employee's job, or to care for a spouse, son, daughter, or parent with a serious health condition.
- E. When spouses are employed by the City they are limited to a combined twelve-week period of leave for birth of a child, adoption, or foster care, or to care for a sick parent.
- F. Accrued annual leave may be utilized by employees taking FMLA leave until exhausted, but does not extend the twelve-week maximum.

- G. Employees eligible for FMLA benefits must apply for the benefits to receive them.
- H. When feasible, employees should provide thirty (30) days written notice of the need to take FMLA leave. When such advance notice is not feasible, employees should provide as much notice as is practical under the circumstances.
- I. The City may require documentation of any family relationship upon which a leave request is based.
- J. An employee requesting leave for a serious health condition, or the serious health condition of a family member must provide medical certification reflecting the need for FMLA leave. When feasible, such documentation should be provided before FMLA leave begins, and in all circumstances, must be provided within fifteen (15) days of the start of FMLA leave.
- K. The City may, at its own expense, require an employee to obtain a second medical opinion. If the two opinions conflict, the City may, at its expense, require the employee to obtain a third opinion from a medical provider designated or jointly approved by the City and the employee. That third opinion is final and binding. Pending receipt of the second and third opinions, the employee is provisionally entitled to FMLA benefits
- L. Highly compensated “key” employees are entitled to take FMLA leave, but the City need not return a key employee to the same or equivalent position upon return from leave, if such restoration will cause substantial and grievous economic injury to the City. A “key employee” is a salaried eligible employee who is among the highest paid ten (10) percent of all employees employed by the City.
- M. The City may designate leave as FMLA leave without a request from the employee. Within five days of receipt of information reflecting that leave is being requested for an FMLA-qualifying reason, the City will notify the employee whether leave will be designated as FMLA leave.
- N. Provisions of the FMLA and its implementing regulations will prevail in the case of a conflict with these Personnel Rules and Regulations.
- O. The City will not discriminate or retaliate against an employee for taking or requesting FMLA leave. Any employee who discriminates or retaliates against an employee for taking or requesting FMLA leave is subject to appropriate discipline, up to and including termination.

9.9 Conversion and Sell Back of Annual and Sick Leave

- A. Annual Leave Sell Back. As outlined in Rule 9.3, regular full-time employees working a 40-hour work week may accumulate a maximum of 280 hours of annual leave as of December 31 of each year, employees working 42 hours per week may accumulate up to 294 hours of annual leave as of December 31 each year, and employees working 53 hours per week may accumulate up to 392 hours of annual leave as of December 31 of each year. At the time of retirement, an employee may sell back accrued leave up to the maximum accumulation. An employee electing to do so will be compensated at the employee's current rate of pay, and will receive a lump-sum payment at the time of retirement.
- B. Annual Leave Utilized as Early Retirement. Regular full-time employees may elect to utilize any accrued annual leave (up to the maximum amount) immediately prior to retirement. This option is defined as early retirement.
- C. Payment of Annual Leave Upon Death. In the event of death of an employee, all accrued annual leave (up to the maximum amount) will be paid at the employee's current hourly rate. That lump-sum payment will be made in the employee's name.
- D. Conversion of sick leave to lump-sum sell back for all regular full-time employees. Regular full-time employees (hired before or after January 1, 1987) may convert up to 1,000 hours of accumulated sick leave to a lump-sum payment at the rate of 33% of the employee's current hourly rate.
- E. Payment of sick leave upon death. In the event of death of an employee, the employee's unused sick leave up to the limits specified below, will be paid in the employee's name, at the rate of 50% of the employee's hourly rate:
 - 96 maximum hours for employees working 40 hours per week
 - 100 maximum hours for employees working 42 hours per week
 - 127 maximum hours for employees working 53-54 hours per week
- F. Calculations for Retiring Employees. An estimated benefit calculation will be done, upon request, at any time prior to retirement. The City recommends that such a calculation be done no less than 60 days prior to retirement. The final calculation will be done 30 days after retirement, prior to the sell-back payment. Employees are required to sign the final calculation.

9.10 Funeral Leave

- A. Regular full-time employees are entitled to funeral leave. Funeral leave may be used if the funeral is of an employee's spouse, parent, parent-in-law, brother, sister, brother-in-law, sister-in-law, child, stepchild, grandparent, or grandchild. If the funeral is within 450 miles from the City of Gallup, three (3) consecutive calendar days of leave may be authorized. If the funeral is more than 450 miles from the City of Gallup, five (5) consecutive calendar days of leave may be authorized. The limit of three or five days does not apply if the request is for vacation time and such leave is approved by management.
- B. The City may require verification that funeral leave has been used properly.

9.11 Jury and Witness Leave

- A. An employee shall be granted jury leave with pay when required to perform jury duty in any municipal, county, tribal, state, or federal court.
- B. An employee shall be granted witness leave if subpoenaed to any court. If the witness is appearing in an official capacity as a City employee, the leave will be with pay. If the witness is not appearing in an official capacity as a City employee, then the leave is without pay unless annual leave is used.
- C. If the City pays an employee for jury or witness leave, any compensation, excluding travel reimbursement, received by the employee from the court or the parties who subpoenaed the employee must be paid by the employee to the City. An employee must return to work each day or portion of each day on which the employee is not selected for jury duty, the employee's jury services ends before the end of the work day, or the employee's service as a subpoenaed witness ends before the end of the work day.
- D. As a condition of employment or continued employment, employees may be required to appear as witnesses in grievance hearings or for the City in administrative or judicial proceedings. This includes but is not limited to cooperating with City officials and insurers of the City with respect to any claim, whether for civil damages or other relief, brought by or against the City. Employees are also required to cooperate in City investigations and efforts to recover damages, benefits, settlements, or to accomplish any action. Refusal to cooperate is considered just cause for disciplinary action, up to any including termination.

9.12 Military Leave

- A. Regular employees who undertake active military service shall be eligible for reinstatement rights if they apply within ninety (90) calendar days of the date of honorable discharge from military service. Reinstatement rights entitle the employee to retain seniority, unused sick leave, and other leave benefits. Employees may be required to pass a medical examination, alcohol/drug screening, psychological examination, health history review, be fingerprinted and/or be photographed prior to being reinstated after active military service.
- B. Any regular employee serving in the Military Reserve Training or Emergency National Guard shall be given no more than fifteen (15) working days of military leave with pay per federal fiscal year (October 1 – September 30) when ordered to duty for training, except for weekend monthly duty. This leave is in addition to other authorized leave. Copies of orders must be submitted with the leave request. Additional days may be charged to annual leave or, with proper permission, leave without pay.
- C. Employees must provide reasonable advance notice and documentation of any need for military leave.

9.13 Voting Leave

- A. An employee who is a registered voter and requests time to vote may be granted up to two (2) hours for the purpose of voting between the time of opening and the time of closing of the polls. The employee shall not be liable to any penalty for such absence. The City will specify the hours during the period in which the employee may be absent.
- B. The provisions of Subsection A, above, do not apply to any employee whose work day begins more than two (2) hours subsequent to the time the polls open, or ends more than three (3) hours prior to the time of closing of the polls.
- C. Such leave shall not be used for any other purpose.
- D. The City may require that the appropriate use of this leave be verified.

9.14 Leave Without Pay. Any regular full-time employee may request leave without pay for a period not to exceed one year. Leave without pay may be approved at the discretion of the Department Head for a period of up to five working days. Leave without pay for more than five working days is subject to the recommendation of the Department Head and the approval of the City Manager. Such extended leave

without pay may be granted on the condition that the employee may only return to work if the employee's former position or similar position is available.

An employee who fails to return from leave without pay will be deemed to have voluntarily resigned, effective the date on which the employee was to return from leave without pay.

9.15 Administrative Leave

- A. When, in the judgment of a Director, the safety or welfare of a department, its facilities or its property, or the safety or welfare of the department's employees or the public may be endangered, or an investigation may be impaired, an employee whose conduct is an issue may be placed on administrative leave with pay. The basis for such administrative leave shall be documented in writing and shall be submitted to the employee and to the Human Resources Director either at the time of or within 24 hours of the administrative leave.
- B. Administrative leave under this section shall not constitute discipline. During the administrative leave, the employee shall not attend his regular work site or any other City facilities, except as designated in the notice of administrative leave, but shall remain available during normal work hours to meet with the Department Head or his/her designee, as requested.
- C. The employee may be placed on administrative leave with pay for five (5) consecutive work days. Administrative leave with pay beyond the original five (5) work days is subject to the approval of the City Manager.

9.16 Suspension of Paid Leave. In the event of an emergency declared by the City Manager or designee, the City Manager may postpone all paid leave for an employee, except authorized leave granted pursuant to the FMLA.

9.17 Unauthorized Leave. Any leave not authorized according to the provisions of these rules and regulations shall be deemed unauthorized absence without pay and may subject the employee to disciplinary action up to and including dismissal. Any employee who is absent from work for three (3) consecutive work days without authorization shall be considered to have provided just cause for dismissal, subject to a predetermination conference which shall be offered the employee for the sole purpose of determining if authorization existed for the leave or if an emergency, as determined by the City, justified the employee's failure to obtain authorization.

9.18 Insurance during Leave Periods. An employee wishing to continue to be eligible for group insurance during any leave without pay, shall make arrangements with the Human Resources Department to pay the entire insurance premium.

9.19 Reinstatement after Leave. Any regular employee timely returning to work after approved injury leave, Family and Medical Leave, authorized leave without pay under Section 9.13, or military duty will be entitled to retain seniority, accrued unused sick leave, and all other benefits. For reinstatement after an approved leave of more than twenty (20) working days the returning employee shall notify the Personnel Department at least five working days prior to the expiration of the approved leave. Failure to provide notice of intent to return or failure to return to work on the first work day following the expiration of the approved leave shall constitute just cause for termination of any further rights to employment with the City.

Employees may be required to pass a medical examination, alcohol/drug screening, psychological examination, undergo a health history review, be fingerprinted and/or be photographed prior to reinstatement.

9.20 Longevity Pay. In recognition of employees' length of continuous full-time, regular service, a longevity increment will be paid. Longevity pay shall be paid each pay period and shall not be included in the calculation of regular pay. The employee shall receive longevity pay pursuant to the following schedule:

Years of Completed Service:

5-10 Years.....	\$10
10-15 Years.....	\$20
15-23 Years.....	\$60
23-30 Years....	\$100
Over 30 Years..	\$40

9.21 Employee Assistance Program. The City maintains an employee assistance program offering professional counseling services to employees in need. Employees are encouraged to seek assistance when personal problems are affecting their work performance. Supervisory employees are encouraged to be aware of potential problems affecting performance, and refer employees to the Employee Assistance Program when appropriate.

Use of the Employee Assistance Program may at times be part of a resolution to disciplinary or performance problems. But participation in the program does not excuse compliance with job duties and conduct standards. Normal corrective action procedures will continue during an employee's participation in the program.

9.22 Training

- A. The City recognizes that when employees pursue additional job-related training or higher education, it serves to improve the quality of services provided.
- B. In the event the City determines that training is mandatory, such training will be paid for by the City. Employees may seek reimbursement from the City for training or continuing education. Reimbursement for non-mandatory training is within the discretion of the City Manager.

9.23 Tuition Assistance. The City has a Tuition Assistance Program that provides financial assistance to employees who take job-related, City career-enhancing credit courses at accredited, degree-granting schools and institutions. The program promotes the City's goals for service delivery improvements and workforce investment by encouraging employees to increase effectiveness in their job performance as well as to prepare for potential advancement within the City. The program is not intended to provide assistance for staff development training or to replace department-specific training. It is also not intended to replace costs currently covered by department budgets such as license renewals. While the City supports lifelong learning, education and/or degree attainment, there is no guarantee of promotion or transfer for employees who acquire additional education.

A. Definitions.

- 1. "Accredited Institution" means a college or university accredited by an accrediting agency or state agency nationally recognized by the Secretary of Education or the Council of Higher Education Reimbursement. A listing of nationally-recognized accrediting agencies is found at www.ed.gov.
- 2. "Term" means a full semester, trimester, or quarter. If a school offers classes in sessions or segments within the term, classes taken in sessions or segments will count toward the maximum allowed per term.
- 3. "Agreement for Schooling" means the application needed for approval or disapproval of tuition assistance.

B. General Provisions.

- 1. Departments must develop budgets that will fund the tuition assistance program. During each fiscal year, the amount to be awarded to all qualifying applicants will be contingent on funds that are appropriated toward this program.

2. Course work must meet requirements for an associate, bachelor, or master's degree or job-related certificate program.
3. Tuition assistance is limited to the costs of tuition for a maximum of two courses per school term, not exceeding seven (7) credit hours.
4. Reimbursement may be provided for laboratory fees, online course fees, textbooks, and other expenses or fees associated with the course.
5. Expenses not eligible for reimbursement include but are not limited to pre-enrollment testing, graduation fees, transcript fees, computer and internet access fees, transportation costs, parking, school supplies, meals, and lodging. The City maintains discretion to deny reimbursement of any expense it deems ineligible.
6. Course education must be job-related.
7. Classes may be taken at a community college or state college. Private colleges and universities require cost sharing with the employee. With cost sharing, an online university may be an appropriate venue. The school of choice must be an accredited institution.
8. Employees must meet the residency requirements for in-state tuition. Employees not meeting in-state residency requirements will receive assistance equal to that of in-state tuition and fees.
9. Tuition assistance will be at the rate not to exceed maximum cost per credit hour for in-state (New Mexico) colleges and universities, to be determined by the Human Resources Director.
10. The Tuition Assistance Policy will not duplicate scholarships or financial aid programs such as Pell grants, student loans, etc. If the employee receives such assistance, or any other reimbursement from any public or private source for a course, the employee is only eligible for assistance from the City to the extent that the costs exceed assistance or reimbursement from other sources. It is the employee's responsibility to obtain necessary documentation from the school regarding grants, loans, scholarships, etc. and to submit such documentation to the Office of the City Clerk at the beginning of each term if requested.
11. Completion of a course must be verified with a grade of "C" or better for undergraduate-level courses or with a grade of "B" or better for graduate-level courses. If an incomplete grade or a withdrawing/passing

is received, the employee shall reimburse the City for any tuition paid by the City for said courses.

12. Classes should be scheduled as feasible to not interfere with normally scheduled working hours.
13. An employee who receives assistance under the provisions of this policy is expected to remain in the employ of the City for a minimum of two (2) years following course or degree completion. If an employee voluntarily terminates employment, is separated, is not reappointed, or is terminated for cause, the employee must reimburse the City for all funds expended according to the following schedule:
 - a. Employee remains employed less than 12 months after course/degree completion: 100% repayment of tuition and book fees received while in the program.
 - b. Employee remains employed only 12-24 months after course/degree completion: 50% repayment of all tuition and book fees received while in the program.
14. Arrangements for repayment must be made with the City Clerk. Any balances owed by the City will be deducted from the employee's final pay, and otherwise must be paid within one (1) year of termination.
15. Repayment will not be required in the following circumstances:
 - a. Involuntary separation of reemployment due to a Reduction in Force.
 - b. Serious injury or illness of the employee that hinders the employee from successfully completing the term.

C. Procedure.

1. Employees shall apply for tuition assistance by using the Agreement for Schooling Form.
2. Tuition Assistance applications must be submitted at the beginning of each term and not later than two weeks after commencement of the term.
3. An employee must indicate on the Agreement for Schooling any financial assistance received from an outside source.

4. The approval process shall require review of the application by the City Clerk and final approval by the City Manager. All applications will be reviewed and applicants will receive notification of whether their request was approved or denied. The decision of the City Manager is final and not grievable.
5. Within fourteen (14) days of the conclusion of each term, the employee must hand deliver an official grade report to the City Clerk.
6. If an employee wishes to change course of study at any time, a new Agreement for Schooling Form must be submitted for review and approval.

D. Administration.

1. The Office of the City Clerk is responsible for tracking and maintaining the Tuition Assistance Program. The City Clerk shall be responsible for administering and coordinating the Assistance, processing payment, and collection of monies owed by employees not in compliance with the provisions of the program.
2. The City Clerk will submit to the Human Resources Department a list of individuals who have requested payment for schooling, and documentation of completion to be included in the employee's personnel file.

E. Exclusions.

1. Temporary employees, seasonal employees, and probationary employees are not eligible to participate in the Tuition Assistance Program.
2. Employees covered by collective bargaining agreements will be subject to the provisions of those agreements.

SECTION 10: DISCIPLINARY ACTION

10.1 Progressive Discipline. The City and its citizens expect reasonable conduct and good work habits from every City employee. Where it is appropriate, within the discretion of the City, the City may use progressive discipline. Disciplinary action will be based on the severity and/or the frequency of reoccurrence of the infraction. For some offenses, termination, demotion, or any other action may result from a single instance and may not be preceded by lesser forms of discipline for the same

or other offenses. The City reserves the right to determine in its sole discretion the appropriate disciplinary measures to be imposed in any given case.

10.2 Just Cause. Employees may be disciplined for just cause. Just cause for discipline exists when the employee engages in any behavior inconsistent with the employee's obligations to the City. Examples of just cause for discipline include:

- A. Violence or threats of violence on City premises, in City vehicles, or during working hours;
- B. Incompetence, inefficiency, or inadequate performance of job duties;
- C. Falsification or deliberate omission of information on an employment, application, resume, timecard, or City document;
- D. Insubordination, uncooperative behavior, or failure to respond to supervision;
- E. Misappropriation, unauthorized, or personal use of City funds, property, resources;
- F. Fraudulent conduct in connection with City employment;
- G. Harassment or sexual harassment;
- H. Negligence or neglect in the performance of duty, including negligence or neglect in the operation of City vehicles or equipment and/or failure or refusal to adhere to safety rules and procedures;
- I. Unauthorized release of confidential information;
- J. Being absent from duty without proper authorization;
- K. Excessive tardiness;
- L. Misuse of sick leave;
- M. Failure to adhere to established work schedule;
- N. Failure to obtain authorization for overtime being worked;
- O. Violation of any professional code of ethics applicable to the employee's profession;
- P. Misconduct or language towards anyone that discredits the public service;

- Q. Lack of cooperation with fellow employees, or other conduct that interferes with the performance of an employee's work or the work of another employee's work;
- R. Failure to meet and/or maintain established job qualifications or certifications as set forth in the class specification;
- S. Failure to maintain physical and/or mental competence to perform the essential functions of the job;
- T. Violation of the City's Drug and Alcohol policy;
- U. Conviction of a felony or misdemeanor where disciplinary action is in accordance with the provisions of the Criminal Offender Employment Act. NMSA 1978 § 28-2-1 *et. seq.*;
- V. Violation of any federal, state, or city law pertaining to employment;
- W. Violation of the City's anti-distribution and anti-solicitation policy;
- X. Falsification, destruction, or unauthorized use of City records, reports, or other data belonging to the City;
- Y. Engaging in any act or omissions that adversely affect the welfare of any member of the public, other employees, or the effective operation of the City;
- Z. Accepting gifts or gratuities when the gift may be intended to influence the actions or judgment of the employee or the City. Any gift with a value greater than \$50.00 received by an employee whose action could affect the giver must be reported to the employee's supervisor immediately;
- AA. Providing unwarranted benefits or favorable treatment to any person;
- BB. Violation of these Personnel Rules or Regulations, or departmental rules, regulations, or orders; or
- CC. Any other behavior calling into question the employee's ability to perform job functions, having the potential to harm public respect for the City, or having the potential to interfere with orderly operation of the City.

10.3 Fire and Police Personnel. Designated fire and police personnel will be subject to any Departmental Standard Operating Procedures for actions involving discipline including, but not limited to, written reprimands, suspensions,

demotions, or dismissals. Said Standard Operating Procedures are subject to the recommendation of the Human Resources Director and the approval of the City Manager.

10.4 Types of Discipline. Consistent with the severity and/or frequency of the infraction, the types of discipline available include written reprimand, corrective action plan, suspension, demotion, or dismissal. The types of discipline are defined as follows:

- A. **Written Reprimand:** the formal written censure of an employee by a supervisor.
- B. **Corrective Action Plan:** A plan of specified duration not to exceed one year, enumerating certain conditions governing the terms of an employee's employment, and designed to correct the employee's behavioral or performance problems.
- C. **Suspension:** An involuntary leave of absence imposed by supervisors for disciplinary reasons for a period not to exceed thirty (30) work days. A suspension is typically without pay, but the City has discretion to allow an employee to work through all or part of the suspension (performing regular or alternate job duties) with pay.
- D. **Demotion:** The change of an employee from a position of one classification to a position of a lower classification with a lower pay rate.
- E. **Termination:** The involuntary separation of an employee from employment with the City.

10.5 Consultation. Prior to initiating any disciplinary action, the initiating supervisor must obtain the concurrence of the appropriate Director and consult with the Human Resources Director.

10.6 Notice of Contemplated Disciplinary Action. Before any discipline is imposed, the employee shall be notified of the reasons for which the discipline is contemplated, a summary of the evidence supporting the proposed discipline, and of the employee's right to respond to the proposed disciplinary action.

10.7 Predetermination Conference. The initiating supervisor will meet with the employee and discuss any proposed discipline. The purpose of the meeting is not to provide an evidentiary hearing, but to provide an opportunity for the employee to present his or her side of the story. After the meeting, the supervisor will notify the employee of the decision and, if disciplinary action is to be imposed, what the discipline is to be. If the supervisor's decision is to discipline the employee, that

decision is effective immediately, unless stated otherwise. This section does not apply to written reprimands.

- 10.8 Disciplinary Records.** All disciplinary actions will be documented in writing. The employee must sign a document setting out the discipline, and the reasons for the discipline. That document will be placed in the employee's personnel file and may be considered as a basis for progressive discipline during the remainder of the employee's employment with the City.

SECTION 11: GRIEVANCE PROCEDURE

- 11.1 Grievance Policy.** This policy is driven by the fundamental philosophy of, "the best solutions are offered by those closest to the source of the problem," to allow all employees a fair hearing for redress of grievances.

- A. **Right to Meet with Mayor or City Manager.** All employees have a right to meet with the Mayor or City Manager, accompanied by their respective supervisor; but that right must be exercised in accordance with this Grievance Procedure. The Grievance Procedure applicable to unionized employees is set forth in the applicable Collective Bargaining Agreement. The Grievance Procedure applicable to police and fire department employees is set forth in Departmental Standard Operating Procedures.

Non-union regular full-time employees shall follow procedures in Personnel Rules as set forth below under Class A, B, or C Grievance. If this fails, then and only then, may the meeting reach the City Manager and then only if the employee and affected supervisors are present.

Employees categorized as unclassified, probationary, seasonal, temporary, or part-time do not have grievance rights, and may not utilize the procedures outlined below.

11.2 General Provisions.

- A. **Grievability.** Employees may not grieve the following issues:
1. Matters determined by the City to be subject to management rights necessary to exercise control and discretion over the organization and efficiency of the City, including but not limited to management's rights to: (a) direct the work of employees; (b) hire, promote, evaluate, transfer, or assign employees; (c) reprimand, suspend, demote or discharge employees for just cause; (d) determine staffing requirements; (e) maintain efficient operations; and (f) ensure normal management

functions; or (g) manage and exercise judgment on all matters not specifically prohibited by law.

2. Matters that would require modification of a policy established by the City, or modification of state or federal law.
 3. Matters eligible to be reviewed under the grievance procedure of an applicable collective bargaining agreement.
 4. Matters subject to the provisions of the Labor Management Relations Ordinance.
 5. Matters previously grieved by the affected employee.
- B. Grievances must be initiated by the employee concerned, and may not be pursued without the affected employee's consent.
- C. A single grievance may be filed on behalf of several employees as long as it concerns the same matter.
- D. **Time.**
1. If the day on which action is to be taken falls on a Saturday, Sunday, or City holiday, the action may be taken on the next business day.
 2. A grievance will be considered resolved if the affected employee fails to timely invoke the next step of the procedure within the prescribed period.
- F. The City will not retaliate or discriminate against an employee for pursuing a grievance or for participating in a grievance proceeding. Any retaliation or discrimination will be grounds for discipline, up to and including termination.
- G. The filing of a grievance does not relieve an employee of the employee's responsibility to perform assigned duties.

11.3 Class A Grievance

- A. Classified regular full-time employees may file a Class A grievance regarding work-related issues concerning the interpretation or application of rules and regulations, the imposition of a corrective action plan, and written reprimands that do not result in a loss of pay.

B. Procedure

1. The grievance shall be in writing signed and dated by the grievant.
2. The grievance must include: (a) the alleged violation; (b) the name of the individual(s) in management alleged to have misinterpreted the rules or regulations; (c) the date(s) of the alleged violation; and (d) the relief requested. A request for relief is not sufficient if it merely asks that the employee “be made whole” or uses similar language to that effect.
3. Within seven (7) calendar days of the alleged acts or omissions that generated the grievance, the employee must submit the written grievance to the employee’s immediate supervisor with a copy to the Human Resources Director.
4. Within seven (7) calendar days of timely submission of the written grievance, the employee must attempt to resolve the issue with the employee’s supervisor. The Department Director may choose to participate with the employee and the supervisor in an attempt to resolve the grievance.
5. If the issue is not resolved at the immediate supervisor’s level, the employee may pursue the grievance by filing the written grievance with the City Manager within seven (7) calendar days of the decision that was made at the supervisor’s level.
6. If the issue is not decided by the immediate supervisor within seven (7) calendar days of submission of the written grievance, the employee may pursue the grievance by filing the written grievance with the City Manager within fourteen (14) calendar days of the alleged acts or omissions forming the basis of the grievance.
7. If the grievance is timely submitted to the City Manager, the City Manager or designee shall meet with the employee and appropriate personnel, consider both sides of the grievance, and render a decision.
8. The decision of the City Manager, or designee, is final and binding on the parties.

11.4 Class B Grievance

- A. Classified regular full-time employees may file a Class B grievance regarding an action by management that has resulted in the actual documented negative financial loss (not an anticipated future financial loss) to the

employee or a disciplinary action other than written reprimand and corrective action plans.

B. Disciplinary actions include demotions, suspensions, and involuntary termination of employment.

C. Procedure

1. The employee shall present a written grievance to the Human Resources Director within seven (7) calendar days of the date of the action that generated the grievance. The written grievance must be signed and dated by the employee.
2. Failure to submit a written timely grievance at any level of this grievance process shall render the grievance null and void.
3. The written grievance must include (a) a concise description of the grievable action; (b) the effective date of the grievable action; (c) the name of the individual(s) in management who implemented the grievable action, and (4) the relief requested. A request for relief is not sufficient if it merely asks that the employee “be made whole” or uses similar language to that effect.
4. The Human Resources Director or designee will consider both sides of the issue and attempt to facilitate amicable resolution of the issue.
5. If the grievance is not resolved to the satisfaction of the employee by the Human Resources Director, or if the Human Resources Director has not responded, the employee may file a written request for a grievance hearing with the Human Resources Director within fourteen (14) calendar days of the action that generated the grievance.
6. Upon timely filing of a request for grievance hearing, the Human Resources Director shall appoint a non-employee hearing officer to hear the grievance. The Hearing Officer shall schedule the grievance hearing with the parties within a reasonable time.
7. The Grievant and the City may choose to have an attorney or other representative of their choice present their case at the grievance hearing.
8. An employee’s timely request for a grievance hearing, pending criminal charges, or any other action, will not stay enforcement of the disciplinary or other action.

9. The Hearing Officer has authority to administer oaths, subpoena witnesses, and compel submission of documents.
10. The first issues to be decided by the Hearing Officer are grievability, compliance with the grievance procedure, and any other procedural issues raised by either party. These issues will be decided prior to hearing the merits of the case.
11. If the issue is determined to be grievable, the Hearing Officer shall allow the parties to present their opening statement, present witnesses, cross examine witnesses, and make a closing statement.
12. The Hearing Officer will render a proposed decision in writing based on the material presented at the hearing within fourteen (14) calendar days of the hearing. The time limit may be extended for good cause or by mutual written agreement of the parties.
13. The City Manager will review the record of the hearing and the Hearing Officer's proposed decision. The City Manager may then accept, reject, or modify the Hearing Officer's proposed decision.
14. The decision of the City Manager is final and binding on the parties.

11.5 Class C Grievance

- A. Classified regular full-time employees may file a class C grievance alleging discrimination on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, sexual orientation or gender identity.
- B. Procedure
 1. A Class C grievance must be in writing and is filed with the Human Resources Director. The grievance must include: (a) a brief and concise description of the alleged discrimination; (b) the City employee involved in the alleged discriminatory action; (c) the date of the alleged discrimination; and (4) the relief requested. The request for a Class C grievance must be signed and dated by the employee.
 2. The Human Resources Director or designee will meet with the employee, conduct a prompt investigation, and attempt to resolve the issue within a reasonable time.
 3. If the issue is not resolved to the employee's satisfaction, the employee may pursue the issue with the appropriate state or federal agency.

SECTION 12: EMPLOYEE CONDUCT

12.1 Code of Conduct

- A. The City of Gallup is a public service institution. City employees must be dedicated to the public service and the protection of public health, safety and welfare. Employees must serve the public with respect, concern, courtesy and responsiveness.
- B. Police and Fire Department Employees. These standards shall apply in addition to those applicable standards already promulgated by the Gallup Police and Fire Departments. In case of conflict, the stricter standard shall apply.
- C. Fundamental Canons. City employees shall:
 - 1. Hold paramount the safety, health and welfare of the public;
 - 2. Be guided in their appearance and relations by the highest standards of character and integrity, acting honorably, responsibly, ethically and lawfully so as to enhance the reputation and credibility in the delivery of service by the City of Gallup, both on and off the job;
 - 3. Act for the City of Gallup as a faithful agent or trustee;
 - 4. Avoid conduct detrimental to the City of Gallup or its reputation;
 - 5. Comply with the ordinances of the City of Gallup, its union contracts, state and federal laws, and all applicable rules and regulations;
 - 6. Conduct themselves professionally both on and off duty to include refraining from inappropriate conduct such as fighting, drug abuse, public intoxication, domestic violence, criminal offenses and all such similar behavior; and
 - 7. Issue public statements only in an objective, truthful manner, consistent with the goals of City administration.

12.2 Political Activity

- A. Campaigning. Employees may participate in any federal, state, county, or local political campaign, provided such participation is conducted away from any City office or City work site and is not conducted during working hours. Any employee whose position is funded by a federal program and/or

monies shall be subject to the provisions of 5 United States Code, Section 1501, *et seq.*, as amended, commonly known as the Hatch Act.

- B. Political Candidacy. No employee of the City shall hold political office or be an officer of a political organization during his employment, provided that being a member of the local school board, tribal government, or an election official shall not be construed to be holding political office. Any appointed officer or employee who becomes a candidate for public office shall, upon filing or accepting the nomination and during the campaign, take a leave of absence, which shall be granted.

12.3 Outside Employment. A full-time City employee shall consider the City to be the employee's primary employer. Full-time City employees may only work outside of City employment if that work is not in conflict with the proper discharge of the employee's duties and responsibilities, the employment does not occur during assigned working hours, and the performance and attendance of the employee is at least satisfactory as determined by management. Authorization for outside employment may be obtained by submitting a written request to the employee's Department Head with a copy to the Human Resources Director. The request shall include the name of the employee's supervisor; the nature of the outside work that will be performed; the beginning, ending, and total hours that will be worked per week; the name of the outside employer; the name of the outside employment supervisor; a statement that the employee recognizes the City of Gallup as the primary employer; the employee's signature; and the date of the request. This request requires the recommendation of the Department Head and the approval of the City Manager. If approved the authorization is for twelve (12) months from the date of approval. The authorization may, however, be withdrawn if the employee's performance or attendance are negatively affected or if the employment conditions change.

12.4 Personal Appearance. It is the policy of the City of Gallup that each employee's dress, grooming, and personal hygiene be appropriate to the work situation. Employees are expected at all times to present a professional, business-like image to customers, visitors and the general public. Work attire should complement an environment that reflects an efficient, orderly and professionally operated organization. Certain employees may be required to meet special dress, grooming and hygiene standards, such as wearing uniforms, depending on the nature of their job.

Employees who do not dress appropriately for work may be subject to appropriate discipline, up to and including termination. Employees may also be required to take corrective action, including leaving the premises to correct a problem with dress, appearance, or hygiene. Any work missed because of failure to dress appropriately will not be compensated.

12.5 Disclosure of Information. Employees shall protect confidential or sensitive information to which they have access through the course of employment with the City. Unless the information has already become public, no City employee may use or disclose any information gained from City employment if the information results in a financial or personal benefit to the employee or to a family or household member.

12.6 Solicitation and Distribution. Employees are prohibited from soliciting or distributing literature to other employees during working hours or during the working hours of the person being solicited or receiving literature. Employees are further prohibited at all times from distributing literature in working areas.

12.7 Appointed Officials. All appointed officials shall have all benefits and obligations of regular employees under the Personnel Rules which are not in conflict with the City Charter or any employment contract.

12.8 Equipment Usage

- A. City employees shall use City-owned equipment only for business purposes.
- B. **Offensive Material.** Employees may not display, store, or transmit material that is defamatory, pornographic, discriminatory, retaliatory, libelous, or has the potential to contribute to a hostile work environment, on City equipment or through the use of City electronic systems. An employee who receives or discovers offensive material must immediately inform a supervisor.
- C. **Right to Monitor.** The City has the right to monitor the location, content, and usage of City equipment and electronic systems.
- D. **Phone and Voicemail Systems.** Phone calls and voice messages may be recorded and reviewed by the City.
- E. **Computers.** Use of all City computers is monitored, and all City computers may be accessed at any time for any purpose.
- F. **E-mail/Web Access.** Electronic data transmitted, stored, or accessed on City equipment is regularly measured, stored, and monitored.
- G. **GPS Tracking.** The City may monitor the location and operation of City-owned vehicles operated by on-duty City employees.
- H. **Video Camera Monitoring.** The City has taken steps to monitor its premises for the safety of all employees and visitors, and for the security of its

facilities and property. The City has installed security cameras in certain facilities and work areas.

- I. No Expectation of Privacy. As a result of the monitoring activities specified above, employees should have no expectation of privacy when utilizing City equipment or electronic systems, or when on City property.
- J. Ownership and Employee Duties of Care. City equipment, City electronic systems, and all information created, transmitted or stored on City equipment or electronic systems is considered property of the City. Employees shall not retain, sell, distribute, or use City property for non-City purposes. Employees shall further exercise care to prevent theft or unauthorized use of City equipment and property.
- K. Violations. Unauthorized use of City equipment is grounds for appropriate discipline, up to and including termination.

12.9 Computer, Internet, and Email Usage. Employees must comply with the City of Gallup's Information Security Policy effective April 1, 2016, and all amendments to that policy. A copy of the policy in effect is included in these Rules as Appendix 1. Failure to comply with that policy may result in appropriate discipline up to and including termination.

12.10 Mobile Phone Usage

- A. Mobile phones may be required for specified positions. As a condition of employment, employees who are issued City mobile phones are required to be accessible by such phones during working hours, and when on call.
- B. An allowance may be given to specified employees to compensate for the use of personal mobile phones for City business. The allowance is given for the purpose of maintaining contact during working hours and when on call. The personal mobile phone will remain the property of the employee and the City will have no liability for any phone usage beyond the specified allowance, maintenance, or replacement thereof.
- C. Use of City mobile phones and personal mobile phones for City business must comply with the City of Gallup's Information Security Policy effective April 1, 2016, and all amendments to that policy. A copy of the policy in effect is included in these Rules as Appendix 1.
- D. Employees may be liable financially for any damage due to negligence, misuse, or loss of City mobile phones.

- E. Employees should refrain from using mobile phones when driving. Employees must use a hands-free device when utilizing mobile phones while driving. Employees shall not send or receive text messages or email messages, or read, view, post, or send any material, on mobile phones while driving.
- F. Improper use of mobile phones may result in appropriate discipline, up to and including termination.

12.11 Social Media.

- A. **Purpose and Application.** The purpose of this policy is to establish City general standards for acceptable use of social media. The policy governs the use, administration, management, monitoring, and retention of social media and social media content, consistent with state, federal and City regulations, and City department goals.

This policy applies to all uses of social media by City employees maintaining, using, or providing oversight of social media tools. Employees include, but are not limited to, full-time and part-time employees, interns, and volunteers who access or contribute content. This policy also applies to members of the public who comment or otherwise interact with the City through its social media websites.

All content created, received, transmitted, stored on, or deleted from City information systems is exclusively the property of the City or, to the extent provided by applicable law, of the person or entity that created or owns the copyright or trademark rights to that content.

- B. **Benefits of Social Media Tools.** When used in accordance with applicable laws, regulations, and policies, as well as prudent operational, security, and privacy considerations, Web-based social media tools can (at little to no cost):
 1. Enhance the speed, reach, and targeting of communications (particularly during disaster/emergency situations);
 2. Facilitate collaboration;
 3. Improve information exchange between residents and employees
 4. Increase citizen engagement and dialogue
 5. Streamline processes

6. Foster productivity improvements; and increase the City's ability to broadcast messages to the widest possible audience (City, region, nation, and world).

C. Definitions.

1. "Social media" means and includes internet technologies that facilitate and promote interactive communication, participation, and collaboration. Examples of social media include, but are not limited to, the web sites and applications Blogger, Facebook, LinkedIn, Twitter, Tumblr, Foursquare, Meetup.com, Flickr, YouTube, Yelp, Second Life, and Wikipedia, and the interactive tools and functions they provide to users.
2. "Authorized social media user" or "authorized user" means and includes any City employee, consultant, vendor responsible for the use, administration, management, monitoring, and/or retention of social media, social media tools or web sites, and/or social media content, in the name of or on behalf of the City or any City department.

D. Standards for Use of Social Media by Departments and Department Heads.

1. No department may establish or use or terminate a social media identity account, profile, page, or site (collectively social media account(s) or account(s) without the approval of the Public Information Officer (PIO) or designee.
2. Department heads, with the approval of the PIO or designee, shall designate one or more department employees to be the authorized social media user(s) for the department. Only the department's authorized social media user(s) shall be authorized to post social media content on the department's social media account(s) and may have access to the department's social media accounts that permit such posting.
3. Department head shall establish a procedure for approving, prior to posting, and shall issue department guidelines for, all social media content that is posted on the department's social media accounts, including the designation of one or more department managers (who may also be department authorized social media users) to be responsible for the approvals. All department social media guidelines and policies must be consistent with this policy, and must be approved by the PIO or designee.

4. No information or link (hyperlink) to any Internet site or other materials or communications may be posted, or approved for posting, on an department social media account that is not directly related (as determined by the department head) to the mission, services, and business objectives of the department.
5. Department social media pages must clearly identify the pages as created and managed by the department, identified as a department, office, commission, or department of the City of Gallup.
6. Department social media sites must prominently display, on the first page accessible to site visitors, links to the City's official Internet site www.GallupNM.gov, and to the department's official Internet pages on GallupNM.gov or, if applicable, any department Internet site that is not part of GallupNM.gov.

E. Standards for Use of Social Media by Employees.

1. No City employee may establish any social media account in the name of or on behalf of the City or any City department unless: (1) the Public Information Officer or designee, and the user's department head have all approved the account; and (2) all information to be posted on the account is approved in accordance with Subsection a) above. This requirement applies regardless of whether the account is established, accessed, or used by means of City information systems or by means of the employee's or others' information systems, and regardless of whether the account is established, accessed, or used from City or non-City premises.
2. Social media accounts established by the City or a City department are to be used for City and department business purposes only. Use for communications and postings that are not directly related to a City or department business purpose is prohibited.
3. Employees must report unauthorized uses of City social media or City social media accounts to the head of their department, the PIO or designee.
4. Employees are expected to be attentive and careful in their use of social media. Employees should be aware that their use of social media may be perceived as representing the City and City government, and should tailor their use accordingly.

F. Unacceptable Uses. The City considers the activities and uses of social media listed below to be unacceptable. Employees are prohibited from

engaging in any of them on a social media account established by the City or a City department.

1. Using social media in a manner that does not comply with local, state, and federal laws and regulations, and with City and department policies.
2. Using social media in a manner that:
 - a. Violates the copyright, trademark, or other intellectual property rights of any person or entity, or otherwise violates their legal ownership interests.
 - b. Includes ethnic slurs, profanity, personal insults; material that is harassing, defamatory, fraudulent or discriminatory; or other content or communications that would not be acceptable in a City workplace under City or department policy or practice.
 - c. Violates the terms of contracts governing the use of any social media content, including but not limited to, software and other intellectual property licenses.
 - d. Displays sexually explicit images, cartoons, jokes, messages, or other material in violation of the City Policy Preventing Sexual Harassment in City Government.
 - e. Violates Section 12 of the City of Gallup Personnel Rules and Regulations "Employee Conduct."
 - f. Contains confidential or "for official use only" information or information that compromises the security of City networks or information systems. Such for official use only or confidential information includes, but is not limited to, information that is protected under federal, state, or local laws and regulations (except as permitted under such laws and regulations), as well as social security numbers and other personally identifiable information.
 - g. Violates the terms of use governing the social media account.

This list is not exhaustive. Questions about particular uses of social media or particular social media content should be directed to the department head and the Public Information Officer.

- G. **Personal Social Media Accounts.** This policy is not intended to govern employees' establishment or use of personal social media accounts for personal purposes, outside the workplace and using non-City information

systems. However, some such personal uses of social media may reflect on the City or appear to represent City policy or to be on behalf of the City. In addition, accessing and using personal social media accounts by means of City information systems is subject to City policy. For these reasons, City employees are expected to comply with all City and department policies, as well as the following standards, when using personal social media accounts.

1. City employees have no right to privacy with respect to their personal use of social media accounts accessed by means of City information systems, or with respect to personal social media content so accessed. They should not expect or assume privacy or confidentiality with respect to any such personal social media use or social media content
2. Postings and user profiles on personal social media accounts must not state or imply that the views, conclusions, statements or other social media content are an official policy, statement, position, or communication of the City of Gallup, or represent the views of the City or any City officer or employee, unless the head of the user's department, the PIO or designee, have granted express permission for that user to do so.
3. If a City employee has not received such express permission, any user profile, biography, or posting on a personal social media account that identifies that person as a City employee must include a qualifying statement in substantially the following form: "The views I express on this site are my own and do not reflect any official view or position of the City of Gallup."
4. Employees subject to the City's political activity restrictions, under City policy and pursuant to Section 12.2 of the City of Gallup Personnel Rules and Regulations "Political Activity", must comply with those restrictions in personal uses of social media, whether or not City information systems are used to access the personal social media account.

H. Interactive Communications; Notice to Site Visitors.

1. A City or department social media site or page may be a "limited public forum" under the First Amendment if visitors to the site are able to post comments or other communications. Where permitted by the operator of the site, the comments and similar functions should be disabled on City and department social media pages, unless the department head, PIO or designee determine that permitting or encouraging interactive communications with site users is necessary to carry out the business objectives of the department in creating the site.

2. If interactive communications (e.g. comments) are permitted, terms of use for visitors to the site must be posted prominently on the site, unless prohibited by the terms of use governing the social media account or prevented by the site. The terms must include (1) a clear description of the topics the site is intended to address and that may be addressed in comments, with a statement that user postings will be removed if they are not directly related to those topics; and (2) statements substantially similar to the following:
 - a. Communications posted by visitors on this site may not contain ethnic slurs or profanity; material that is harassing, defamatory, fraudulent, discriminatory or sexually explicit; or any material that infringes copyright, trademark or other intellectual property rights. Any such communications may be removed at any time without notice. Spam and commercial content will be removed.
 - b. This site is not owned, controlled, or operated by the City or the department. Visitors to the site must comply with the terms of use and privacy policies of the site operator, and are subject to the site operator's practices regarding the collection and retention of passive information (e.g. cookies) and other information from and about visitors.
 - c. Any advertisements appearing on the site are not controlled by the City or the department and do not reflect endorsement by the City or department.
 - d. Opinions expressed by visitors to the site do not reflect an endorsement or opinion on the part of the City or department.
 - e. All postings by visitors to the site may be retained by the City, in its discretion and as required by applicable law or City policy.
 - f. All postings may be subject to the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 et seq. ("IPRA"), and other public records and disclosure laws, as well as discovery in litigation. This includes, but is not limited to, information made available through a user's privacy settings on their own social media and other Internet pages.
 - g. Visitors to the site should have no expectation of privacy or confidentiality with respect to any content they post to the site, and the City and department have no responsibility for maintaining any such privacy or confidentiality.

3. The content of communications posted by site users may not be edited or otherwise modified; removal is the only action that may be taken and only for communications that violate the terms of the statements listed above.

- I. **Information Requirements.** Department heads must submit a list of all social media accounts maintained by the department to the PIO or designee, including at a minimum, the following information: (1) the name, hosting site, internet address, and date of inception for the account, and a statement of the purpose and scope of the department's use of the account; (2) all user names, passwords, and other log-in credentials for the account; (3) all authorized social media users for the department that have access to and/or responsibility for the account; and (4) the administrative contacts and contact information for the account. The department head must promptly notify the PIO or designee of any changes in any of the foregoing and of any new department social media accounts or pages and any termination of accounts or pages.

Department heads shall ensure that all department-approved social media accounts and social media content are periodically reviewed for compliance with this policy. Department heads are responsible for all social media content created, received, transmitted, stored, deleted, destroyed, and/or printed in the name of or on behalf of the City or the department.

- J. **Records Retention.** Social media content is subject to the Records Retention and Destruction Schedule established by the Department of Records for the department, whether or not the social media is currently posted on the department's site(s). Agencies are responsible for making and retaining such postings, as required by the department's Records Retention and Destruction Schedule.
- K. **Compliance.** Each City department head shall be responsible for enforcing compliance with this policy by department employees.

Employees who violate this policy, or any other City department policy may be subject to disciplinary action, up to and including termination of employment, in accordance with the disciplinary policies of the employee's department and of the City, and for employees represented by the Gallup Police Officers Association (FOP Lodge 7 (Blue Collar), International Association of Fire Fighters local 4296, United Mine Workers Local 1628, or the terms of the applicable collective bargaining agreement.

If a City contractor or third party user knowingly or negligently commits or permits a material violation of this policy, the City may terminate the contract in accordance with its terms, and/or terminate the contractor's or

third party user's access to City information processing facilities, information systems, and information, in addition to any legal or remedial actions the City may take to enforce and protect its interests.

- L. **Getting More Information.** Questions about this policy and other information security matters should be addressed to the Public Information Officer or designee.

12.12 Conflict of Interest

- A. Employees shall disqualify themselves from participating in any official act directly affecting a business in which they have a financial interest. Employees shall not acquire a financial interest at a time when they believe or have reason to believe that it will be directly affected by their official act.
- B. All employees having a financial interest which they believe, or have reason to believe, may be affected by an official act taken within the scope of their employment, shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the Finance Director at the time the conflict occurs and during the month of January every year thereafter. Additionally, it shall be the duty of employees to inform the City Manager of such financial interest at the time they acquire it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in City employment.
- C. The City shall not enter into any contract with a business nor should the contractor be allowed to subcontract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the City Manager has issued a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the City.
- D. A purchase order or contract entered into by the City with a business in which an employee of the City has a controlling interest is void if the employee failed to comply with the provisions of this section prior to the City entering into such contract or purchase order.
- E. A former employee shall not within one (1) year after the date of termination from employment represent any person or business in connection with a matter in which the former employee has performed an official act, unless the City Manager consents to such representation. No person or business

with which the former employee is associated may knowingly undertake or continue a private representation in such a matter unless: 1. the former City employee is screened from participation in the matter and is apportioned no part of the compensation therefrom; and 2. Written notice is promptly given to the City Manager. Nothing in this section shall prohibit a former employee from entering into a contract to represent the City in any matter, however all such contracts must be approved by the City Manager.

- F. Violation of any of these provisions by any employee is grounds for disciplinary action, up to and including termination.

12.13 Licensing and Certificates.

- A. Required Licenses and Certificates. Employees are responsible for meeting and maintaining all job-related requirements at the time of application, hire, transfer or promotion. This may include licenses, certificates, permits, degrees and registrations.
- B. Notification of Loss of License or Certification. An employee who has lost a required license or certification must notify the employee's immediate supervisor and Human Resources Director on the first day of employment after such a loss; and not perform any work without the required license or certification.
- C. Failure to maintain a required license or certification, or failure to immediately notify the City of loss of a required license or certification, is grounds for appropriate discipline, up to and including termination.

12.14 Travel. Employees must comply with the City's Finance Policies concerning travel when traveling for City business. Failure to comply with those policies, travel without appropriate authorization, and falsification of any request for reimbursement may cause an employee not to be reimbursed for business travel, and may be grounds for appropriate discipline, up to and including termination. A copy of the Finance Policies is available upon request from the Finance Department.