

CITY OF HOBBS

ORDINANCE NO. 1141

AN ORDINANCE AMENDING CHAPTER 2.56 OF THE HOBBS MUNICIPAL CODE  
RELATED TO THE PERSONNEL RULES FOR THE CITY OF HOBBS

WHEREAS, in 1991, records show that the City of Hobbs adopted official personnel rules, via resolution, which governed the employee and employer relationship with the City of Hobbs employees; and

WHEREAS, in 2003, the City of Hobbs codified its personnel rules in Articles 1 through 10 in Chapter 2.56 of the Hobbs Municipal Code via Ordinance No. 916; and

WHEREAS, on January 7, 2013, the City of Hobbs amended Chapter 2.56 to make changes to Article I (definitions), Article II (computation of overtime), Article VII (grounds for employee discipline), and Article VIII (benefits and leave); and

WHEREAS, ensuring that the City of Hobbs personnel rules are concise and up-to-date and account for cultural shifts, updates in the law, and philosophical changes in the organization provides a tremendous benefit to the City's employees and management alike and greatly contributes to the overall well-being of all City of Hobbs employees; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 2.56, is hereby amended as more specifically described as follows:

## Chapter 2.56 - Personnel Rules

### Article 1 - General Provisions

#### 2.56.010 - Title and scope.

This chapter shall constitute and be referred to as the official personnel rules of the City. This chapter shall apply to all employees and appointed officials of the City.

(Ord. 916 (part), 2003)

#### 2.56.020 - Personnel manual—Adopted—Personnel merit system adopted.

By and under the authority of Section 3-13-4, New Mexico Statutes, 1978 Compilation, ~~there is adopted by reference the Hobbs, New Mexico, the City of Hobbs hereby adopts these~~ Personnel Rules dated November 3, 2003, for the purpose of establishing a merit system for the hiring, promotion, discharge, and general regulation of employees of the City.

All employees of the City shall be hired, promoted, discharged, and compensated on the basis of merit and without regard to race, color, religion, sex, pregnancy, ancestry, sexual orientation and gender identity or expression, spousal affiliation, national origin, age, physical or mental handicap or disability, serious medical condition, genetic information, status as a military veteran, or any other legally protected characteristic ~~race, creed, color, ancestry, national origin, religious or political affiliation, age, sex, sexual orientation, physical, or mental disability, or serious medical condition~~ in compliance with State or Federal law.

(Ord. 916 (part), 2003)

#### 2.56.030 - Definitions.

The definitions in this section shall be used for descriptive purposes. If any conflict occurs between these definitions and the rule or regulation to which the definitions apply, the latter shall take precedence. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Acting appointment" means temporary assignment of an employee to a different classification in accordance with this chapter.

"Acting City Manager" means the person appointed from time to time by the City Manager, or by the City Commission when the City Manager position is vacated without a permanent replacement, who shall serve temporarily as City Manager when the ~~short term~~ short-term

absence or incapacity of the City Manager requires. The acting City Manager shall have all the duties, authority, and responsibilities of the City Manager during ~~his or her~~ a temporary tenure.

"Anniversary date" means the annual anniversary of the ~~time date~~ when an employee first became a regular employee and ~~received~~ became eligible for leave, pension, and other benefits. Also known as a "Permanent Date".

"Appeal" means a written, formal complaint by a non-probationary employee based on a disciplinary action taken by management resulting in the employee's suspension, demotion, or ~~dismissal~~ involuntary termination for cause.

"Appointment" means formal authorization of the hiring of an individual.

"At-will employee" means an employee who ~~serves~~ is employed at the pleasure of the City Manager in a position that has been deemed to be on an at-will basis subject to the discretion of the employer and the employee and either or both the employer and the employee may terminate employment at any time, for any reason, or for no reason, with or without prior notice. ~~-At-will employees~~ and shall not be entitled to rights of grievance and appeal. These employees include department heads, employees that have executed employment agreements, probationary employees, and temporary/seasonal employees.

"Benefits" means leave, insurance, pension, and other remuneration to employees, in addition to salary paid for services rendered.

"Calendar days" means consecutive calendar days.

"Calendar year" means January 1st through December 31st.

"Callback" means unscheduled work required of an employee that requires the employee to return to the work site after leaving the work site at the end of the regular working day.

"Cause" means motive or reason for discipline of ~~regular~~ employees.

"City Charter" means the governing document approved through an election.

"City Manager" is an at-will, exempt employee who is appointed by the City Commission who shall receive all leave and benefits as documented in a signed contract and shall not be entitled to rights of grievance and appeal.

"Class" means one (1) or more positions so nearly alike in the essential character of their duties and responsibilities that the same pay grade, title, and qualification requirements can be applied.

"Classification" means analysis based on comparative duties, responsibilities, and qualifications by which appropriate classes are determined.

"Demotion" means the removal of an employee from a position of one (1) class to a position of another class with a lower maximum pay rate.

"Department head" means administrative personnel, as defined by resolution, reporting directly to the City Manager. Department heads ~~serve at the pleasure of the City Manager~~ are at-will and shall not be entitled to rights of grievance and appeal. Division heads and other ~~high level~~ high-level supervisors or administrative personnel may, from time to time and except as otherwise provided by this chapter, be designated to act on behalf of a department head.

"Discipline" means action taken with regard to an employee, including reprimand, suspension, demotion, or ~~dismissal~~ involuntary termination.

~~"Dismissal" means the involuntary separation of an employee from employment by the City Manager.~~

"Employee" means an authorized and appointed incumbent of a position in the municipal service.

"Exempt Employee" means an employee that is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) because he or she they are is classified as an executive, professional, administrative or outside sales employee, and meets specific criteria for the exemption.

"Grievance" means a written, formal complaint by an eligible employee.

"Human Resource Director" means the administrative person who has supervisory and administrative responsibility for the personnel management function of the City.

"Incumbent" means the current occupant of a position in the municipal service.

"Job title" means the designation which becomes the official title allocated to that position for all personnel purposes.

"Job vacancy" means a position which is not occupied.

"Layoff" means the separation of an employee which occurs when a regular position has been abolished because of material changes in duties, or shortage or stoppage of work or funds, or other reasons in the best interest of the City.

"Leave" means an authorized absence from regularly scheduled work hours.

"Non-exempt employee" means an employee that is not exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and is therefore entitled to overtime pay for all hours worked beyond forty (40) in a workweek for general employees and all hours worked beyond the designated "work period" under Section 7(k) of the FLSA for employees engaged in fire protection and law enforcement.

"Non-regular employee" means a probationary employee who shall not be entitled to rights of grievance and appeal or an employee appointed to a position ~~who is~~ which is not eligible to receive leave and benefits, except those required by law, and who is not entitled to rights of grievance and appeal.

"Overtime" means time a non-exempt employee is directed and authorized to work in excess of the standard workweek as defined in 2.56.400 – Hours of Work, or for certified police and fire personnel, the standard work period.

"Part-time employee" means an employee who works less than forty (40) hours per week.

"Pay or compensation plan" means the aggregate of pay rates assigned to each class of positions in the classified plan.

"Pay range" means those points between and including the minimum and maximum rates of pay established for a class by the classification and pay compensation plan.

"Payroll calendar year" means that period of time encompassing the first day of the pay period represented by the first payday in a calendar year through the last day of the pay period represented by the last payday in the same calendar year.

"Performance review" means a documented~~written~~ evaluation of the job performance of an employee by a supervisor.

"Performance review date" means the scheduled time when employee performance shall next be assessed pursuant to the City Pay Compensation Plan. ~~Personnel Director" means the administrative person who has supervisory and administrative responsibility for the personnel management function of the C~~

"Position" means the aggregate of duties and responsibilities performed by one (1) person. A position may be regular, part-time, temporary, or acting and may be occupied or vacant.

"Position description" means a written statement of the characteristic duties, responsibilities, and qualification requirements that distinguish a given position from other positions.

"Prevailing market rate" means the level of pay for a given class within a given labor market area.

"Probationary period" means a trial period during which the employee is employed at-will ~~serves at the will of the City Manager~~ and may be terminated at any time, for any reason, or for no reason, with or without prior notice~~without cause~~. Probationary employees shall not be entitled to rights of grievance and appeal. Please see 2.56.550 - Probationary period.

"Promotion" means the change of an employee from a position of one (1) class to a higher level~~higher-level~~ position with a higher maximum pay rate.

"Reclassification" means the process of analysis by which an established position is reviewed to determine whether the duties and responsibilities of that position have materially changed.

"Regular employee" means an employee who has been appointed to a regular position in accordance with this chapter, who shall receive all leave and benefits in proportion to hours worked and who shall be entitled to rights of grievance and appeal except during the probationary period. A regular employee may be full-time or part-time.

"Regular position" means a full-time or part-time position that has been designated in the annual budget to receive all leave and benefits in proportion to hours worked.

"Reprimand" means a censure of an employee by a supervisor.

"Resignation" means the voluntary termination of an employee from the municipal service.

"Retirement" means the voluntary termination of an employee due to the employee's eligibility for immediate retirement under the applicable State retirement plan, consistent with all applicable laws.

"Seasonal employee" means an at-will employee who has been appointed to a seasonal position created to last no more than nine (9) consecutive months who is not eligible to receive leave and benefits, except those required by law, and who is not entitled to rights of grievance and appeal. A seasonal employee may be full-time or part-time.

"Selection techniques" means methods by which the suitability of job applicants are compared in order to determine whether to appoint any of them and, if so, which applicant to appoint.

"Shift employee" means an employee who, upon employment, may be required to work holidays and weekends.

"Supervisor" means an employee who has been given the authority in the interest of the employer to assign, direct, or reprimand subordinate employees, or effectively recommend such action. Supervisory personnel also have the power to recommend formal disciplinary actions and evaluate performance.

"Suspension" means an absence without pay imposed on an employee for disciplinary reasons by a department head.

"Temporary employee" means an employee who has been appointed to a temporary position in accordance with this chapter, who is not eligible to receive leave and benefits, except those required by law, and who is not entitled to rights of grievance and appeal. A temporary employee may be full-time or part-time.

"Temporary position" means an at-will full-time or part-time position created to last no more than nine (9) consecutive months and has not been designated in the annual budget to receive

leave and benefits, except those required by law, and who is not entitled to rights of grievance or appeal. A temporary employee may be full-time or part-time.

"Termination" means the voluntary or involuntary end of employment of an individual employee.

"Transfer" means the appointment or assignment of an employee to a new position either (i) within the same classification or (ii) within a new classification still within the municipal service.

"Workers' compensation" means the program established to provide benefits to employees injured on the job.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.040 - Applicability—Administration and implementation.**

This chapter shall be applicable to all employees to the extent of and according to this chapter, except as otherwise provided by ordinance. Responsibility and authority for the implementation and administration of this chapter is vested in the City Manager, notwithstanding any other section of this chapter.

~~Wherever the male gender is used in this section, it shall be construed to include male and female employees. Wherever the masculine gender is used in this section, in defining the qualifications for specific entitlements or conditions of employment, it shall be construed to include the feminine.~~

(Ord. 916 (part), 2003)

## **2.56.050 - City Manager—Authority and responsibility.**

Subject to applicable State law, charter provisions, ordinances, and resolutions for regulations and policies of the City Commission, the City Manager has and retains all rights to administer the affairs of the City, either personally or through ~~his or her~~ subordinates. For the purpose of this chapter, these rights include but are not limited to the right to:

- A. Hire, promote, reclassify, transfer, assign, lay off, and recall employees to work;
- B. Reprimand, suspend, demote, ~~discharge~~terminate, or otherwise discipline employees;
- C. Judge the employee's skill, ability and efficiency, and general performance;
- D. Determine the starting and quitting times and the number of hours to be worked;
- E. Determine the assignment of work and the size and composition of the work force;
- F. Revise, eliminate, combine, or establish new jobs and classifications;

- G. Establish, close down, or expand the operation of any facility, department, or division and reduce, increase, alter, reorganize, combine, transfer, or cease any department's operation, equipment, or service;
- H. Subcontract and determine the services to be rendered, bought, or sold;
- I. Introduce technological changes; new, improved, or modified services, methods, techniques and equipment; and otherwise generally manage the operation and direct the work force.

(Ord. 916 (part), 2003)

### **2.56.060 - Amendment.**

Amendments to this chapter may be proposed by the City Manager to the City Commission as required. All amendments shall be adopted by ordinance and shall become effective upon adoption by the City Commission or on such date as the City Commission designates.

(Ord. 916 (part), 2003)

### **2.56.070 - Administrative procedures and regulations.**

The City Manager, at any time deemed ~~by him or her~~ to be necessary or proper for the purpose of enforcement or implementation, may ~~him or herself or may by his or her~~ authorization and through ~~his or her~~ designee adopt, amend, or rescind written administrative procedures or regulations consistent with this chapter. Such procedures or regulations shall be effective on the dates specified by the City Manager and shall be placed on record in the ~~personnel office~~ human resource department, together with this chapter, to be open to public inspection during normal working hours. These administrative regulations shall also be distributed to management personnel and employees in all departments in a manner dictated by the Human Resource Director that allows for effective dissemination ~~and shall be posted on bulletin boards, for a minimum of thirty (30) days.~~

(Ord. 916 (part), 2003)

### **2.56.080 - Equal employment opportunity.**

It has been and will continue to be a fundamental policy of the City not to unfairly discriminate against individuals on the basis of race, color, religion, sex, pregnancy, ancestry, sexual orientation, and gender identity or expression, spousal affiliation, national origin, age, physical or mental handicap or disability, serious medical condition, genetic information, ~~or~~ status as a military veteran, or any other legally protected characteristic with respect to recruitment, hiring, discipline, training, and promotion, working conditions, wages and salary, employee benefits, and the application of policies. ~~Further, it is the policy of the City to comply with the concepts and practices of affirmative action. This policy shall not be used as a basis for excluding or~~



separating individuals of a particular characteristic as identified in this section from participating in business or work-related social activities or discussions to avoid allegations of harassment.

- A. Effective implementation and continuing administration of this policy will be the direct responsibility of the City Manager or the City Manager's designee. The City Manager or designee ~~serves as affirmative action administrator with~~ has the responsibility ~~responsibilities to maintain and implement the affirmative action plan and~~ to ensure that the coordination, direction, and review of equal employment opportunity policies, practices, and programs is accomplished. Questions or concerns about this policy should be directed to the Human Resource Director.
- B. All supervisory personnel ~~should~~ shall ~~make special efforts to ensure that all employees reporting to them understand and effectively implement the policy. Further, supervisory personnel shall promptly report any alleged harassment or discriminatory treatment they become aware of to the City Manager or Human Resource Director.~~
- C. The City does not condone and will not tolerate the discrimination, harassment, or bullying of any employee. In addition, it is a violation of City policy for any employee to engage ~~in sexual or any other form of employee harassment in any form of harassment, discrimination, or bullying.~~ Complaints of harassment of any type, including sexual harassment, should be brought to the attention of the City Manager or the ~~Personnel Director~~ Human Resource Director.
- D. Harassment is verbal, written, or physical conduct that denigrates or shows hostility or aversion toward an individual because of a legally protected characteristic, or that of their relatives, friends or associates, and that: (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment, (ii) has the purpose or effect of unreasonably interfering with an individual's work performance, or (iii) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes epithets, slurs or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on City time, or using City equipment by e-mail, phone, text messages, social networking sites, or other means.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (iii) 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. Sexual harassment can be physical and psychological in nature. An aggregation of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing.

- E. If an employee feels that they have been subjected to harassment, they may immediately inform the harasser that the conduct is unwelcome and needs to stop. If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the

alleged harasser directly, they should report the incident to the Human Resource Director or City Manager. \_\_\_\_

- F. Bullying is defined as repeated, health-harming mistreatment of one or more people by one or more perpetrators. It is abusive conduct that includes threatening, humiliating or intimidating behaviors, work interference/sabotage that prevents work from getting done, or verbal abuse--. Bullying can be behavior that is verbal, physical, gesture, or exclusion.
- G. ~~Further, all~~ All complaints of discriminatory treatment, harassment, bullying, or retaliation in violation of this policy should be brought to the attention of the City Manager or the Personnel-Human Resource Director.
- H. ~~Complaints of harassment, or~~ discriminatory treatment, bullying, or retaliation should be brought forward as promptly as reasonably possible after the alleged harassment, or ~~discriminatory treatment, bullying, or retaliation~~ occurs. A prompt, thorough, and impartial investigation will be conducted in as confidential manner as possible. The City will protect the confidentiality of employees who report or participate in the investigation of alleged harassment, discriminatory treatment, bullying, or retaliation to the greatest possible extent consistent with adequate investigation and appropriate corrective action.
- I. Any person reporting harassment, ~~or~~ discriminatory treatment, bullying, or retaliation or participating in an investigation of harassment, ~~or~~ discriminatory treatment, or bullying shall not be subject to retaliatory action.
- J. Employees who report alleged harassment, discriminatory treatment, bullying, or retaliation will be notified of the status of their complaint, the results of the investigation, and any corrective or preventative action taken-- Corrective or preventative action resulting from the reporting of alleged harassment, discriminatory treatment, bullying, or retaliation will be implemented promptly--.
- K. It is the responsibility of each and every employee of the City to give this policy of equal employment opportunity real meaning and full support.
- ~~K.~~L. Violations of the equal employment policy including any acts of harassment, discrimination, bullying, or retaliation are subject to progressive discipline, up to and including involuntary termination of employment--. False and malicious complaints of harassment, discrimination, bullying, or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate disciplinary action.

(Ord. 916 (part), 2003)

## **2.56.090 – Reasonable accommodation.**

Reasonable accommodations will be provided to qualified applicants and employees known physical or mental disability, medical, or religious reasons as required by federal or state law unless doing so poses and undue hardship on the City.- Requests for reasonable accommodation should be addressed to the Human Resource Director.

## 2.56.100 – Whistleblower.

The City requires employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees of the City, employees must practice honesty and integrity in fulfilling their duties and responsibilities and comply with all applicable laws and regulations.—. This Whistleblower Policy is intended to encourage and enable employees to raise serious concerns internally so that the City can address and correct inappropriate conduct and actions. A whistleblower, as defined by this policy, is an employee of the City who reports an activity that they consider to be illegal or dishonest. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; an appropriate designee of the City Manager is charged with this responsibility.—. Examples of illegal or dishonest activities include, but are not limited to, violations of federal, state, or local laws; billing for services not performed or for goods not delivered; safety policy violations; and other fraudulent financial reporting.

- A. Effective implementation and continuing administration of this policy will be the direct responsibility of the City Manager or the City Manager's designee. Questions or concerns about this policy should be directed to the Human Resource Director or City Attorney.
- B. Employees who have knowledge of or a concern of illegal or dishonest fraudulent activity should contact their immediate supervisor, the Human Resource Director, or the City Attorney. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline, up to and including involuntary termination.
- C. All supervisory personnel shall ~~hold make special efforts to ensure that all employees reporting to them understand the policy.~~ Further, supervisory personnel shall promptly report any allegations of illegal or dishonest behavior brought to their attention to the Human Resource Director or City Attorney.
- D. Reports of illegal or dishonest fraudulent activity should be brought forward as promptly as reasonably possible. A prompt, thorough, and impartial investigation will be conducted in as confidential manner as possible. The City will protect the confidentiality of employees who report or participate in the investigation to the greatest possible extent consistent with adequate investigation and appropriate corrective action.
- E. It is a violation of this policy to retaliate, or for a supervisor to allow retaliation, against an employee who in good faith reports an ethics violation or a suspected violation of law.—. In addition, any employee participating in an investigation of illegal or dishonest fraudulent activity shall not be subject to retaliatory action.
- F. Violations of the whistleblower policy are subject to progressive discipline, up to and including involuntary termination of employment.—.

## Article 2 - Classification

### **2.56.200 - Identification—Consistency in pay ranges—Approval of plan.**

Each position within the City shall be classified and shall be identified by a class specification and class title. ~~A,~~ and all positions within a classification shall be subject to the same pay range through the annual budget process.

(Ord. 916 (part), 2003)

### **2.56.210 - New positions—Classification required before filling.**

No person shall be employed by the City to fill a position with any classification or pay range not included in the classification plan.

(Ord. 916 (part), 2003)

### **2.56.220 - Maintenance of plan.**

The City Manager shall periodically instruct the ~~Personnel~~ Human Resource Director to review the duties and responsibilities of positions within the City.

(Ord. 916 (part), 2003)

### **2.56.230 - Reclassification.**

~~Reclassification shall be conducted according to the procedures set forth in administrative regulation. Reclassification of a position may be requested to recognize a significant change in the duties and responsibilities of a position. Reclassification shall not be used as a method of awarding an employee a salary increase or rewarding high performance. A position being reclassified does not in itself require a salary increase of the current incumbent if the incumbent is still within the position's pay after reclassification.~~

Reclassification requests will be submitted along with a job analysis, the job description, a letter justifying the reclassification request, and organizational chart by the Department Head to the Human Resource Director for evaluation.

After completion of a job audit by the human resource department, the Human Resource Director will present reclassification requests received from the Department Head to the City Manager.

The City Manager will determine if a reclassification may be justified and may direct the human resource department to analyze the position and make a classification recommendation.

Although there may be various instances when a position is reclassified, such as during reorganization or when directed by the City Manager, the customary time for submitting a reclassification request is during budget adjustments or prior to the annual budget preparation.—. The ideal time for reclassification is when the position is vacant.

Compensation and review considerations are addressed in 2.56.360 – Reclassification.

(Ord. 916 (part), 2003)

### **Article 3 – Pay Compensation**

#### **2.56.300 - Pay Compensation plan review—Recommendation.**

The City Manager may periodically instruct the Human Resource Personnel Director to review and propose a compensation plan which considers both salary and benefit levels, for job classifications within the classification plan. The pay-compensation plan shall be recommended by the City Manager to the City Commission.

(Ord. 916 (part), 2003)

#### **2.56.310 - Employees paid according to classification and pay compensation plans—City Manager's authority.**

All employees shall be paid in accordance with the approved pay-compensation and classification plans. The City Manager shall have the final authority with respect to the assignment or change in assignment to rates within the approved pay-compensation and classification plans.

(Ord. 916 (part), 2003)

#### **2.56.320 - Rate at appointment—Increases.**

Upon original appointment, all persons employed by the City shall be paid at the minimum rate for the classification. However, the City Manager may authorize original appointments at higher than the minimum rate within the designated pay range if the employee demonstrates exceptional experience, education, or and-training beyond the minimum qualifications in the job description, or to accommodate market conditions. A memo documenting the justification for appointments at higher than the minimum rate shall be submitted to the Human Resource Director and City Manager for review.

The Human Resource Director shall be responsible for reviewing all proposed appointment pay rates for (i) equity within the appointee's classification and (ii) equity in relation to incumbents

in classifications that may be training or serving in a leadership capacity to the appointee--. If a potential internal equity issue exists, the Human Resource Director has the authority to establish a maximum appointment rate regardless of experience, education, or training of the appointee.

If hired at higher than the minimum rate, such employee shall be eligible for salary increases in accordance with the approved pay-compensation plan--.

(Ord. 916 (part), 2003)

### **2.56.330 - Raises-Rate increases upon promotion.**

An employee ~~shall~~may, upon promotion, receive an increase in pay consistent with the approved pay-compensation plan. The performance review date will not change as a result of the promotion.

(Ord. 916 (part), 2003)

### **2.56.340 - Rate decreases upon Ddemotion.**

When an employee is demoted for disciplinary reasons to a position having a lower classification level, the employee shall receive a salary decrease. The decrease shall be within the pay range of the ~~lower level~~lower-level position. If an employee receives a demotion for non-disciplinary reasons, the rate of pay may equal the rate of pay received prior to the demotion, provided the rate of pay is in the pay range of the ~~lower level~~lower-level position. The performance review date will not change as a result of the demotion.

(Ord. 916 (part), 2003)

### **2.56.350 - Transfer.**

When an employee is transferred within the same pay grade, the rate of pay shall remain the same. The performance review date will not change as a result of the transfer. If the transfer is from a seasonal or temporary position to a regular permanent position, a new permanent hire date and performance review date will be established.

(Ord. 916 (part), 2003)

### **2.56.360 - Reclassification.**

The process of reclassification is addressed in 2.56.230 - Reclassification.

A. ~~If~~When an employee's position is reclassified to a ~~higher level~~higher-level classification or when a classification is assigned to a higher salary range, no reduction in the base pay rate will result. The employee shall receive at least the minimum rate of pay in the new range or a rate of pay higher than the minimum rate of pay within the designated range based upon the recommendations of the ~~Personnel~~Human Resource Director and the approval of the City

Manager. A position being reclassified to a higher-level does not in itself require a salary increase if the employee is already within the position's salary range after reclassification.

B. When an employee's position is reclassified to a ~~lower level~~ lower-level classification or when a classification is assigned to a lower salary range, the affected employee shall be permitted to continue at ~~his or her~~ the present rate of pay. The employee shall not be eligible for salary increases until the salary range encompasses the incumbent's pay rate.

—An employee's performance review date does not change as a result of a reclassification.

(Ord. 916 (part), 2003)

### **2.56.370 — Distribution of pay upon Termination.**

If an employee is involuntarily terminated ~~dismissed~~, the final check shall be issued within five (5) calendar days pursuant to applicable law. If an employee ~~resigns~~ is voluntarily terminated, the final check is due and payable the next regular payday.

In the event a final paycheck is unclaimed or not cashed, the human resource department will mail the final check to the address on file with the human resource department.—. In the event a forwarding address is unknown, the human resource department will make all efforts available to them to locate the employee or a forwarding address.

### **2.56.380 – Paychecksay periods & distribution.**

Employees are paid every two (2) weeks with the pay period beginning on Sunday and ending on Saturday fourteen (14) days later. -Employees can elect to either receive pay distribution via a physical check or direct deposit. Employees must have the Direct Deposit form complete and on file with the human resource department for direct deposit. The City is not responsible for paychecks that an employee requests to be mailed first class that are subsequently lost.—. Lost paychecks will be handled according to 2.56.390 – Corrections.

-Physical paychecks and direct deposit advices shall be distributed to department management on payday, except as identified below.—. Employees will be notified by their managers as to department paycheck distribution policies.

If a payday occurs on a holiday, paychecks will be distributed on the workday before the holiday, whenever possible.—.

Employees may designate another person to pick-up their paycheck or request the paycheck to be mailed by submitting an Authorization for Release of Payroll Check for the human resource department.

Paychecks which have not been distributed by the department representative by the end of the payday will be returned to the human resource department. Paychecks which have not been picked up from the human resource department by the day after payday will be mailed to the address on file with the human resource department.

## **2.56.385 – Employee compensation information.**

Employees are responsible for ensuring the human resource department has current information including, but not limited to:

- A. Changes in tax status or withholdings documented on a W-4 form resulting from a marriage, a divorce, the birth of a child or the loss of a deduction.
- B. Changes to home address, phone number, or e-mail address.
- C. Name changes. All name changes must be reported within thirty (30) calendar days and must be accompanied by a Social Security card (or receipt), new Driver's License (if applicable), and marriage certificate (if applicable) to be processed.

## **2.56.390 – Corrections.**

Employees should promptly contact their direct supervisor, human resource department, or the Finance department if a possible error in the amount of pay is detected.

- A. Replacement checks may be issued in the event of a lost or stolen physical check after the employee has completed an affidavit.—. The employee shall wait one (1) week before the Finance department can reissue the check after the stop payment has been accepted and cleared by the bank.—. Any fees incurred by the City may be passed along to the employee and deducted from the paycheck in accordance with applicable Federal and State law.
- B. Corrections in under or over-payments will appear on the next regularly issued paycheck, except in emergencies.
- C. Retroactive Pay, such as a resulting from a pay increase, will be paid in the next regularly issued paycheck.

## **2.56.395 – Tracking of hours worked.**

Federal and state record-keeping requirements require the City to maintain accurate records and to enforce certain regulations.—. Employees who fail to abide by these regulations are subject to disciplinary action, up to and including immediate involuntary termination of employment.

- A. Exempt employees: Exempt employees are not required to use the time clock to record hours worked daily. Exempt employees must record all full-day and half-day absences in the time clock system.
- B. Non-exempt employees: Non-exempt employees must use the time clock to record hours worked daily.
- C. All hours worked must be recorded. -Working “off the clock” is strictly prohibited for non-exempt employees.—. Time spent by non-exempt employees using electronic communications for work purposes will be considered hours worked; the time is compensable and will count toward overtime eligibility as required by law. Therefore, electronic communications should not be used outside regularly scheduled work hours unless required and approved by management. This includes all types of work-related communication. Non-exempt employees should not check for, read, send, or respond to work-related e-mails outside their



normal work schedules unless specifically authorized based on job duties or direction by management to do so.

- D. Employees must clock-in at the beginning of their workday, out at the end of their workday in and out for meal periods, and out when leaving the premises during working hours for reasons other than City business. -Clocking in and out at the same time is prohibited.
- E. Employees may only record their own time in the time clock system--. Supervisors may adjust an employee's time if they failed to clock in or out.
- F. Employees may not clock-in earlier than seven (7) minutes before their scheduled starting time without prior authorization from the supervisor or department head.
- G. Employees may only clock-in when they are ready to start work--. The practice of clocking-in and then taking a break is not allowed.

(Ord. 916 (part), 2003)

## **Article 4 - Hours of Work and Overtime**

### **2.56.400 - Hours of work.**

An employee's normal work schedule may vary and is determined by the respective department head.

The standard workweek used to determine overtime eligibility for non-exempt employees shall equal forty (40) hours for all employees, regardless of their an employee's particular work schedule, unless otherwise designated by the City Commission or collective bargaining agreement. The standard workweek shall begin Sunday at midnight and end on Saturday at 11:59 p.m.

(Ord. 916 (part), 2003)

### **2.56.410 - Overtime—Eligibility for non-exempt positions.**

Any non-exempt ~~or hourly~~ employee who works time in excess of the standard workweek shall be compensated for overtime. This applies to full-time, part-time, seasonal, and temporary employees. Compensation may be in the form of pay or compensatory time off consistent with the provisions of the Fair Labor Standards Act ~~and the applicable administrative regulation.~~ Overtime shall be compensated at one and one-half (1½) times the regular hourly rate--. The City reserves the right to require employees to take monetary payment for overtime rather than accrue compensatory time off. For general employees, accumulated compensatory time will be capped at twenty (20) hours. All exceptions to accumulated compensatory time caps for general employees must be approved by the City Manager. Accumulated compensatory time caps for bargaining unit employees shall be pursuant to the collective bargaining agreement.

(Ord. 916 (part), 2003)

### **2.56.420 - Overtime—Scheduling.**

Overtime shall be authorized only by a department head. Overtime may be assigned and required in consideration of work requirements and resource availability.

(Ord. 916 (part), 2003)

## **2.56.430 - Computation of overtime.**

- A. Extended Duty. For overtime extending beyond the normal work period when the employee does not leave the work site, ~~pursuant to administrative regulation~~, eligible employees will be compensated overtime based on ~~quarter-hour increments, depending on the time worked.~~
- B. Callback Pay. When a non-exempt employee is called back for unscheduled work after having left the work site after completion of a regularly scheduled shift, all work performed shall be compensated at the applicable rate. On the first call back in each day, the employee will be compensated for a minimum of one (1) hour or actual time worked, whichever is greater. For subsequent call backs in the same given day, the employee shall be compensated for hours actually worked.
- C. On-Call Pay. ~~For departments who do not maintain a twenty-four (24) hour operation and require routine on-call duty in order to respond to after-hour and/or weekend calls, the on-call employee shall be compensated as follows: for a maximum of Fourteen (14) hours of additional pay at straight time for each full week of on-call time. The on-call time shall to be reported as follows: Two (2) hours for Friday, Saturday and Sunday (weekends) and four (4) hours for Monday through Thursday (after hours) per day for each day in which on-call duty is performed. These hours will not be adjusted for on-call time during holidays, etc. etc. Eligibility for on-call pay requires inclusion on a written on-call schedule approved by the department head. On-call employees may be subject to disciplinary action and loss of on-call compensation if an employee is unable, through illness, emergency, or any other reason to carry out on-call responsibilities.~~
- D. Court Appearances. When any non-exempt employee is called to testify in a court case and the basis of ~~his or her~~ their testimony is related to the performance of ~~his or her~~ his or her job duties, ~~he or she~~ the employee shall be eligible for court appearance pay. Court appearance pay shall be granted only when the hearing is scheduled outside of the employee's regular work schedule. This provision does not apply to employee plaintiffs in actions against the City.
- E. ~~Part-time Employees. Overtime shall be compensated to part-time employees whenever their total hours worked is in excess of forty (40) hours per~~ Effect of Paid Leave. For general employees, No paid holiday, paid time off, paid administrative leave, or compensatory time used shall be counted as working time in determining eligibility for overtime. Paid holiday, paid time off, paid administrative leave, or compensatory time for bargaining unit employees shall be pursuant to the collective bargaining agreement.
- F. Training. When training is required by the City for an employee, an effort will be made to arrange for the training during an employee's regularly scheduled work hours. However, a

department head may change an employee's normal work hours to accommodate the training schedule.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013)~~

## **2.56.440 - Positions ineligible for overtime—Compensatory absences.**

Employees in exempt positions, as defined by the Fair Labor Standards Act, are expected to work, without direct compensation, in excess of the standard workday or workweek to complete job duties. Exempt employees shall not be eligible to receive overtime for such time worked; moreover, any such time shall not be compensable in wages or salaries, nor shall it be accumulated. If, however, an exempt employee works an excessive amount of time beyond the standard workweek, the department head may grant short administrative absences without the use of accumulated paid time off. The granting of such absences, including the time allowed for and the scheduling of these absences, shall be strictly discretionary with the department head. The Mayor will approve such absences for the City Manager.

An exempt employee, at the sole discretion of their department head, may adjust their schedule to allow for an extended workday(s) to be completed in return for a shortened workday or additional day off within the same pay period—. Approved flextime shall not negatively affect the workload or productivity of coworkers either by shifting burdens or creating delays and additional steps in the process—. In addition, hours of operation and services available for City employees and/or citizens of Hobbs shall not be affected by flextime schedules.

Exempt employees shall not be permitted to use paid time off in increments less than four (4) hours—. Exempt employees are required to utilize a minimum of forty (40) hours of paid time off per calendar year unless an exception for extenuating circumstances is approved by the department head and City Manager—. Paid time off donated according to the City's paid time off donation program will be credited toward the forty (40) hour yearly threshold.

If an exempt employee fails to use or donate the minimum of forty (40) hours paid time off in the calendar year by the last pay period in December and does not have an exception approved by both the Department Head and the City Manager, then that employee will lose the forty (40) paid time off hours and that forty (40) paid time off hours will not be carried forward into the next year's accruals nor will the forty (40) paid time off hours be paid out at the end of the calendar year.

If an exempt employee fails to use or donate the minimum of forty (40) paid time off hours in the calendar year, but utilizes or donates an amount less than forty (40) paid time off hours and does not have an exception approved by both the Department Head and the City Manager, then that employee will lose the amount of paid time off that would bring the paid time off used up to the forty (40) paid time off hours required to be used in the calendar year. The remaining paid time off, short of the forty (40) hour requirement, will not be carried forward into the next year's

accruals nor will the remaining paid time off short of the forty (40) hour requirement be paid out at the end of the calendar year.

(Ord. 916 (part), 2003)

## **2.56.450- Work breaks.**

- A. Under this chapter, the department head may, but is not required to, provide for work breaks during the working day. No more than two (2) such breaks shall be granted, not to exceed fifteen (15) minutes each, including related travel time. Work breaks shall not be considered to accumulate if they are not taken and shall not be used to shorten the normal workday. The granting of such breaks shall depend on the constraints of working conditions and staffing within each department. Regulations regarding such breaks shall be set forth by the department head and approved by the Human Resource Director. Compensation for work breaks of fifteen (15) minutes or less will be in accordance with federal and state law.
- B. Department heads may, but are not required to, provide for a meal period of up to one (1) hour in which the employee is fully relieved of all duties.—. Regulations regarding such meal periods shall be set forth by the department head and approved by the Human Resource Director.—. Employees will not be compensated for bona-fide meal periods of thirty (30) minutes or more.
- B.C. A written policy will be on file with the human resource department outlining required rest and break periods as dictated by the City Manager for reasons related to safety in the workplace.
- C.D. In accordance with federal and state regulations, the City will provide reasonable break time for an employee to express breast milk for a nursing child for one (1) year after the child's birth in a clean and private space, other than a bathroom, that is free from intrusion from coworkers and the public.—. Such breaks shall not be compensated beyond the established breaks as defined in subsections (A) and (B) of this section.

(Ord. 916 (part), 2003)

## **2.56.460 - Absences.**

Under this chapter, the procedure of notification of absences may vary by position and is determined by the respective department head. -Excessive unexcused absences and tardiness are subject to progressive discipline, up to and including involuntary termination.

Any unapproved absence from work shall be considered unauthorized and may be subject to disciplinary action, up to and including involuntary termination.

The City does not discriminate on the basis of religion and will make every effort to reasonably accommodate an employee's sincerely held religious beliefs with absences and schedule changes. Reasonable accommodations may include allowing flexible arrival and departure times, flexible work breaks, staggered work hours, and other means to enable an employee to make up time lost due to the observance of religious practices. -The City will not be able to accommodate when the absence or schedule change creates an undue hardship that will disrupt

business operations. Under Title VII, a religious accommodation is an undue hardship when it poses a "more than de minimis" cost or burden--. Employees are responsible for giving supervisors as much notice as practical. Employees are encouraged to discuss any questions or issues with the human resource department.

## **Article 5 - Appointment**

### **2.56.500 - Recruitment and application process.**

- A. Announcement of Vacancies. Under this chapter, the ~~personnel office~~human resource department shall prepare job announcements using such publicity as deemed appropriate to reach prospective applicants for the position to be filled. All job announcements and other publicity material concerning position vacancies shall explicitly state that the City is an equal opportunity employer. -Vacancies will be posted for a minimum of five (5) business days.
- B. Area for Consideration. Individuals shall be recruited from a geographic area sufficiently broad to ensure the selection of well-qualified candidates for the position.
- C. Application. Every person wishing to apply for employment with the City must complete a City of Hobbs job application ~~form and submit the form to the Personnel Division.~~ If a resume is submitted for a position, the person shall complete an application ~~form~~ prior to being considered for the position. Such ~~form~~application shall provide information concerning ~~training, experience, references~~job qualifications and such other data as deemed necessary by the Human Resource Director.
- D. Disqualification of Applicants. Applicants may be disqualified for consideration for employment when any of the following factors exist:
1. The applicant does not possess the minimum qualifications for the job.
  2. The applicant is not physically or mentally fit to perform the duties of the job, with or without reasonable ~~qualifications~~ accommodations.
  3. The applicant has demonstrated an unsatisfactory employment record or personal record as evidenced by the results of a background and/or reference check.
  4. The applicant refuses to sign an affidavit allowing a background investigation.
  5. The applicant has given false information in ~~his or her~~the job application, practiced deception during the selection process, or does not complete the application.
  6. The applicant failed to pass selection procedures as administered by the City.
  7. The applicant receives a positive test result on a pre-employment drug test.
  8. The applicant fails to provide copies of required documents requested in the application and selection process prior to a final decision on hiring.
  9. The applicant is suspended from employment or is otherwise under disciplinary sanction, by ~~his or her~~a current employer, including the City.
- E. Discrimination. No applicant should be unfairly disqualified because of race, color, religion, sex, pregnancy, ancestry, sexual orientation and gender identity or expression, spousal affiliation, national origin, age, physical or mental handicap or disability, serious medical condition, genetic information, status as a military veteran, or any other legally protected characteristic. ~~age, race, color, religion, national origin, sex, sexual orientation, physical or~~

~~mental disability, serious medical condition, or veteran status, or any other legally protected characteristic.~~

- F. Selection Procedures.— The Human Resource Director, in consultation with the department head, will determine the verification techniques utilized, such as, but not necessarily limited to, reference checks, background investigations, examinations as outlined in 2.56.510 – Nature and types of examinations subsection (A), and drug testing. -Verification techniques will be job-related and may be position specific.

(Ord. 916 (part), 2003)

## **2.56.510 - Nature and types of examinations.**

- A. Selection Techniques. For the purpose of this chapter, the selection techniques used in the examination process shall be objective, of a practical nature, and shall relate to those factors which, upon the review of the ~~Personnel~~ Human Resource Director, in consultation with the department head, can reasonably be expected to measure the relative capabilities of the persons examined in their ability to execute the duties and responsibilities of the position to which they seek to be appointed. Examinations shall consist of selection techniques which will fairly assess the qualifications of candidates, such as, but not necessarily limited to, achievement and aptitude tests, other written tests, personal interview, oral Boards, assessment centers, performance tests, physical agility tests, evaluation of daily work performance, work samples, medical tests, or any combination of these or other tests.
- B. Open Competitive Examination. Open competitive examinations ~~will~~ may, at the discretion of the Human Resource Director and the respective department head, be given for ~~all~~ any positions to be filled in the municipal service unless the needs of the service require a promotional examination as set forth in subsection C of this section. When internal candidates and outside candidates have equal qualifications and examination scores, preference will be given to the internal candidate, ~~provided that the outside candidate is not from an affected group identified in the EEO plan or related documents.~~
- C. Promotional Examination. Whenever an adequate number of qualified candidates are available within the City without the necessity of outside recruitment, as determined by the ~~Personnel~~ Human Resource Director and the respective department head, a promotional examination may be utilized. The department head and Human Resource Director must approve any promotional examination held as a means of establishing qualified employees for promotion to fill existing or future vacancies. Promotional examination may include any of the selection techniques mentioned in this section, or any combination of them. Promotional examinations may be conducted on a City, department, or divisional basis. Only those employed at the time of application who meet the requirements set forth in the promotional announcements may compete in promotional examinations.

(Ord. 916 (part), 2003)

## **2.56.520- Employment lists.**

- A. Creation of Lists. After the completion of an examination ~~and~~ or selection process, the ~~Personnel~~ Human Resource Director, upon request from the department head, may establish

an employment list as a means of recommending qualified individuals to fill existing or future vacancies. Employment lists shall be of two (2) types:

1. Open competitive employment lists result from selection processes in which both internal and external applicants are eligible to participate. These lists shall include the names of all persons who have ~~(i) successfully~~ successfully completed a class or position examination that was announced as an open competitive examination and (ii) have met the minimum scoring as established by the Human Resource Director and department head prior to the position class or examination.
  2. Promotion employment lists result from selection processes in which only internal applicants are eligible to participate. These lists shall include the names of those employees who have successfully completed a promotional examination for a position or a class of work. Such lists may be used in conjunction with other recruitment procedures at the discretion of the ~~Personnel~~ Human Resource Director. Placement on an employment list shall in no way entitle an applicant or candidate to appointment to any position.
- B. Duration of Lists. Employment lists may remain in effect for up to one (1) year.
- C. Rule of Three. The hiring supervisor shall have the right to invoke the rule of three (3) when hiring from an established list. For purposes of this section, the rule of three (3) is defined as follows: In the case of one (1) vacancy, the top three (3) scoring candidates on an established list are eligible for appointment. For each additional vacancy, one (1) additional candidate may be eligible for appointment.
- D. Reemployment Lists. The names of regular employees who have been laid off shall be placed on appropriate reemployment lists for twelve (12) months in order of total continuous time served in probationary and regular status.
- E. Removal of Names ~~From~~ from List. The name of any person appearing on an employment or reemployment list shall be removed by the ~~Personnel~~ Human Resource Director if the eligible person requests in writing that ~~his or her~~ their name be removed, ~~if he or she fails~~ for failure to respond to a notice of appointment mailed to ~~his or her~~ the last known address, or when the list expires, as specified in this chapter. The names of persons on promotional employment lists who resign shall automatically be dropped from such lists.
- F. Waivers. Eligible applicants may waive their right to appointment without suffering any loss of status on the employment list by so doing. However, when a candidate has waived appointment two (2) ~~times~~ times, ~~his or her~~ the candidate ~~name~~ shall automatically be dropped from such list.

(Ord. 916 (part), 2003)

## **2.56.530 - Job vacancies.**

- A. Notice to ~~Personnel~~ Human Resource Director. Under this chapter, whenever a vacancy is to be filled, notification shall be given to the ~~Personnel~~ Human Resource Director. If there is no reemployment list available for the class, the City Manager, upon recommendation of the department head, shall have the right to decide whether to fill the vacancy by transfer,

appointment from a promotional employment list, appointment from an open employment list, or a combination of these categories.

- B. Appointment. All persons shall be selected on the basis of ~~job-related~~ job-related criteria. No person shall be selected for employment without the ~~approval~~ authorization of the department head, Human Resource Director, and the ~~authorization of the~~ City Manager.

(Ord. 916 (part), 2003)

## **2.56.540- Types of appointment—Status.**

- A. Regular Appointment. Any employee who is appointed to a regular position shall receive all leave and benefits in proportion to hours worked and shall be entitled to rights of grievance and appeal except during the probationary period. A regular appointment may be full-time or part-time. Regular appointments that are part-time shall receive benefits in proportion to hours worked, ~~pursuant to administrative regulation.~~
- B. Temporary Appointment.
1. Any employee who is appointed to a temporary position shall not receive leave and benefits, except those required by law, and shall not be entitled to rights of grievance and appeal. The services of a temporary employee may be terminated without cause. A temporary appointment may be full-time or part-time.
  2. If a temporary employee is appointed to a regular position, the employee's performance review date shall be established as the effective date of the regular appointment.
- C. Acting Appointment. For the good of the service or for a temporary job vacancy or for the purposes of providing training, the City Manager may assign an employee to a different job classification. Assignment of acting status shall entitle the employee to the salary associated with that job classification for the duration of the assignment, provided such salary is equal to or higher than an employee's current pay rate. The City Manager may not assign an employee to acting status for a period of less than one (1) calendar month of duty ~~or more than six (6) calendar months.~~ The City Commission may assign an employee as acting City Manager upon the vacancy of the City Manager position for an indeterminate period until a permanent City Manager is employed.
- D. Seasonal Appointment. The City Manager may authorize temporary appointments without examination to positions which are typically seasonal or non-regular in nature. Such appointments shall be made only to temporary positions. Persons appointed for seasonal employment must meet the minimum age requirements and employment standards of the class to which appointed.
- E. Interim Appointment. The City Manager may appoint an outside applicant without examination on an interim basis for a period not to exceed six (6) months to a position that has been vacated temporarily. Persons appointed on an interim basis must meet the minimum training and experience qualifications for the class in which employed.

(Ord. 916 (part), 2003)



## 2.56.550 - Probationary period.

- A. All employees shall be subject to an initial one-year probationary period.
- a. The probationary period for general employees begins at the date of hire.
  - b. The probationary period for members of the police certified service begins at the date of hire or appointment to the police certified service and ending after two thousand eighty (2,080) field hours as a New Mexico Certified officer, regardless of any previous City employment.
  - A.c. The probationary period for ~~Members of~~members of the police and certified fire certified service shall serve a probationary period beginningbegins at the date of hire or appointment to the police or fire certified service and ending one (1) year after hire or appointment to the police or fire certified service, or, for police certified service, two thousand eighty (2,080) field hours as a New Mexico Certified Officer, regardless of any previous City employment.
- B. Any approved leave without pay or workers compensation leave in excess of two (2) weeks that is taken during the probationary period will extend an employee's probationary status proportionately.
- C. The probationary period shall be considered a trial employment period during which the department head shall determine the employee's suitability for the position ~~he or she~~ occupiesoccupied as the final step in the selection process.
- D. If at any time prior to the end of the probationary period the department head determines that the employee is not suitable for the position, the department head may recommend immediate involuntary termination of employment to be approved by the City Manager, whose decision is final. Probationary employees serve at the will of the City Managerare employed at will and may be terminated at any time, for any reason, or for no reason, with or without prior notice, without cause.
- E. Any employee who has not successfully completed the probationary period shall not be entitled to rights of grievance or appeal as defined by this chapter.
- F. An employee shall not be subject to a probationary period except upon original appointment or except as defined in subsection A of this section and Section 2.56.600.

(Ord. 916 (part), 2003)

## 2.56.560 - Performance review.

- A. After the successful completion of the probationary period, all full-time and part-timeeach employees shall have their performance reviewed. Further annual reviews will be consistent with the employee's anniversary date, every twelve (12) months or at such other times consistent with approved pay plan.
- B. If the employee disagrees with the immediate supervisor's review, the employee shall file in writing, within ten (10) calendar days, a request with the next level of supervision to review the immediate supervisor's evaluation. This process may continue at the employee's request up the chain of command until the department head has reviewed the matter. The conclusion of the department head will be deemed final and unappealable with regard to that evaluation. If the employee fails to meet the time limits imposed, the process will endend, and the employee will lose any rights that have not already been exercised in regard to the

evaluation. At any step in this progression up the chain of command, the employee may stop the process and prepare a written response to the evaluation. That response will be retained in the employee's personnel file, together with the original evaluation.

(Ord. 916 (part), 2003)

## **2.56.570 - Medical examination.**

Any candidate recommended for appointment to a ~~full-time or part-time~~ City position may be required to undergo a City-funded medical examination, physical abilities/agility test, drug and/or alcohol screen and, for member of the police or fire certified service, a psychological examination by a City-designated physician. Any examination shall be job-related and completed after a conditional offer of employment and prior to appointment in order to determine whether the applicant is capable of satisfactorily performing the essential functions of the specific position, with or without reasonable accommodation.

The City Manager may, upon request from the department head and Human Resource Director, ~~at any time also~~ require a physical or mental examination of any employee, to be funded by the City and performed by a City-designated physician or other appropriate professional, to certify that the employee is capable of satisfactorily performing the essential functions of the position. An employee may be placed on administrative leave with pay pending the examination results.

In addition to or in lieu of an examination, an employee may also be required to submit medical information to the City's medical advisor.

(Ord. 916 (part), 2003)

## **2.56.580 - Nepotism.**

- A. It is vital to the public image of the City to avoid the practice or appearance of nepotism in employment. In carrying out this policy, the following rules shall apply without exception:
1. No relative shall be hired in any capacity if related to the City Commissioners, the Mayor, or the City Manager by blood or marriage to the third degree of kindred. The third degree of kindred includes spouses, parents, children, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, aunts, uncles, ~~nieces and nephews~~ nieces, nephews, nephews, and the equivalent step- or in-law relatives of the aforementioned.
  2. No person shall be hired, promoted, or transferred to a position which is under the direct supervision or the departmental chain of command of a relative, ~~and~~ In this case, meaning a blood or marriage relation to the third degree of kindred, as defined in subsection (A)(1) of this section, those in a dating relationship, or members of the same household.
  3. If two (2) employees are in positions of direct or indirect supervision through any departmental chain of command and these two (2) employees establish a relationship by ~~marriage, other operation of law, or through lifestyle accommodations being the substantial equivalent of a family relationship~~ as defined in subsection (A)(2) of this

section, the City Manager may transfer one (1) of the employees to a position removed from the supervisory control of the other if it is determined that such transfer will serve the best interests of the City.

4. Except as provided in subsections (A)(1) and (A)(2) of this section, no applicant or employee who is a relative of another City employee shall be prohibited from seeking and holding a City position or from promotion within the municipal service, provided such recruitment or promotion is conducted in accordance with this chapter and any applicable administrative regulations. However, should the employment of a relative create a conflict within the workplace, the City may require that relatives work different shifts or be under separate supervision. The City may also elect to terminate one or both relatives who are creating the workplace disruption.—. As such, familial disputes or tensions should not be permitted to enter the workplace.—.
5. When a situation that runs contrary to the above policy arises through promotion, transfer, marriage, or otherwise, that person is required to inform management and the human resource department of the relationship.—. The affected individuals will have three (3) months in which to settle the issue voluntarily; that is, by having one of them request a transfer or termination.—. If the affected parties are unable to resolve the situation on their own, the City Manager, Human Resource Director, and the employee’s department head will together review the case at the end of the three (3) month period.—. Their decision concerning which employee (or both) is to be transferred or terminated will be binding.—. During those three (3) months, the supervisory employee will not be involved or have direct input in the employment decisions of the other employee.

B. Supervisors will not knowingly allow these nepotism provisions to be compromised and all employees have an affirmative obligation to report any violations to their department head to the Human Resource Director.

(Ord. 916 (part), 2003)

### **2.56.590 – Reemployment of retired employees.**

The City will abide by State legislation and New Mexico Public Employees Retirement Association (PERA) guidelines regarding the reemployment of a PERA affiliate retiree.—. Retirees interested in employment with the City must meet the minimum qualifications for the position and complete the same application and selection process as outlined in 2.56.500 – Recruitment and application process. -Service time will not be bridged for purposes of benefits accrual, seniority, or other tenure-related benefits.—. The retiree will be required to complete the applicable probationary period.

## **Article 6 - Changes in Employment Status**

### **2.56.600 - Transfer and promotion.**

A. When a job vacancy is announced, any employee may apply for transfer or promotion to the position, provided the employee is not suspended from employment or otherwise under an ongoing disciplinary sanction at the time of the application. All such qualified applicants will

be considered, although no employee is assured of selection. Employees will be promoted or transferred when all other qualification and selection results are equal. If the employee successfully applies for transfer or promotion during ~~his or her~~the probationary period, the employee shall commence a new and separate probationary period in the new position.

- B. The City Manager may, for the good of the service, transfer an employee within a department or division or to a different division or department in the City, without loss in pay. Such employee shall be eligible for salary increases in accordance with the approved compensation plan. The performance review date will not change as a result of the ~~promotion~~transfer.

(Ord. 916 (part), 2003)

### **2.56.610 - Demotion.**

A department head may recommend an employee be demoted to a lower classification ~~and pay~~ subject to the rules set forth in Section 2.56.700. Compensation will be addressed in accordance with 2.56.340 — Rate Decreases upon Demotion. The performance review date will not change as a result of the demotion.

(Ord. 916 (part), 2003)

### **2.56.620 -Reduction in force and Layoffs.**

- A. If the City Commission determines that one (1) or more divisions or functions of the City should be privatized or eliminated, employees in the affected divisions or functions shall be subject to any agreements negotiated at the time of the privatization or elimination, and the remainder of this section should not apply in such situations.
- B. The City Manager may, for the good of the service, reduce the work-force ~~and or~~ lay off employees, other than those affected by a privatization or elimination effort as defined in subsection A of this section. Within each division the order of layoff shall be determined by the following considerations: job performance, as documented in the personnel file; suitability for the position; seniority within each classification of the work unit; seniority within the department; and seniority within the City.
- C. ~~All laid off employees shall receive an additional two (2) weeks' salary with their final paycheck.~~ All regular full-time employees laid off within a division shall be placed on a reemployment list for one (1) year and shall be returned to work if a vacancy exists within the division in reverse order of layoff, provided the employee is qualified to perform the job to be filled. Any employee so reemployed shall retain rates of accrual based upon previous ~~seniority~~ seniority and in accordance with section 2.56.820 subsection C. ~~and leave balances which were not paid at time of lay off shall be reinstated.~~
- C.D. Employees affected by a reduction in force shall not be placed on a reemployment list as there is no intention of replacing the affected position and is thus a permanent reduction in headcount.

(Ord. 916 (part), 2003)

## **2.56.630 - Furlough.**

The City Manager may, for the good of the service, reduce the workforce and furlough employees. A furlough is a mandatory temporary leave of absence from which the employee is expected to return to work or to be restored from a reduced work schedule. A furlough may be the result of lack of work, lack of funds, or other non-disciplinary reasons. The furlough may constitute either a mandatory reduced work schedule or a mandatory leave of absence.

## **2.56.6430 - Disability—Termination of employee.**

The City Manager may terminate an employee due to a disability, mental or physical, which prohibits performance of the essential functions of the job, with or without reasonable accommodation. Rules and procedures governing disability leave are set forth in Sections 2.56.875 through 2.56.905 in conformance with all applicable laws.

(Ord. 916 (part), 2003)

## **2.56.6540 - Termination/Dismissal—Grounds.**

An employee may be ~~dismissed~~involuntarily terminated, for cause, from the employ of the City subject to the rules set forth in Section 2.56.760.

(Ord. 916 (part), 2003)

## **2.56.6650 - Resignation.**

Resignation means an employee's voluntary termination of employment. Employees who fail to report to work without notification for three (3) workdays; or three (3) regularly scheduled shifts (Police) or two (2) consecutive regularly scheduled shifts (Fire) are considered to have voluntarily resigned their position.

(Ord. 916 (part), 2003)

## **Article 7 - Disciplinary Actions**

### **2.56.700 - Just cause discipline.**

Disciplinary actions for regular employees, full and part-time are based on just cause in order to promote the efficiency of the services rendered by the City and the operation of its respective departments and offices. Disciplinary actions shall be consistent with governing laws and regulations and shall be taken without regard to race, color, religion, sex, pregnancy, ancestry, sexual orientation and gender identity or expression, spousal affiliation, national origin, age, physical or mental handicap or disability, serious medical condition, genetic information, status as a military veteran, or any other legally protected characteristic~~race, age, religion, color, national origin, sex, sexual orientation, physical or mental disability or serious medical~~

condition, or any non-merit factor. No employee shall be disciplined for refusing to perform an unlawful or unsafe act.

(Ord. 916 (part), 2003)

### **2.56.705 - Definition of just cause.**

Just cause is defined as any conduct, action or inaction arising from, or directly connected with the employee's work, which is inconsistent with the employee's obligation to the City and reflects the employee's disregard of the City's interest. Just cause includes, but is not limited to: inefficiency; incompetence; theft; misconduct; negligence; insubordination; violation of City policy or procedure; unauthorized use of City funds, property, facilities, and materials; disruptive behavior; repeated tardiness and excessive absences; unsatisfactory work performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems; or for causes as described in the Criminal Offender Employment Act, N.M.S.A. 1978, § 28-2-1, et seq.

(Ord. 916 (part), 2003)

### **2.56.710 - Disciplinary action.**

Any department head may take disciplinary action against an employee pursuant to the department head's authority and consistent with departmental policies and the ordinance codified in this chapter. Copies of any documented disciplinary action shall be furnished to the ~~personnel office~~ human resource department for placement in the employee's file with the signature of the recipient acknowledging receipt of the action. In the event an employee refuses to acknowledge receipt of a disciplinary action with a signature, a second supervisory personnel or member of the human resource department will witness the refusal, sign as a witness, and the disciplinary action placed in the employee's file in the human resource department.

Disciplinary action shall be considered ongoing and active for one (1) year from the date of receipt by the employee for relevant and subsequent disciplinary actions as well as changes to employment status as defined in Article 6. Under certain circumstances and depending on the severity of the infraction, the employee's previous work record, and any aggravating or mitigating circumstances surrounding the case of inadequate performance or act of misconduct, disciplinary action may be considered ongoing and active for up to two (2) years with the approval of the City Manager and Human Resource Director.

(Ord. 916 (part), 2003)

### **2.56.715 - Grounds.**

A. Regular employees subject to this chapter or any administrative or departmental regulations duly promulgated may be disciplined for cause. Cause for disciplinary action includes but is not limited to the following:

1. Work performance that continues to be unsatisfactory after reasonable attempts to correct performance;
2. Misconduct on the job; conduct or language toward the public or toward employees which discredits the public service;
3. Negligence in the performance of duty, including negligence in the operation of City vehicles or equipment or failure to adhere to established safety rules and procedures;
4. Incompetence or inefficiency; failure to perform job duties adequately;
5. Insubordination; failure to comply with the lawful orders of a supervisor, including refusal to work overtime;
6. Unauthorized absence from work including tardiness;
7. Consumption, possession, or distribution of alcohol or drugs on the job or reporting to work under the influence of alcohol or drugs;
8. Acceptance of money, gifts, privileges, or other valuable consideration which was given with the expectation of influencing the employee in the performance of ~~his or her~~ their duties;
9. Use of official position or authority for personal profit or advantage;
10. Misuse, theft, or destruction of City property;
11. Unauthorized disclosure of confidential information from City records or documents, as set forth by applicable State laws; falsification, destruction, or unauthorized use of City records, reports, or other data belonging to the City including City employment application, or any other document used in the employment process;
12. Unauthorized or fraudulent manipulation of time records or other City records;
13. ~~For causes as defined in the Criminal Offender Employment Act, N.M.S.A. 1978, § 28-2-1, et seq.;~~
14. 13. Violation of City or departmental rules or policies or a professional code of ethics accepted by those in the same profession as the employee;
15. 14. Noncooperation by an employee with fellow employees or other personal conduct which substantially interferes with the performance of ~~his or her~~ said employee's or another employee's work;
16. 15. Misuse of leave; the claim under false or misleading pretenses.
17. 16. ~~Distribution of literature, vending, or soliciting~~ Selling, vending, or collecting soliciting contributions on City time and in public areas or voluntary cooperation with ~~parties doing such~~ for private matters which do not comply with the City's government purpose without prior authorization of the City Manager;
18. 17. Violation of any Federal or State law pertaining to employment, including all civil right statutes;
19. 18. Failure to adhere to the established work schedule; failure to obtain authorization for overtime prior to overtime worked as established by general written department policy;
20. 19. Failure to meet or maintain established job qualifications, as set forth in the job description, including maintaining a valid driver's license if required by the position;
21. 20. Other acts or omissions that adversely affect the welfare of citizens, other ~~employees~~ employees, or the effective operation of the City;
22. 21. Unauthorized possession of a weapon on the job site;
22. Fighting and/or disruptive behavior in the workplace;
23. Violation of City Personnel Rules.

B. These examples are in no way intended to provide an exhaustive listing of the reasons for which an employee may be disciplined.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

### **2.56.720 - Off duty conduct.**

Off-duty conduct may be cause for discipline if it diminishes the integrity of the City's service; violates the equal employment opportunity policy; any City policy grounds for discipline as outlined in section 2.56.715; caused disclosure of confidential information; involves violent acts; involves the use of illegal intoxicants; or relates to disruptive action on City property or at City-sponsored events. This policy does not apply to off-duty conduct such as religious or political practices protected by law; protected, concerted activity as defined by the National Labor Relations Act; the lawful use of tobacco, alcohol, or legal drugs; association or affiliation with certain civic organizations; or other lawful off-duty conduct.

~~(Ord. 916 (part), 2003)~~

### **2.56.725 - Progressive discipline.**

~~A regular~~A regular employee shall be progressively disciplined for unsatisfactory work performance whenever practical. Each case of inadequate performance or act of misconduct shall be judged individually. The step of corrective action used will depend on the severity of the infraction, ~~and the employee's previous work record, and any aggravating or mitigating circumstances surrounding the case of inadequate performance or act of misconduct.~~ Under certain circumstances suspension without pay, demotion, or ~~dismissal~~ involuntary termination may be the appropriate initial disciplinary action.

~~(Ord. 916 (part), 2003)~~

### **2.56.730 — Types of action permitted.**

Consistent with the type and severity of cause for disciplinary action, the disciplinary authorities may take the actions set forth in Sections 2.56.735 through 2.56.760.

~~(Ord. 916 (part), 2003)~~

### **2.56.735 — Verbal counseling.**

Verbal counseling is used for minor infractions such as informing the employee that ~~his or her~~ their actions, behavior, or conduct needs to change. Supervisors shall keep written notations of verbal counseling reprimands. ~~Employees are not provided the opportunity to provide a written response to a verbal counseling and a verbal counseling is not eligible for appeal or grievance.~~



Verbal counseling is an optional supervisory tool and is not required as a prerequisite to any other disciplinary action.

(Ord. 916 (part), 2003)

## **2.56.740 - Written reprimand.**

A supervisor may reprimand an employee in writing for cause. The written reprimand shall be submitted to the employee. A copy of the reprimand, with the signature of the recipient acknowledging receipt of the action, shall be furnished to the human resource department for placement in the employee's file. A copy of the written reprimand shall be kept in the personnel file. Refusal to acknowledge receipt of a written reprimand by the employee will follow the provisions outlined in 2.56.710 - Disciplinary action. The employee may respond in writing to the written reprimand. The employee's written response will ~~be kept in the personnel file~~ also be kept in the employee's file in the human resource department. As the employee is provided an opportunity to submit a written response, a written reprimand is not eligible for appeal or grievance. All written reprimands must be approved by the appropriate department head prior to submission to the employee.

(Ord. 916 (part), 2003)

## **2.56.745 - Suspension.**

- A. Upon review by the ~~Personnel~~ Human Resource Director of the facts, a department head may recommend suspension of an employee\* for cause without pay for a period of not more than one hundred twenty (120) hours.
- B. All non-probationary employees shall be offered the opportunity to attend a meeting prior to any proposed suspension without pay. The human resource department will use reasonable means to provide the employee notice at least twenty-four (24) hours before the meeting time.
- ~~B.C.~~ An employee may waive their rights to a pre-suspension meeting by providing a written statement to that effect.
- ~~C.D.~~ The pre-suspension meeting shall be conducted by the department head, or designee, with only the department head, or designee, ~~the department supervisor,~~ and the employee present. Upon request of the department head, a representative of the human resource department will be in attendance. No other parties or representatives shall be allowed to attend. At this meeting, the employee shall have the proposed disciplinary action and the related grounds explained, a brief explanation of the evidence in the possession of the City, and shall be given the opportunity to respond. The meeting need not definitely resolve the proprietary of the action but shall serve as an initial check against perceived factual allegations. The meeting will aid in determining whether there are reasonable grounds to support the proposed action.
- ~~D.E.~~ A record of the meeting shall be made and kept by the human resource department. An employee may waive his or her rights to a pre-suspension meeting by providing a written statement to that effect.

E.F. The department head shall submit a written report of the findings and recommended action to the employee. A copy of the findings and recommendation, with the signature of the recipient acknowledging receipt of the action, shall be furnished to the human resource department for placement in the employee's file. A copy of the findings and recommended action shall be placed in the employee's personnel file. Refusal to acknowledge receipt of the recommended action by the employee will follow the provisions outlined in 2.56.710 - Disciplinary action.

G. In accordance with the Fair Labor Standards Act, exempt employees may only be suspended without pay for one or more full days for infractions of workplace conduct rules or for full or partial days for violation of safety rules of major significance.

(Ord. 916 (part), 2003)

Note — \*Exempt employee's suspensions will be pursuant to the Fair Labor Standards Act.

## **2.56.750 - Demotion.**

- A. A department head may request-recommend that an employee be demoted for cause to a lower classification, pursuant to the meeting requirements of subsection 2.56.745(B). The cause for such a demotion shall be documented in writing and shall be submitted to the employee, together with notice of the scheduling of the pre-demotion meeting. An employee may waive his or her rights to a pre-demotion meeting by providing a written statement to that effect.
- B. All non-probationary employees shall be offered the opportunity to attend a meeting prior to any proposed demotion. The human resource department will use reasonable means to provide the employee notice at least twenty-four (24) hours before the meeting time.—.
- C. An employee may waive their rights to a pre-demotion meeting by providing a written statement to that effect.
- D. The pre-demotion meeting shall be conducted by the department head, or designee, with only the department head, or designee, the department supervisor, a representative of the personnel division/human resource department, and the employee present. No other parties or representatives shall be allowed to attend. At this meeting, the employee shall have the proposed disciplinary action and the related grounds explained and shall be given the opportunity to respond.—. The meeting need not definitely resolve the propriety of the action but shall serve as an initial check against perceived factual allegations.—. The meeting will aid in determining whether there are reasonable grounds to support the proposed action.
- E. A record of the meeting shall be made and kept by the human resource department.
- F. The department head, or -shall designee, shall submit a written report of the findings and recommended action to the employee. A copy of the findings and recommendation, with the signature of the recipient acknowledging receipt of the action, shall be furnished to the human resource department for placement in the employee's file. A copy of the findings and recommended action shall be placed in the employee's personnel file. Refusal to acknowledge receipt of the recommended action by the employee will follow the provisions outlined in 2.56.710 - Disciplinary action.

(Ord. 916 (part), 2003)

## **2.56.755 - Procedure for filing and hearing—Further appeal of suspension or demotion only.**

- A. Upon written notification of suspension or ~~demotion~~ ~~the demotion~~, the eligible employee may appeal the decision to the City Manager. The appeal of a suspension or demotion must be submitted in writing to the ~~Personnel~~ Human Resource Director within ten (10) calendar days of the written notification of the suspension or demotion. The appeal shall be a written statement explaining the reasons for the appeal in detail and setting forth therein the action desired. The City Manager may, at ~~his or her~~ their discretion, elect to hold a hearing or hear additional evidence as ~~he or she~~ the City Manager sees fit. The City Manager shall render a timely decision and reserves the right to modify the penalty imposed. The decision of the City Manager shall be final with no additional appeals permitted.
- B. An employee may ~~self-represent himself or herself~~ appear Pro Se, or self-represent, in the appeal process or may choose to be represented by another person.

## **2.56.760 (Ord. 916 (part), 2003)**

### **2.56.760 - Termination/Dismissal.**

- A. A department head may recommend that an employee be involuntarily terminated/dismissed for cause. The cause for such involuntary termination/dismissal shall be documented in writing and shall be submitted to the employee, together with a notice of the scheduling of the pre-termination meeting. ~~An employee may waive his or her rights to a pre-termination meeting by providing a written statement to that effect.~~
- B. All non-probationary employees shall be offered the opportunity to attend a meeting prior to any proposed involuntary termination. The human resource department will use reasonable means to provide the employee notice at least twenty-four (24) hours before the meeting time.
- C. An employee may waive their rights to a pre-termination meeting by providing a written statement to that effect.
- D. The pre-termination meeting shall be conducted by the department head with only the department head, a representative of the ~~personnel division~~ human resource department, and the employee present. ~~No other parties or representatives shall be allowed to attend. At this meeting, the employee shall have the proposed disciplinary action and the related grounds explained and shall be given the opportunity to respond.~~ The meeting need not definitely resolve the propriety of the action but shall serve as an initial check against perceived factual allegations. The meeting will aid in determining whether there are reasonable grounds to support the proposed action.
- E. A record of the meeting shall be made and kept by the human resource department.
- F. ~~The department head shall submit a written report of findings and recommended action to the City Manager. A copy of the findings and recommended action shall be placed in the employee's personnel file. The City Manager shall review these findings and recommendations and shall:~~
  - 1. ~~Dismiss~~ Terminate the employee, or
  - 2. Take other appropriate action.

G.F. A copy of the final action taken by the City Manager shall be provided to the employee and placed in the employee's personnel file.

(Ord. 916 (part), 2003)

### **2.56.765 - Procedure for filing and hearing—Further appeal of dismissal-involuntary termination only.**

- A. Upon written notification of dismissal-involuntary termination, either the eligible employee or the department head may appeal the decision. The appeal of an involuntary termination dismissal must be submitted in writing to the Personnel-Human Resource Director within ten (10) calendar days of the written notification of the City Manager's ruling of involuntary termination dismissal after a pre-termination meeting. The appeal shall be a written statement explaining the reasons for the appeal in detail and setting forth the action desired.
- B. In the appeal of an involuntary termination dismissal, the City Manager shall appoint a hearing officer to hear the appeal. The hearing officer must be familiar with public or private personnel systems or have pertinent experience in the appropriate areas of management or law. The hearing officer cannot be an employee or former employee or former or current elected official of the City of Hobbs.
- C. A representative of the personnel division-human resource department shall schedule the hearing of the appeal within a reasonable time. The assigned hearing officer will review the recommendation resulting from the pre-termination meeting and hold a full due process hearing. Upon hearing the appeal as presented by both parties and upon making a record of the hearing, the hearing officer shall transmit a decision in writing to the employee and the department head within twenty-one (21) calendar days of the conclusion of the hearing. The hearing officer shall render a timely decision which will either confirm or reject the termination action taken by the City Manager. The decision of the hearing officer shall be final.
- D. An employee may self-represent himself or herself appear Pro Se, or self-represent, in the appeal process or may choose to be represented by another person.

(Ord. 916 (part), 2003)

### **2.56.770 - Failure to follow procedure—Representation.**

If the employee fails to abide by any part of the appeal procedure as outlined in Section 2.56.755 or 2.56.765, the employee shall be conclusively deemed to have waived and abandoned the appeal. Time limits may be extended by the mutual, written consent of the employee and the Personnel-Human Resource Director.

If the employee, or the employee's representative, fails to appear at the appeal hearing or fails to submit written statements in lieu of appearance, the employee shall be conclusively deemed to have waived and abandoned the appeal.

(Ord. 916 (part), 2003)

## **2.56.775 - Notice of meeting for suspensions, demotions, and dismissals involuntary terminations.**

If the employee is not readily available for personal delivery of the notice of the meeting or at the work site, the notice of the meeting shall be mailed via certified mail to the employee at the last known address in the employee's personnel file.

(Ord. 916 (part), 2003)

## **2.56.780 - Department heads exempt from grievance or appeal rights.**

Department heads ~~serve at the pleasure of the City Manager~~ are employed at-will and shall not be entitled to rights of grievance and appeal as set forth in this chapter.

## **2.56.785 – Internal investigations**

Internal investigations into unlawful discrimination, harassment, violations of City policies as defined in 2.56.715 – Grounds, violations of departmental policy, or other violations of City rules and conduct standards may be performed with the authorization of the appropriate department head, Human Resource Director, City Attorney, or City Manager. The City is committed to ensuring all internal investigations are conducted in a fair, impartial, and thorough manner and in compliance with all applicable federal and state laws.

- A. The City reserves the right to use any lawful method of investigation which, in its sole discretion, it deems reasonable and necessary to determine whether any employee has engaged in conduct warranting disciplinary action. The City may contact third parties and non-employees to ascertain facts through the scope of the investigation.
- B. The City reserves the right to conduct lawful searches and inspection of both City and personal items brought on to City property upon approval from the City Manager, City Attorney, and Human Resource Director as part of an internal investigation. Employees will be asked to cooperate with an investigative search and searches will be conducted in the presence of at least two (2) City designees.
- C. The City will make all reasonable efforts to initiate an investigation into the allegation(s) and conclude the investigation in a timely fashion, as appropriate.
- D. All employees are expected to cooperate in any investigation. Failure to cooperate may lead to discipline, up to and including involuntary termination. False information provided during an investigation may lead to disciplinary action, up to and including involuntary termination.
- E. The results of the investigation will be made available only to those employees with the need to have access or as needed to be disclosed as part of the investigation.
- F. Employees whom the City has reason to believe have engaged in actions contrary to the policies or best interests of the City will be subject to disciplinary action, up to and including involuntary termination.
- G. Any employee who knows of or observes improper or wrongful conduct should contact the human resource department or City Manager. All supervisors have a responsibility to act on such information. Employees who fail to report improper or wrongful conduct and

supervisors who fail to act are subject to discipline, up to and including involuntary termination.

H. Unless advised otherwise by the legal department, the human resource department will retain records relative to a City-initiated investigation in compliance with any federal or state recordkeeping laws.

I. An employee may be placed on administrative leave as approved by the City Manager, with or without notice, to permit the City to conduct an internal investigation.—. The leave shall be confirmed in writing prior to or at the commencement of the leave and state the reason for the leave.—. Employees placed on administrative leave during an investigation shall remain available during the leave to participate in investigative interviewing.

J. The above policy may be superseded by departmental internal affairs policy as it relates to investigations of police officers in the line of duty.

(Ord. 916 (part), 2003)

## **Article 8. - Leaves and Benefits**

### **2.56.800 - Paid holidays designated.**

A. Paid Holidays. The following shall be paid holidays for all regular employees:

1. New Year's Day, January 1st;
2. Martin Luther King Day, third Monday in January;
3. Presidents' Day, third Monday in February;
4. Memorial Day, last Monday in May;
- 4.5. Juneteenth, June 19th;
5. —
6. Independence Day, July 4th;
7. Labor Day, first Monday in September;
8. Veteran's Day, November 11th;
9. One-half (½) day immediately preceding Thanksgiving Day;
10. Thanksgiving Day, fourth Thursday in November;
11. Day after Thanksgiving Day, Friday after Thanksgiving;
12. One-half (½) day immediately preceding the date of observance for Christmas Day;
13. Christmas Day, December 25th.

B. Holidays Falling on Weekends. Any official City holiday that falls on a Saturday will be observed on the preceding Friday. A holiday falling on Sunday will be observed on the following Monday.

C. Floating Holiday. All regular full-time and part-time employees employed on the first day of the payroll calendar year will be awarded a floating holiday of eight (8) hours for general employees and police shift employees and 11.36 hours for fire shift employees. The use of a floating holiday is subject to advance approval by the department. Floating holiday pay must

be used before the last pay period ending date in the calendar year. Unused floating holiday pay will not carry over year to year and will not be paid out upon separation of employment, voluntary or involuntary. Floating holiday pay is nontransferable between employees and will not be considered time worked when determining overtime eligibility.

B. —

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013.~~)

### **2.56.805 - Certain employees ~~excepted~~ exempted from paid holidays.**

All regular employees on a pay status receiving any pay on the scheduled workday immediately prior to and immediately after the holiday shall be accorded holiday leave as listed in Section 2.56.800.

An employee who is absent without approval on the workday preceding or following a holiday shall not be paid for the holiday.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013.~~)

### **2.56.810 - Additional compensation for work on paid holidays.**

Any employee who works during a designated city holiday shall be paid, in addition to actual hours worked, an additional eight ~~additional eight~~ (8) hours for general employees and police shift employees and 11.36 hours for fire shift employees ~~his/her~~ at the normal rate of pay during the specific holiday.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013.~~)

### **2.56.815 - Holidays during paid time off.**

Holidays that occur during an employee's absence due to paid time off shall not be counted as paid time off, but as holiday leave.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013.~~)

## **2.56.[816] - Paid time off.**

All regular employees shall accrue paid time off beginning January 20, 2013, instead of vacation time and sick leave, as fully set forth herein.

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.[816.1] - ~~Transition from vacation and sick leave to paid time off.~~**

On January 20, 2013, all current employees transitioning to paid time off shall be entitled to a certain value in their existing vacation and sick leave. All unused vacation leave shall convert to paid time off, hour for hour, subject to paid time off caps. Every employee with sick leave shall receive credit for fifty (50) percent of accrued sick leave (sick leave credit). One half (1/2) of the sick leave credit (twenty-five (25) percent of total sick leave) shall be converted to paid time off, hour for hour, subject to paid time off caps. One half (1/2) of the sick leave credit (twenty-five (25) percent of total sick leave) may be cashed in at the employee's regular hourly pay rate (cash value), subject to all applicable income tax withholding requirements. An employee may utilize his/her cash value to fund his/her existing deferred compensation, subject to all applicable tax regulations. In the alternative, an employee may elect to convert his/her cash value to additional paid time off, hour for hour, subject to applicable paid time off caps.

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.[816.2] - Paid time off caps.**

Paid time off cap for all general employees shall be three hundred twenty (320) hours. Paid time off cap for all fire department shift employees and police shift employees shall be four hundred fifty-six (456) hours. At the end of each payroll calendar year, any employee who is over his/her the paid time off cap shall be paid for every hour over his/her the paid time off cap (cap payment), subject to applicable income tax withholding requirements.

At the time of transition, one time only, an employee may elect to utilize his/her cash value pay based upon a two hundred forty (240) hour cap for general employees and police shift employees and a three hundred forty (340) hour cap for fire shift employees. Police shift employees annually may elect to set their cap at either three hundred twenty (320) hours or four hundred fifty-six (456) hours.

In the event the City's general fund cash reserve dips below twenty (20) percent at the end of a fiscal year, the City may elect to increase paid time off caps until the following year in which the general fund cash reserve is above twenty (20) percent. Employees shall not forfeit any earned paid time off and shall continue to accrue as designated in Section 2.56.820.

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.[816.3] - ~~Paid time off delayed implementation.~~**



~~With City Manager approval, at the City Manager's sole discretion, a current employee with a reasonable basis may delay the implementation of his/her paid time off transition. If the delayed transition occurs before the end of 2013, the employee's sick leave credit shall be calculated at thirty three and one third (33 1/3 ) percent of total sick leave. If the delayed transition occurs after 2013 and before the end of 2014, the employee's sick leave credit shall be calculated at twenty five (25) percent of total sick leave.~~

~~(Ord. No. 1058, 1-7-2013.)~~

**2.56.[816.4]2 - Extension of paid time off cap.**

With City Manager approval, at the City Manager's sole discretion, any employee with a reasonable basis may extend ~~his/her~~their paid time off cap.

~~(Ord. No. 1058, 1-7-2013.)~~

**2.56.[816.5]3 — Short-term and long-term disability insurance for paid time off employees.**

All employees ~~who receive~~eligible for paid time off shall receive short-term and long-term disability insurance as part of their benefit package with the City. ~~The City shall pay one hundred (100) percent of the premiums for the disability insurance for the fiscal years 2012-2013 and 2013-2014. After the 2013-2014 fiscal year, the~~The premiums for short-term and long-term disability shall be determined annually and the employees may be required to cost share if the premiums increase ~~from the fiscal year 2012-2013~~. The specific terms of the disability insurance shall be negotiated annually to obtain the best value for the City and the employees.

~~(Ord. No. 1058, 1-7-2013.)~~

**2.56.820 - Rate of accumulation of paid time off.**

A. Paid time off shall be granted to regular full-time employees and police shift employees, other than fire shift employees, as follows:

Years of Service	Accrual Rate	Working Days	Maximum
	Per Month	Per Year	Accrual
Date of hire through 5th year	12.00 hours	18 days (144 hours)	320 hours general & 456 hours police shift employees
6th year through 10th year	14.00 hours	21 days (168 hours)	320 hours general & 456 hours police shift employees
11th year through 15th year	16.00 hours	24 days (192 hours)	320 hours general & 456 hours police shift employees

16th year through 20th year	18.00 hours	27 days (216 hours)	320 hours general & 456 hours police shift employees
21st year plus	20.00 hours	30 days (240 hours)	320 hours general & 456 hours police shift employees

B. Regular full-time employees of the fire department working a shift schedule shall be granted paid time off as follows:

Years of Service	Accrual Rate	Working Days	Maximum
	Per Month	Per Year	Accrual
Date of hire through 5th year	17.04 hours	8.52 shifts (204.48 hours)	456 hours
6th year through 10th year	19.89 hours	9.95 shifts (238.68 hours)	456 hours
11th year through 15th year	22.69 hours	11.35 shifts (272.28 hours)	456 hours
16th year through 20th year	25.49 hours	12.75 shifts (306.00 hours)	456 hours
21st year plus	28.29 hours	14.15 shifts (339.60 hours)	456 hours

C. Consecutive years of service shall be based on service time earned as a regular employee eligible for benefits. Breaks in service of no greater than six (6) months shall be bridged for the purpose of calculating consecutive years of service. Breaks in service of greater than six (6) months shall not be bridged and the last-current hire date shall be used to calculate years of service.

(Ord. 966, 2007; Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013; Ord. No. 1071, 12-2-2013~~)

### **2.56.825 - Incremental use, scheduling of paid time off.**

Paid time off may be taken in increments of not less than one-quarter~~half~~ (1/4~~1/2~~) hour (non-exempt employees), but the employee may only take paid time off if it has been accumulated. Any paid time off must be approved by the supervisor. The department head or designee shall be the final authority in allowing the scheduling and amount of paid time off taken.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

### **2.56.830 - Paid time off for part-time regular employees.**

Part-time regular City employees working between twenty (20) to twenty-nine (29) hours weekly shall accrue fifty (50) percent of the normal rate accrued by a full-time employee and shall have a fifty (50) percent cap of a full-time employee. Part-time regular employees working thirty (30) to thirty-nine (39) hours weekly shall accrue seventy-five (75) percent of the normal rate accrued by a full-time employee and shall have a seventy-five (75) percent cap of a full-time employee.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

### **2.56.835 - Paid time off accumulation paid upon termination.**

Any paid time off accumulated by an employee but not taken at the time of termination shall be paid in full, subject to applicable income tax wage withholding requirements.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

### **~~2.56.840 - Reserved.~~**

~~Editor's note — Ord. No. 1058, adopted Jan. 7, 2013, repealed § 2.56.840, pertaining to sick leave, and derived from Ord. No. 916, adopted in 2003.~~

### **2.56.845-840 - Family and medical leave policy.**

The City will provide unpaid family and medical leave will be granted to eligible employees pursuant to the federal Family and Medical Leave Act (FMLA) of 1993. In addition, unpaid leave will be provided to eligible employees pursuant to New Mexico regulations on Domestic Violence leave.

Details regarding the handling of compensation, paid time off usage and accrual, and benefits shall be outlined in a FMLA policy maintained by the Human Resource Director. Should an employee have accrued paid time off, during a family and medical leave event, paid time off shall be utilized.

Questions regarding or requests for FMLA should be directed to the human resource department.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

## **~~2.56.850—2.56.870 – Reserved.~~**

~~Editor's note — Ord. No. 1058, adopted Jan. 7, 2013, repealed §§ 2.56.850—2.56.870, pertaining to sick leave, and derived from Ord. No. 916, adopted in 2003.~~

## **2.56.875 845 - Paid time off bank.**

A paid time off bank program ~~may be~~ has been developed to provide additional paid time off days to ~~members of the bank~~ other employees upon exhaustion of accumulated leave balances for ~~qualifying events~~ serious health conditions or other absence as defined under the federal Family and Medical Leave Act. Eligibility for and use of the paid time off bank will be administered according to the procedures set forth in administrative regulation.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

## **2.56.880 850 - Workers' compensation leave.**

Workers' compensation leave shall be granted to any employee who sustains an injury or occupational disease in the course and scope of ~~his or her~~ employment with the City. Should the ~~family~~ and medical leave (FMLA) provisions apply to the use of workers' compensation leave, those provisions shall also apply and run concurrent with workers' compensation leave.

Workers' compensation is a "no fault" system that provides compensation for medical expenses and wage losses to employees who are injured or who become ill due to their employment. Some exceptions are injuries caused by willful and serious misconduct or by a worker's intoxication or by an employee's voluntary participation in recreational social activities.

The City pays the entire cost of workers' compensation insurance. The insurance will cover all related medical and rehabilitation expenses and a portion of lost wages. The insurance company will also authorize the length of stay, if any, away from work.

An employee who has a job-related injury or illness shall notify their supervisor immediately. The supervisor will have the employee fill out a report and return it to the human resource department.

It is the City of Hobbs's policy to comply with applicable federal and state laws and to aide any employee whose injury or illness is determined to be compensable under the provisions of the state's Wworkers' eCompensation aAct. The City of Hobbs shall not retaliate against employees who exercise their rights under the workers' compensation laws.

~~(Ord. 916 (part), 2003)~~

## **2.56.885-855 - Workers' compensation leave amount—Conditions.**

- A. An employee sustaining a workers' compensation approved, on-the-job injury shall be subject to the following:
1. If the injury or occupational disease prevents an employee from returning to work, injury leave shall be granted subject to the following conditions: Per the New Mexico Workers' Compensation statutes chapter 52, ~~The~~ first seven (7) calendar days from the day the injured employee leaves work as a result of the injury shall be accounted for as paid time off.
  2. If the period of injury lasts longer than 28 calendar days from the day the injured employee leaves work as a result of the injury, injury leave shall be accounted for from the day the employee first left work, as defined in Section 2.56.8690.
  3. While on workers' compensation leave, an employee shall not accrue paid time off.
  4. ~~No employee shall be otherwise employed or gainfully occupied while he is on workers' compensation leave.~~ Any work-related injury ~~which is anticipated to or does result in three (3) or more days of leave shall require the employee to promptly, or at the time of being physically able to do so, submit a form specified by administrative regulation from the treating physician stating the cause and nature of the injury and the probable duration of disability.~~
- B. Prior to the employee's return to work, the treating physician may be requested to submit a written report, based on the employee's current job description, to the Human Resources Director, indicating the date the employee will become able to return to ~~their~~this position.
- C. If the employee is returning without a full release from the physician to perform the essential functions of the job, the physician's report should state what, if any, restrictions apply.
- D. It shall be the decision of the department head and Human Resource Director as to whether or not to allow the employee to return to a light or restricted duty. The department head shall consider what, if any, special projects might be available in allowing a restricted or light duty assignment in their department and the Human Resource Director shall consider what, if any, special projects might be available in allowing a restricted or light duty assignment in other City service areas. ~~However, light or restricted duty shall not extend beyond four hundred eighty (480) hours per occurrence.~~

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.890-860 - Reduction of workers' compensation.**

- A. Compensation payable under the Workers' Compensation Act shall be reduced by ten (10) percent when an injury is caused by the willful failure of the employee to use safety devices provided by the employer.
- B. Compensation payable under the Workers' Compensation Act shall be reduced by ten (10) percent to ninety (90) percent ~~No compensation shall be made to any employee whose when~~

~~an injury was is~~ caused by the intoxication of the employee or willfully suffered or intentionally inflicted by the employee.

- C. Compensation payable under the Workers' Compensation Act shall be reduced by ten (10) percent to ninety (90) percent ~~No compensation shall be made to any employee whose~~ when ~~an injury was is~~ caused solely by the employee being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act, or under the influence of a narcotic drug as defined in the Controlled Substances Act unless the drug was lawfully dispensed or administered to the employee by a properly licensed practitioner.

~~(Ord. 916 (part), 2003)~~

### **2.56.895-865 - Injuries on job.**

Any employee injured on the job shall immediately report the injury to his supervisor, who shall report the injury to the hHuman rResources dDepartment. An incident report shall be completed by the supervisor and submitted to the hHuman rResources dDepartment within twenty-four (24) hours of the incident.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013)~~

### **2.56.900-870 - Workers' compensation leave—Eligibility for other leaves.**

- A. An employee may use accrued paid time off to supplement workers' compensation leave benefits to receive his normal net salary while on workers' compensation leave until exhausted. Leave shall be deducted at the appropriate rate.
- B. When paid time off is exhausted, the employee is eligible to take leave without pay.

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013)~~

### **2.56.905-875 - Temporary disability leave generally.**

Temporary disability leave shall be governed by the terms and conditions of the family and medical leave policy.

~~(Ord. 916 (part), 2003)~~

### **2.56.910-880 - Administrative leave.**

- A. Paid or unpaid Administrative leave may be approved by the City Manager or their designee for the good of the City's service or when inclement weather or man-made and natural disasters may create potential for injury or damage to City employees--. In granting paid administrative leave, the City Manager or designee shall consider the safety of City employees, taxpayer dollars utilized to finance administrative leave, and the good of the City's service.
- B. Administrative leave under this section shall not constitute discipline but may be used for pending investigations. During ~~the~~ administrative leave for pending investigations, the employee shall not attend ~~his to the~~ 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 as requested.
- C. When it comes to the attention of the City Manager that an employee has been charged with a crime which is a felony under the laws of the state wherein the charges are brought, the City Manager or designee may, upon determining that it is in the best interests of the City in order to protect and maintain the public's confidence and trust in city government, place the employee on unpaid administrative leave pending the outcome or disposition of the criminal charges.
- D. The basis for a determination to place an employee on administrative leave for pending investigations shall be documented in writing and shall be submitted to the employee and to the ~~human relations~~ Human Resource director-Director either at the time of or within twenty-four (24) hours of the commencing of the administrative leave.
- ~~D.E.~~ No other City employee outside of the City Manager or their designee has the authority to grant administrative leave--. Administrative leave without the City Manager's or designee's approval shall not be granted and the affected employee shall receive leave without pay for the time missed or the employee may utilize paid time off.
- ~~E.F.~~ Any employee granting administrative leave without the City Manager's or designee's approval shall be subject to discipline, up to and including involuntary termination.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.915-882 - Court and jury duty leave.**

An employee shall be granted court leave when required to perform jury duty in any municipal, county, state, or federal court or when required to serve as a non-party witness in any such court. Any employee so summoned shall immediately notify his supervisor at the City of the date and time of the impending required attendance.

Regular employees shall receive their regular pay based on the hours they are normally scheduled to work during such time of service, provided that they pay to the City any jury duty or witness fees, excluding mileage and parking reimbursement for a personal vehicle, which they receive. Jury duty or witness fees earned during holidays or paid time off shall be retained by the employee.

Any employee appearing as a plaintiff or defendant in a personal case not as a result of his capacity as an employee shall not be granted court leave, and any employee appearing as a plaintiff in an action against the City shall not be granted paid leave, unless the employee uses accrued paid time off.

This provision shall not apply to police shift employees where the current collective bargaining agreement addresses court time. The collective bargaining agreement shall control with regard to court time for police shift employees.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013~~)

## **2.56.920-884 — Bereavement and fFuneral leave.**

If a death occurs in the immediate family of a regular employee, a bereavement and funeral leave with pay may be granted up to a maximum of three (3) occurrences per year and five (5) days total per calendar year dependent upon need, i.e., travel distance, relationship, etc. As used in this section, the term "immediate family" shall be defined as husband or wife legal spouse, child, stepchild, son-in-law or daughter-in-law, brother or sister, brother-in-law or sister-in-law, stepbrother, stepsister or stepsister, stepbrother-in-law or stepsister-in-law, parent, stepparent, father-in-law, mother-in-law, brother in law, sister in law, grandfather, grandmother, grandfather-in-law, grandmother-in-law and grandchild. ~~The employee may be required to provide valid proof of death upon request and shall notify the immediate supervisor prior to taking funeral leave.~~

If a death occurs in the family of an employee which does not qualify for paid bereavement and funeral leave as outlined above, the employee will be required to use paid time off for absences.—. If the employee does not have a balance of paid time off available for use, unpaid time off at the sole discretion of the department head (less than three (3) days) or the City Manager (three (3) or more days) upon need, i.e., travel distance, relationship, etc.

Pay for bereavement and funeral leave is computed at the regular hourly rate to a maximum of eight (8) hours for one day, except for Police or Fire employees who accrue at a higher rate.—. Time off granted in accordance with this policy will not be credited as time worked for the purpose of computing overtime.

The City reserves the right to request verification of the absences in the form of a death certificate, newspaper article, letter from the funeral home, or as otherwise approved by the Human Resource Director prior to granting bereavement and funeral leave.—. The employee may be required to provide valid proof of death upon request and shall notify their immediate supervisor as soon as practical and prior to taking bereavement and funeral leave.

(Ord. 916 (part), 2003)

(~~Ord. No. 1058, 1-7-2013~~)



## **2.56.925-886 - Military leave.**

The City is committed to protecting the employment and reemployment rights of employees who are uniformed service members. In accordance with federal and state law, it is the policy of the City that no employee or prospective employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service for any of the Uniformed Services of the United States.

The uniformed services consist of: Army, Navy, Marine Corps, Air Force, and Coast Guard; Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve; Army National Guard and Air National Guard; Commissioned Corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.—.

Employees taking part in a variety of military duties are covered under this policy.—. Such military duties include leaves of absence taken by members of the uniformed services, including active duty and active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, time spent being examined to determine fitness to perform such service, funeral honors duty performed by National Guard or Reserve members, and duty performed by intermittent employees of the National Disaster Medical System when activated for a public health emergency and approved training to prepare for such service.

The purpose of this policy is to provide employees with a general description of their military leave rights. In the event this policy provides for less than the Uniformed Services Employment and Reemployment Act, employees will be afforded all rights required by law.

Employees eligible under this policy ~~Military leave shall be allowed in accordance with applicable laws. Employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not more than fifteen (15) working days' (a working day equals an employee's normal shift, i.e., fire shift employee's day is twenty-four (24) hours) military leave with pay per federal fiscal year when they are ordered to duty for training. Unused military leave may be carried over to the following year, not to exceed a total of thirty (30) leave days in a federal fiscal year. This military leave is in addition to other leave or paid time off to which the employee is otherwise entitled.~~

~~(Ord. 916 (part), 2003)~~

~~(Ord. No. 1058, 1-7-2013.)~~

## **2.56.930 - Reserved.**

~~Editor's note — Ord. No. 1058, adopted Jan. 7, 2013, repealed the section catchline for Section 2.56.930, "Military training leave," and combined its provisions with Section 2.56.925.~~

**2.56.935-888 - Unauthorized leave.**

Any unapproved absence from work shall be considered unauthorized and may be subject to disciplinary action, up to and including dismissal involuntary termination. ~~All unauthorized leave shall be originally recorded as leave without pay. Upon investigation of the unauthorized leave, the department head may change the leave to paid time off without losing the right to discipline the employee.~~

(Ord. 916 (part), 2003)

~~(Ord. No. 1058, 1-7-2013.)~~

**2.56.940-890 - Suspension of paid leave.**

The City Manager shall reserve the right to postpone all paid leave for an employee in an emergency, except authorized workers' compensation leave and family and medical leave.

(Ord. 916 (part), 2003)

~~(Ord. No. 1058, 1-7-2013.)~~

**2.56.945-892 - Leave without pay.**

For the good of the service and at the employee's request, the City Manager may grant a period of leave without pay to any regular employee for a period of time not to exceed one (1) year. For the good of service and at the employee's request, a department head may grant a period of leave without pay to any regular employee for a period of time not to exceed three (3) consecutive workdays.

After the third (3rd) consecutive day of leave without pay, all accruals will stop for the remainder of the pay period. Accruals will resume on the pay period following the employee's return to regular work schedule. Written notification to stop leave accruals must be provided by the department head to the finance department, human resource department, and the City Manager.

Employees on leave without pay and whose bi-weekly pay is not sufficient to cover the employee portion of insurance premiums will be required to enter into a repayment agreement upon return to work.

(Ord. 916 (part), 2003)

**2.56.950894 – Insurance benefits.**

All full-time and part-time employees are eligible for health insurance as part of their benefit package with the City. The premiums and coverages shall be determined annually, and

employees may be required to cost share premiums. The specific terms of the health insurance shall be negotiated annually to obtain the best value for the City and the employees.

Employees who enroll in employee plus one or family coverage health benefits are eligible for continuation of benefits upon their death while being actively employed by the City at time of death. Upon notification of death of an active employee, the City will continue current health benefit enrollments for three (3) consecutive months at no cost to the family of the deceased employee. The three (3) month coverage period will start on the first day of the month following the date of death of the employee. The City will pay the full premium and claim amounts associated with those benefits. At the end of the three (3) month period, benefits will transition to an optional Consolidated Omnibus Budget Reconciliation Act (COBRA) eligible plan that can be selected by the deceased employee's family to continue current benefits at their own cost.

Upon separation of employment (voluntarily or involuntarily for reasons other than gross misconduct) or for employees who have their hours reduced below the required amount necessary to participate in the City-sponsored plan the City will notify eligible employees of their ability to participate in an optional Consolidated Omnibus Budget Reconciliation Act (COBRA) eligible plan to continue current benefits at their own cost.

### **2.56.960896 – Longevity pay**

Regular full-time and part-time employees who meet eligibility requirements as outlined in by administrative regulation may receive a longevity payment.

PERA rules require that longevity payments be subject to PERA withholding. While this decreases the cash amount received by the employee, it increases the amount calculated for the final average salary for PERA retirement purposes.

The City reserves the right to cancel this program if funding is not continued as part of the annual budgeting process.

### **2.56.965898 – Bilingual incentive pay**

To serve an ethnically diverse community, the City shall incentivize employees who possess the ability and willingness to aid Spanish-speaking citizens. The City Manager may incentivize the ability to speak languages other than Spanish as long as proficiency can be measured utilizing the City-selected language proficiency test.

Eligibility: Regular, benefit eligible employees in an active status (FMLA and Military Leave not included) and who have completed a certification with the City-selected language proficiency test (Public safety examination for certified police and fire employees and a commercial test for general employees).

The cost of the first examination will be paid by the City for each eligible employee.—. Employees not successful in their first attempt will be responsible for the cost of any subsequent attempts.

Upon receiving certification, the employee will receive a fifteen hundred (\$1500) dollar, less all applicable taxes and applicable wage withholdings, incentive payment.

Employees who complete four (4) hours of continuing education units in Spanish recognized and paid for by the an annual recertification with the City-selected language proficiency test (Public safety examination for certified police and fire employees and a commercial test for general employees) City prior to each annual anniversary date, will be eligible for an additional fifteen hundred (\$1500) dollar incentive payment.

The cost of the first recertification examination will be paid by the City for each eligible employee. Employees not successful in their first attempt will be responsible for the cost of any subsequent attempts.

The City reserves the right to cancel this program if funding is not continued as part of the annual budgeting process.

## **Article 9 - Employee Conduct**

### **2.56.1000-900 - Participation in political campaignsactivity.**

Employees may participate in any Federal, State, county, or local political campaign, provided that such participation is conducted away from any City office or City work site and is not conducted during working hours. Participation in any political activities should in no way suggest the support of the City.—.

A. The following activities are prohibited while on-duty:

1. Demonstrating;
2. Circulating petitions;
3. Soliciting votes or contributions;
4. Fundraising;
5. Use of city equipment or resources for making or distributing political messages or materials;
6. Other activities not considered part of the employee's normal duties that are intended in any way to benefit a political campaign.—.

B. Political messages that are inappropriate or offensive to co-workers are prohibited.

C. Harassment of co-workers or citizens regarding political preferences will not be tolerated.

All employees should be able to vote either before or after regularly assigned work hours. In accordance with state law, employees whose workday begins within two (2) hours of the polls opening and ends less than (3) hours before polls close are entitled to up to two (2) paid hours of leave to vote. Supervisors may set the time for leave to vote based on staffing and needs of the department. Time off for voting should be reported and coded appropriately on timekeeping records.

D.—

(Ord. 916 (part), 2003)

### **2.56.~~1010~~910 - Election to municipal office—Resignation required.**

Any employee elected to municipal office in the City shall resign from the employ of the City.

(Ord. 916 (part), 2003)

### **2.56.~~1020~~920 - Outside employment.**

- A. An employee is free to pursue any outside employment, including self-employment, provided that there is no conflict of interest, the employment does not occur during the assigned working hours of the employee, and the efficiency of the employee is maintained. Further definition of a conflict of interest can be found in 2.56.~~1065~~965 – Conflict of Interest and Ethical Behavior.
- B. The employee must submit a ~~written request~~Request for Authorization to Pursue Outside Employment to the department head and the City Manager for authorization to pursue outside employment. The department head and City Manager shall approve requests in accordance with subsection (A) of this section. If, at any time, the department head and City Manager determines that an employee should not continue outside employment, the department head and the City Manager may require that such employment cease.
- C. All requests and authorizations for outside employment shall be maintained in the employee's personnel file in the human resource department.

(Ord. 916 (part), 2003)

### **2.56.~~1030~~930 - Special job requirements—Residency—Telephone at residence.**

The department head may require that any incumbent in a specific City position may be required to live within a certain distance of the City facility where ~~he or she~~they regularly reports to work and have a telephone at ~~his or her residence~~for reasons related to the emergency response or callback provisions of his or herthe job description.

(Ord. 916 (part), 2003)

## **2.56.1040-940 - Union agreements.**

Any issue covered in a City collective bargaining agreement takes precedence over the same issue in this chapter. All issues not covered in such agreements shall be subject to this chapter.

(Ord. 916 (part), 2003)

## **2.56.1050-950 - Dress Attire and grooming standards.**

The City requires employees to maintain a neat and clean appearance that is appropriate for the workplace setting and for the work being performed. The department head may establish written standards regulating dress and appearance attire and grooming for the respective departments for the purpose of maintaining either safety standards or a professional working environment. The City will reasonably accommodate a staff member's religious beliefs in terms of workplace attire unless the accommodation creates an undue hardship. Employees requesting a workplace attire accommodation based on religious beliefs should be referred to the human resource department.

Supervisors should communicate any department-specific workplace attire and grooming guidelines to staff members during orientation. Any questions about the department's guidelines for attire should be discussed with the employee's immediate supervisor.

Any employee who does not meet the attire or grooming standards will be subject to disciplinary action, up to and including involuntary termination, and may be asked to leave the premises to change clothing. Hourly employees will not be compensated for any work time missed because of failure to comply with designated workplace attire and grooming standards.

(Ord. 916 (part), 2003)

## **2.56.1060-960 – Workplace violence**

The City does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities, including but not limited to, causing physical injury to another person; making threatening remarks; displaying aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress; intentionally damaging the property of the City, a citizen, or another employee; and committing acts of sexual harassment or domestic violence.

Any potentially dangerous situations must be immediately reported to a supervisor or the human resource department. Reports can be made anonymously, and all reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately, and information will be disclosed to others only on a need-to-know basis.

Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to disciplinary action, up to and including involuntary termination. Nonemployees engaged in violent acts on the employer's premises will be reported to the proper authorities.

## **2.56.1065965 – Conflict of interest and ethical behavior**

~~— Employees shall conduct the City’s business with integrity and comply with all applicable laws in a manner that excludes considerations of personal advantage or gain—. Employees should avoid any situation which involves or may involve a conflict between their personal interest and the interest of the City. As in all other facets of their duties, employees dealing with citizens, suppliers, contractors, or any person doing or seeking to do business with the City are to act in the best interest of the City. Each employee shall make prompt and full disclosure in writing to their manager of any potential situation which may involve a conflict of interest or ethical violation. Such conflicts and violations may include, but are not limited to:~~

- ~~— Ownership by an employee or by a member of their family of a significant interest in any outside enterprise which does or seeks to do business with the City. Exceptions to this can be approved by the City Manager.~~
- ~~— Serving as a director, officer, partner, consultant, or in a managerial or technical capacity with an outside enterprise which does or is seeking to do business with the City. Exceptions to this can be approved by the City Manager.~~
- ~~— Acting as a broker, finder, go-between, or otherwise for the benefit of a third party in transactions involving or potentially involving the City or its interests.~~
- ~~— Any other arrangements or circumstances, including family or other personal relationships, which might dissuade the employee from acting in the best interest of the City.~~

~~A. Acceptance of gifts, services, discounts, entertainment, or considerations of any kind from suppliers or contractors that are a violation of applicable law and generally accepted ethical standards. All conflicts of interest and ethical requirements for City employee’s shall strictly comply with the City of Hobbs Code of Conduct, as may be amended from time to time, set forth in Chapter 2.01 of the Hobbs Municipal Code.~~

## **2.56.1070970 – Drug and alcohol use.**

~~The City is committed to providing a safe and productive work environment. Alcohol and drug abuse poses a threat to the health and safety of employees and to the security of the City’s equipment and facilities. For these reasons, the City is committed to the elimination of drug and alcohol use and abuse in the workplace—. The City reserves the right to conduct drug and alcohol testing in instances of pre-employment, reasonable suspicion, federal or state requirements of random testing for specified positions, and post-accident as outlined in administrative regulation.~~

- ~~A. The Drug and Alcohol regulations of the City will be administered by the Human Resource Director.~~
- ~~B. Applicants who refuse to cooperate in a drug test or who test positive will not be hired.~~
- ~~C. Employees who refuse to cooperate in required tests or who use, possess, buy, sell, manufacture, or dispense an illegal drug in violation of this policy will be subject to disciplinary action up to and including involuntary termination.~~

- D. Employees who test positive, or otherwise violate this policy, will be subject to discipline, up to and including involuntary termination.
- E. Information and records relating to positive test results, drug and alcohol dependencies, and legitimate medical explanations provided to the testing facility will be kept confidential to the extent required by law and maintained in secure files separate from normal personnel files. Such records and information may be disclosed on a need-to-know basis and may also be disclosed when relevant to a charge, claim, or other legal proceeding initiated by or on behalf of an employee or applicant.

### **2.56.1075975 - Workplace safety and incident reporting.**

The City is committed to providing a safe and healthful workplace.—. By providing training and equipment, the City will help employees perform their jobs more safely.—. All employees play a vital role in reducing workplace incidents.—. Employees are required to follow safe procedures and carry out work in a safe manner and are ultimately responsible for their own safety.—. The reporting of accidents and incidents involving City employees, property damage, and near miss reporting will be regulated by administrative regulation and monitored by the City Manager and Human Resource Director.—. Employees who violate the City’s safety rules may be subject to discipline, up to and including involuntary termination.

## **Article 10 - Grievances**

### **2.56.1100-1000 - Informal grievances.**

The purpose of informal grievance procedures is to provide employees, in an atmosphere of courtesy and cooperation, an equitable solution to problems or complaints ~~which may affect employees in the course of their employment with the City~~ regarding an alleged violation of the City’s Personnel Rules outlined in Chapter 2.56 of the Hobbs Municipal Code, a written department policy, and administrative regulation, or another written condition of employment. When applicable, the informal grievance procedure allows employees to voice complaints concerning alleged ~~improper actions~~ violations of the aforementioned written conditions of employment ~~of~~ by employees, supervisors, or management. The informal grievance procedure does not apply to written reprimands, suspensions, involuntary demotions, and involuntary terminations.

(Ord. 916 (part), 2003)

### **2.56.10420 - Informal grievance procedure.**

A. The following steps comprise the informal grievance procedure.

1. Meeting with Supervisor.

- a. The employee is required to contact ~~his or her~~ their supervisor in writing within five (5) calendar days of the incident or action being grieved to discuss the same.



- b. Within five (5) working days of the completion of the meeting, the supervisor shall provide the employee with a written decision.
2. Meeting with Department Head.
- a. The employee may appeal the decision of the supervisor to the department head in writing within three (3) working days of the receipt of the supervisor's written decision.
  - b. The department head shall meet with the employee within five (5) working days of receiving the grievance to discuss the grievance. The department head will provide the employee with a written decision within ten (10) workings days of the meeting.
3. Meeting with City Manager.
- a. Within three (3) workings days of receiving the department head's decision, the employee may appeal the decision to the City Manager.
  - b. The employee and one (1) witness of ~~his or her~~ the employee's choice (if desired) and the department head shall meet with the Human Resource Director and the City Manager or ~~his or her~~ designee to discuss the grievance within five (5) working days of receipt of the written request by the City Manager. Within ten (10) working days of the meeting, the City Manager shall advise the employee of ~~his or her~~ the decision in writing. ~~The~~ The City Manager's decision shall be final.
- B. Time limits may be extended at the request of either party involved in subsections (A)(1), (A)(2) or (A)(3) of this section. A request for extension of time shall be made to the ~~Personnel~~ Human Resource Director.

(Ord. 916 (part), 2003)

## **2.56.10430 - Conditions or actions not grievable.**

The following are not grievable:

- A. Employee complaints of bullying, retaliation or discrimination or harassment based on race, color, religion, sex, sexual orientation, age, national origin, physical or mental ~~disability or serious disability~~, serious medical condition, or any other legally protected characteristic. These allegations should be reported ~~directly to the City Manager or Personnel Director~~ in compliance with the City's discrimination and harassment reporting procedures.
- B. Matters where the City is without authority to act or does not have the ability to provide a remedy.
- C. ~~Dismissal~~ Involuntary termination of probationary employees prior to the expiration of their probationary period.
- D. Release of temporary or seasonal employees prior to or at the end of their anticipated employment period.
- E. ~~Dismissal~~ Involuntary termination of department heads at any point during their employment with the City.

- F. Reassignments, transfers, temporary assignments, removal from temporary assignments, promotions, involuntary demotions, terminations, or layoffs.
- G. Performance appraisals, merit recommendations, verbal counselings, written reprimands, suspension, or selection for vacant positions.


(Ord. 916 (part), 2003)

**Article 11 – General Repealer**


**2.56.1100 – Prior versions repealed.**

All prior versions of any generally applied personnel rules for the City of Hobbs, whether adopted by resolution or ordinance, that are inconsistent with the provisions outlined herein are hereby repealed in their entirety. This section does not apply to department-specific rules, administrative regulations, or any collective bargaining agreement on the condition that any of these documents are not inconsistent with the provisions outlined in this Chapter.

PASSED, ADOPTED AND APPROVED this 4<sup>th</sup> day of April, 2022.

  
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SAM D. COBB, Mayor

ATTEST:

  
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JAN FLETCHER, City Clerk

