

# CHAPTER 3: CITY EMPLOYEES

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## ARTICLE 1: MERIT SYSTEM; PERSONNEL POLICY

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**§ 3-1-1 THE MERIT SYSTEM.**

In accordance with Article X of the Charter of the city, there is hereby established a merit system governing the hiring, promotion and discharge of employees and providing for the general regulation of employees. Pursuant to the Charter, the Mayor designates the Chief Administrative Officer of the city to be responsible for the administration of the merit system. The Chief Administrative Officer is authorized to establish Rules and Regulations to implement this article. If this article conflicts with any federal law, federal law will control.

('74 Code, § 2-9-1) (Ord. 52-1978; Am. Ord. 29-1998)

**§ 3-1-2 RESPONSIBILITIES OF THE CHIEF ADMINISTRATIVE OFFICER FOR PERSONNEL FUNCTIONS.**

- (A) The Chief Administrative Officer shall have the following responsibilities:

(1) To exercise leadership in and encourage the development of effective personnel administration within the departments, agencies, and special programs in the city service;

(2) To institute and consider recommendations for changes in this article;

(3) To institute and approve Personnel Rules and Regulations prior to their publication by the Director of Human Resources as provided in this article;

(4) To issue administrative instructions to provide policy and guidance in furtherance of the responsibilities of the Chief Administrative Officer;

(5) To establish a compensation plan for classified city employees consistent with other provisions of this article; and

(6) To designate a Deputy Chief Administrative Officer or a department head to assume the duties of the Chief Administrative Officer in the event of his or her inability to act or absence from the city.

(B) The power of appointment or promotion to a position in the classified or unclassified service of the city shall rest with the Chief Administrative Officer; provided that, in the absence of a written directive to the contrary signed by the Chief Administrative Officer, such power may be exercised by the administrative head of a city department, agency or special program for the positions within such department, agency or special program.

(C) Subject to existing law and in addition to other rights, granted by charter, regulation, rule or this article, the Chief Administrative Officer shall have the following rights:

(1) To direct the work of its employees;

(2) To hire, promote, evaluate, transfer, and assign employees;

(3) To reprimand, suspend, demote or discharge employees for just cause;

(4) To determine staffing requirements;

(5) To maintain the efficiency of the city government and ensure the carrying out of normal management functions;

(6) To take actions as may be necessary to carry out the mission of the city government in emergencies; and

(7) To manage and to exercise judgment on all matters not specifically prohibited by this article or by a collective bargaining agreement in effect between the city employer and an employee organization.

(D) The Chief Administrative Officer shall have no power or authority to appoint the Director of Council Services or to hire, promote, discipline or discharge the staff of the offices of the City Council, which shall be the responsibility of the Director of Council Services.

('74 Code, § 2-9-2) (Ord. 52-1978; Am. Ord. 69-1988; Am. Ord. 29-1998)

**§ 3-1-3 RESPONSIBILITIES OF THE DIRECTOR OF HUMAN RESOURCES.**

The Director of Human Resources, under the general direction of the Chief Administrative Officer, shall direct all of the administrative and technical activities of the Human Resources Department and shall have the following duties:

(A) To exercise leadership in and encourage the development of effective personnel administration within the departments, agencies, and special programs in the city service, and make available the resources of the Human Resources Department to this end;

(B) To prepare and recommend to the Chief Administrative Officer or his or her designated representative, such changes in this article as may be considered necessary, appropriate, or desirable after investigating their operation and the effects of the policies made thereunder;

(C) To prepare, install, and maintain a classification plan based on the duties, authority, and responsibility of positions in the city service;

(D) To prepare and maintain a pay plan corresponding to the classification plan, with the approval of the Chief Administrative Officer;

(E) To establish and maintain a roster of all persons in the city service and records in which there shall be set forth for each employee his class, title, pay, pay status, and other relevant data;

(F) To develop and establish training and educational programs for persons in the city service;

(G) To propose Personnel Rules and Regulations and publish after approval by the Chief Administrative Officer for the conducting of examinations for new employees; for promotion of employees; and for such other procedures, policies, and practices, including the evaluation of employees' work performance, with reference to personnel administration as may be necessary and desirable;

(H) To administer programs, including trainee programs, designed to attract persons with potential for career development to the city service;

(I) To coordinate recruitment, hiring and promotional practices to assist in the implementation of the Affirmative Action Program of the city; and

(J) To direct employee layoffs based on seniority principles and collective bargaining agreements, as approved by the Chief Administrative Officer.

('74 Code, § 2-9-3) (Ord. 52-1978; Am. Ord. 69-1988; Am. Ord. 17-1990; Am. Ord. 29-1998)

**§ 3-1-4 PERSONNEL BOARD.**

(A) There shall be a Personnel Board composed of five members. Two members shall be appointed by the Mayor; they shall have significant management or personnel experience. Two members shall be selected by the employees by election and then appointed by the Mayor. The remaining member shall be selected by the other four members. All board members shall be persons who have resided in the city for a period of at least one year and shall not be elected public officials. All selections shall be subject to the advice and consent of the City Council. Board members shall serve two-year terms which expire September 1. The terms of the members who are serving when Ordinance 29-1998 was passed shall expire as follows: the term of one mayoral appointee and one elected member, chosen by lot, shall expire September 1, 2000. The terms of the remaining three members shall expire September 1, 2001.

(B) When a vacancy occurs among members selected by the employees, an election by the employees of the city shall be held. Only persons who have received the signatures of at least 20 employees on a nominating petition(s) shall be eligible to be placed on the ballot in the election. When there is one vacancy to be filled, the person who receives the most votes in the employee election shall be appointed by the Mayor to fill the vacancy; where there are two vacancies to be filled, the two candidates with the most votes shall be appointed by the Mayor to fill the vacancies. In the event of a tie the Mayor shall appoint the appropriate number out of the candidates with the most votes. All appointments shall be sent to the Council for advice and consent. If a member appointed by the Mayor pursuant to an employee election is not approved by Council, the Mayor shall appoint the person who had a tie vote with the first appointee; if there was not such a tie, a new election shall be held, and the person with the most votes and who was not previously rejected by the Council shall be appointed by the Mayor and submitted to the Council.

(C) Except as provided in this article, the qualifications, appointments, and conduct of the members of the Board and the organizational structure of the Board shall be governed by §§ [2-6-1-1](#) et seq.

('74 Code, § 2-9-4) (Ord. 52-1978; Am. Ord. 6-1987; Am. Ord. 29-1998)

**§ 3-1-5 POWERS AND DUTIES OF THE PERSONNEL BOARD.**

(A) The Personnel Board shall serve in an advisory capacity in the administration of the city's Personnel Program and shall have the following powers:

(1) To advise and assist the Chief Administrative Officer or his or her designated representative and the Director of Human Resources in adopting such Personnel Rules and Regulations as are considered necessary, appropriate or desirable to carry out the provisions of this article;

(2) To advise and assist the Chief Administrative Officer or his or her designated representative and the Director of Human Resources in the improvement of personnel standards in the classified service;

(3) To advise the Chief Administrative Officer or his or her designated representative and the Director of Human Resources upon problems concerning personnel administration and recommend corrective action; and

(4) To inquire, after consultation with the Chief Administrative Officer, into any matter which it may consider desirable concerning the administration of affairs of personnel.

(B) The Personnel Board shall render a decision upon the appeal of classified employees of the city who have been suspended without pay for more than five days, demoted for disciplinary reasons or discharged, as provided in § [3-1-25](#).

(C) Meetings of the Personnel Board, including hearings, shall comply with the New Mexico Open Meetings Act, §§ 10-15-1 et seq. NMSA 1978.

(D) The Personnel Board shall establish rules and regulations governing the conduct of its meetings and its grievance hearings.

('74 Code, § 2-9-5) (Ord. 52-1978; Am. Ord. 69-1988; Am. Ord. 29-1998)

#### **§ 3-1-6 THE CLASSIFIED AND UNCLASSIFIED SERVICE.**

(A) All employees in the city service shall be divided into unclassified service and classified service. Elected officials and members of boards, commissions and authorities that are not employees of the city shall not be covered by the classified or unclassified service.

(B) The classified service shall be comprised of all employees except those who are specifically placed in the unclassified service.

(C) The unclassified service shall be comprised of the following:

(1) The Chief Administrative Officer and Deputy Chief Administrative Officers;

(2) Assistants to the Mayor, assistants to the Chief Administrative Officer and the secretary to the Chief Administrative Officer;

(3) The city's Public Information Officer and the secretary to the Mayor;

(4) The City Attorney, Assistant City Attorneys, City Hearing Officer, City Clerk/Recorder, administrative heads of departments as established in the city's organizational structure, physicians, veterinarians, and the Director of the Office of Internal Audit and Investigations;

- (5) Temporary and seasonal employees employed as such;
- (6) Part-time employees employed for less than 20 hours per week;
- (7) Administrative heads of agencies or special programs sponsored by the city and defined as unclassified by the Chief Administrative Officer;
- (8) The Director of Council Services and the Attorney for the Council; and
- (9) Any position designated as unclassified by the Chief Administrative Officer.

(D) Unclassified employees are employees at will and serve at the discretion of the Chief Administrative Officer, except for unclassified City Council staff, which serve at the discretion of the Director of Council Services. Such employees shall have no property interest in continued unclassified employment and may be dismissed for any or no reason.

(E) All employees, except as otherwise provided herein, in the classified service shall be entitled to all of the rights and benefits provided for by this article. All employees in the unclassified service shall be entitled to all of the rights and benefits to which classified employees are entitled except the benefits provided for in §§ [3-1-23](#), [3-1-24](#) and [3-1-25](#), and also such rights and benefits specifically contracted for in writing between the Chief Administrative Officer and an unclassified employee.

(1) Temporary and seasonal employees are not entitled to any of the rights and benefits of employment to which other employees are entitled under this article.

(2) Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the city; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours. Hours worked in addition to a regular work week shall not entitle an employee to additional leave benefits.

(3) Elected officials except as otherwise provided by this article or law, shall be eligible to participate in the retirement, paid life and medical insurance available to full-time, permanent employees of the city.

(F) The initial contract between the Mayor and the Chief Administrative Officer, including salary and benefits, shall be presented to the City Council for approval when the Mayor presents his selection for Chief Administrative Officer to the Council for advice and consent pursuant to the City Charter. The Mayor shall notify the Council of subsequent changes in the contract. The Mayor's employment benefits shall be reviewed and approved by the City Council annually as a part of the city budget.

('74 Code, § 2-9-6) (Ord. 52-1978; Am Ord. 54-1987; Am. Ord. 69-1988; Am. Ord. 30-1989; Am. Ord. 29-1998; Am. Ord. 1-2005)

**§ 3-1-7 EMPLOYMENT BY THE CITY.**

(A) Every effort shall be made to fill vacant positions in the city with the best qualified candidate. All vacancies in classified positions will be advertised to all city employees, except probationary police, fire and corrections officers, but applications from persons outside of city employment may be considered at the same time.

(B) Subject to preferences required by law, preference shall be given in filling a vacant position of the same or lower grade for which an employee is qualified according to the following order:

- (1) Employees reinstated as a result of administrative board or judicial action as ordered;
- (2) Employees returning from active duty in the military;
- (3) Employees transferred pursuant to § [3-1-2\(C\)](#) of this article;
- (4) Employees returning from physical layoff;
- (5) Nonprobationary employees returning from layoff;
- (6) Employees notified of layoffs; and
- (7) Employees returning from authorized absence from work without pay.

(C) Employees who have held a classified position with the city for more than ten years prior to serving in an unclassified position shall be allowed to return to a classified position.

(D) The Director of Human Resources, with the approval of the Chief Administrative Officer, shall have the sole authority to place employees who are granted a preference in this section in positions for which they are qualified.

(E) Preference for placement, except for employees returning from active duty in the military or placement resulting from administrative or judicial action, shall end one year from the date that the preference was created.

('74 Code, § 2-9-8) (Ord. 52-1978; Am. Ord. 32-1987; Am. Ord. 29-1998)

**§ 3-1-8 PROBATIONARY PERIOD.**

(A) Probationary employment is tentative and subject to a probationary period. A probationary employee does not have a legitimate entitlement to continued employment and may be terminated for any or no reason.

(B) A probationary period shall be utilized for closely evaluating the employee's work and for securing the most effective adjustment of the new employee to his or her position. Such

probationary period shall be 12 months immediately following the original appointment date for all police officers, fire fighters, and correction officers. Original appointment as a police or fire fighter shall be tentative and subject to a probationary period of 12 months from the date of graduation from the Police Academy or Fire Academy whether or not such appointee has been previously employed by the city. All other appointments to the classified service shall be tentative and subject to a probationary period of six months immediately following the original appointment date.

(C) At any time during the probationary period, an employee may be dismissed for any reason which is not prohibited by law. The change from probationary to non-probationary status shall require positive action by the department head or his designee and failure to take positive action at the end of the probationary period shall constitute dismissal of the employee. Upon the supervisor's recommendation, the department head or his designee may extend the probationary period for a maximum of 60 days.

(D) An employee on probationary status is not entitled to the rights and benefits provided for in other sections of this article.

('74 Code, § 2-9-9) (Ord. 52-1978; Am. Ord. 30-1985; Am. Ord. 69-1988; Am. Ord. 29-1998)

### **§ 3-1-9 PERFORMANCE EVALUATIONS.**

(A) The Chief Administrative Officer shall establish a system to evaluate the work performance of city employees in the classified service. Performance evaluations or ratings shall not be the subject of a grievance.

(B) The performance evaluation system will provide for:

(1) Performance standards that will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position in the classified system;

(2) Communication with each employee as to the performance standards and critical elements of the employee's position;

(3) An opportunity during a specified period of time for the employee to demonstrate an improvement in performance; and

(4) Appropriate disciplinary action to be taken if performance is inadequate including dismissal or demotion for an employee who continues to have unacceptable performance after an opportunity to demonstrate acceptable performance.

(C) The work performance of an employee shall be officially evaluated by his or her immediate supervisor(s) at least once a year.

('74 Code, § 2-9-10) (Ord. 52-1978; Am. Ord. 30-1985; Am. Ord. 29-1998)

### **§ 3-1-10 COMPENSATION.**

(A) Compensation of classified employees shall be based on a classification plan. The classification plan shall be based on duties, authority and responsibility of positions in the city service. A pay plan shall be maintained corresponding to the classification plan.

(B) The City Council shall establish the compensation of the Director of Council Services. In setting compensation or grades for personnel in the Office of Internal Audit and Investigations, the Chief Administrative Officer should give great weight to any recommendation by the Accountability in Government Committee.

('74 Code, § 2-9-11) (Ord. 52-1978; Am. Ord. 48-1989; Am. Ord. 29-1998; Am. Ord. 1-2005)

### **§ 3-1-11 WORK HOURS.**

The working time of employees in a department shall be specified from time to time by the department head, with the approval of the Chief Administrative Officer, or his designated representative. Full-time employment by the city shall constitute the sole employment of any employee, unless additional outside employment, to be performed at times other than hours when such employee is required to perform city service, is approved in writing by the department head. Overtime may be paid by the city for work performed outside of established work hours in accordance with the Fair Labor Standards Act.

('74 Code, § 2-9-12) (Ord. 52-1978; Am. Ord. 29-1998)

### **§ 3-1-12 LEGAL HOLIDAYS.**

(A) (1) The Chief Administrative Officer shall annually announce the legal holidays for city employees which shall be generally consistent with United States, New Mexico State, and Bernalillo County government holidays.

(2) Employees may take any holiday as a floating holiday at any time during the year with the prior written approval of the department head.

(B) Departments which must furnish service on legal holidays shall have formal arrangements for offering employees who must work on legal holidays appropriate compensation. Holiday pay shall be computed in accordance with the Personnel Rules and Regulations. If a designated legal holiday falls on a Saturday, the day off will be observed on the previous Friday. If a designated legal holiday falls on a Sunday, the day off will be observed the following Monday.

('74 Code, § 2-9-13) (Ord. 52-1978; Am. Ord. 61-1988; Am. Ord. 30-1989; Am. Ord. 29-1998)

### **§ 3-1-13 VACATION LEAVE.**

(A) Vacation leave will accrue on a biweekly basis from the day of a city employee's current permanent employment. Vacation leave may be taken as accrued, upon approval of the

employee's department head or designee. Hours worked in addition to a regular work week as given below, shall not entitle an employee to additional vacation. The city shall not compensate employees and officials for unused vacation time, except:

(1) Pursuant to a collective bargaining agreement; or

(2) Any permanent employee separating from the city service is eligible to be compensated for accrued vacation leave as provided for in the Personnel Rules and Regulations.

(B) Vacation leave will accrue as follows:

Continuous Service	Reg. Work Week	Biweekly Accruals	Accrual Year
Less than 5 years:	40 hours	3.85 hours	100 hours
	56 hours	5.39 hours	140 hours
More than 5 years BUT less than 10 years:	40 hours	4.62 hours	120 hours
	56 hours	6.47 hours	168 hours
More than 10 years BUT less than 15 years:	40 hours	5.54 hours	144 hours
	56 hours	7.76 hours	201.6 hours
More than 15 years:	40 hours	6.16 hours	160 hours
	56 hours	8.62 hours	224 hours

(C) The Mayor and the City Councillors do not accrue vacation time. The Mayor sets his or her own hours and days of work, consistent with his Charter position as a full-time official. Similarly, Councillors set their own hours and days of work, consistent with their duties to attend meetings and attend to their other responsibilities.

(D) Vacation accumulation will be computed as of the pay period including December 31 each year. The excess over 78 biweekly accruals shall be dropped from the record.

(E) Notwithstanding § 3-1-6(D), no vacation time may be accrued by employees or officials except as provided by this section or as provided by a ratified group agreement as provided in § 3-1-6(F); this includes a collective bargaining agreement entered into consistent with §§ 3-2-1 et seq., Labor- Management Relations.

('74 Code, § 2-9-14) (Ord. 52-1978; Am. Ord. 52-1988; Am. Ord. 30-1989; Am. Ord. 29-1998)

**§ 3-1-14 SICK LEAVE.**

(A) Permanent city employees on a regular work week of 40 hours will accrue sick leave at the rate of 3.70 hours biweekly with a maximum accumulation of 1,200 hours allowed. Employees on a regular work week of over 40 hours shall accumulate additional sick leave both biweekly and maximum accumulation on a basis proportional to the 40-hour week. Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the city; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours.

(B) Sick leave will accrue on a biweekly basis from the date of current, permanent, full-time, probationary or non-probationary employment. Hours worked in addition to a regular work week as listed above shall not entitle an employee to additional sick leave accumulation.

(C) Pro-rata conversion to cash payment or to vacation time of sick leave exceeding certain accumulations will be provided for in the Personnel Rules and Regulations. Pro-rata or full conversion of sick leave to early retirement will be provided for in the Personnel Rules and Regulations.

(D) Proper and reasonable provisions for controlling and verifying the use of sick and emergency leave will be established in the Personnel Rules and Regulations.

(E) In the event that collective bargaining agreements make reference to sick leave benefits, the reference will be to the ordinance as it was in effect at the time the agreement was ratified.

('74 Code, § 2-9-15) (Ord. 52-1978; Am. Ord. 29-1998)

### **§ 3-1-15 INJURIES IN PERFORMANCE OF DUTY.**

(A) Any employee who is injured or who suffers occupational disease in the performance of his duties and who, as a result of such injuries or disease, receives weekly benefits under the Workers' Compensation Act of New Mexico, §§ 52-1-1 et seq. NMSA 1978, shall be granted injury time with full pay so long as a qualified doctor of Medicine (M.D.), Osteopathy (D.O.), or Podiatry (D.P.M.) designated by the city certifies that the injury required the employee's absence from his or her work. The Chief Administrative Officer may withhold payment of injury time to any employee if, upon investigation, the Chief Administrative Officer desires that the payment of injury time be withheld until such employee has settled his or her claim under the Workers' Compensation Act of New Mexico, §§ 52-1-1 et seq. NMSA 1978, against the city.

(B) Injury time shall be in addition to the number of days sick leave accumulated. An employee placed in physical layoff status shall return to the first available position closest to his or her former grade or classification as possible, for which he or she can qualify, when a qualified doctor of Medicine (M.D.), Osteopathy (D.O.), or Podiatry (D.P.M.), selected by the Chief Administrative Officer, certifies that such employee is physically able to perform such duties according to the physical qualifications of the job.

(C) Injury time shall not exceed the following stated maximum hours for any accidental injury, recurrence or aggravation of this injury or for any occupational accidental injury, recurrence or aggravation of this injury; or for any occupational disease, recurrence or aggravation of this disease.

<i>Regular Work Week Working Hrs.</i>	Maximum Injury Time
40 hours	960 hours
56 hours	1,344 hours

(D) Subject to the deductions below, sums paid to employees under the terms of this section shall constitute a lien against any amount collected through settlement or court action by the employee against a third party causing the injury. Upon such payment the city may proceed against such third party in its own name or in the name of the injured employee to collect such injury time pay, and failure of the employee to cooperate with the city in any legal or other action will subject the employee to disciplinary action. As a condition of employment, an employee who receives workmen's compensation or injury time shall permit the city to bring an action against any responsible party for recovery of all such benefits paid to the employee.

(E) Injury time pay shall not exceed the difference between Workmen's Compensation benefits received and an employee's regular pay. There shall be deducted from salary received for injury time or sick leave granted for injury or occupational disease, any cash compensation benefits received under the Workmen's Compensation Laws of the State of New Mexico. In the event a lump sum settlement is made of the employee's claim under the New Mexico Workmen's Compensation Laws, the percentage of his or her disability shall be agreed upon at the time such lump settlement is made and deduction shall be made from his or her injury time as a result of his or her disability under the Workmen's Compensation Laws of the State of New Mexico; provided that in no event shall the total amount deducted exceed the amount of the lump sum settlement made with the employee.

('74 Code, § 2-9-16) (Ord. 52-1978; Am. Ord. 69-1988; Am. Ord. 29-1998)

**§ 3-1-16 LEAVE WITH PAY.**

(A) Leave with pay may be authorized in writing by the Chief Administrative Officer for any employee to attend an official meeting where the good of the city service is involved, or to serve required court-related duty, or to attend an educational institution, or to secure special instruction, or to testify on behalf of the city in Court. If an employee is required to serve court-related duty, any compensation he or she receives for such duty shall be paid to the city by the employee.

(B) Four bargaining unit members who are designated by a union as the union's negotiating team pursuant to § [3-2-12](#), Labor-Management Relations, will receive leave with pay to attend scheduled bargaining sessions with the city negotiating team which occur during the employee's normal work hours. This benefit is limited to the bargaining necessary to negotiate the collective bargaining agreement and does not include ongoing negotiations during the term of a collective

bargaining agreement. Leave for collective bargaining may begin no earlier than 60 days prior to expiration of an existing agreement and ends when tentative agreement is reached on a successor agreement. This leave must be approved by the Chief Administrative Officer upon the verification of the City's lead negotiator. The Chief Administrative Officer shall promulgate rules of procedure concerning leave for collective bargaining.

(C) Military leave with pay will be authorized for permanent employees who are members of the National Guard or Air National Guard of New Mexico or any organized reserve unit of the armed forces of the United States, including the Public Health Service, for a period not to exceed 15 working days in each federal fiscal year which begins October 1, in addition to other authorized leave, when they are ordered to active duty training with such units. Permanent employees who are members of an unorganized reserve component may be granted military leave not to exceed 15 working days in each federal fiscal year which begins October 1, for the purpose of attending organized courses of instruction or training periods authorized such personnel. Permanent employees called to active military duty in emergencies declared by the Governor or the President for short periods of time not to exceed 15 days may be granted military leave.

(D) Upon the specific recommendation of the department director, the Chief Administrative Officer may grant leave with pay for a period not to exceed six calendar months to permanent employees having at least five years continuous service and 12 calendar months to permanent employees having at least ten years continuous service in the city upon demonstration of extreme hardship, due to personal injury or sickness. No employee will be eligible for such leave unless he has clearly exhibited exceptional performance of duties which have been specifically so certified by the employee's department head. Leave with pay for such purposes may be granted by the Chief Administrative Officer only after usage of vacation leave, sick and emergency leave and injury time, and only if the employee is not eligible for pension benefits under the city or state retirement programs or under Federal Social Security. A decision of the Chief Administrative Officer not to grant such leave with pay will not be the subject of a grievance as defined in this article.

(E) Leave with pay for an employee's birthday is authorized for any employee who is not represented by an employee organization as defined in §§ [3-2-1](#) et seq., Labor-Management Relations, in collective bargaining. If the employee's birthday falls on a day other than a normal working day, or if the employee is required to work on the birthday, the employee may select an alternate day, but such day must be approved by the division or department head.

(F) An employee under investigation by the city for alleged misconduct may be placed in leave with pay status during the investigation. Such leave shall be limited to 30 working days. Leave in excess of 15 working days shall require approval by a committee composed of the Director of the Human Resources Department, the Director of the Office of Employee Relations and the City Attorney, or their designees.

(G) The Chief Administrative Officer may develop a leave program for the purpose of allowing city employees to act as loaned executives.

(H) Leave with pay may also be authorized by the Chief Administrative Officer for services or activities of an employee outside of the scope of his or her employment which can be reasonably anticipated to directly or indirectly benefit the city.

('74 Code, § 2-9-17) (Ord. 52-1978; Am. Ord. 69-1988; Am. Ord. 30-1989; Am. Ord. 47-1989; Am. Ord. 29-1998)

**§ 3-1-17 LEAVE WITHOUT PAY.**

(A) An employee may be granted leave without pay for a period not to exceed one year as a result of sickness or disability when certified by a qualified doctor of Medicine (M.D.), Osteopathy (D.O.), or Podiatry (D.P.M.), or to run for public office, or for additional vacation time, or for good and sufficient reason which the Chief Administrative Officer considers to be in the best interests of the city.

(B) Leave without pay may be granted for the purpose of attending schools for courses only when it is clearly demonstrated that the subject matter is directly job related and will result in improved job effectiveness in the organization.

(C) A permanent employee who has been elected or appointed to a public office may be granted sufficient leave without pay to enable the employee to hold the office.

(D) Except under unusual circumstances, voluntary separation to accept employment not in the city service shall be considered by the Chief Administrative Officer as insufficient reason for granting a leave of absence without pay.

(E) Such leaves of over two calendar weeks shall require written approval of the Chief Administrative Officer. Leaves of two calendar weeks or less may be granted by the employee's department head.

(F) For good cause and under exceptional circumstances, a request for extension of leave without pay may be approved by the Chief Administrative Officer.

('74 Code, § 2-9-18) (Ord. 52-1978; Am. Ord. 69-1988; Am. Ord. 29-1998)

**§ 3-1-18 LAYOFF.**

(A) Layoff is defined as the involuntary separation of classified, nonprobationary employees from City service as a result of the abolishment of a position, program elimination or a lack of funds. Probationary, unclassified, temporary, seasonal and student employees are not eligible for layoff privileges.

(B) The Chief Administrative Officer and the Director of the Human Resources Department are responsible for approving all layoffs and offering transfers or placement offers to employees who are or may be identified for layoff. Prior to a layoff, the Chief Administrative Officer shall develop a layoff plan which must be based on seniority principles and applicable collective bargaining agreements.

(C) If practicable, prior to the implementation of the layoff plan, the Chief Administrative Officer shall offer voluntary transfers to employees affected by the plan to avoid placing employees in layoff status. These voluntary transfers will be offered using seniority principles and respecting any applicable collective bargaining agreements. If practicable, the layoff plan shall provide for the retention of employees with more than five (5) years of continuous City service. Employees placed in layoff status will be terminated two (2) years from the effective date of layoff if they have not been placed or upon refusal to accept an offer of transfer or placement of equal grade or comparable pay.

(Ord. 21-2002)

**§ 3-1-19 RESIGNATIONS.**

(A) Any employee of the city wishing to leave the service in good standing shall notify his or her immediate supervisor in writing at least two weeks before leaving.

(B) Unauthorized absence from work for a period of three consecutive regularly scheduled work shifts or three working days, whichever is greater, may be considered as an automatic resignation. Such an automatic resignation is not the subject of a grievance as defined in this article, but shall be subject to the procedure in § 3-1-22(C) of this article.

('74 Code, § 2-9-19) (Ord. 52-1978; Am. Ord. 29-1998)

**§ 3-1-20 DISPOSITION OF AWARDS.**

(A) Nothing contained in this article shall prohibit the city from developing methods of rewarding employees by the giving of a reward, bonus, leave with pay or any other form of remuneration or extra compensation in addition to the regular compensation and employee benefits to a classified or unclassified employee so long as all of the following conditions are met:

(1) The employee renders service that is outside of and in addition to the normal requirements and expectations of his or her employment;

(2) The city reasonably anticipates some tangible or intangible benefit from such service; and

(3) The service rendered results from a pre-existing plan or program authorized by the Chief Administrative Officer which sets up a specific criteria for such extra compensation.

('74 Code, § 2-9-21) (Ord. 52-1978; Am. Ord. 29-1998)

**§ 3-1-21 POLITICAL ACTIVITY.**

No employee shall participate in the following types of political activity:

(A) Using his or her position or employment with the city to influence support of other officials or employees of the city for or against any candidate or issue or political action committee or other similar organization in any election or pre-election activity; provided, however, that nothing herein shall deny the right of an official or employee of the city to express his or her views on any issue.

(B) Being a candidate for or holding any elective city office.

(C) Accepting and/or soliciting campaign contributions for any candidate or political action committee or other similar organization in any election or pre-election activity, during working hours, at a City workplace, or in the scope of their City employment.

(D) Accepting and/or soliciting contributions for the benefit of a city employee or official for political purposes during working hours, at a city workplace, or in the scope of his or her city employment.

('74 Code, § 2-9-23) (Ord. 52-1978; Am. Ord. 31-1985; Am. Ord. 29-1998; Am. Ord. 47-2000; Am. Ord. 47-2004)

### § 3-1-22 EMPLOYEE MEDIATION.

(A) The Employee Mediation Program is established to:

(1) Encourage city employees to resolve work place conflicts early, informally and with minimum intervention from administration;

(2) Address conflict in the work place constructively through communication and collaboration whenever possible.

(3) Aid direct communication and problem solving between individuals;

(4) Provide neutral mediators to help informal, direct communication and conflict resolution within each department of the city; and

(5) Provide a resource to each department to minimize the costs of conflict.

(B) All city employees will be notified of and encouraged to use the Employee Mediation Program to address work place conflict, including conflict between employees and conflict between an employee and a supervisor. Participation in the mediation program is voluntary. Participation in the mediation will not affect access to other procedural remedies for employees.

(C) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CONFLICT.** Any misunderstanding, miscommunication or difference of opinion which could affect morale or productivity in the work place.

**COORDINATOR.** The person in the city's Alternative Dispute Resolution (ADR) office who administers the Employee Mediation Program.

**MEDIATION.** A specific informal meeting process which aids communication and problem solving, the goal of which is to enhance communication and promote a "win-win" approach to conflict resolution among the participants.

**MEDIATORS.** Individuals available through the city's ADR office who may be a city employee from any classification who is trained and skilled in the mediation process, or who may be someone other than a city employee who is trained and skilled in the mediation process and has entered into a contract with the city to provide mediation services.

**PARTICIPANTS.** Individuals excluding the mediators who attend a mediation meeting for the purpose of assisting in conflict resolution.

(D) Mediation Procedure.

(1) Mediation is initiated by any city employee by contacting the Coordinator by telephone, in writing or in person. Mediation may be initiated at any point during the conflict resolution process, but employees and supervisors should attempt to use the mediation process at an early stage in their conflict resolution efforts.

(2) During the intake process, the Coordinator will assist employees in identifying the participants and the goals of the mediation.

(3) The mediation will take place during business hours in a neutral site at a time mutually acceptable to the participants. The mediation shall be conducted in accordance with the Employee Mediation Program Guidelines. Any resolution resulting from the mediation must comply with all applicable laws, policies, rules and procedures.

(Ord. 29-1998)

**§ 3-1-23 DISCIPLINARY ACTIONS.**

(A) (1) Employees may be disciplined by written reprimand, suspension, demotion or dismissal. Just cause for discipline is any behavior significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the city. Just cause shall also include prohibited retaliation as defined in the Whistleblower Ordinance and the Accountability in Government Ordinance and the filing of frivolous complaints or complaints based on false or confidential information pursuant to the Whistleblower Ordinance and the Accountability in Government Ordinance. The Chief Administrative Officer may enumerate in Personnel Rules and Regulations examples of behaviors that constitute just cause.

(2) The Chief Administrative Officer, a Deputy Chief Administrative Officer, a department director or an acting department director may impose any discipline. Division heads may issue reprimands and suspend an employee for five days or less after informing the

department head. An employee's immediate supervisor may issue a reprimand after informing the division head or department head.

(3) Prior to passage of any year-end appropriation clean-up bill, the Chief Administrative Officer shall review expenditures of each City program strategy and determine which program strategies overspent their annual appropriations in excess of five percent or \$100,000, whichever is lower, prior to Council appropriation of the amount overspent. This level of overexpenditure constitutes a violation of §§ [2-11-12](#) and [2-11-16](#) ROA 1994. Because management of program finances to conform to City ordinances is a primary responsibility of all City program directors, the Chief Administrative Officer shall place a written reprimand in the personnel file of any program director whose program is overspent by five percent or \$100,000, whichever is lower, prior to Council appropriation. A program director who receives three reprimands for overspending his or her budget prior to the passage of any year-end appropriation clean-up bill by the Council during a five-year period demonstrates a lack of financial management skills critical to fulfilling the duties of a program director and, therefore, shall be demoted one grade and transferred to a position without financial management responsibility.

(4) As a requirement of assuming office, each department director shall execute an employment contract with the City, one of the provisions of which shall be that he or she will not allow their department to overspend their appropriated budget nor allow any program strategy to overspend its appropriated budget prior to the passage of any year-end appropriation clean-up bill by the Council. Department directors responsible for departments that overspend their budget prior to the passage of any year-end appropriation clean-up bill in two years during a period of four years shall be terminated. The Chief Administrative Officer shall place a written reprimand in the personnel file of any department directors in the event that a program in the department under the responsibility of the director similarly overspends its budget appropriation.

(B) No person except the Chief Administrative Officer shall discipline heads of departments. Only the Accountability in Government Committee may discipline the Director of the Office of Internal Audit and Investigations. In addition, only the Director of Council Services may discipline other employees of the Department of Council Services, and only the Director of the Office of Internal Audit and Investigations may discipline other employees of the Office of Internal Audit and Investigations.

(C) Before discipline is imposed, the employee shall be notified of the reasons for which discipline is contemplated, a summary of the evidence against the employee, and the employee's right to respond to the proposed action. After giving the employee the notice of contemplated action and before the employee makes any written or oral response, the supervisor contemplating the discipline shall request review by the City Employee Mediation Program Coordinator of the circumstances on which the contemplated action is based in an effort to avoid the discipline. Mediation shall occur if it is deemed appropriate by the Coordinator. After this review or if mediation is unsuccessful, the supervisor may continue with the contemplated disciplinary procedure by giving the employee the right to respond to the notice of contemplated action.

(D) Suspensions shall not exceed 90 calendar days for any offense. The Chief Administrative Officer or department head has the option on a suspension of five days or less to

prohibit the employee from attending the work place or to allow the employee to work through the suspension with pay. Suspensions may be held in abeyance for a stated period of no longer than six months.

(E) The Chief Administrative Officer shall promulgate rules of procedure concerning disciplinary actions.

(F) Any disciplinary action shall be noted in the employee's personnel file.

('74 Code, § 2-9-24) (Ord. 52-1978; Am. Ord. 48-1988; Am. Ord. 30-1989; Am. Ord. 55-1989; Am. Ord. 29-1998; Am. Ord. 13-2001; Am. Ord. 9-2002; Am. Ord. 2-2004; Am. Ord. 1-2005)

### **§ 3-1-24 THE GRIEVANCE RESOLUTION PROCEDURE.**

(A) **PURPOSE.** The Grievance Resolution Procedure provides a means for reconciling complaints concerning minor disciplinary actions and working conditions or departmental rules. The purpose of this grievance procedure is to promote harmonious relations among employees, supervisors and managers; to encourage the settlement of disagreements informally at the employee-supervisor level; to provide an orderly procedure to handle grievances through the various supervisory levels when necessary; to resolve grievances as quickly as possible; and to discourage the filing of unfounded grievances.

(B) **SCOPE.** This grievance procedure applies to all permanent classified employees who are not covered by labor agreements providing an alternate grievance procedure.

(C) **DEFINITIONS.** For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**EMPLOYEE.** Includes all permanent classified city employees.

**GRIEVANCE.** A formal complaint regarding disciplinary suspensions of five days or less, letters of reprimand and the application of existing rules, regulations, or policies.

**GRIEVANCE COMMITTEE.** A neutral ad hoc committee composed of four permanent city employees (two supervisory and two nonsupervisory) randomly selected by the Chief Administrative Officer to investigate and recommend solutions to an employee grievance.

**GRIEVANT.** The employee who files a grievance.

**REPRESENTATIVE.** An individual duly authorized by an employee to act on the employee's behalf.

(D) **GRIEVABLE AND NONGRIEVABLE ISSUES.**

(1) To be reviewable under the grievance procedure an issue must:

- (a) Concern matters or specific incidents that have occurred, and
- (b) Result from an act or omission by management regarding aspects of employee-employer relations over which the department director has control, and
- (c) Arise out of a specific situation or act that has resulted in inequity or damage to the employee.

(2) An issue is not reviewable under this grievance procedure if it is a matter which:

- (a) Is subject to those management rights (specified elsewhere in this article and in the Labor-Management Relations Ordinance) which are necessary to exercise control and discretion over the organization and efficiency of the operations of the city;
- (b) Would require modification of a policy established by the City Council, State or Federal law;
- (c) Has been reviewed via another grievance procedure (as authorized in an agreement with a labor organization);
- (d) Is reviewable under the Personnel Rules and Regulations or another administrative procedure;
- (e) Is subject to the provisions of the Labor-Management Relations Ordinance.

(3) The Chief Administrative Officer or designee shall decide whether the issue is grievable as defined in this article. This decision is final. The Chief Administrative Officer or his designee may not determine that a claim of retaliation pursuant to the Whistleblower Ordinance is not grievable.

(E) STEPS IN THE GRIEVANCE PROCEDURE. An employee must take the following steps to submit a grievance pursuant to this policy. If at any step the employee fails to take action within the allotted time, the grievance procedure will be concluded. If at any step a city representative, the Chief Administrative Officer or a grievance committee fails to take action within the allotted time, the procedure shall move to the following step.

(1) Step One. The employee initiates the grievance by submitting a written request for review of the dispute by the City Employee Mediation Program within ten calendar days from the date of the act or from the point that the employee became aware of the occurrence. If the 10th day is a weekend or holiday, the following day of business becomes the "10th day". Within seven calendar days, the Coordinator of the City Employee Mediation Program will determine if mediation of the dispute is appropriate. If so, mediation will be held according to the guidelines for the City Employee Mediation Program.

(2) Step Two. If the Coordinator determines that mediation would not be appropriate or if mediation is conducted and the dispute is not resolved, within seven calendar days after the

mediation or the decision of the Coordinator, the employee shall submit a written grievance to his or her department director. The written grievance shall contain the employee's name, department, position, and immediate supervisor; the date of the alleged incident; a statement of the problem and the employee's suggested solution. Either the employee or the director may request a meeting, but it is the director's option to respond only in writing. Within seven calendar days from receipt of the grievance or a meeting, whichever is later, the department director must submit a written response to the employee.

(3) Step Three. If the employee is not satisfied with the Department Director's decision, the employee may submit the written grievance described in Step Two to the Chief Administrative Officer who will convene a grievance committee to investigate the dispute and recommend a resolution. The committee will recommend a resolution of the grievance to the Chief Administrative Officer. The Chief Administrative Officer will review the Committee's recommended resolution, provide a final written resolution to the grievance and forward it to the employee and the Department Director. The Chief Administrative Officer's decision is the final step in the administrative process.

#### (F) GENERAL PROVISIONS.

(1) Grievances may be initiated only by the employee concerned and may not be pursued without the affected employee's consent.

(2) Once a grievance has been investigated and denied, repeated filing of grievances on the same issue will not be permitted.

(3) While the grievant may designate a representative at any step of the grievance procedure, labor unions do not have representation rights for nonbargaining unit employees. A grievance committee is not required to recognize more than one representative for any grievance.

(4) If the grievance involves a group of employees or if several employees file separate grievances on the same matter, the grievances may be handled as a single grievance.

(5) The City Clerk's office will act as facilitator for the Grievance Committee to ensure that the Committee has access to all information necessary to conduct the investigation. The Committee will have the authority to call witnesses and to review all necessary records and reports.

(6) Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved.

#### (G) ADDITIONAL GUIDELINES.

(1) Employees and supervisors are strongly encouraged to request mediation at any step in this process.

(2) Any grievance will be considered resolved at the completion of any step if all parties are satisfied or if the employee concerned chooses not to present the matter to the next step of the procedure within the prescribed period.

(3) As a condition of employment, employees shall be required to appear as witnesses in grievance resolution hearings when requested by the grievant or by the members of the city administrative staff. In addition, refusal to appear or participate in the grievance resolution procedure at any stage by a grievant shall result in forfeiture by the grievant of any further right to use of the grievance resolution procedures to resolve the grievance.

(4) The Director of Human Resources shall develop written guidelines for the operation of the Grievance Committee, addressing such issues as confidentiality of information revealed to the Committee and bias or interest of Committee members, and operating procedures.

(5) Following completion of the grievance process, department managers shall ensure the grievant experiences no retaliation for having pursued the grievance. Any Chief Administrative Officer direction associated with the grievance resolution is to be carried out as quickly as possible.

('74 Code, § 2-9-25) (Ord. 52-1978; Am. Ord. 6-1987; Am. Ord. 48-1988; Am. Ord. 30-1989; Am. Ord. 46-1995; Am. Ord. 29-1998; Am. Ord. 2-2004)

#### **§ 3-1-25 APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE.**

(A) A nonprobationary employee who has been suspended without pay for more than five days, demoted for disciplinary reasons, or discharged may appeal the discipline to the Personnel Board within ten calendar days of the occurrence of the disciplinary decision. The appeal shall be in writing and shall be submitted to the Chief Administrative Officer with a copy to the employee's department head. The Chief Administrative Officer shall promptly refer the request to the Personnel Board for a hearing on the matter.

(B) The written appeal shall include:

- (1) The employee's name, department, position, and immediate supervisor;
- (2) The discipline imposed and a brief summary of the offense for which the discipline was imposed; and
- (3) The reason the employee disagrees with the discipline.

(C) The Personnel Board shall refer the appeal to a Personnel Hearing Officer to conduct an evidentiary hearing. The Hearing Officer shall prepare and submit to the Board and the parties a report containing a summary of the evidence taken at the hearing and proposed findings of fact. The city and the employee may submit exceptions to the Hearings Officer's report and written argument within the time allowed by the Board's procedural rules.

(D) The Board shall render a decision that shall include findings of fact and conclusions of law consistent with the evidence. The proceedings before the Personnel Board shall be limited to consideration of the Hearing Officer's Report, any written submissions of the parties, and, at the Board's option, oral argument by the parties concerning the evidence admitted at the hearing. The Board shall not hear any testimony. A tie vote upholds the recommendation of the Hearing Officer.

(E) The Board may take one of the following actions:

(1) Accept the recommendation of the Hearing Officer by accepting the Hearing Officer's Proposed Findings of Fact and entering conclusions of law consistent with the findings;

(2) Reverse or modify the recommendation of the Hearing Officer by making its own Findings of Fact consistent with the evidence and entering conclusions of law consistent with the findings; or

(3) Remand the matter to a Personnel Hearing Officer for further hearing.

(F) The employee or the city may appeal the decision of the Personnel Board to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision shall be affirmed unless the decision is found to be:

(1) Arbitrary or capricious and unsupported by substantial evidence;

(2) In violation of applicable constitutional provisions or otherwise illegal; or

(3) In excess of the statutory authority or jurisdiction of the Board.

(G) The Personnel Board shall promulgate rules of procedure for hearings before Personnel Hearing Officers and its own meetings.

(H) The Personnel Hearing Officers have the power to administer oaths, subpoena witnesses and compel the production of documents pertinent to any hearing authorized by this article. As a condition of employment, employees may be required to appear as witnesses in hearings. Refusal to testify in an appeal hearing under this article is grounds for disciplinary action. An employee who files an appeal and refuses to appear or participate in the appeal process at any formal stage forfeits any further right to continue that appeal.

(I) An employee who appeals a disciplinary action shall be free from discrimination, restraint, coercion or reprisal by any supervisor or employee. However, appealing or showing an intention to appeal does not relieve any employee in any way of his or her responsibility to perform his or her assigned duties promptly, efficiently and completely.

(Ord. 29-1998)

**§ 3-1-26 PERSONNEL HEARING OFFICER.**

(A) The Chief Administrative Officer shall determine how many Personnel Hearing Officers are required for the efficient operation of the disciplinary appeal procedure and initiate the selection procedure prescribed in this article.

(B) Personnel Hearing Officers shall be selected based on competitive sealed proposals that contain a statement of the applicant's qualifications for the position and a writing sample. The city shall publish notice of requests for proposals in a newspaper of general circulation not less than ten days before the closing date for receipt of proposals. The Chief Administrative Officer shall name an ad hoc advisory committee to evaluate the proposals and submit a ranked list of applicants. The Chief Administrative Officer shall select Hearing Officer(s) from the names submitted by the committee, subject to the approval of the Council.

(C) A Personnel Hearing Officer shall be an attorney licensed to practice in New Mexico or a person experienced in employer-employee relations or personnel administration. Personnel Hearing Officers shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.

(D) A Personnel Hearing Officer shall provide services under a contract with the city and shall not be considered an employee of the city for any purpose. The term of a contract shall be no more than two years. The contract may provide for part-time services. The contract may not be terminated by the city for any reason except violation of the Code of Judicial Conduct. In the event the city does not have a contract with any Hearing Officer, the Personnel Board may appoint or the parties may agree to a Hearing Officer to hear a specific case.

(E) A Personnel Hearing Officer shall not be actively involved in the political affairs of the city.

(F) No person shall attempt to influence a Personnel Hearing Officer's findings and conclusions pursuant to this article except during a hearing or in the presence of a representative of the opposing party.

('74 Code, § 2-9-27) (Ord. 6-1987; Am. Ord. 29-1998)

### **§ 3-1-27 EMPLOYEE ORGANIZATION AGREEMENTS.**

(A) The provisions of this article shall apply to all city employees; provided, however, that where a collective bargaining agreement, which has been ratified and approved by the Mayor in accordance with §§ [3-2-1](#) et seq., Labor-Management Relations, conflicts with a provision of this article, the collective bargaining agreement shall, with respect to those employees covered by the agreement, govern over such provision of this article unless it is one establishing:

- (1) Classified and unclassified service;
- (2) Methods of service rating of unclassified employees; or

(3) Methods of initial employment, promotion recognizing efficiency and ability as the applicable standards, and discharge of employees.

(B) In the case of a conflict between a collective bargaining agreement and a provision establishing any of the above, this article shall govern.

('74 Code, § 2-9-26) (Ord. 52-1978; Am. Ord. 46-1995; Am. Ord. 29-1998)

## **ARTICLE 2: LABOR - MANAGEMENT RELATIONS**

### Section

- [3-2-1](#) Short title
- [3-2-2](#) Purpose
- [3-2-3](#) Definitions
- [3-2-4](#) Right to organize and bargain collectively
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- [3-2-10](#) Hearings and decisions
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- [3-2-13](#) Negotiating procedures
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- [3-2-16](#) Applicability

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[3-2-18](#) Consistency with City Budget Ordinance

**§ 3-2-1 SHORT TITLE.**

This article may be cited as the "City of Albuquerque Labor-Management Relations Ordinance."

('74 Code, § 2-2-1) (Ord. 153-1971; Am. Ord. 4-1977)

**§ 3-2-2 PURPOSE.**

The City Council declares that it is the public policy of the city, and purpose of this article:

(A) To allow the city employees to organize and bargain collectively with the city government;

(B) To promote harmonious and cooperative relationships between all parties; and

(C) To protect the public interest by assuring, at all times, the orderly and uninterrupted operations and functions of the city government.

('74 Code, § 2-2-2) (Ord. 153-1971; Am. Ord. 121-1972; Am. Ord. 4-1977)

**§ 3-2-3 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BOARD.*** The City Labor-Management Relations Board.

***CITY EMPLOYEE.*** Any permanent, non-probationary employee of the city except officials elected by popular vote or appointed to fill vacancies in elective offices; members of boards, commissions, and heads of agencies appointed by the Mayor; heads of agencies appointed by boards and commissions; supervisors; temporary or seasonal employees; employees paid wholly and directly from funds of the United States Government; and individuals privy to confidential matters of the city government affecting the employer-employee relationship.

***CITY GOVERNMENT.*** The government of the city acting through and for its agencies, departments, divisions and branches and bureaus.

***COLLECTIVE BARGAINING.*** A procedure whereby representatives of the city government and an employee organization meet, confer, consult, and negotiate with one another in a good-faith effort to reach agreement or otherwise resolve differences relating, or with respect, to wages, hours and other terms and conditions of employment.

**EMPLOYEE ORGANIZATION.** Any organization or labor union whose primary purpose is to represent city employees in collective bargaining, on matters pertaining to wages, hours, terms and conditions of employment, but it does not include any organization that:

- (1) Advocates the overthrow of the constitutional form of government in the United States by other than lawful means; or
- (2) Discriminates with regard to the terms or conditions of membership because of race, color, sex, creed, age, or national origin; or
- (3) Has a primary purpose other than representing employees in collective bargaining with their employer, or other than as an association or organization formed for the advancement of, or in behalf of, a specific profession or vocation.

**IMPASSE.** The failure of the parties to agree with respect to any issue or issues which are subject to collective bargaining over which the parties have negotiated in good faith, and with respect to which neither party is willing to make further concessions.

**PROFESSIONAL EMPLOYEE.** Any city employee engaged in work that:

- (1) Is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
- (2) Involves the consistent exercise of discretion and judgment in its performance;
- (3) Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period;
- (4) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of a specialized intellectual instruction and study in an institution of higher learning or hospital, as distinguished from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

**STRIKE.** The willful failure or refusal to report for duty, the willful absence from one's assigned position, the complete or partial cessation of work, by one or more employees, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment by one or more city employees where a purpose of such action is to induce, influence or coerce a change in, or the enforcement of, any term or condition of employment or compensation, or any right, privilege or obligation of employment; or any term or provision of a collective bargaining agreement, or proposal advanced in the course of collective bargaining.

**SUPERVISOR.** Any individual having authority in the interest of the city employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action; if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. In the

Police and Fire Departments, chiefs, deputy chiefs, and assistant chiefs are the only employees classified as supervisors.

('74 Code, § 2-2-3) (Ord. 153-1971; Am. Ord. 4-1977)

**§ 3-2-4 RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY.**

(A) City employees have the right to form, join and otherwise participate in the activities of an employee organization of their own choosing for the purpose of bargaining collectively with the city government, and for other lawful reasons. City employees also have the right to refuse to join and participate in the activities of employee organizations. An employee organization which has been certified by the Mayor as the exclusive bargain representative for an appropriate bargaining unit of the city employees may bargain collectively with the city government concerning hours, salary, wages, working conditions, and all terms and conditions of employment.

(B) Nothing contained in this article shall be construed to limit, impair, or affect the rights of any individual city employee to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of city employment or their betterment aside from the method described herein, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of his employment.

(C) No organization, its representative or other individual, shall be allowed to solicit membership for an employee organization or labor union during such employees' duty hours.

('74 Code, § 2-2-4) (Ord. 153-1971; Am. Ord. 4-1977)

**§ 3-2-5 MANAGEMENT RIGHTS.**

Subject to existing law, the Mayor and his administrative staff shall have the following rights:

- (A) To direct the work of its employees;
- (B) To hire, promote, evaluate, transfer and assign employees;
- (C) To demote, suspend, discharge or terminate employees for just cause;
- (D) To determine staffing requirements;
- (E) To maintain the efficiency of the city government and ensure the carrying out of normal management functions;
- (F) To take actions as may be necessary to carry out the mission of the city government in emergencies; and

(G) To manage and to exercise judgment on all matters not specifically prohibited by this article or by a collective bargaining agreement in effect between the city employer and an employee organization.

('74 Code, § 2-2-5) (Ord. 153-1971; Am. Ord. 4-1977)

**§ 3-2-6 DETERMINATION OF REPRESENTATION.**

(A) Any employee organization may file a written request with the Mayor asserting that a majority of the members of a bargaining unit of the city desires to be represented by it for the purpose of collective bargaining and asking to be recognized as the exclusive bargaining representative. The request shall include a demonstration of support of at least 30% of the employees in the bargaining unit by means of a dated membership list or signed and dated membership cards of those employees desiring representation. Notice of the request shall be posted on the next working day following the filing of the request, by the City Human Resources Department in a place conspicuous to the city employees in the bargaining unit.

(B) Other employee organizations may file with the Mayor a written claim, within ten days after the posting of the notice of the request as specified in division (A) above, showing a demonstration of support of at least 10% of the employees in the bargaining unit by means of a dated membership list or signed and dated membership cards of those employees desiring representation. Notice of this claim shall also be posted on the next working day following the filing of the claim, by the City Human Resources Department in a place conspicuous to the city employees in the bargaining unit.

(C) If an employee organization wishes to solicit membership cards from city employees who are not in an existing bargaining unit, upon request, the Mayor shall provide a list of the requested employees to the employee organization. If the Mayor finds that the employee organization subsequently presents a valid demonstration of support from fifty percent of the employees, plus one additional employee, in the proposed unit, and that no other employee organization has filed a written claim under subsection (B) of this section, the Mayor shall certify the employee organization as the exclusive representative of the bargaining unit. If, within 10 working days of receiving the request for recognition and demonstration of support, the Mayor finds that it is unclear or the Mayor disputes that the employee organization has presented a valid demonstration of support from fifty percent plus one of the employees in an appropriate bargaining unit, or if the Mayor finds that a second employee organization has met the conditions of subsection (B) of this section, or if the Mayor finds that there is a dispute over the appropriate bargaining unit, or if the employee organization has filed a request for an election supported by 30% of the employees in the bargaining unit, the Mayor shall refer the matter to the Labor-Management Relations Board for resolution.

(D) Upon referral of a dispute over whether an employee organization represents a majority of the employees in an appropriate bargaining unit, or if, within 10 days of the filing of a request for recognition, the Mayor has made no decision regarding certification or referral to the Labor-Management Relations Board, the Board shall take one of the following actions:

(1) Review the employee organization's showing of interest and resolve any disputes over whether the employee organization has presented a valid demonstration of support from 50% of the employees, plus one additional employee, in an appropriately constituted bargaining unit. If the Board finds the employee organization's demonstration of support does not exceed 50% of the employees in an appropriate bargaining unit, the employee organization shall have five additional working days to submit supplemental demonstration of support. If the Board determines that a majority of city employees in an appropriately constituted bargaining unit support representation by the employee organization for the purpose of collective bargaining as provided for in this article, the Mayor shall certify that employee organization as the exclusive representative for the bargaining unit; or

(2) If the employee organization has demonstrated support from at least 30% of the employees in the bargaining unit, but less than a majority of the employees in the bargaining unit, the Board shall call and hold a representation election within 45 days from the date of the posting of the notice to determine whether an employee organization shall be the exclusive representative for the unit.

(3) Neither an election nor certification by a showing of interest shall occur if:

(a) There is currently in effect a lawful written agreement between the public employer and an exclusive bargaining representative for the bargaining unit involved; or

(b) Within the preceding 12 months there has been held a representation election or a decertification election for the bargaining unit; or

(c) In the opinion of the Board after holding such hearing as may be appropriate, the bargaining unit described in the request for representation is not an appropriate unit in accordance with this article, or that such appropriateness has not yet been determined by the Board. If the Board subsequently determines that the requested bargaining unit is appropriate, the Board shall then certify the employees organization's showing of support or call and hold a representation election as provided above.

(4) In the event an employee organization fails to be certified as the exclusive bargaining representative after a showing of interest and/or election, employees in that bargaining unit may be included in an alternate bargaining unit for the purposes of a new organizational effort by that employee organization. Each such alternate unit shall be in itself an appropriate bargaining unit. The Board shall combine the alternate units if the employee organization becomes the exclusive bargaining representative of more than one such alternate unit.

(E) The Board shall call and hold all elections within the time limits established by this article and according to the following:

(1) Included on the ballot in a representation election shall be any employee organization which has submitted evidence of support of at least 30% of the city employees in the bargaining unit, in accordance with division (A) above, any employee organization which has

submitted evidence of support of at least 10% of the city employees in the bargaining unit in accordance with division (B) above, and a choice for no representation. The choices on a ballot in a decertification election shall be the incumbent exclusive bargaining representative and no representation;

(2) Voting shall be by secret ballot;

(3) All city employees in the bargaining unit involved shall have the right to vote;

(4) If the majority of the ballots cast are in favor of representation by an employee organization for the purpose of collective bargaining as provided by this article, the Mayor shall certify that employee organization as the exclusive bargaining representative for the bargaining unit. If a majority of the employees voting do not vote for representation by an employee organization the unit shall not be represented.

(F) *Election disputes shall be resolved by the Board.*

(1) In the event of an election involving more than one employee organization, wherein no choice on the ballot receives the vote of a majority of the city employees voting, then and in such event a runoff election shall be held within 30 days with a choice consisting of the employee organization receiving the greatest number of votes in the original election and the choice of no representation. The determination of representative status in such runoff election shall be governed by the provisions set forth in division (D) above.

(G) The exclusive bargaining representative shall represent all employees covered by the terms of the collective bargaining agreement.

(H) The decertification of any employee organization which has been recognized as the exclusive bargaining representative of employees in an appropriate bargaining unit may be affected by the filing of a written request for decertification supported by either a showing that 30% of the employees in the bargaining unit seek to have a decertification election, or a statement by the city government that it harbors a good-faith doubt that the exclusive bargaining representative has the support of the majority of the employees in the bargaining unit. If, in the opinion of the Board, the showing of interest in support of such a petition is sufficient, or in the case of a petition filed by the city government, there is objective evidence to support a good-faith doubt as to the majority status of the exclusive bargaining agent, the Board shall call and hold a decertification election within 45 days from the date of the receipt of the request. If a majority of the city employees in the bargaining unit vote in favor of decertification of an employee organization, the Mayor shall decertify that employee organization as the exclusive bargaining representative for the bargaining unit.

(I) No decertification election shall be held if within the preceding 12 months the Board has held a representation election or a decertification election for the bargaining unit.

(J) No petition for representation or decertification shall be entertained by the Board unless such petition and the requisite showing of support therefor shall have been filed with the Board

during the 30-day period between the 120th day and the 90th day immediately preceding the expiration date of the contract.

(K) The existence of an exclusive bargaining representative shall not prevent city employees in or out of the bargaining unit from taking their grievances to their supervisor or the City Human Resources Department. Any action by the city government in connection with grievance handling shall not be inconsistent with this article or the terms and conditions of employment established by an exclusive bargaining representative and the city for the bargaining unit involved.

('74 Code, § 2-2-6) (Ord. 153-1971; Am. Ord. 69-1973; Am. Ord. 4-1977; Am. Ord. 4-2001)

### **§ 3-2-7 DUTY TO BARGAIN.**

The city government and any employee organization recognized as the exclusive representative for a unit, through their designated agents, shall bargain concerning hours, salary, wages, working conditions and other terms and conditions of employment not in violation of law or local ordinance and not in conflict with the provisions of §§ [3-1-1](#) et seq., the Merit System; Personnel Regulations, establishing classified and unclassified service, methods of service rating of classified employees, methods of initial employment, promotion recognizing efficiency and ability as applicable standards, discharge of employees, and grievance and appeal procedures for classified employees; provided, however, that the provisions of a collective bargaining agreement which has been ratified and approved by the Mayor shall, where in conflict with any other provision of §§ [3-1-1](#) et seq. govern. This duty includes an obligation to confer in good faith with respect to terms and conditions of employment.

('74 Code, § 2-2-7) (Ord. 153-1971; Am. Ord. 218-1972; Am. Ord. 4-1977; Am. Ord. 54-1978)

### **§ 3-2-8 DETERMINATION OF BARGAINING UNITS.**

(A) The appropriateness of the bargaining unit will be investigated and determined by the Board.

(B) Bargaining units shall be established by vocational groupings such as blue collar, maintenance, white collar or professional, with consideration being given as to whether they have traditionally been in these groupings. Individual crafts will not be designated as bargaining units unless they have been traditionally dealt with as a separate group by the city.

(C) In determining the appropriateness of a bargaining unit, the Board will consider:

(1) Whether the city employees have the same conditions of employment which apply uniquely to them;

(2) Whether the city employees have a mutuality of interest;

(3) How the public interest might best be served in determination of the bargaining unit.

(D) A bargaining unit shall not include both professional and non-professional city employees nor shall it include supervisors, security personnel other than commissioned police officers, jailers and matrons, or those privy to confidential information including but not limited to employees of the Personnel Department, Data Processing Department, Mayor's Office, the City Attorney's Office, secretaries to Department Heads, employees involved in payroll work and any persons privy to confidential information concerning employee relations.

('74 Code, § 2-2-8) (Ord. 153-1971; Am. Ord. 69-1973; Am. Ord. 4-1977)

**§ 3-2-9 PROHIBITED PRACTICES.**

(A) The city government is prohibited from:

(1) Interfering with, restraining or coercing city employees in the exercise of their rights under this article;

(2) Interfering with the formation or administration of any employee organization, interfering with the selection of an agent or representative for bargaining or adjustment of grievances;

(3) Discrimination in regard to hiring or conditions of employment for the purpose of encouraging or discouraging membership in any employee organization;

(4) Refusing to negotiate in good faith with a certified exclusive bargaining representative of an employee organization;

(5) Discharging or discriminating against a city employee because he has filed charges or given testimony under the provisions of this article;

(6) Violating a written agreement in force which was negotiated under the provisions of this article.

(B) An employee organization, a group of city employees, or a city employee individually is prohibited from:

(1) Interfering with, restraining, or coercing employees in the exercise of their designated duties or their rights under this article;

(2) Restraining, coercing, or interfering with the public employer in the selection of its agent for bargaining or for adjustment of grievances;

(3) Causing or attempting to cause a city supervisor to discriminate against a city employee because of membership or lack of membership in an employee organization;

(4) Refusing to negotiate and/or conduct business in good faith with the designated representative of the city government.

(5) Violating the provisions of any written agreement in force;

(6) Interfering with, restraining or coercing any official, administrative officer or representative of the city government in the conduct of his private business or personal affairs;

(7) Engaging in, inducing, or encouraging any city employee or group of employees to engage in a strike, a work stoppage, or work slowdown.

(C) It shall be a prohibited practice for any elected or appointed official of the city government or for any employee organization, group of city employees or individual city employee to attempt to influence negotiations or to interfere with the normal progress of negotiations between the duly authorized negotiating teams of the city government and of the employee organization.

(D) Any controversy concerning prohibited practices will be submitted to the Board within 30 days of the occurrence of the alleged prohibited practice. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon the accused party and the Board of a written notice together with a copy of the charges. The accused party shall have five work days within which to serve on the opposing party and the Board a written answer to such charges. Within five work days after service of the answer, the Board or its designee shall schedule a hearing to be conducted as soon as possible, and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses and submit evidence.

('74 Code, § 2-2-9) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 4-2001)

### **§ 3-2-10 HEARINGS AND DECISIONS.**

(A) The Board may promulgate rules of procedure for the conduct of the hearings and proceedings required by this article. The hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence. The Board's hearings and decisions shall be on the record. The Board shall have the authority to administer oaths, subpoena witnesses and compel the production of documents as it deems necessary to the conduct of its proceeding and its subpoenas shall be enforceable in the District Court.

(B) At the conclusion of each hearing, the Board shall announce on the record a decision and shall order such necessary relief as is consistent with the evidence, this article and applicable law. The Board shall memorialize in written form the decision and order announced on the record and shall state the Board's findings and conclusions.

(C) Whenever the Board receives a charge that alleges that a strike as defined by this article has occurred, the Board shall within 48 hours of notification of such prohibited practice charge give notice to all parties concerned, hear the matter in emergency session and announce its decision.

(D) An aggrieved party may appeal the decision of the Board within 30 days of the issuance of a written decision by following the Rules of Civil Procedure for the District Courts. The decision of the Board shall be affirmed unless the decision is found to be: arbitrary, capricious or an abuse of discretion; unsupported by evidence in the record taken as a whole; or, otherwise not in accordance with law.

(Ord. 4-2001)

#### **§ 3-2-11 PENALTIES AND SANCTIONS.**

(A) If the Board determines that a strike, as defined by this article, has occurred, the Mayor may terminate the collective bargaining agreement order decertification of the employee organization, and inform the employee organization that it no longer represents employees in the bargaining unit involved after the Mayor has met with representatives of the effected employee organization. The Mayor shall also notify the employees in the subject bargaining unit of such action and advise them that they will not be privileged to bargain with the city government through a collective bargaining agent for at least 12 months. In such a case, the employee organization that represented the employees who went on strike shall be prohibited from participating in a representation election for city employees for a minimum of 12 months.

(B) If the Board determines that a party has committed a violation of § [3-2-9](#), the appropriate District Court may, if requested:

(1) Issue an order restraining and enjoining such violation.

(2) In the case of a strike as defined by this article, the District Court may impose on the employee organization a fine which will be set in accordance with the damages and/or loss of revenue involved.

('74 Code, § 2-2-10) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 4-2001)

#### **§ 3-2-12 COLLECTIVE BARGAINING AGREEMENTS.**

(A) All agreements reached between the city and an exclusive bargaining representative as a result of collective bargaining will be reduced to writing in the form of a contract between the parties.

(B) The cost of writing and reproducing copies of such agreements shall be shared according to the number of copies desired by each party to negotiations.

('74 Code, § 2-2-11) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 12-1977; Am. Ord. 4-2001)

#### **§ 3-2-13 NEGOTIATING PROCEDURES.**

(A) *Negotiating Teams.*

(1) Negotiating teams will consist of a maximum of four persons designated by the employee organization and a maximum of four persons designated by the Mayor.

(2) Each side may invite one observer to each session to present technical data. Such observers will be allowed to present facts.

(B) *Contract Opening.*

(1) (a) Upon written request by the employee organization to the Mayor or his designee, or by the Mayor or his designee to the employee organization, negotiating sessions will be scheduled to discuss items mutually agreed upon.

(b) Such request for negotiating sessions shall indicate the matter to be discussed and shall be answered within ten working days.

(2) Not less than 60 days prior to the contract ending date, either side may request the opening of negotiations as indicated above.

(3) (a) Prior to the start of negotiations, the Mayor and the employee organization will designate their chairmen and spokesmen from among the designated members of their negotiating team.

(b) While normally communications will be from spokesman to spokesman, other negotiating team members may enter into discussions on specific subjects.

(C) *Procedure for Negotiations.*

(1) Negotiations will be conducted as provided below and will take place at the facilities and at a time mutually agreed to by the negotiating teams.

(2) All negotiations will be held in closed sessions.

(3) Negotiations will start with the negotiating team of the party requesting negotiations delivering their proposed changes, one section or subsection at a time. Each section will be read out loud with the changes and the reasons therefore indicated in some detail. This procedure will lessen the chances of misunderstandings and increase the chances for acceptance. This procedure will continue to be followed until the entire employee organization proposal has been presented.

(4) Upon complete presentation of the proposal, the other negotiating team will present their counter proposal in the same manner.

(5) Thereafter, each side will take turns presenting counter proposals with supporting data until agreement is reached a section at a time. It may be necessary to leave one section and go on to another in order to get a new look at the one passed up.

(6) Negotiating sessions will proceed with deliberate speed, but recesses and study sessions may be called for by either side. Prior to recess, the reconvening time will be agreed upon.

(7) Members of the employee organization negotiating team will be released from their normal duties without pay to participate in negotiations.

(D) *Tentative Agreement.*

(1) Tentative agreements reached during negotiations will be reduced to writing and initialed by each team spokesman.

(2) Such tentative agreement is conditional and may be withdrawn should later discussion change either team's understanding of the section as it relates to another part of the agreement.

(E) *Ratification.* Complete agreement on any matter in negotiations will be reached when the employee organization membership and the Mayor have ratified the agreement.

('74 Code, § 2-2-12) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 12-1977; Am. Ord. 4-2001)

**§ 3-2-14 IMPASSE PROCEDURES.**

(A) *Mediation.*

(1) If the parties have not reached agreement and an impasse exists, either party or the Board may call for mediation. Upon the declaration of impasse, the parties involved shall mutually agree upon a mediator or request the Federal Mediation and Conciliation Service to appoint an impartial and disinterested person to act as mediator. If the services of the Federal Mediation and Conciliation Services are not available, the parties shall request the Board to appoint a neutral and disinterested person to act as mediator. Only items negotiated but not agreed upon shall be submitted to mediation. The mediator shall not have the power to compulsion and shall meet with the parties to aid in resolving their differences and effectuate a settlement of the impasse.

(2) The parties shall not issue public announcements concerning negotiations during pendency of these impasse procedures.

(B) *Voluntary Binding Total Package Final Offer Arbitration.*

(1) If an impasse persists 15 days after the mediator has first met with the parties in joint session, the city and employee organization shall have the power to voluntarily agree to binding arbitration as a method of resolving the impasse. The agreement for arbitration shall be in writing and a copy shall be served upon the Board. The Board shall arrange for such arbitration consistent with the provisions of this article.

(2) Each party shall submit to the Board, within four days of the request for arbitration, its offer made to the other party resulting in the impasse, with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached. The parties may continue to negotiate during the arbitration proceedings until an agreement is reached or a decision rendered by the arbitrator.

(3) The submission of the impasse items to the arbitrator shall be limited to issues that had been considered by the mediator and upon which the parties have not reached agreement.

(4) The arbitrator shall be selected in the following manner:

(a) The negotiating teams of the city government and the employee organization may jointly agree on the selection of an arbitrator. The arbitrator shall not be an employee of the city or a union official.

(b) If agreement on the selection of the arbitrator cannot be reached, the negotiating teams shall jointly request a list of five names from the Federal Mediation and Conciliation Service from which the arbitrator shall be selected. The negotiating team that wins the flip of the coin shall have the right to strike the first name from the list submitted by the Federal Mediation and Conciliation Service. The negotiating teams shall continue to alternate striking names until one name remains. The remaining person shall be the arbitrator.

(5) The arbitrator shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

(6) From the time of selection until such time as the arbitrator makes his or her final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the arbitrator with parties other than those who are direct parties to the dispute. The arbitrator may conduct formal or informal hearings to discuss the content of the final total package offer submitted by each party.

(7) The arbitrator shall consider in his or her deliberations the following standards:

(a) The lawful authority of the city government;

(b) Stipulations of the parties;

(c) The interests and welfare of the public;

(d) The financial ability of the city government to meet costs;

(e) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other public sector employees performing similar services and with other employees generally in public employment in comparable communities;

(f) The relevant average consumer prices for goods and services, commonly known as the cost-of-living;

(g) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received;

(h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(i) The effect of financing the resulting decision on the normal level of services offered by the city government;

(j) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(8) Within 15 days after the conclusion of the presentation of the parties and submission of briefs, the arbitrator shall select the complete final offer submitted by one of the parties and shall issue an award incorporating that final offer without modification. The arbitrator shall give written explanation for the selection of the final offer and inform the parties of the decision.

(9) The final offer selected by the arbitrator and the items previously agreed upon by the city and the employee organization shall be deemed to represent the agreement between the parties.

(C) *Costs.* All costs for mediation and arbitration shall be borne equally by the city and the employee organization, except the cost of any representatives of each party shall be borne by that party.

(D) *Review of Arbitration Decision.*

(1) The decision and award of the arbitrator shall be reviewable in the appropriate District Court and subject to vacation, modification or remand of rehearing:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where the award was in excess of statutory authority or jurisdiction of the arbitrator;

(c) Where the award was made in violation of applicable constitutional provisions;

(d) Where the award was in violation of this article or affected by other error of law;

(e) Where the arbitrator committed acts unlawfully prejudicial to the rights of any party;

(f) Where the award exceeds the lawful authority of the city government as to funding, spending, or budgeting or would substantially impair or limit the performance of any statutory duty of the city government;

(g) Where the award is unsupported by substantial evidence or is arbitrary and capricious or characterized by clearly unwarranted exercise of discretion.

(E) *Resort to Procedure not a Condition Precedent to suit.* The impasse procedures set forth herein are voluntary and shall not constitute a condition precedent to the bringing of any action for relief in an appropriate tribunal, nor shall the failure or refusal of the city government or any employee organization to participate in said voluntary impasse procedures constitute a defense in any such action or proceedings.

('74 Code, § 2-2-13) (Ord. 4-1977; Am. Ord. 4-2001)

#### **§ 3-2-15 CITY LABOR-MANAGEMENT RELATIONS BOARD.**

There shall be formed, to assist in the implementation and administration of the article, a city Labor-Management Relations Board of three members. In view of the legal work involved in the interpretation of this article, Board members shall normally be members of the legal profession or individuals who possess expertise in the field of employee relations or both. Board members shall serve for a period of two years commencing October 1, provided that, upon the initiation of any proceeding or hearing, the Board as then constituted may retain jurisdiction to finally decide the matter. The Board shall be selected as follows:

(A) Each city employee organization whose principal interest is to represent city employees in bargaining collectively with the city government concerning wages and conditions of employment, shall appoint one person to a committee that will be charged with selecting one person to the Board. This committee will meet once every two years in September and select the employees' member of the Board for the following years.

(B) The Mayor of the city shall during the same month appoint the second member of the Board.

(C) The third member and chairperson of the Board shall be appointed mutually by the members appointed by the Mayor and the employee organizations.

(D) In case the Board must meet in accordance with this article during the absence of a member of the Board, the President of the City Council shall appoint an interim Board member from the public at large with due regard to the representative character of the Board. In the event a Board member cannot complete the two year term, a new member shall be selected for the remainder of the term in accord with the selection process of this article.

(E) The members of the Board shall be compensated at the rate of \$100 each for each day of hearing or meeting. In any proceeding wherein the Board hears and decides a controversy between parties, the Board members' daily fee will be shared equally by the parties involved.

('74 Code, § 2-2-14) (Ord. 153-1971; Am. Ord. 218-1972; Am. Ord. 4-1977; Am. Ord. 4-2001)

#### **§ 3-2-16 APPLICABILITY.**

This article shall preempt all contrary local ordinances, or executive orders except those provisions of §§ [3-1-1](#) et seq., Merit System; Personnel Regulations, establishing:

(A) Classified and unclassified service;

(B) Methods of service rating of classified employees;

(C) Methods of initial employment, promotion recognizing efficiency and ability as applicable standards, and discharge of employees; and

(D) Grievance and appeal procedures for classified employees. Other provisions of §§ [3-1-1](#) et seq., where they do not conflict with this article or a collective bargaining agreement which has been ratified and approved by the Mayor, shall be administered in conjunction with this article. All provisions of §§ [3-1-1](#) et seq. shall continue in effect for all employees not represented by a bargaining agent.

('74 Code, § 2-2-15) (Ord. 153-1971; Am. Ord. 4-1977; Am. Ord. 54-1978; Am. Ord. 4-2001)

#### **§ 3-2-17 GUIDELINES COMMITTEE.**

(A) To facilitate communication and coordination between the Mayor and the City Council concerning collective bargaining strategy, there is created a Guidelines Committee composed of three City Councillors appointed by the Council President and three members of the Mayor's staff, one of whom shall be the Chief Administrative Officer. The Guidelines Committee shall, in accordance with the New Mexico Open Meetings Act, promulgate rules to effectuate the purposes of this section.

(B) The Guidelines Committee shall meet in closed session with appropriate staff in accordance with the New Mexico Open Meetings Act as necessary to discuss bargaining strategy preliminary to collective bargaining negotiations between the city and employee organizations.

(C) At the time negotiations are opened, the Guidelines Committee shall entertain a presentation from the employee organization involved in the subject collective bargaining negotiations summarizing its positions and proposals in the upcoming negotiations so the Guidelines Committee may be fully informed. The Guidelines Committee shall not otherwise meet to hear or entertain presentations by employee organizations of collective bargaining proposals, counter proposals, grievances or any other issue related to employee/labor relations except that the Mayor may ask the Guidelines Committee to convene upon the Board entering a finding that a strike has occurred.

(Ord. 4-2001)

**§ 3-2-18 CONSISTENCY WITH CITY BUDGET ORDINANCE.**

Any contract between the city and an employee organization, which contains provisions that result in expenditures greater than the amount, appropriated for wages and benefits in an adopted city budget for the initial fiscal year of the contract or which contains a multi-year commitment shall require the review and approval by the City Council. In order for any contract to be approved by the City Council, the City Council must approve the economic components of the contract through an executive communication and adopt a resolution providing an appropriation or deappropriation or both to cover the cost of the contract. All such contracts shall contain re-opening language for economic items.

(Ord. 20-2002)

## **ARTICLE 3: CONFLICT OF INTEREST**

### Section

- [3-3-1](#) Short title
- [3-3-2](#) Definitions
- [3-3-3](#) Employee conduct; standards
- [3-3-4](#) Gifts and donations prohibited
- [3-3-5](#) Conflict of interest; employees
- [3-3-6](#) Confidential information
- [3-3-7](#) Conflicts of interest; former employees
- [3-3-8](#) False statements prohibited
- [3-3-9](#) Nepotism prohibited
- [3-3-10](#) Outside employment
- [3-3-11](#) Code of conduct
- [3-3-12](#) Violation by employees
- [3-3-13](#) Violation by former employee

**§ 3-3-1 SHORT TITLE.**

This article may be cited as the "Conflict of Interest Ordinance."

('74 Code, § 2-3-1) (Ord. 31-1985)

**§ 3-3-2 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BUSINESS.*** A corporation, partnership, sole proprietorship, firm, organization or other legal entity carrying on business.

***CONFIDENTIAL INFORMATION.*** Information which by law or practice is not available to the public.

***CONTROLLING INTEREST.*** A financial interest in a business which is greater than twenty percent.

***EMPLOYEE.*** Every appointed classified or unclassified officer or employee of the city who receives compensation in the form of a salary or who is eligible to receive per diem and mileage. The term employee shall not include elected officials of the city.

***FINANCIAL INTEREST.*** Any interest which shall yield, directly or indirectly, any monetary or other material benefit to a city employee or to the city employee's spouse or minor children. The term "financial interest" shall not include the employee's salary or other compensation authorized by law.

***OFFICER.*** All members of boards, commissions and committees, the Chief Administrative Officer, and all department directors, division directors and section chiefs.

***OFFICIAL ACT.*** An official decision, vote, approval, disapproval or other action which involves the use of discretionary authority.

('74 Code, § 2-3-2) (Ord. 31-1985)

**§ 3-3-3 EMPLOYEE CONDUCT; STANDARDS.**

Employees must in all instances maintain their conduct at the highest standards. No employee shall continue in his or her city employment with pay when he or she engages in activities which are found to more than likely lead to the diminishing of the integrity, efficiency, or discipline of the city service.

('74 Code, § 2-3-3) (Ord. 31-1985)

**§ 3-3-4 GIFTS AND DONATIONS PROHIBITED.**

(A) No reward, favor, gift, emolument, or other form of remuneration in addition to regular compensation and employee benefits shall be received by any employee for the performance or non-performance of his or her duties from any vendor, contractor, individual or firm doing business with the city or who can be reasonably anticipated to do business with the city in the future, or from any other source having or proposing to have any relationship with the city.

(B) Nothing in this section shall be construed to prohibit an occasional, non-pecuniary gift, insignificant in value; an award publicly presented in recognition of public service, acts of heroism or for solving of crimes; a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the State to engage in the business of making loans.

('74 Code, § 2-3-4) (Ord. 31-1985)

**§ 3-3-5 CONFLICT OF INTEREST; EMPLOYEES.**

(A) An employee shall disqualify himself or herself from participating in any official act directly affecting a business in which he or she has a financial interest. No employee shall acquire a financial interest at a time when he or she believes or has reason to believe that it will be directly affected by his or her official act.

(B) Every employee who has a financial interest which he or she believes or has reason to believe may be affected by an official act taken within the scope of his or her employment shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter. Additionally, it shall be the duty of an employee to inform his or her department head of such a financial interest at the time he or she acquires it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City Clerk for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in city employment.

(C) The city shall not enter into any contract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief Administrative Officer has made a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the city.

(D) Any purchase order or contract entered into by the city with a business in which an employee of the city has a controlling interest is void if the employee failed to comply with the provisions of this Section prior to the city entering into such contract or purchase order.

('74 Code, § 2-3-5) (Ord. 31-1985)

**§ 3-3-6 CONFIDENTIAL INFORMATION.**

No employee or former employee shall disclose or use confidential information acquired by virtue of his or her municipal employment or office without prior written approval of the Chief Administrative Officer. Nothing in this subsection shall prohibit a former employee from entering into a contract to represent the city in a confidential capacity.

('74 Code, § 2-3-6) (Ord. 31-1985)

**§ 3-3-7 CONFLICTS OF INTEREST; FORMER EMPLOYEES.**

(A) A former employee shall not within one year after the date of termination from employment represent any person or business in connection with a matter in which the former employee has performed an official act, unless the Chief Administrative Officer consents to such representation. No person or business with which a former employee is associated may knowingly undertake or continue a private representation in such a matter unless:

(1) The disqualified former employee is screened from participation in the matter and is apportioned no part of the compensation therefrom; and

(2) Written notice is promptly given to the Chief Administrative Officer.

(B) Nothing in this section shall prohibit a former employee from entering into a contract to represent the city in any matter.

('74 Code, § 2-3-7) (Ord. 31-1985)

**§ 3-3-8 FALSE STATEMENTS PROHIBITED.**

(A) No person shall willfully or corruptly make any false statement, certificate, mark, rating, or report in regard to any test, certification, appointment, or investigation, or in any manner commit any fraud, conceal any wrong-doing or knowingly withhold information about wrongdoing in connection with employment with the city or in connection with the work-related conduct of any city employee.

(B) No person seeking appointment to, or promotion in the service of the city, shall either directly or indirectly give, render, or pay any money, service, or other valuable thing to any person for, or on account of, or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion; provided, however, that this provision shall not apply to payments made to duly licensed employment agencies.

('74 Code, § 2-3-8) (Ord. 31-1985)

**§ 3-3-9 NEPOTISM PROHIBITED.**

No relative of a city employee, by blood or marriage, may be employed in any position with the city in which the employee may be able directly to supervise, control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed.

('74 Code, § 2-3-9) (Ord. 31-1985)

**§ 3-3-10 OUTSIDE EMPLOYMENT.**

No employee shall engage in outside employment without prior approval of the Chief Administrative Officer, or a designee of the Chief Administrative Officer. No employee shall continue outside employment if such employment has a negative impact on his or her job performance. A determination that such employment has a negative impact on an employee's job performance is not the subject of a grievance as defined in [§ 3-1-24](#) of this chapter. No employee who is receiving Worker's Compensation benefits shall engage in outside employment.

('74 Code, § 2-3-10) (Ord. 31-1985)

**§ 3-3-11 CODE OF CONDUCT.**

(A) The Director of the Personnel Services Department shall, subject to the prior approval of the Chief Administrative Officer, promulgate a Code of Conduct for all employees.

(B) In addition to the Code of Conduct promulgated by the Director of Personnel Services, a city department director may promulgate a Code of Conduct for all employees of his or her department which prescribes standards in addition to those set forth in this article and the Code of Conduct promulgated by the Director of Personnel Services which are peculiar and appropriate to the function and purpose for which the department was created or exists. Such codes, upon approval of the Chief Administrative Officer, shall further govern the conduct of employees and if violated, shall constitute cause for dismissal, demotion or suspension.

('74 Code, § 2-3-11) (Ord. 31-1985)

**§ 3-3-12 VIOLATION BY EMPLOYEES.**

Violation of any of the provisions of this article by any employee is grounds for disciplinary action, including dismissal, in accordance with the provisions of §§ [3-1-1](#) et seq., the Merit System Ordinance.

('74 Code, § 2-3-12) (Ord. 31-1985)

**§ 3-3-13 VIOLATION BY FORMER EMPLOYEE.**

Violation of any of the provisions of this article by a former employee is a misdemeanor, and, upon conviction the former employee shall be subject to the penalty set forth in § [1-1-99](#).

('74 Code, § 2-3-13 (part)) (Ord. 31-1985)

## **ARTICLE 4: PER DIEM AND MILEAGE**

Section

[3-4-1](#) Authority

[3-4-2](#) Short title

[3-4-3](#) Purpose

[3-4-4](#) Definitions

[3-4-5](#) Restrictions; regulations; per diem and mileage rates; in lieu of actual expenses

**§ 3-4-1 AUTHORITY.**

The City Council, pursuant to the provisions of Article X, Section 6 of the Constitution of New Mexico, hereby enacts this article relating to Per Diem and Mileage of Public Officers and Employees of the city as authorized by such section and for the purpose of providing maximum local self-government.

('74 Code, § 2-8-1) (Ord. 32-1975)

**§ 3-4-2 SHORT TITLE.**

This article shall be known and may be cited as the "Per Diem and Mileage Ordinance."

('74 Code, § 2-8-2) (Ord. 32-1975)

**§ 3-4-3 PURPOSE.**

The purpose of this article is to establish standard rates for reimbursement for travel for public officers and employees coming under this article.

('74 Code, § 2-8-3) (Ord. 32-1975)

**§ 3-4-4 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***EMPLOYEE.*** Any person who is an officer or employee of the city and whose salary is paid either completely or in part from public money.

***MAYOR.*** The Mayor or his authorized representative.

***PUBLIC OFFICER.*** Every elected or appointed officer of the city.

('74 Code, § 2-8-4) (Ord. 32-1975; Am. Ord. 46-1978)

**§ 3-4-5 RESTRICTIONS; REGULATIONS; PER DIEM AND MILEAGE RATES; IN LIEU OF ACTUAL EXPENSES.**

(A) The use of city sponsored credit cards is specifically authorized for:

(1) Purchases of transportation by common carrier in connection with authorized travel on official city business;

(2) Reservations for lodging, facilities, or rental cars in connection with authorized travel on official city business; and

(3) Purchases necessary for the use of vehicles owned by the city.

(B) Per diem allowances for meals and incidental travel expenses may be advanced to mitigate the financial burden placed on public officers or employees required to travel on official city business.

(C) All travel on official city business shall be approved in advance of the travel. Public funds shall not be expended to reimburse any public officer or employee for expenses for out-of-state travel without written authorization from the Mayor or his authorized representative. This written authorization shall not be required of the Mayor, City Councilors or members of the City Council staff.

(D) The Mayor shall promulgate regulations consistent with those issued by the Internal Revenue Service establishing the amount of and method of payment of per diem and mileage for authorized travel and transportation expenses incurred in conducting official city business. The required accounting for all travel and transportation expenses shall be in compliance with city travel regulations and shall be accompanied by documentation or receipts acceptable to the city.

(E) Unless provided to the contrary in the city travel regulations, the per diem and mileage, or per diem and cost of tickets for common carriers, paid to salaried public officers or employees is in lieu of actual expenses for transportation, lodging, and subsistence. When city travel regulations permit the payment of actual expenses for lodging, meals or incidental travel expenses, no per diem shall be allowable or paid.

('74 Code, § 2-8-6) (Ord. 32-1975; Am. Ord. 46-1978; Am. Ord. 10-2005)

## **ARTICLE 5: RETIREMENT OF CITY EMPLOYEES**

### Section

[3-5-1](#) Policy

[3-5-2](#) Retirement required

[3-5-3](#) Temporary provisions

3-5-4 Public employees retirement act; not intended to modify

**§ 3-5-1 POLICY.**

It is declared to be the policy of the city that a continuance of employment by the city of persons beyond the age of 65 (excepting police officers and firefighters beyond the age of 60) is not generally advantageous to either the employee or the city.

('74 Code, § 2-7-1) (Ord. 2751)

**§ 3-5-2 RETIREMENT REQUIRED.**

Effective December 1, 1965, all employees of the city (except those defined as "unclassified employees" in § 3-5-4(B)) shall retire on the first day of the month following his attainment of age 65 (police officers and firefighters age 60) unless their period of service is extended as provided in § 3-5-3(D).

('74 Code, § 2-7-2) (Ord. 2751)

**§ 3-5-3 TEMPORARY PROVISIONS.**

(A) Employees age 68 (police officers and firefighters age 65) or over by December 1, 1965, may continue in city employment until their next birth date following the effective date of this article or until December 1, 1966, whichever date is later, after which date such employee must retire, provided that the Mayor determines such continuance of employment to the employee's next birth date after December 1, 1965, or the final date of December 1, 1966, is in the best interests of the city.

(B) Employees (except police officers and firefighters) who have already reached age 65 by December 1, 1965, but who have not attained their 68th birthday, may continue service as per division (D) of this section.

(C) Effective December 1, 1965, all employees of the Uniformed Divisions of the Police and Fire Departments shall retire on the first day of the month following their attainment of age 60, unless their period of service is extended as provided in division (D) of this section.

(D) When an employee attains age 65 (police officers and firefighters age 60) he may have his retirement deferred for one year periods after his normal retirement date, but not beyond the first day of the month following his attainment of age 68 (police officers and firefighters age 65) provided that the Mayor determines that such continuance of employment is in the best interests of the city.

('74 Code, § 2-7-3) (Ord. 2751)

**§ 3-5-4 PUBLIC EMPLOYEES RETIREMENT ACT; NOT INTENDED TO MODIFY.**

(A) This article is not intended to affect or modify any age retirement provision contained in the Public Employees Retirement Act nor to change, modify or affect any retirement annuity or benefits otherwise payable to any employee or beneficiary. Nothing herein contained shall be deemed to apply to elective officers, or to persons in the Unclassified Service.

(B) The Unclassified Service, for the purpose of this article shall comprise the following:

(1) Persons employed to make or conduct a special inquiry, investigation, examination or installation if the City Council or the Mayor certifies that such employment is temporary, and that the work should not be performed by employees of the city;

(2) Part-time, temporary or seasonal employees;

(3) The Golf Course Managers and others whose conditions of employment are specified by individual written contracts.

('74 Code, § 2-7-4) (Ord. 2751)

## **ARTICLE 6: RETIREMENT PLAN**

### Section

[3-6-1](#) Plan established

[3-6-2](#) Definitions

[3-6-3](#) Supplemental retirement fund committee

[3-6-4](#) Retirement plan officers

[3-6-5](#) Membership

[3-6-6](#) Service credit

[3-6-7](#) Service retirement

[3-6-8](#) Albuquerque annuity

[3-6-9](#) Total and permanent disability

[3-6-10](#) Albuquerque annuity offset

[3-6-11](#) Annuity reserve fund

[3-6-12](#) Former plan transfer

- [3-6-13](#) Investment of funds
- [3-6-14](#) Administrative expenses
- [3-6-15](#) Payments from plan funds
- [3-6-16](#) Assignments prohibited
- [3-6-17](#) Effective date of plan

**§ 3-6-1 PLAN ESTABLISHED.**

The city supplemental retirement plan is hereby established. The purpose of the retirement plan is to provide benefits for certain periods of city service, not covered by the Public Employees Retirement Association of New Mexico, to employees of the city who entered the city's employ prior to the date the city becomes an affiliated public employer in the said Public Employees Retirement Association of New Mexico or said employee's widow/widower.

('74 Code, § 2-5-1) (Ord. 964; Am. Ord. 6-1988; Am. Ord. 52-1989)

**§ 3-6-2 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***AFFILIATION DATE.*** September 1, 1954.

***ALBUQUERQUE ANNUITY.*** An annual amount paid from funds of the retirement plan, in equal monthly installments, throughout the life of the person.

***ALBUQUERQUE SERVICE.*** Service credited a member to the extent provided in § [3-6-6](#).

***ANNUITANT.*** Any retired member who is in receipt of an Albuquerque annuity and a state annuity, or either of them.

***CITY MEMBER.*** Any member who exempts himself from membership in the state system.

***COMMITTEE*** or ***SUPPLEMENTAL RETIREMENT FUND COMMITTEE.*** The committee provided for in this article.

***COMPENSATION*** or ***SALARY.*** A member's annual rate of compensation paid by the city for services rendered by him. In cases where a member's compensation is not all paid in money, the Committee shall fix the value of that part of his compensation not paid in money.

***CONTRIBUTING MEMBER.*** Any member who becomes a member of the state system.

***EFFECTIVE DATE.*** September 2, 1954.

**FINAL AVERAGE SALARY.** The average of the highest annual compensations received by a member for a period of five consecutive but not necessarily continuous, years of service contained within his 10 years of total service immediately preceding his retirement.

**FISCAL YEAR.** The 12 months period coinciding with the city's fiscal year.

**FORMER PLAN.** The retirement system created and established by Ordinance No. 598 as amended by Ordinance No. 680 and Ordinance No. 907, and repealed by this article.

**FRACTION OF A YEAR.** The ratio of the number of days employed to 365 days.

**MEMBER.** Any person included in the membership of the retirement plan.

**REGULAR INTEREST.** Such rate or rates of interest per annum, compounded annually, as the Committee shall from time to time determine.

**RETIREMENT PLAN.** The city supplemental retirement plan created and established by this article.

**RETIREMENT.** Withdrawal from city service with an Albuquerque annuity and a state annuity, or either of them.

**SERVICE.** Service rendered to the city by an employee of the city.

**STATE SERVICE.** Service credited a member by the state system.

**STATE SYSTEM.** The Public Employees Retirement Association of New Mexico, established by Chapter 17, Laws of 1947, and as may from time to time be amended.

**TOTAL SERVICE.** The number of years, and fraction of a year, of service rendered to the city by a member in the employ of the city. The term "total service" shall include service rendered before and after September 1, 1954.

**VOLUNTARY RETIREMENT DATE.** A contributing member means the "voluntary retirement date" provided for in the law governing the state system. For a city member "voluntary retirement date" means the date he attained or attains age 60 years, or the date he acquired or acquires 30 years of total service, whichever date occurs first.

**WIDOW/WIDOWER.** The surviving spouse of a member, as defined herein, who has not remarried.

('74 Code, § 2-5-2) (Ord. 964; Am. Ord. 1936; Am. Ord. 6-1988; Am. Ord. 52-1989)

**§ 3-6-3 SUPPLEMENTAL RETIREMENT FUND COMMITTEE.**

(A) There is hereby created a Supplemental Retirement Fund Committee in which is vested the authority and responsibility for the administration, management and operation of the retirement plan, and of construing and carrying into effect the provisions of this article.

(B) The Committee shall consist of five members from city government, who shall be appointed by the Mayor and serve at the pleasure of the Mayor.

(C) Members of the former plan board of trustees serving as trustees, as of the day preceding the effective date of the retirement plan, shall continue to serve as trustees under the retirement plan until their respective terms under the former plan shall expire.

(D) The Committee shall designate from its own number a chairman and a vice-chairman.

(E) The Committee shall hold regular meetings, at least one in each year, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the Committee shall remain open to the public.

(F) Three Committee members shall constitute a quorum at any meeting of the Committee. Each attending member shall be entitled to one vote in the meeting of the Committee and at least three concurring votes shall be necessary for a decision of the Committee at any one of its meetings.

(G) The Committee shall annually furnish the Mayor a report showing the fiscal transactions of the retirement plan for the preceding fiscal year.

(H) The Committee shall from time to time adopt such mortality and other tables of experience as are required for the proper operation of the retirement plan on an actuarial basis. The plan shall be administered in a manner that is actuarially sound.

('74 Code, § 2-5-3) (Ord. 964; Am. Ord. 6-1988)

#### **§ 3-6-4 RETIREMENT PLAN OFFICERS.**

(A) The City Treasurer shall be the administrative officer of the retirement plan. In addition, he shall be treasurer of the retirement plan and the custodian of its funds.

(B) The City Attorney shall be legal advisor to the Committee.

(C) The Committee may designate an actuary who shall be technical advisor to the Committee and who shall perform such duties as are required in connection therewith.

('74 Code, § 2-5-4) (Ord. 964; Am. Ord. 6-1988)

#### **§ 3-6-5 MEMBERSHIP.**

(A) Subject to division (B) of this section, the membership of the retirement plan shall include all employees of the city who were regularly employed by the city within a period of one

year preceding September 2, 1954 and who are in the employ of the city, on a full time basis, within one year from and after September 2, 1954.

(B) The membership of the retirement plan shall not include:

- (1) Members of the City Council;
- (2) Persons whose services are compensated in whole or in part on a fee basis;
- (3) City attorneys who are not employed by the city on a full time basis;
- (4) Members of boards and commissions of the city on account of their service on such boards or commissions;
- (5) Persons employed to make or conduct special surveys, investigations, examinations, or installation, if the Chief Administrative Officer, by written certification, classifies such persons as temporary employees;
- (6) Persons who first become employed by the city after September 1, 1954;
- (7) Persons who reenter city employment following September 1, 1955; and
- (8) Persons who are seasonal, part-time, or temporary employees.

(C) Except as otherwise provided in this article, should any member separate from city service for any reason, except his death or becoming an annuitant, he shall thereupon cease to be a member and his Albuquerque service credited to his service account shall be forfeited by him. In the event he re-enters city service within a period of one year from and after the date he last separated from city service he shall again become a member of the retirement plan and the Albuquerque service credited to him at the time of his last separation from city service shall be restored to his credit. In the event a member becomes an annuitant or dies he shall thereupon cease to be a member.

(D) In any case of doubt as to who is a member of the retirement plan the Committee shall decide the issue.

(E) Widows or Widowers of eligible members shall be entitled to receive a maximum annuity of \$125 per month.

('74 Code, § 2-5-5) (Ord. 964; Am. Ord. 1936; Am. Ord. 6-1988; Am. Ord. 52-1989)

#### **§ 3-6-6 SERVICE CREDIT.**

(A) The service rendered by a member prior to September 1, 1954, to the extent credited him under the former plan, shall be credited him under the retirement plan as Albuquerque service; provided, that in no case shall such Albuquerque service include:

- (1) Any periods of service for which the said member is credited with state service; nor
- (2) Any periods of service rendered by him from and after September 1, 1954.

(B) In any case of doubt as to the Albuquerque service to be credited any member, the Committee will have final power to determine the Albuquerque service to be so credited.

('74 Code, § 2-5-6) (Ord. 964; Am. Ord. 1936; Am. Ord. 6-1988)

#### **§ 3-6-7 SERVICE RETIREMENT.**

(A) Any member may retire on or after his voluntary retirement date upon his written application filed with the Committee setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement he shall be entitled to an Albuquerque annuity provided for in § [3-6-8](#).

(B) Any member who has attained or attains age 70 years shall be separated from city Service on the first day of the calendar month next following the month in which he attains age 70 years. Upon his separation from service he shall be entitled to an Albuquerque annuity provided he has five or more years of total service.

('74 Code, § 2-5-7) (Ord. 964; Am. Ord. 6-1988)

#### **§ 3-6-8 ALBUQUERQUE ANNUITY.**

(A) Upon his retirement from service, as provided in § [3-6-7](#), a contributing member shall receive an Albuquerque annuity equal to 2% of his final average salary multiplied by the number of years, and fraction of a year, of his credited Albuquerque service: Provided, that his Albuquerque annuity so computed shall be subject to the following:

(1) In no case shall a contributing member's Albuquerque annuity be less than an amount which when added to his state annuity shall equal 3% of the first \$2,500 of his final average salary multiplied by his years, and fraction of a year, of state service credited for service rendered prior to August 1, 1947 and his years, and fraction of a year, of his credited Albuquerque service, not to exceed a total of 20 years of such state service and Albuquerque service combined.

(2) In no case shall a contributing member's Albuquerque annuity exceed the lesser of:

(a) An amount which is \$75 per annum multiplied by the number of years, and fraction of a year, of his credited Albuquerque service; or

(b) An amount which when added to his state annuity results in the total of both annuities exceeding:

1. \$2,400 per annum for a contributing member with less than 30 years of state service; or

2. \$3,000 per annum for a contributing member with 30 or more years of state service.

(B) Upon his retirement from service, as provided in § [3-6-7](#), a city member shall receive an Albuquerque annuity equal to 2% of his final average salary multiplied by the number of years, and fraction of a year, of his credited Albuquerque service, not to exceed 20 years.

(C) If a contributing member who is classified as a state police member in the state system retires under the state system prior to his attainment of age 60 years with a superannuating retirement annuity, he shall be entitled to an Albuquerque annuity, computed according to division (A) of this section. Payment of his said Albuquerque annuity shall begin upon his application for same filed with the Committee on or after his attainment of age 60 years.

(D) Widow/Widower of members who retired from active duty, on or before August 31, 1954, due to total and permanent disability from injuries incurred on duty or illnesses exaggerated by injury received or inflicted while on duty shall be entitled to a maximum retirement benefit of \$125 per month. Said benefit shall terminate at the time of the widow/widower's remarriage or at their death. Said benefit shall not extend beyond said surviving spouse.

(E) Upon the basis of such mortality and other tables of experience as the Committee shall from time to time adopt and in keeping with sound actuarial and fiscal practices, the Committee may provide for a lump sum payment in lieu of regular payments for any annuity or retirement benefit payable under the retirement plan.

('74 Code, § 2-5-8) (Ord. 964; Am. Ord. 6-1988; Am. Ord. 52-1989)

**§ 3-6-9 TOTAL AND PERMANENT DISABILITY.**

(A) (1) Upon the application of a member, or his department head, a member who:

(a) Is in the employ of the city; and

(b) Becomes totally and permanently physically or mentally incapacitated for duty in the employ of the city, may be retired by the Committee.

(2) Provided, that after a medical examination of the said member made by or under the direction of a physician or physicians designated by the Committee, the said physician or physicians certifies to the Committee:

(a) That the said member is physically or mentally totally incapacitated for duty in the employ of the city;

(b) That such incapacity will probably be permanent; and

(c) That such member should be retired.

(B) A contributing member, who retires on or after his voluntary retirement date, on account of disability as provided in division (A) of this section, shall receive an Albuquerque annuity computed according to § [3-6-8\(A\)](#), subject to § [3-6-10](#).

(C) A contributing member who retires prior to his voluntary retirement date, on account of disability as provided in division (A) of this section, shall receive an Albuquerque annuity equal to 2% of his final average salary multiplied by the number of years, and fraction of a year, of his credited Albuquerque service; provided, that his Albuquerque annuity shall not exceed the less of:

(1) An amount which is \$75 per annum multiplied by the number of years, and fraction of a year, of his credited Albuquerque service; or

(2) An amount which when added to his state annuity results in the total of both annuities exceeding \$2,400 per annum. This division (C) shall be subject to division (E) of this section and § [3-6-10](#).

(D) (1) A city member, who retires on account of disability, as provided in division (A) of this section, shall receive an Albuquerque annuity computed according to § [3-6-8\(B\)](#) and shall be subject to division (E) of this section.

(2) In the event a city member retires on account of disability, as provided in division (A) of this section, prior to his voluntary retirement date, and the Committee finds that the member has become incapacitated to such extent by reason of a personal injury or disease which occurred as the natural and proximate result of causes arising solely and exclusively out of and in the course of his employment by the city and a physician selected by the Committee upon examination of the member, has stated that as a medical probability such personal injury or disease is a natural and proximate result of such causes, the Albuquerque annuity of such member shall not be less than \$600 dollars per annum. At his voluntary retirement date the said disability retiree shall be given Albuquerque service credit for the period he was in receipt of an Albuquerque annuity, notwithstanding that such service credit includes service rendered after September 1, 1954, and his Albuquerque annuity shall be recomputed to include such additional service credit.

(E) (1) At least once each year during the first five years following the retirement of a city member on account of disability, and at least once in each three-year period thereafter, the Committee may, and upon his application shall, require the said disability annuitant, prior to his voluntary retirement date or age 65 years, whichever occurs first, to undergo a medical examination to be made by or under the direction of a physician designated by the Committee. Should the said disability annuitant refuse to submit to such medical examination in any such period his Albuquerque annuity may be discontinued by the Committee until his withdrawal of such refusal. If upon such medical examination of said disability annuitant, the said physician reports to the Committee that the said disability annuitant is physically able and capable of resuming employment with the city his Albuquerque annuity shall be suspended to his voluntary retirement date or attainment of age 65 years, whichever occurs first, and shall be resumed at the time provided the said annuitant is not in the employ of a governmental agency in the state.

(2) In the event the state annuity payable to a contributing member is suspended by the state system, the Albuquerque annuity, if any, payable to the said contributing member shall likewise be suspended until payment of his state annuity is resumed.

(3) In the event a disability annuitant, who was a member, is returned to city service he shall again become a member of the retirement plan and his Albuquerque service credited to him at the time of his disability retirement shall be restored to his credit.

(F) The annuities granted under Commission Ordinance No. 1083 prior to September 28, 1960 shall be obligations of the city supplemental retirement plan and shall be continued subject to the provisions of the said Commission Ordinance No. 1083 as it was in force January 17, 1956.

('74 Code, § 2-5-9) (Ord. 964; Am. Ord. 1936; Am. Ord. 1083; Am. Ord. 6-1988)

#### **§ 3-6-10 ALBUQUERQUE ANNUITY OFFSET.**

If a contributing member retires from city service, pursuant to the provisions of this article, before he has paid into the employees savings fund of the state system an amount necessary to qualify for a state pension, the Committee may authorize that there be paid, from retirement plan funds, to the state system such amount as the state retirement board shall certify as necessary to qualify the said member for a state annuity. The Committee may authorize payment to the state system, if the employee had been a member of the state system the entire time of the city employment, provided that the annuity reserve fund has a surplus in accordance with a report of the city's actuary.

('74 Code, § 2-5-10) (Ord. 964; Am. Ord. 6-1988)

#### **§ 3-6-11 ANNUITY RESERVE FUND.**

(A) The annuity reserve fund is hereby created. It shall be the fund in which shall be accumulated contributions by the city, and from which shall be paid annuities and other payments as provided in this article. The city's contributions to the retirement plan shall be determined and paid in accordance with the provisions of § [3-6-11\(B\)](#).

(B) (1) Upon the basis of such mortality and other tables of experience as the Committee shall from time to time adopt, and regular interest, the Committee shall annually determine, by means of an actuarial valuation of the retirement plan, the annuity reserve liabilities covering:

- (a) Annuities to be paid members upon their retirements from service; and
- (b) Annuities being paid annuitants.

(2) The said annuity reserve fund shall be amortized over the future natural lifetime of the said members and annuitants. The Committee shall annually certify to the City Council the amortization payment so determined for the ensuing fiscal year, and the City Council shall appropriate and the city shall pay such amount into the annuity reserve fund in the ensuing fiscal

year in twelve equal monthly payments, beginning August 20 of each year and on or before the 20th day of each month thereafter.

('74 Code, § 2-5-11) (Ord. 964; Am. Ord. 6-1988)

**§ 3-6-12 FORMER PLAN TRANSFER.**

(A) The City Treasurer shall transfer to the annuity reserve fund of the retirement plan, established by the ordinance, all assets of every description credited to the Albuquerque City Employees' Retirement Fund of the former plan.

(B) All annuities being paid from the Albuquerque City Employees' Retirement Fund of the former plan; as of the effective date of the retirement plan, shall become obligations of the retirement plan and shall be paid from the annuity reserve fund. In no case shall such annuities being paid be increased or diminished by reason of the adoption of the retirement plan.

('74 Code, § 2-5-12) (Ord. 964; Am. Ord. 6-1988)

**§ 3-6-13 INVESTMENT OF FUNDS.**

(A) The Committee shall be the trustees of the annuity reserve fund of the retirement plan and it shall have full power to invest and reinvest same:

(1) In bonds or other obligations of the United States, and in any obligations of any governmental agency in which both principal and interest are guaranteed by the United States Government.

(2) In general obligation bonds of the State of New Mexico, or any city, town, school district, or conservancy district in the State of New Mexico.

(3) In obligations consisting of notes, bonds, or debentures, which are the direct obligation of a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale, of electricity or gas, or the operation of telephone or telegraph systems, or any combination of them; provided, the obligor corporation is incorporated under the laws of the United States or any state thereof or the District of Columbia, and the said obligations are rated, at the time of purchase, in the highest or next highest classification established by at least two nationally recognized standard rating services.

(B) Except as provided in this article, no member or other person connected with the Committee shall have any interest direct or indirect in the gains or profits of any investment made by the Committee, nor as such directly or indirectly receive any pay or emolument for his services in making such investments. No member or other persons connected with the Committee, directly or indirectly for himself or as an agent or partner of others, shall borrow any funds or deposits of the retirement plan, or in any manner use the same, except to make such current and necessary payments as are authorized by the Committee. No member or other person connected with the Committee shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed of the retirement plan.

(C) All securities registered in the name of the Albuquerque City Employees' Retirement Fund may continue to be so registered until disposed of.

(D) All income derived from the investment of moneys of the retirement plan shall be credited to the annuity reserve fund.

('74 Code, § 2-5-13) (Ord. 964; Am. Ord. 1936; Am. Ord. 6-1988)

**§ 3-6-14 ADMINISTRATIVE EXPENSES.**

The expenses of administering the retirement plan shall be paid by the city in addition to the contributions made to the annuity reserve fund. The administrative expenses shall be authorized by the Committee with the budget approved by the City Council.

('74 Code, § 2-5-14) (Ord. 964; Am. Ord. 6-1988)

**§ 3-6-15 PAYMENTS FROM PLAN FUNDS.**

All funds of the retirement plan shall be held for the sole purpose of meeting disbursements as provided in this article and shall be used for no other purpose. No payment shall be made from the funds of the retirement plan unless same is authorized by resolution adopted by the Committee.

('74 Code, § 2-5-15) (Ord. 964; Am. Ord. 6-1988)

**§ 3-6-16 ASSIGNMENTS PROHIBITED.**

None of the moneys, annuities, or other benefits mentioned in this article shall be assignable either in law, or in equity or be subject to execution, levy, attachment, garnishment, or other legal process, except as is specifically provided in this article.

('74 Code, § 2-5-16) (Ord. 964; Am. Ord. 6-1988)

**§ 3-6-17 EFFECTIVE DATE OF PLAN.**

The effective date of the retirement plan shall be the date the city becomes an affiliated public employer in the Public Employees' Retirement Association of New Mexico.

('74 Code, § 2-5-17) (Ord. 964; Am. Ord. 1936)

## **ARTICLE 7: WHISTLEBLOWER POLICY**

### Section

[3-7-1](#) Short title

- [3-7-2](#) Findings and intent
- [3-7-3](#) Definitions
- [3-7-4](#) Procedures for reporting
- [3-7-5](#) Disclosure of information
- [3-7-6](#) Investigations
- [3-7-7](#) Confidentiality
- [3-7-8](#) Retaliation
- [3-7-9](#) Reservation of authority
- [3-7-10](#) Notice of whistleblower protections
- [3-7-11](#) Reports to the City Council

**§ 3-7-1 SHORT TITLE.**

This article may be known and cited as the "Whistleblower Ordinance."  
(Ord. 2-2004)

**§ 3-7-2 FINDINGS AND INTENT.**

The public health, safety and welfare are better protected by instituting a procedure for reporting improper governmental action, encouraging such reporting and protecting those who properly report such action from retaliation. Proper reporting will provide the opportunity to minimize any adverse impacts of improper governmental actions.  
(Ord. 2-2004)

**§ 3-7-3 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALLOWABLE COMPLAINT.*** A complaint that may be filed pursuant to this article alleging an improper governmental action and meets all other requirements of this article. An allowable complaint does not include a complaint that is frivolous or that discloses information (1) that the complainant knows to be false, (2) with disregard for the truth or falsity thereof or (3) that is a confidential record.

***COMPLAINANT'S DEPARTMENT.*** The director of the department in which the city employee filing a complaint is assigned. If the complainant works for an agency of the city that

is not designated as a department, then **COMPLAINANT'S DEPARTMENT** shall mean the highest ranking official of such agency.

**CONFIDENTIAL RECORDS.** Any record that is confidential under any provision of law, any record that is closed to public inspection pursuant to law, and records that are advisory in nature and preliminary to any final determination of policy or action. **CONFIDENTIAL RECORDS** do not include records that are purely factual materials and do not disclose the names of complainants or witnesses.

**DIRECTOR.** The Director of the Office of Internal Audit and Investigations created by the Accountability in Government Ordinance, or its successor agency, and any investigators designated by the Director.

**EMPLOYEE.** Every appointed classified or unclassified employee of the city who receives compensation in the form of a salary. **EMPLOYEE** shall not include elected officials of the city.

**FRIVOLOUS COMPLAINT.** Any complaint or portion of a complaint that has no basis, or does not pertain to an improper governmental action, or is made for some purpose other than identifying an improper governmental action, such as complaints made for the purpose of retaliation or harassment.

**GRIEVABLE** and **GRIEVANCE.** These terms shall have the same meaning as provided in § [3-1-24](#) ROA 1994.

**GROSS WASTE OF PUBLIC FUNDS.** An unnecessary or unauthorized expenditure of a substantial amount of money or a series of unnecessary or unauthorized expenditures of smaller amounts of money cumulatively amounting to a substantial amount of money.

**IMPROPER GOVERNMENTAL ACTION.** Any action by a city employee, an appointed member of a board, commission or committee or an elected official of the city that is undertaken in the performance of such person's duties with the city that is in violation of a federal, state or local government law or rule, an abuse of authority, of substantial and specific danger to the public health or safety, or a gross waste of public funds that is in violation of city policy or rules. The action need not be within the scope of the employee's, elected official's or board, commission or committee member's official duties to be subject to a claim of improper governmental action. **IMPROPER GOVERNMENTAL ACTION** does not include city personnel actions, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining agreements or the merit system ordinance, §§ [3-1-1](#) et seq. ROA 1994.

**INTERNAL AUDITOR.** The Internal Auditor and the office of the Internal Auditor as created by the Internal Audit Act, or its successor agency, and any investigators designated by the Internal Auditor.

***INTERNAL AUDITOR INVESTIGATION.*** A special audit conducted by the Office of Internal Audit and Investigations based on a complaint filed pursuant to this article.

***RETALIATION*** or ***RETALIATORY ACTION.*** Any disciplinary action taken because (1) an employee lawfully disclosed information or filed an allowable complaint pursuant to this article, (2) an employee testified or assisted or is scheduled to testify or assist in any investigation, action or proceeding relating to the lawful disclosure of information by another employee pursuant to this article, or (3) the supervisor who imposed the disciplinary action believed the employee receiving the disciplinary action was involved in the activities described in parts (1) and (2) of this paragraph and such belief was the primary reason for the disciplinary action.

(Ord. 2-2004; Am. Ord. 1-2005)

**§ 3-7-4 PROCEDURES FOR REPORTING.**

(A) *Complaints filed with the department.* The complainant shall submit a written report to the complainant's department stating in detail the factual basis for the complainant's reasonable belief that an improper governmental action has occurred. Upon receipt of a complaint, the complainant's department shall take prompt action to investigate the report of improper governmental action. Upon completion of the investigation, the complainant's department shall provide to the complainant a summary of the results of the investigation. Summaries of investigations shall not include personnel disciplinary actions taken as a result of the investigation. Summaries shall be provided to the complainant within 15 city business days of the receipt of the written complaint by the complainant's department or at such additional time beyond 15 days, but only when the complainant's department has good cause for extending the investigation and notifies the complainant when the summary of results will be provided and the reason for the extension of time. No extension shall be longer than an additional 15 city business days.

(B) *Alternative filing.* If the complainant's department director or the highest ranking official of a city agency is the subject of the complaint, then the complaint shall be filed with the Chief Administrative Officer or a member of his staff designated to receive such complaints. If the office of the chief administrative office is the subject of the complaint, the complaint shall be filed with the Mayor or his designee.

(C) *Complaints filed with the Director of the Office of Internal Audit and Investigations.* If a complainant files a complaint with the Director of the Office of Internal Audit and Investigations but does not file a complaint with complainant's department, the Director of the Office of Internal Audit and Investigations shall determine whether the complaint shall first be investigated by the complainant's department, pursuant to the procedures required in subsections (A) or (B) of this section, or the Office of Internal Audit and Investigations.

(D) *Complaints to be accepted by the Director of the Office of Internal Audit and Investigations.* The Director of the Office of Internal Audit and Investigations shall proceed with an investigation when (1) a complaint has been filed pursuant to subsections (A) or (B) of this section and the summary of the investigation is not provided to the complainant within 15 business days or the extension thereof, (2) after receipt of the summary of the investigation the

complainant alleges that there is a reasonable basis for believing that insufficient action has been taken by the city to address the improper governmental action, (3) for other specified reasons, the improper governmental action is likely to recur or (4) a complaint alleges immediate harm. When applicable, a complaint filed with the Director of the Office of Internal Audit and Investigations shall have attached to it the written complaint submitted to the complainant's department. The complaint filed with the Director of the Office of Internal Audit and Investigations shall contain a statement explaining at least one of the following: (1) that the complainant's department did not provide a summary of the investigation, (2) the basis for the complainant's belief that the action taken by the city in response to the complaint is insufficient or (3) the basis for the complainant's belief that the improper governmental action is likely to recur or (4) the nature of the immediate harm and the basis for the complainant's belief that immediate and substantial harm may occur. When applicable, the complaint shall include a copy of all summaries of investigation provided to the complainant by the complainant's department. The Director shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(E) *Immediate harm.* Complainants shall file a complaint of improper governmental action with the office of the Director of the Office of Internal Audit and Investigations if the complainant believes that immediate and substantial harm to people or property will occur if immediate action is not taken. The complainant shall notify the Director of the Office of Internal Audit and Investigations in the complaint as to whether the complainant has filed the same complaint with the complainant's department and, if applicable, attach a copy of such complaint. If the complaint has not been filed with complainant's department, the Office of Internal Audit and Investigations shall determine if the complaint shall first be investigated by the complainant's department, pursuant to the procedures required in subsection (A) of this section, or the Director of the Office of Internal Audit and Investigations. The Director shall immediately notify the complainant's department if the Director of the Office of Internal Audit and Investigations determines that a threat of immediate harm may exist.

(F) Employees who fail to follow the procedures in this article in reporting improper governmental action shall not receive the protections provided in this article.

(G) If the complaint of improper governmental action includes allegations concerning the Director of the Office of Internal Audit and Investigations, or anyone with supervisory authority over the Director of the Office of Internal Audit and Investigations pursuant to the Accountability in Government Ordinance, the complaint shall be filed with the City Attorney.

(H) If the Department Director, the Chief Administrative Officer, the Mayor or the Director of the Office of Internal Audit and Investigations (the appropriate office conducting the investigation) determines that the complaint involves allegations of criminal activity, the complaint may be referred to a law enforcement agency of proper jurisdiction. The party conducting the investigation may coordinate any further investigation with such law enforcement agency. If criminal charges are formally filed, the party conducting the investigation may suspend its investigation until completion of criminal action.

(Ord. 2-2004; Am. Ord. 1-2005)

### § 3-7-5 DISCLOSURE OF INFORMATION.

(A) *Criminal activity.* Nothing in this article shall be construed to prohibit an employee from disclosing information to an appropriate law enforcement agency.

(B) *False information, frivolous complaints and confidential records.* The protections to employees provided by this article shall not apply to any complainant who files a frivolous complaint or who discloses information (1) that the complainant knows to be false, (2) with disregard for the truth or falsity thereof or (3) that is a confidential record.  
(Ord. 2-2004)

### § 3-7-6 INVESTIGATIONS.

(A) The Director of the Office of Internal Audit and Investigations shall conduct a preliminary investigation based on complaints filed pursuant to this article. Such preliminary investigation shall begin within 30 days of the receipt of the complaint by the Director of the Office of Internal Audit and Investigations. The preliminary investigation shall determine if the complaint merits further investigation. If the Director of the Office of Internal Audit and Investigations finds that the complaint has no merit or that proper corrective measures have been taken by the city, the Director of the Office of Internal Audit and Investigations shall notify the complainant and the complainant's department of the decision and such decision shall be a final report. If the Director of the Office of Internal Audit and Investigations finds that a further investigation is required, the Director of the Office of Internal Audit and Investigations shall notify the complainant and the complainant's department of that decision. Decisions made pursuant to this subsection shall be public record only upon delivery of the decision to the complainant and the complainant's department.

(B) All employees, board, commission and committee members and elected city officials shall assist the Director of the Office of Internal Audit and Investigations in the investigation of complaints filed pursuant to this article, including but not limited to providing records and making statements. Interviews shall be outside the presence of the complainant's and the witness' supervisor. Employees shall be interviewed without loss of pay and may have an employee representative present at the interview. The Director of the Office of Internal Audit and Investigations shall give reasonable written notice to the person being interviewed of the time for the interview. Except as otherwise provided in this article, all records of interviews shall be kept confidential until the Director issues a final report concerning the complaint.

(C) If the Director of the Office of Internal Audit and Investigations determines that the complaint (1) was made in bad faith, (2) is frivolous, (3) was made for purposes of harassment or in retaliation, (4) contains information that the complainant knows to be false or the complainant disclosed information with disregard for the truth or falsity thereof, (5) contains information that is confidential by any provision of law or (6) contains information from records which are closed to public inspection pursuant to law, such determination shall be included in a report to the complainant, the complainant's department and the Chief Administrative Officer. The report shall be a public record, state the basis for such determination and be filed in complainant's personnel file. The Chief Administrative Officer shall determine if disciplinary action concerning the complainant is appropriate based on the Director of the Office of Internal Audit and Investigations' report and notify the complainant's department.

(D) The Director of the Office of Internal Audit and Investigations may decline to investigate a complaint or portions of a complaint alleging improper governmental action if the same allegations have previously been investigated or have been adjudicated in any court. The Director of the Office of Internal Audit and Investigations may consolidate investigations when complaints allege the same or similar improper governmental action.

(E) Upon completion of a full investigation, a final written report containing the findings and conclusions of the investigation shall be delivered to the complainant and complainant's department. The report shall be public record upon delivery to the complainant and complainant's department. If the report concludes that improper governmental action occurred and that corrective measures have not taken place or are insufficient to prevent reoccurrence of the improper governmental action the report shall also be delivered to the Mayor and the City Council president.

(Ord. 2-2004; Am. Ord. 1-2005)

#### § 3-7-7 CONFIDENTIALITY.

The complainant's identity shall be kept confidential when a complaint is filed with the complainant's department until such time that the summary of the investigation is provided to the complainant. If a complaint is filed with the Director of the Office of Internal Audit and Investigations, the complainant's identity shall be kept confidential until such time that the Director of the Office of Internal Audit and Investigations delivers a final report as provided in this article. Nothing in this article shall preclude the Director of the Office of Internal Audit and Investigations from disclosing the identity of a complainant or witness or other information to the extent necessary to conduct the Director of the Office of Internal Audit and Investigations' investigation or from disclosing all information related to the complaint, including the identity of the complainant, to law enforcement agencies of proper jurisdiction.

(Ord. 2-2004; Am. Ord. 1-2005)

#### § 3-7-8 RETALIATION.

(A) *Retaliation prohibited.* Elected city officials and city employees are prohibited from taking retaliatory action against an employee because the employee participated in an action protected under this article.

(B) *Discipline.* It shall be a defense to any discipline that the disciplinary action was initiated in retaliation of the employee having filed an allowable complaint or participated in an action protected pursuant to this article.

(C) *Grievances.* Complaints of retaliation not involving discipline shall be submitted pursuant to the grievance resolution procedure provided in § [3-1-24](#) ROA 1994.

(D) *Proof of retaliation.* In order to establish retaliation as a defense to a disciplinary action, the complainant must demonstrate that the complainant's activity under this article was protected activity and was the primary reason for the action the employee is grieving or

appealing. The city may rebut this defense if it demonstrates that it would have taken the same action regardless of the complainant's participation in the activity protected under this article, and that the disciplinary action was taken for legitimate business reasons.

(E) *Limitations.* Retaliation shall not be a defense to a disciplinary action unless the disciplinary action was initiated within two years of the date the complainant filed the complaint with the complainant's department or the Director of the Office of Internal Audit and Investigations. The failure to raise a claim of retaliation in a grievance or an appeal shall bar any subsequent cause of action based on retaliation prohibited by this article arising out of the same set of facts at issue in the related grievance or appeal.

(F) *Remedies.* When retaliation is found to have occurred, either the remedies allowed pursuant to §§ [3-1-24](#) and [3-1-25](#) ROA 1994 of the Merit System Ordinance may apply or adverse materials relating to the retaliatory action in the employee's personnel file may be expunged, or both may apply.

(G) *Retaliation.* If a supervisor is found to have retaliated against an employee in violation of this article, one or more of the following remedies may be ordered by the supervisor's department: (1) placement of information describing the violation of this article in the supervisor's personnel file, (2) reprimand, (3) suspension without pay, (4) demotion or (5) termination of employment.

(H) When there is no finding of retaliation, such record shall be placed in the personnel file of each supervisor accused of retaliation and in the personnel file of the employee who made a claim of retaliation pursuant to this article.

(I) Retaliation shall not be a defense to a disciplinary action or grounds for a grievance if the complainant's complaint is found (1) to have been made in bad faith, (2) frivolous, (3) to have been made for purposes of harassment or in retaliation, (4) to have contained information that the complainant knew to be false, (5) to have disclosed information without regard for the truth or falsity thereof, (6) to have contained confidential records.  
(Ord. 2-2004; Am. Ord. 1-2005)

#### **§ 3-7-9 RESERVATION OF AUTHORITY.**

Nothing in this article shall interfere with the power of the city to take action with respect to any employee, provided that such action is justified on facts separate from activity protected under this article.  
(Ord. 2-2004)

#### **§ 3-7-10 NOTICE OF WHISTLEBLOWER PROTECTIONS.**

The Director of the Office of Internal Audit and Investigations shall prepare and each city department shall post a notice of allowable activities under this article.

(Ord. 2-2004; Am. Ord. 1-2005)

### **§ 3-7-11 REPORTS TO THE CITY COUNCIL.**

The Director of the Office of Internal Audit and Investigations shall provide an annual report to the City Council which shall include (1) the number of complaints received, (2) the nature of each complaint, (3) the number of full investigations conducted, (4) findings or recommendations on policies or practices resulting from investigations, (5) the number of complaints found as valid claims and (6) the number of complaints found to be frivolous or without merit.

(Ord. 2-2004; Am. Ord. 1-2005)

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