

CITY OF ALBUQUERQUE
MERIT SYSTEM ORDINANCE

Section

- 3-1-1 The merit system
- 3-1-2 Responsibilities of the chief administrative officer for personnel functions
- 3-1-3 Responsibilities of the director of human resources
- 3-1-4 Personnel board
- 3-1-5 Powers and duties of the personnel board
- 3-1-6 The classified and unclassified service
- 3-1-7 Employment by the city
- 3-1-8 Probationary period
- 3-1-9 Performance evaluations
- 3-1-10 Compensation
- 3-1-11 Work hours
- 3-1-12 Legal holidays
- 3-1-13 Vacation leave
- 3-1-14 Sick leave
- 3-1-15 Injuries in performance of duty
- 3-1-16 Leave with pay
- 3-1-17 Leave without pay
- 3-1-18 Layoff
- 3-1-19 Resignations
- 3-1-20 Disposition of awards

- 3-1-21 Political activity
- 3-1-22 Employee mediation
- 3-1-23 Disciplinary actions
- 3-1-24 The grievance resolution procedure
- 3-1-25 Appeal from suspension, demotion and discharge
- 3-1-26 Personnel hearing officer
- 3-1-27 Employee organization agreements

§ 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 who 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 Internal Auditor;
- (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)

§ 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, the Chief Administrative Officer should give great weight to any recommendation by the Audit Committee.

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

§ 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 out-side 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:

[Chart Omitted]

(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.

Regular Work Week

Maximum

Working Hrs. 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 in any election; 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 or distributing campaign literature for any candidate in any election, during working hours, at a City workplace, or in the scope of their City employment.

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

§ 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. 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. No person except the Director of Council Services shall discipline the Internal Auditor, and that shall not occur without the concurrence of the Internal Audit Committee. In addition, only the Director of Council Services may discipline other employees of the Department of Council Services, and only the Internal Auditor may discipline other employees of

the Office of Internal Audit.

(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)

§ 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.

(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)

§ 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 Hearing 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)