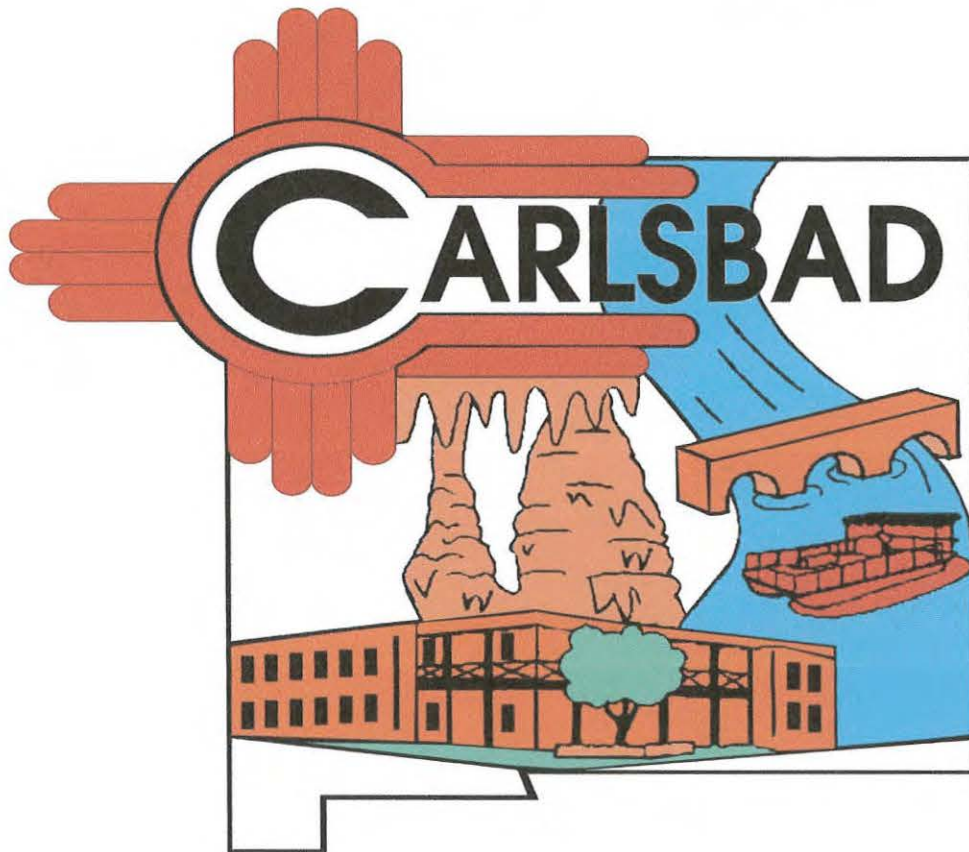


CITY OF CARLSBAD



PERSONNEL POLICY MANUAL

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CHAPTER 1

PERSONNEL PRACTICES

Rule 100

These rules shall govern all phases of Personnel Administration in the City of Carlsbad and shall supersede any rules heretofore adopted. It is not the purpose of this manual to create an implied contract of employment beyond the specific provisions contained herein. The policies within this manual and any amendments thereto shall be adopted by formal resolution of the Governing Body.

100.1

Should any provision, or part thereof, of this Personnel Policy Manual be contrary to provisions contained in a collective bargaining agreement, the provisions of the collective bargaining agreement shall prevail for those employees covered by the specific collective bargaining agreement.

101

It is the policy of the City of Carlsbad that equal opportunity shall govern all personnel policies and practices and shall include, but not be limited to:

- A) Recruitment, hiring and promotion of any qualified person without regard to race, color, ancestry, religion, veteran status, national origin, age, sex, physical or mental disability, except where such is a bona fide occupational qualification as defined by applicable Federal, State, or City laws and regulations. The City further reaffirms its intent to provide reasonable accommodations to disabled employees or applicants in an effort to enhance accessibility to the work place.
- B) Employment and promotion of individuals who are best suited by training, ability, experience, demonstrated competence and interest in performing the responsibilities of each position.
- C) Personnel actions such as compensation, benefits, transfer, lay off, reinstatement and training programs.

101.1

An affirmative action plan to execute these policies has been adopted by the Governing Body. Copies are available in the office of the City Administrator.

CHAPTER 2

AUTHORITY FOR ADMINISTRATION

- Rule 200** The City of Carlsbad, by and through its Governing Body, reserves the right to promulgate any lawful rule or regulation necessary for effective personnel administration, or to amend or rescind any such rule or regulation at any time in a manner consistent with law.
- 201** The City Administrator shall administer all aspects of personnel administration in accordance with these rules and in compliance with City ordinances and the laws of the State of New Mexico and the United States of America.
- 202** Henceforth, the City Administrator may appoint the Director of Human Resources to fulfill any or all responsibilities of administration of this manual as deemed appropriate, except those specifically reserved to the City Administrator by statute, ordinance, or regulation.
- 203** The City Administrator shall:
- A) develop, maintain and apply procedures for the recruitment, promotion, training, discipline and related aspects of personnel management for all personnel under the City's jurisdiction;
 - B) maintain an employee compensation plan approved by the Governing Body;
 - C) recommend to the Governing Body such new or revised personnel rules as are deemed necessary and desirable;
 - D) issue supplemental regulations and directives necessary to the effective implementation of these rules;
 - E) approve contractual arrangements with any qualified person or agency for the performance of technical and professional services required in the establishment and operation of the personnel program;
 - F) delegate to Directors or others such responsibilities and authorities as are deemed necessary for successful administration of the personnel program;

- G) authorize departmental personnel rules drawn and recommended by Directors relating to specific areas of responsibility; and
- H) maintain or cause to be maintained an adequate employment record of each employee including a record of official acts under these policies.

204 Departmental personnel rules may be drafted by Directors to meet specific needs of their areas of responsibility. Such departmental personnel rules must be authorized in writing by the City Administrator prior to implementation. Should there be a conflict between departmental personnel rules and the Personnel Policy Manual, the City of Carlsbad Personnel Policy Manual rules shall govern.

205 The provisions of this Personnel Policy Manual shall apply to all persons employed by the City of Carlsbad, except as follows, or otherwise specified:

- A) Officials elected by popular vote or appointed to fill vacancies in elective office.
- B) Members of City boards and committees appointed by the Mayor, Governing Body or City Administrator.
- C) Independent contractors.
- D) Volunteers, except as otherwise noted herein.

CHAPTER 3

EMPLOYEE CATEGORIES

Rule 300

Designation of all positions within the City shall be either Director, Deputy Director, Department Head, Classified, or Administrative, defined as follows:

Directors referred to in these rules include:

- A) City Administrator
- B) City Attorney
- C) City Clerk
- D) Director of Culture, Recreation & Community Services
- E) Director of Finance/Treasurer
- F) Director of Human Resources
- G) Director of Planning, Engineering & Regulation
- H) Director of Public Works
- I) Director of Utilities
- J) Fire Chief
- K) Police Chief

Deputy Directors referred to in these rules include:

- A) Assistant Fire Chief
- B) Assistant Police Chief
- C) Assistant Treasurer
- D) Deputy City Administrator
- E) Deputy Director of Public Works
- F) Deputy Director of Utilities

Directors and Deputy Directors are considered Executive positions.

Department Heads referred to in these rules include:

- A) Airport Manager
- B) City Court Administrator
- C) City Engineer
- D) IT Manager
- E) Library Director
- F) Museum Director
- G) Police Captain
- H) Purchasing Manager
- I) Recreation Center Manager
- J) Special Projects Administrator
- K) Sports and Recreation Coordinator

- L) Superintendent
- M) Transit Manager
- N) Other managerial positions as may be named as department heads from to time

Classified:

All positions subject to the provisions of a collective bargaining agreement whether or not individual employees in such positions are actually members of the applicable bargaining unit.

Administrative:

All non-union positions other than Directors and Department Heads.

301

Types of Positions

All personnel shall be categorized in one of the following employment designations:

- A) Full-time positions: positions established with a work schedule of 35+ hours of work per week.
- B) Part-time positions: positions established with a work schedule of less than 35 hours of work per week.
- C) Temporary positions: positions established for a definite period of time up to one (1) year.
- D) As needed/on call positions: positions established with no guarantee of hours or specified period of employment.

302

Employee Status

- A) Regular employee: an employee who has completed the initial probationary period successfully.
- B) Probationary employee: an employee who has not completed the probationary period as established herein pursuant to Rule 417 or pursuant to a collective bargaining agreement.

- C) Interim employee: an individual appointed to a vacant position for a designated or undesignated period pending the recruitment, selection and placement of a probationary employee or during the absence of the incumbent employee.

303 Job Descriptions

Each position shall be described by a job description which shall include the title, significant duties and responsibilities, and qualifications applicable to the job duties. The job description as a whole shall be considered in determining the job title and pay, except where such matters have been determined through the collective bargaining process. Job titles are for convenience only and are not intended to be fully descriptive of the job duties, responsibilities, tasks or obligations.

304 Study of Individual Positions

The Director of Human Resources shall arrange for job position studies of individual positions as appropriate.

305 New Positions

Whenever the creation of a new position is desired, the Director shall submit a written job description detailing the duties, justification and budgeting considerations of the position. All new positions are subject to approval by the Governing Body.

306 Change in Job Duties

Directors shall notify the City Administrator promptly, in writing, of each recommended, significant, permanent change of duties, responsibilities, or work assignments for positions under their supervision. Directors shall review the relevant job description within their area of responsibility for accuracy prior to filling a vacant position.

307 Improper Title or Grade

Employees who consider their position improperly titled or paid shall submit a written request for review to the Director of Human Resources, who shall investigate and review such requests. Recommendations, if any, for retitling or pay adjustment shall be made by the Director of Human Resources and submitted to the City Administrator for approval. If a change in title or pay is not justified and is denied, the employees shall be informed promptly in writing of such decision through the chain of command.

Except as otherwise provided for in these rules, no employee shall receive compensation from the City in addition to the pay established for the employee's position for any services rendered by the employee either in the discharge of the employee's ordinary duties, which may be imposed upon the employee or which the employee may undertake or volunteer to perform. No reward, gift, or other form of remuneration in addition to regular compensation shall be received from any source other than the City by an individual employee for performance of the duties as a City employee.

CHAPTER 4

RECRUITMENT AND SELECTION

Rule 400

Vacancies

Whenever a vacancy is requested to be filled, the Director shall submit to the Human Resources Department a personnel requisition form containing all pertinent information concerning the vacancy. Requisitions must be approved in writing by the City Administrator prior to posting vacancy notices.

401

Posting of Vacancies

All vacancy notifications, except for Executive positions, shall be posted on specified City bulletin boards for a minimum of seven (7) calendar days, during which time requests for transfer or promotion shall be accepted by the Director of Human Resources on a form provided by the City.

402

Recruitment

The Director of Human Resources may also publicize job openings through such media as will bring notice of recruitment to as many qualified persons as possible, including the filing of openings with the New Mexico Department of Workforce Solutions, posting of job announcements in public places, and the advertising of vacancies through printed and electronic media. Each such announcement shall state that the City of Carlsbad is an Equal Opportunity Employer. Individuals shall be recruited from a geographic area as wide as necessary in order to find the candidate who best fulfills the needs of the position and in compliance with Federal and State statutes.

403

Employment Applications

Applications shall be submitted on the standard City of Carlsbad form. The application form shall not solicit information prohibited by law, except for those positions where age, physical condition or absence of criminal convictions are bona fide occupational requirements or statutory requisites for public employment or where collection of such information is in accordance with statutory requirements. Applications for all positions shall be accepted in the Human Resources Office on days and at times posted.

404 Applicant File

The Director of Human Resources shall maintain a file of non-employee applicants. Applications will be retained for a period of three (3) years. Unless otherwise noted, submission of a new application shall be required for each advertised position.

405 Competitive Examinations

All applicants for positions shall be subject to competitive examination. Examinations shall be confined to those matters which are job related and which fairly, validly and reliably test the capability and fitness of the applicant to successfully discharge the duties of the class for which the fitness examination is held. Examinations may be written, oral, physical, medical, performance tests, rating of training and experience, or any combination of these.

406 References

The Director of Human Resources shall determine the extent to which the employment and personal references and other information provided by the applicant shall be checked. Applicants shall be advised on the application form that they are subject to such reference checks and data verification. All such inquiries, whether made by personal, telephone or written contact, shall be documented and made a part of the applicant's file.

407 Certification

Certain positions require a certification by State or other governmental authorities including, but not limited to, Water and Waste Water positions, Law Enforcement Officers and Emergency Medical Technicians. The City may require levels of certification applicable to specific positions which will be outlined in the job description.

408 Driver's License

A valid New Mexico driver's license of appropriate category is a mandatory requirement of any City job, classification, or position which requires an employee to operate a motor vehicle at any time in connection with City business.

408.1 For purposes of this policy, a valid New Mexico limited license or permit of appropriate category issued by competent authority shall be satisfactory

evidence of a valid license if acceptable to the City's auto and general liability insurance carrier.

408.2 Revocation or suspension of an employee's driver's license shall disqualify such employee from holding any City position which requires a driver's license.

408.3 An employee whose license has been suspended or revoked for any reason shall:

- A) not operate any motor vehicle in connection with City business; and
- B) notify his/her immediate supervisor as soon as possible, but in any event, prior to the start of his/her next work day.

Failure of an employee to comply with the provisions of the above paragraph shall be cause for disciplinary action.

408.4 Supervisors who learn that a subordinate employee's driver's license has been suspended or revoked shall:

- A) take immediate action to ensure that the employee does not operate a motor vehicle in connection with City business; and
- B) notify the Director of the department in which the employee works of the suspension or revocation as soon as possible.

Failure of a supervisor to comply with the provisions of the above paragraph shall be cause for disciplinary action.

408.5 An employee whose position requires a driver's license and whose license is suspended or revoked for 180 days or more shall:

- A) be suspended without pay for a maximum of 30 calendar days during which time the employee may return to his/her regular job at any time upon providing the City Administrator or his designee with proof of a valid New Mexico driver's license of appropriate category;
- B) be discharged if he/she is unable to obtain a valid New Mexico driver's license of appropriate category within 30 calendar days.

408.6 An employee whose position requires a driver's license and whose license is suspended or revoked for less than 180 days shall, until such time as the

employee provides the City Administrator or his designee with proof of a valid New Mexico driver's license of appropriate category:

- A) be immediately demoted to a City position which does not require a driver's license; or
- B) if it is in the best interest of the City, be retained in the employee's regular position at a 10 percent reduction in pay.

408.7 Subject to Rule 408.5, employees in laborer classifications shall be demoted to a laborer position that does not require a driver's license at a 10 percent reduction in pay for the duration of the demotion.

408.8 Notwithstanding any provision to the contrary, an employee whose position requires a driver's license and whose license has been suspended or revoked for any length of time shall be discharged:

- A) if the employee has had a prior license suspension or revocation within the five-year (5-year) period preceding the most recent suspension or revocation; or
- B) if the loss of license resulted in whole or in part from:
 - 1. the operation of a City vehicle
 - 2. the operation of any vehicle in connection with City business; or
- C) if the loss of license results in the loss of certifications essential to the performance of the employee's job.

409 Evaluation of Candidates

All candidates for a vacant position shall be evaluated against the same qualification requirements. Qualified applicants for a specific position will be referred by the Personnel Office to the Director for review and selection. A recommendation for hire will be forwarded to the City Administrator by the Director following interviews and reference checks. All reference checks shall be made by or at the direction of the Director of Human Resources.

410 Background Investigation

An investigation of a candidate's background, to include criminal records check, may be conducted depending upon the nature of the position and as directed by the Director, City Administrator, or Director of Human Resources.

411 Selection

Upon completion of interviews of the highest ranking candidates, the Director shall notify the City Administrator of the candidate(s) recommended to fill the position(s).

412 All qualifications being equal, City employees shall be given preference over non-employee candidates.

413 Offer of Employment

An offer of employment for a position with the City is made when the Governing Body gives approval to a recommendation for hire, subject to successful completion of the physical examination. The Governing Body must approve the appointment of all applicants for employment with the City.

414 Physical Examinations

All offers of employment shall be conditioned upon successfully passing a pre-employment physical examination. The physical examination shall be performed by the City-appointed physician at the expense of the City. The results of medical examinations shall be confidential, filed separately from other personnel records, and shall be made available only to those persons who are entitled to such information.

415 Interim Appointment

If there are no candidates available who have qualified for a vacant position, the City Administrator may authorize the interim appointment of a current employee. Such appointment shall be for an interim period, specified or non-specified, pending further recruitment and examinations. To be considered for regular appointment, the individual appointed must qualify on a competitive basis with all other applicants for the position.

416 Date of Hire and Anniversary Date

The date of hire shall be the first day the employee reports to work. The anniversary date shall be the same day and month in succeeding years.

417 Probationary Period

Every employee shall work a minimum probationary period of six calendar months, unless otherwise specified in a collective bargaining agreement. An employee who receives a transfer to another department during the

probationary period shall commence a new 6-month probationary period, unless the requirement is waived by the City Administrator. Employees hired into an apprentice program shall be considered probationary employees for the duration of the apprentice program.

- 417.1 The probationary period allows the employee time to demonstrate fitness for the work position by the actual performance of the position's responsibilities.
- 417.2 Probationary employees may be dismissed at any time during the probationary period and shall be dismissed at the end of the period unless their probationary period evaluation is rated satisfactory or above. A probationary employee who is recommended for dismissal may be considered for demotion to a position in a lower pay range with the approval of the City Administrator.
- 417.3 Probationary employees shall receive regular, periodic evaluations during the probationary period. If performance and employment conditions are satisfactory or above, the employee shall attain regular employee status.
- 417.4 Employee benefits will accumulate during the probationary period, except as otherwise provided herein. Employee benefits such as vacation, sick leave, leave of absence, holidays and insurance may be utilized during the probationary period.

CHAPTER 5

EMPLOYEE CONDUCT AND RIGHTS

Rule 500

Code of Ethics - Public Employment as a Public Trust

In performing their duties and in their many contacts with citizens, City employees shall be aware continuously that the impression of City government which the public forms is based upon their manner, appearance, job performance, speech and conduct. Consequently, City government is dependent upon standards of reliability, integrity, industriousness, helpfulness, courtesy, efficiency, patience, grooming, dress and language which are appropriate to the work situation and acceptable to the majority of the community. A public employee away from the job shall exercise the same rights as any other private citizen insofar as they do not interfere with their performance on the job or undermine the public confidence in the City, the employee, or any other City employee.

501

Attendance

An employee shall arrive promptly and be prepared to work at the scheduled time and place. In the event that illness or other conditions prevent arrival or punctuality the employee shall notify their immediate supervisor as soon as possible prior to the scheduled reporting time giving the reason for failure to report and estimating, whenever possible, when he/she will be able to report for duty.

502

Employees who leave their duties before the scheduled ending time because of illness or other reasons must obtain permission from the supervisor prior to leaving.

503

The approval by a supervisor of requests for leave with pay or leave without pay for the time involved in an absence shall be based upon the reasons involved, the availability of accumulated leave time and the employee's performance and attendance history.

504

Failure to provide proper notification as required in Rule 501 or failure to report to work on time shall constitute a tardiness and shall be cause for disciplinary action as outlined in Rule 807.

505 Excessive absenteeism is cause for disciplinary action. Unexcused absences exceeding four percent (4%) of an employee's scheduled work hours during a rolling calendar year is considered to be excessive absenteeism. An unexcused absence is defined as:

- A) any sick leave not authorized in writing by a physician.
- B) any unauthorized failure to report during scheduled work time.

505.1 A rolling calendar year is the previous 12-month period from the date of the last incident of absence. Excessive absenteeism shall be cause for disciplinary action.

506 Rest Periods

Each employee may be allowed a rest period of no more than 15 minutes (including travel time) twice a day as authorized by the supervisor. Rest periods shall be taken only after having been on the job for a minimum of two (2) hours, unless otherwise approved by the supervisor. Rest periods cannot be accumulated for other purposes such as vacation, or as a means of leaving the job early. Abuse of rest periods is grounds for disciplinary action. Employees may be required to remain at the work site during their rest periods.

507 Meal Time

A City employee shall be entitled to time off to eat during each work shift. Such meal time, to be scheduled by the supervisor, shall be unpaid time, unless the employee is required to remain at the work site, or subject to call, in which case the City Administrator may authorize a meal period as part of time worked.

508 Outside Employment and Volunteer Activities

Employment with the City shall be considered the primary employment of all full-time employees. Such employees shall not engage in outside employment or volunteer activities that conflict in any manner with the employee's responsibilities to the City.

509 Political Participation

No City employee shall campaign, distribute literature, or solicit political contributions while on the job. No City employee shall prohibit the right of another employee to have and express a personal choice or commitment

provided such expression of views does not interfere with anyone's work duties.

- 509.1 No person shall solicit contributions or assessments for any political party or candidate during working hours. No City employee shall ever be expected, required, or coerced to contribute to any campaign.
- 509.2 No City employee shall purport to represent the City at any political meeting, political activity, or in political publicity unless authorized by the City Administrator.
- 509.3 The City shall not prohibit an employee from voting or from exercising his/her political rights as a private citizen during non-working hours.
- 509.4 A City employee who chooses to run and campaign for political office shall not campaign during working hours. An employee elected to a post may retain City employment after election if the elective post is not in violation or conflict with City employment under any applicable law or policy.

510 Solicitations and Distributions

Solicitation or distribution of any material on City property by employees or non-employees is prohibited unless approved in advance by the City Administrator.

511 Voluntary Contributions

No City employee shall be required to contribute funds to a community volunteer service or charity drive. Employees wishing to serve as volunteers to collect contributions from other employees must obtain approval from the City Administrator prior to any solicitation activity.

512 Voting Time

A City employee who is registered to vote shall be granted up to two (2) hours time between the time of opening and the time of closing the polls to exercise this privilege when requested in advance. In accordance with state law, the supervisor shall specify the hours during this period in which the worker may be absent. The specified hours may include time before a scheduled shift and following the end of a shift. The provisions of this state law do not apply to any employee whose work day begins more than two (2) hours after the opening of the polls, or ends more than three (3) hours prior to the time of closing the polls. Supervisors may adjust work schedules to insure adequate personnel coverage.

513 Hiring of Relatives

It is vital to the public image of the city to avoid the practice or appearance of nepotism in employment.

- 513.1 No person shall be hired, promoted, or transferred to a position which is under the direct supervision or the departmental chain of command of a relative, in this case meaning a blood or marriage relation to the third degree of kindred.
- 513.2 If two employees are in positions of direct or indirect supervision through any departmental chain of command and these two employees establish a relationship by marriage, other operation of law, or through lifestyle accommodations being the substantial equivalent of a family relationship, the City Administrator may transfer one of the employees to a position removed from the supervisory control of the other if it is determined that such transfer will serve the best interests of the city.
- 513.3 Except as provided in this section, no applicant or employee who is a relative of another city employee shall be prohibited from seeking and holding a city position or from promotion within the municipal service, provided such recruitment or promotion is conducted in accordance with this policy and any applicable administrative regulations.
- 513.4 The third degree of kindred includes spouses, parents, children, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, aunts, uncles, nieces and nephews.
- 513.5 Supervisors will not knowingly allow these nepotism provisions to be compromised and have an affirmative obligation to report any violations to their department head.

514 Fraternization

It is the policy of the City of Carlsbad to limit fraternization throughout the organizational structure. As such, the following rules shall apply:

- A) No supervisory personnel shall have a dating relationship with any subordinate employee.
- B) No supervisory personnel shall reside within the same dwelling as any subordinate.
- C) Fraternization between supervisory and subordinate personnel must not diminish the department's organizational structure.

- D) Employees in training shall be prohibited from fraternizing with training personnel until such time as they are released from training.

All departmental personnel having knowledge of a violation of this policy shall report said violation to the department head as soon as practical.

515 Citizen Verification

The City will not discriminate on the basis of a person's national origin or citizenship status with regard to recruitment, hiring or discharge. An INS Form I-9 must be completed in order to verify identity and employment eligibility.

516 Bulletin Boards

Employees are expected to read notices of job vacancies, official notices and other items of interest posted on departmental bulletin boards. Because of the public nature of the bulletin boards, distasteful, risque, or potentially offensive material shall not be posted.

517 Dress and Appearance

All employees are expected to appear clean, neat and conservative in keeping with the professional image of the City. Grooming and hair styles shall comply with any departmental regulations. Jewelry, accessories and shoes shall be functional and safe for the work performed. Body odor, bad breath, cigarette smoke and excessive use of perfume and cologne can be offensive. Appropriate precautions must be taken. The City reserves the right to ask any employee improperly dressed to leave the job site to change clothing or to improve his/her appearance with loss of pay for the time absent from the job. Specific dress regulations will be included in departmental orientation.

518 Uniformed Personnel

Uniforms, which are provided to many City employees, shall be maintained by the employee. Only headgear provided by the City shall be permitted for uniformed personnel. Uniforms must be complete and appropriate for the season. Each department will maintain specific regulations for wearing its uniforms and related accessories and equipment. Uniforms, or any part thereof, shall not be worn during off-duty hours, except as incidentally necessary prior to arriving or after leaving work and during lunch periods. Under no circumstances shall a non-employee be allowed to wear a City uniform at any time.

519 Non-Uniformed Personnel

Employees not provided uniforms shall wear appropriate clothes for their job. Very casual clothing, evening wear and play clothes are not appropriate for normal work routines. Some field positions may permit casual attire and will be specified in approved departmental policies.

520 City Vehicle Usage

It is the policy of the City of Carlsbad to provide City vehicles to designated staff for the efficient operation of City business.

520.1 Employees are prohibited from utilizing City-owned vehicles for purposes other than commuting and business reasons, except as specifically authorized by the City Administrator. All employees must drive a City-owned or authorized vehicle while on City business unless specifically exempted by authorization of the City Administrator.

520.2 If an employee is authorized by the City Administrator to use the employee's personal vehicle on official, out-of-town business, the employee shall be reimbursed at a rate per mile established by Resolution from time to time. Use shall be within the strict guidelines of use as prescribed by the City Administrator.

520.3 Most employees who use City vehicles regularly will be assigned specific vehicles. Employees who are not assigned specific vehicles will be assigned vehicles from the pool as directed by the Director.

521 Relief Breaks and Meal Periods While Using City Vehicles

Relief breaks and meal periods are not official business. Employees shall use their best judgment regarding vehicle use for these periods. During normal operations, the employee may stop for a meal or relief break. Supervisors shall be responsible for assuring that vehicle use is not abused.

522 Operation of Vehicles

Vehicles shall be operated in a safe, lawful and responsible manner. Seat belts shall be worn as required by law. Recognizing the need to minimize distractions while driving, utilization of cell phones is permissible only with hands-free devices. Smoking is prohibited in all City vehicles.

523 Vehicle Use Eligibility

The regulations concerning the eligibility of employees' use of City vehicles shall be established by the City Administrator.

- 523.1 Motor vehicle records will be checked at least annually on all employees. Disciplinary action will be warranted should the records check reveal an apparent lack of concern for safety. Successful completion of an approved defensive driving course may be required of all employees who operate City vehicles.

524 Work Safety

It is the official policy of the City of Carlsbad that no job is so important and no service so urgent that time cannot be taken to perform work safely. The City Administrator shall appoint a Safety Advisory Committee to establish and enforce safety standards and rules for the operation of City business.

- 524.1 Negligence or failure to follow safety rules and regulations are grounds for disciplinary action. General safety policies are contained in a general safety manual and departmental safety policies.

525 Investigations and Audits

The City reserves the right to conduct appropriate investigations or audits for the purpose of monitoring the adherence of all City employees to the policies and procedures set forth in this manual as well as all policies adopted by reference. Such investigations and audits, based upon reasonable suspicion, may include, but are not limited to, the search of City property, including lockers and desks, regardless of the ownership of a securing device.

526 Personnel Record and Record Changes

Each employee may examine his/her own permanent personnel record at any reasonable time with prior arrangement with the Director of Human Resources. The City is not obligated to provide a copy of an individual's personnel file except as may be required by applicable law or regulation.

- 526.1 Employees will be provided a copy of all personnel actions which affect their employment status at the time of the action.

526.2 Employees are encouraged to update their personnel files with evidence of additional skills and training which they have acquired since employment and to update dependent, beneficiary and similar benefit information changes as they occur. Record changes such as address and phone numbers also should be made in the Personnel Office.

526.3 Portions of employee personnel records are subject to public inspection. Those portions protected by applicable law or regulation may only be inspected with the written permission of the employee or upon the appropriate order of a court or other regulatory body. However, Supervisors within the employee's chain of command may inspect the employee's record without the employee's permission.

527 **Computer, E-mail and Internet Usage**

City Employees using City equipment to access the internet or any such related services shall at all times use the internet or related services only in connection with official City business and in a manner appropriate to official duties and responsibilities. Employees shall refrain from:

- A) The illegal downloading of any electronic file;
- B) The transmission of any communication with the intent to threaten, intimidate, harass, annoy or offend;
- C) The transmission of any communication containing any inappropriate or offensive content regarding race, sex, religion, ethnicity or handicap;
- D) The transmission of any communication in violation of any law, regulation, ordinance or City policy;
- E) The use of the internet or related services for personal gain, recreation or amusement;
- F) Accessing or attempting to access in order to read, delete, copy or modify the electronic mail of other users;
- G) Accessing or attempting to access files without proper authorization; or
- H) The use of any password or personal identification number or other security devices of another person without proper authorization.

528 Telephone Use

Every City employee shall provide the supervisor and Personnel Department with a phone number where he/she can be contacted outside of work.

528.1 All employees are required to demonstrate professional and courteous conduct on all City telephones. Employees should always identify themselves and their department when receiving incoming calls. Every effort must be made to transfer misdirected calls to the proper person and department. Personal long-distance calls, including long distance faxes, shall not be charged to City telephones. Use of phones for personal business which interferes with the execution of City business will be grounds for disciplinary action.

528.2 Cell phones have become essential to the effective and efficient conduct of City business. The use of cell phones for City business may be necessary or required depending on the work assignment or an Employee's classification. All executive and certain administrative staff will be required to acquire personally owned cell phones and make themselves available at all reasonable times. Those employees identified by policy as requiring cell phone use shall receive the payment of a flat monthly or bi-weekly stipend to cover all reasonable costs for the purchase of a personally owned cell phone and continuing monthly costs. The use of cell phones without a hands-free device while operating a City vehicle is strictly prohibited.

529 Governmental Conduct Act

The Governmental Conduct Act, NMSA 1978, Sec. 10-16-1, et seq., requires all employees and public officials of the City to disclose their outside employment. "Employees" are everyone rendering services to the City for pay. "Public officials" are every elected or appointed officer of the City, including all members of advisory boards. A part of that Act requires all public officers and employees disclose to the City in writing "all employment engaged in by the officer or employee other than the employment with or service to" the City.

529.1 All changes in your employment status must reported in writing to the City when they occur. If, after you have filled out a Disclosure Form, you become employed by someone other than the City or if you cease to be employed by someone you listed on the Form, you must obtain a new one, fill it out, and return it immediately. New forms can be obtained at the City Human Resources Office, Room 114, City Hall. Employees turn in their completed forms at the Human Resources Office. Public officials turn in their completed forms to the City Clerk's Office, Room 206, City Hall.

- 529.2 One of the purposes of the Governmental Conduct Act is to have full disclosure of real or potential conflicts of interest. Knowledge of an employee's or public official's non-City employment, family members, and financial interests allows the City to avoid conflicts of interest in City purchasing and contracts. It also prevents unlawful employee participation in purchasing and contract matters.
- 529.3 Refusal to provide the information or providing incomplete or false information by an employee could result in discipline including discharge from the City. A Public Official could be removed from his or her position with the City. In addition to discipline or discharge, violations of the Governmental Conduct Act can result in civil and criminal lawsuits filed by a District Attorney or the New Mexico Attorney General. For some violations, the civil penalties include injunctions and civil fines as much as \$250 for each violation. Criminal penalties include imprisonment and fines. The most serious violations of the Governmental Conduct Act are 4th degree felonies punishable by 18 months in prison and a fine of \$5,000.

CHAPTER 6

EMPLOYEE PAY

Rule 600

Payroll Periods

A payroll period consists of two calendar weeks from Monday morning to Sunday night. Paychecks shall be issued every other Friday, or as designated by the City Administrator.

- 601** Pay changes become effective on the first day of the following pay period unless otherwise authorized by the City Administrator.

602 Work Week

The standard work week for non-exempt positions shall be 40 hours. Certain jobs will require more hours, less hours, or irregular hours (e.g., Fire Department, part time, seasonal, etc.).

- 602.1** The number of hours an employee is required to be on duty each day, week, or month shall be uniform, as far as is practicable, for all employees in the same class. The scheduled work week of an individual employee normally shall be established consistent with the organizational unit, provided that the City Administrator, or his/her designee, may approve deviations to meet the needs of the City.

603 Exempt Positions

In accordance with Fair Labor Standards Act (FLSA), certain positions may be designated by the City Administrator as being "exempt" positions on the basis of administrative, executive, or professional duties performed. Such positions are exempt from payment for overtime or call-back. Compensation for exempt positions shall include all hours worked, however many or few, in a work week.

604 Non-Exempt Positions

The majority of City employees are non-exempt for overtime purposes. Employees in such positions shall be paid for each hour worked on straight-time or overtime rate, whichever is applicable.

605 Overtime Compensation Authorization

Regular overtime must be approved in advance by the Department Head or his designee. Employees shall not perform overtime work unless such work is approved in advance.

606 Regular Overtime

Overtime is work in excess of 40 hours per 7-day work week, unless otherwise established in a manner consistent with law, and shall be paid as follows:

- A) Daily overtime: All work performed in excess of eight (8) hours in any scheduled work day shall be paid as overtime. Daily overtime shall not apply to 24-hour shift workers. Employees who work four 10-hour work days shall be paid overtime after ten (10) hours in a scheduled work day.
- B) Weekly overtime: All work performed in excess of 40 hours in any work week shall be paid as overtime. Employees who work 24-hour shifts shall be paid overtime for all hours worked outside of their regularly scheduled shifts.
- C) Before or after regular hours: All work performed before or after any scheduled work shift shall be paid as overtime.

607 Overtime Rate

Authorized overtime shall be calculated at the rate of one and one-half (1½) times the base hourly rate multiplied by the number of overtime hours worked.

608 FLSA Overtime

In certain police, fire and ambulance situations, the City may utilize partial exemptions from overtime as allowed by law. Overtime compensation will be paid in such situations in a manner consistent with law.

609 Call-Back Pay

When a non-exempt employee is ordered to report and does report back to work for emergency service, the time shall be compensated as specified in Rule 607.

609.1 Time must be calculated beginning with the time the employee actually leaves to return to work following notification to return to work.

609.2 If an employee is required to stay on the job after the end of the regular work shift, the employee shall be paid overtime for the actual time worked rounded to the next highest quarter ($\frac{1}{4}$) hour.

610 Pay for Holiday Work

When a non-exempt employee works on a regularly scheduled work day that is observed by the City as a holiday, the employee shall be compensated, unless otherwise specified in a collective bargaining agreement, as follows:

- A) the regular rate for the regularly scheduled hours actually worked; and
- B) holiday pay in an amount equal to the regular rate for each regularly scheduled hour worked; and
- C) time and one-half ($1\frac{1}{2}$) for any hours that constitute overtime.

611 Continuous Service Required

Eligibility for salary increases, leave accrual and similar purposes specified in these rules shall be based upon the requirement of continuous service, which means creditable employment by the City without a break. In calculating such service:

- A) Any leave of absence of 30 work days or less does not constitute a break in service and is creditable time.
- B) Leave of absence of more than 30 work days is a break in service and is not creditable time.
- C) Absences for extended military leave without pay in response to voluntary enlistment, the draft, or active duty orders are not creditable time for leave accrual rate and seniority.
- D) Annual military leave as specified in New Mexico Statute and noted in Rule 1241 is creditable service.
- E) A break in employment caused by layoff, resignation, or other termination is not creditable service.

612**Separation Pay**

If an employee is discharged, the final pay shall be issued pursuant to Section 50-4-4, NMSA, 1978. If an employee resigns, dies, or retires, the final pay is due and payable the next regular pay day, unless otherwise approved by the City Administrator. All City property that has been issued to or is in the possession of the employee must be returned and accounted for by the supervisor. The supervisor will send notification to the City Administrator advising that all City property is or is not turned in, and any amounts owed the City for City-owned property.

612.1

Employees are responsible for paying for property of the City which is not returned. Appropriate deductions from the final paycheck will be made if property or payment is not received.

CHAPTER 7

PROMOTIONS, TRANSFERS AND DEMOTIONS

Rule 700

Career Ladders

The Director of Human Resources shall analyze all positions within the City to determine similarities and differences in qualifications required and shall identify rational paths for lateral and vertical movement between positions. Whenever possible, employees in positions with lower pay grades shall be offered opportunity to train for promotion to positions with higher pay grades.

701

Promotions

Qualified, regular employees shall be considered for promotion to fill any vacant position in the City's service, and shall be considered over non-employee applicants, all qualifications being equal. Probationary employees shall not be considered for promotion until completion of the probationary period, except with approval of the City Administrator, or as otherwise provided for in a collective bargaining agreement.

702

Development Encouraged

The City encourages employees to develop skills, attain greater knowledge of their work, and make known their qualifications for promotion to more responsible and difficult positions. Successful completion of in-service training by an employee shall be recorded by the Department Head in the employee's file. Employees are urged to report completion of outside training or the attainment of new or improved skills to the Department Head for inclusion in their personnel files.

703

Transfer

An employee may be transferred from one position to another provided the employee meets the qualifications for the new position and is determined to be the most qualified employee for the position.

704

Transfer Procedure

- A) An employee who wishes to be considered for a transfer to another position which has been posted must submit a bid consideration request form to the Director of Human Resources. The bid consideration request form will be forwarded to the interviewing supervisor. The

interviewing supervisor will make arrangements with the employee for an interview and, subsequently, notify the employee's current supervisor of the interview.

- B) The transfer date of an employee who is selected for the position shall be agreed upon by the current supervisor and the new supervisor.
- C) In no case shall an employee be prohibited from expressing interest in transferring, nor shall there be any reprisal for such interest.
- D) Where transfer procedures are specified in a collective bargaining agreement, such procedures shall govern for the employees classified under the agreement.

705

Demotions

An employee may be demoted from a position to a position with lower pay, provided the employee meets the qualifications for the new position and the employee either:

- A) Voluntarily requests such demotion.
- B) Would otherwise be laid off because of abolishment of the position, lack of work, or lack of funds.
- C) Is displaced by return of the former incumbent from authorized leave.
- D) Position has been reassigned to a lower pay grade.
- E) Has participated in a Pre-Determination Hearing, as specified in Chapter 11, for which a recommendation for demotion has been affirmed.
- F) Is subject to demotion pursuant to the provisions of official policy or the provisions of a collective bargaining agreement.

706

Demotions must be recommended by the Directors controlling both positions and approved by the City Administrator.

CHAPTER 8

DISCIPLINE

Rule 800

Purpose of Discipline

The City of Carlsbad is committed to conducting operations in a safe and efficient manner. To insure this goal is attained, employees are expected to conduct themselves in a professional and conscientious manner; dedicating themselves to constant safety awareness, efficiency in all operations and quality of workmanship.

- 800.1 Whenever an employee's performance, work habits, or personal conduct fall below the satisfactory level, the employee's immediate supervisor shall inform the employee promptly and specifically of all such shortcomings. If the failure by an employee to fulfill his or her responsibilities as an employee does not require immediate disciplinary action, a reasonable period for improvement will be allowed before initiating written disciplinary action. Minor infractions, in the first instance, will be handled by oral counseling.
- 800.2 It is the policy of the City to administer discipline in a progressive manner, however, any or all steps may be waived based upon the severity of the infraction. Infractions of City policy will be placed at the appropriate level of progressive discipline. Each alleged violation will be given careful consideration, investigated thoroughly, and disciplinary action will be administered in a fair and equitable manner.
- 800.3 Any activity that may not be specifically enumerated in these rules, yet which interferes with the maintenance of an efficient, orderly, safe, and healthy workplace will also be considered as a violation of these basic rules of conduct and be treated accordingly.

801

Conduct Subject to Discipline

Employees may be subject to disciplinary action for failing to fulfill their responsibilities as employees. The following list illustrates conduct that may subject an employee to disciplinary action, however, the list is not inclusive of all actions subject to discipline.

- A) Misconduct on the job.
- B) Carelessness or negligence in the performance of duty, including the operation of City vehicles or equipment.

- C) Failure to meet prescribed standards of work.
- D) Failure to follow instructions, directives or direct orders.
- E) Unauthorized absence from work (see Rule 1213, AWOL).
- F) Unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or violation of the drug and alcohol policy.
- G) Acceptance of money, gifts, privileges, or other valuable consideration which was given with the expectation of influencing the employee in the performance of his/her duties.
- H) Use of official position for personal advantage.
- I) Willful misuse, theft, or destruction of City, employee, or visitor property.
- J) Unauthorized or fraudulent manipulation of time records or other City records.
- K) Convicted of a violation of any federal or state law or City ordinance.
- L) Violation or disregard of policy, regulation or rule contained in this manual or established by the department and approved by the City Administrator.
- M) Violation of a professional code of ethics or professional responsibility.
- N) Tardiness and excessive absenteeism.
- O) Insubordination.
- P) Disorderly or indecent conduct.
- Q) Use of offensive or abusive language.

802

Forms of Disciplinary Action

Progressive disciplinary action will be utilized, but any or all steps may be waived based upon the severity of the infraction. The types of disciplinary action which may be recommended are limited to:

- A) Written warning.

- B) Written reprimand.
- C) Suspension without pay.
- D) Payment for intentionally or negligently damaging City property.
- E) Demotion.
- F) Discharge.

803 Relief from Duty

Any Department Head may relieve an employee from duty for cause and order the employee to leave the work site, but such order shall not constitute suspension or discharge until such is approved by the City Administrator.

804 Leave of Absence with Pay Pending Investigation

Pending an investigation of an employee for alleged violations, the City Administrator may determine that it would be in the best interest of the City for that employee not to perform his/her regular duties. The employee may be placed on administrative leave of absence with pay and notified of such action. The extent of such leave shall be dependent upon the length of the investigation.

805 Notification of Disciplinary Action

A record of all disciplinary action shall be maintained in written form stating the cause for discipline and citing the specific elements upon which it is based. A copy of the written notice shall be forwarded to the Director of Human Resources who shall place it in the employee's personnel file. A copy of the action shall be given to the employee.

806 Absenteeism

The City expects employees to be at work on a regular basis and requires that all excused absences for accrued vacation or leave without pay/leave of absence will be requested and approved in advance.

- 806.1 An employee who is unable to report to work at the beginning of the shift due to sickness must notify his/her supervisor prior to the beginning of the shift and request sick leave. In the event an employee does not have sufficient sick leave to cover the request, the employee must use accrued annual leave to supplement the lack of sick leave.

Tardiness

The City expects employees to be at their work stations, ready to work, at the beginning of the scheduled shift, at the end of scheduled breaks and at the end of scheduled lunch periods.

807.1 The following progressive discipline will be utilized for instances of tardiness.

40-hour-per-week Employees

- 1st tardiness in the previous 6 months - written warning;
- 2nd tardiness in the previous 6 months - written reprimand;
- 3rd tardiness in the previous 6 months - 1 day suspension without pay;
- 4th tardiness in the previous 6 months - 3 days suspension without pay;
- 5th tardiness in the previous 6 months - discharge.

24-hour Shift Workers

- 1st tardiness in the previous 12 months - written warning;
- 2nd tardiness in the previous 12 months - written reprimand;
- 3rd tardiness in the previous 12 months - 8 hours suspension without pay;
- 4th tardiness in the previous 12 months - 1 shift suspension without pay;
- 5th tardiness in the previous 12 months - discharge.

CHAPTER 9

EMPLOYMENT SEPARATION

Rule 900

Types of Separation

An employee may terminate employment with the City for either voluntary or involuntary reasons. Resignation, job abandonment and retirement are voluntary separation. Death, disability retirement, lay off and discharge are involuntary separation.

901

Return of City Property

At the time of termination for any reason and prior to final payment, the employee shall return all records, uniforms, keys, I.D. badges, gasoline cards, or other items of City property in the employee's custody to the immediate supervisor. The departing employee shall execute a certificate that all such property known to be in the employee's custody has been returned. Where such property has been signed for by the employee, the cost of any shortage must be reimbursed to the City prior to receipt of the final paycheck.

902

Separation Pay

Employees who separate shall receive payment for all earned wages and for unused accrued annual leave. Employees retiring under PERA will be allowed to sell back sick leave in accordance with Rule 1206. Final payment shall be no later than the next regularly scheduled pay day, provided the employee or survivor is in compliance with Rule 901 above.

903

Resignation

An employee who desires to resign shall submit a written resignation as far in advance as possible, but no later than two weeks in advance. The written resignation shall contain the effective date, reason for resignation and signature. Failure to give written, advance notice will result in "no rehire" status. If an employee tenders an oral resignation, the employee's supervisor shall immediately prepare a memorandum to the Director stating the employee's resignation, including the effective date and the reason for the resignation. A copy of the memorandum will be provided to the employee. Voluntary resignation is considered a complete break in employment and service continuity.

904 Job Abandonment

Employees who are absent from the job for three (3) consecutive working days or two (2) consecutive twenty-four hour (24 hr) shifts without approved leave have abandoned their job. A Notice of Termination shall be sent by certified mail to the last known address of the employee. Any compensation for wages due through the last day's work will be withheld pending compliance with Rule 901 or restitution for the deficiencies thereunder.

905 Post-Approval of Absence

Employees who have abandoned their position may be reinstated only if it is demonstrated to the satisfaction of the City Administrator that the circumstances of the job abandonment made it impossible for the employee to notify the proper persons and request official leave. If the City Administrator determines that the employee is to be reinstated, such time missed will be charged as leave without pay. The determination of the City Administrator shall be final.

906 Retirement

An employee is considered eligible to retire from the City of Carlsbad if he/she qualifies for retirement under the provisions of the Public Employees Retirement Association (PERA). An employee who meets any of the above retirement criteria may do so by giving notice as in Rule 903.

907 Disability Retirement

If an employee suffers from a permanent physical or mental unfitness or incapacity for duty, that employee may, if eligible, apply for and receive a disability retirement under PERA. Application for disability retirement may be initiated by the employee, but must, in all cases, be supported by medical evidence acceptable to PERA.

908 Lay Off

When one or more positions must be discontinued or abolished because of lack of funds, lack of work, reorganization or change of duties, the appropriate Director shall submit a written report, if applicable, to the City Administrator, recommending the position(s) to be discontinued.

908.1 The Director shall recommend to the City Administrator the order of lay off of employees based upon the relative suitability for the positions which remain. Layoff procedures contained in a collective bargaining agreement shall govern for those employees covered by the agreement.

908.2 Employees with regular status who have been laid off by the City shall be offered the first vacancy in their former position which occurs within the six months following lay off provided:

- A) the individual has expressed in writing his/her desire to be considered for reinstatement; and
- B) a current address for the former employee is filed in the Personnel Office; and
- C) the individual is qualified to perform the duties of the position.

908.3 Regular employees who must be terminated due to lay off shall be notified in writing and shall be added to the active file of candidates for employment upon submission of a new employment application.

909 Death

Termination by death of the employee shall be effective as of the date of death. All benefits due shall be paid to the estate of the deceased, except for those items which, by law, may be paid to a surviving spouse.

910 Discharge During Probationary Period

At any time during the probationary period an employee may be suspended without pay pending discharge by recommendation of the Director and City Administrator, subject to final approval by the Governing Body.

910.1 Employees discharged during their probationary period may not request a hearing under Rule 1001 or Rule 1102.

CHAPTER 10

PROBLEM RESOLUTION AND GRIEVANCE PROCEDURE

Rule 1000

Problem Resolution

The City recognizes that differences of opinion regarding working conditions or other matters will arise from time to time. Employees are encouraged to discuss freely any problem or complaint with their supervisor.

1001

Although most misunderstandings can and should be resolved on an informal basis with the supervisor, more formal provisions have been made to resolve difficult problems. For all employees not covered by a collective bargaining agreement, the procedure for presenting a grievance is as follows:

- Step 1 Concerns and problems not resolved informally should be brought to the immediate supervisor, in writing, on a form provided by the City within seven (7) calendar days following the event upon which the grievance is based. Supervisors are required to investigate the complaint and provide a response as soon as possible; but, in any event, not more than seven (7) calendar days.
- Step 2 If the grievance is unresolved, an employee may forward the grievance to the Director within seven (7) calendar days of the immediate supervisor's response. The Director will conduct an investigation of the grievance and render a written response within seven (7) calendar days.
- Step 3 If a grievance is still unresolved, the employee may, within seven (7) calendar days, present the grievance to the City Administrator for review. The City Administrator shall respond within seven (7) calendar days and such response shall be the final response.

1002

The grievance procedure is designed to be fair and expedient to resolve any conflict, thus, legal representation is not permitted.

- 1003** The grievance procedure may be utilized for a variety of reasons including, but not limited to:
- A) disagreement with performance evaluation rating.
 - B) disagreement with a disciplinary action not given as a result of a pre-determination hearing.
 - C) allegations of discriminatory or unfair actions.
 - D) allegations of harassment of any kind.
- 1004** The grievance procedure may not be utilized for resolution of adverse actions pursuant to Chapter 11.
- 1005** There may be times when for some reason employees feel they cannot take a complaint to their immediate supervisor. If this is the case, employees may go directly to the next highest supervisor. However, these cases should be rare, since the supervisor usually is better qualified to handle questions and work-related problems.
- 1006** It is the responsibility of each supervisor to see that all complaints are handled as quickly as possible and without prejudice. There will be no discrimination or reprisal against any employee for his/her part in a presentation of a complaint.
- 1007** All grievances taken beyond the level of the employee's immediate supervisor shall be presented in writing by the employee on a form approved by the City.

CHAPTER 11

ADVERSE ACTION AFFECTING EMPLOYMENT STATUS

Rule 1100

Definition of Adverse Action

Any recommended action which would adversely affect the employment status of an employee will be reviewed fully prior to imposing such action. Adverse action is defined as:

- A) Suspension without pay.
- B) Demotion.
- C) Discharge.
- D) Payment for intentionally or negligently damaging City property.

1101

Authority to Impose Adverse Action

All supervisors shall have the authority to recommend that adverse action be imposed upon an employee for failure of the employee to fulfill his or her responsibilities as an employee. However, no adverse action shall be imposed against an employee without the express written approval of the City Administrator, and not until such time as the affected employee has been afforded the opportunity for a pre-determination hearing before the City Administrator or designee.

1101.1

Notwithstanding the provisions of the above paragraph, a supervisor may immediately suspend and remove from the work environment any employee who poses a clear and present danger to himself or to others; who is committing or has committed a criminal act; or who otherwise is incapable of fulfilling the obligations of a job. In such cases, the employee may be asked to leave the work site. A determination will be made at a later time as to whether or not the suspension time will be deemed paid or unpaid.

1102

Pre-Determination Hearings

Upon recommendation of an action of adverse nature, the affected employee will be given the opportunity to participate in a pre-determination hearing, the purpose of which is to provide the employee with ample opportunity to present rebuttal to the recommended action consistent with the minimum standards of due process. A copy of the recommendation package shall be provided to the employee at least two (2) days in advance of the scheduled hearing.

- 1102.1 It is not mandatory that an employee avail himself or herself of the right to a pre-determination hearing. Employees will not be required to appear for a hearing. However, failure to appear at such hearing shall be deemed a waiver and abandonment of all pre-determination rights.
- 1102.2 The pre-determination hearing shall be informal in nature and shall not require adherence to the rules of evidence. Both sides will be given the opportunity to present evidence and testimony in support of their positions; however, extensive cross examination and argumentation will not be permitted.
- 1102.3 The affected employee may be accompanied to the hearing by a person of his or her choice who may ask questions or otherwise represent the affected employee. However, legal representation is not permitted at the pre-determination hearing.
- 1102.4 Within two (2) working days after the hearing, the City Administrator will issue a written determination either affirming, reversing, or modifying the original recommendation for adverse action. The affected employee will be provided a copy of the written determination prior to the imposition of any adverse action.
- 1102.5 The pre-determination hearing and procedures set forth in this policy in no way affect the rights of an employee to pursue remedy through the union grievance process.

1103 Special Discharge Hearing Procedures

The City Administrator will conduct the discharge pre-determination hearing. A determination for discharge will be accompanied by a written overview of the hearing. A copy of the overview and recommendation will be provided to the employee. The employee may submit a written statement which will be included in the recommendation packet to the Mayor and Governing Body.

- 1103.1 Any person discharged upon the recommendation and determination of the City Administrator will, upon request, be given the opportunity to appear before the Governing Body in either open or closed session to appeal the decision of the City Administrator. All actions taken by the Governing Body, however, to affirm or reverse the decision of the City Administrator must be made in open session.
- 1103.2 The Governing Body may affirm, reverse, or modify the decision of the City Administrator. The decision of the Governing Body is final and no further avenue of appeal within the City is available.

CHAPTER 12

EMPLOYEE BENEFITS

Rule 1200 All regular full time Employees are eligible for benefits provided by the City of Carlsbad. Employees who regularly are scheduled at or above 20 hours per week may be eligible for additional benefits accrual upon recommendation of the Director and with the approval of the City Administrator. Temporary and as needed/on-call positions are not eligible for City benefits.

1201 Health Insurance

All regular full-time employees are eligible to join the City's group insurance plan providing coverage for the employee and the employee's dependents. Participation in the group insurance plan is mandatory unless an employee is covered under another insurance plan. The City pays a portion of the cost of the plan. Specific details of the plan and the cost to the employee are available in the Personnel Office. The City's participation in providing group insurance is subject to modification or termination at any time as are the benefits, terms and conditions of such group insurance. Employees who have previously waived coverage under the City's Group Plan may be subject to demonstrating proof of insurability as required by the City's insurance carrier.

1202 Continuation of Insurance

An insured employee who terminates employment may elect to continue his/her coverage under the current plan under federal law (COBRA) for up to 18 months, or until disqualified by nonpayment of premium, or becoming eligible for other coverage. The employee is responsible for the total premium cost.

1203 Cafeteria Tax-Saving Plan

In accordance with Internal Revenue Code Section 125 and Section 10-7-14, NMSA, 1978, as amended, the City of Carlsbad offers its employees a "cafeteria" tax saving plan. The plan, which is voluntary, allows an employee through a written agreement to reduce his or her salary by an amount equal to the employee's group insurance costs. This type of plan is called a "premium only plan" and, since the group insurance costs are not subject to taxation, the overall tax burden of the employee is reduced.

1203.1 The written cafeteria plan agreement is binding for each plan year and can be changed only if the employee's marital or dependent status changes.

1203.2 The City's cafeteria plan is administered by a third party administrator (TPA) insurance company. The purchase of any additional insurance coverage is strictly voluntary on the part of the employee and the City in no way endorses or warrants any such product.

1203.3 Information about the City's cafeteria plan is available upon request from the Personnel Office.

1204 Workers Compensation

The City provides Workers Compensation benefits for all employees in accordance with state law. Specific policies regarding workers compensation are contained elsewhere in this manual and in the City Safety Manual.

1205 Workers Compensation Supplemental Income

Employees off work due to a work-related injury or illness who are receiving disability benefits as provided by Workers Compensation shall utilize accrued sick leave or annual leave to supplement their income up to the level of their normal base pay until all accrued benefits are exhausted.

1206 Retirement Benefits

Each regular City employee contributes a percentage of his/her gross salary toward retirement. The City contributes as required by the Public Employees' Retirement Association of New Mexico (PERA), or as otherwise approved by the Governing Body in a manner consistent with law and the PERA regulations. Retirees under PERA may be eligible for health insurance under the State's Retiree Health Care Authority.

1206.1 Any Employee who retires from the City under PERA will be afforded the option of selling their sick leave back to the City. The City will purchase the sick leave hours at 1/3 the value of the total hours accumulated.

1207 Deferred Compensation Plan

Pursuant to Internal Revenue Code Section 457 and Section 10-7A-1, NMSA, 1978, as amended, the City of Carlsbad offers its employees a Deferred Compensation Plan administered by a third-party administrator under contract to the State of New Mexico.

1207.1 The Deferred Compensation Plan allows an employee to defer a percentage of his or her annual salary. The plan reduces the employee's overall tax burden and the funds deferred and interest thereon are not subject to taxation

until such time as the funds are returned to the employee, usually upon retirement or termination of employment.

- 1207.2 Participation in the Deferred Compensation Plan is voluntary. Information on the plan is available from the plan administrator or Director of Human Resources.

1208 Sick Leave Buy Back

Employees who have a balance of at least 100 hours of sick leave on November 1 of each year shall be entitled to buy back all sick leave hours in excess of a 100 hours minimum balance at 1/3 (one-third) value up to a maximum of 120 hours in any calendar year. Employees who elect to buy back excess sick leave shall fill out a Sick Leave Buy Back Request Form and submit the form to the Payroll Department not later than the first work day in November. Sick leave buy back shall be paid by separate check on or before the last payday prior to Thanksgiving.

1209 Educational Incentive Pay

Recognizing the value of highly educated public employees to the public, and to encourage City employees to pursue academic degrees, education incentive pay, at ratios established in the City's Pay Plan, is offered for the following:

- Certificate
- Associates Degree
- Bachelor's Degree
- Master's Degree

- 1209.1 To be eligible for educational incentive pay, an employee must have received a degree from a fully-accredited college or university, recognized by the US Department of Education, verified by a certified official transcript.

- 1209.2 Employees who have received relevant academic degrees shall receive education incentive pay at double the rate established in accordance with the City's Pay Plan.

Relevant academic degree shall mean a degree conferred by an accredited college or university in a major field of study which corresponds directly with the classification duties of the employee. The City shall, after a review of the official transcript and employee's job description, determine the relevance of the academic degree to the Employee's classification duties. Compensation for educational incentive pay shall not be cumulative.

1209.3 The following employees are not eligible for educational incentive pay:

- A) employees who have earned degrees incidental to courses of study provided or paid for by the City and which entitle the employee to a promotion to a higher-paying classification;
- B) employees in positions for which a degree is a bona fide qualification for employment;
- C) employees subject to a collective bargaining agreement which does not expressly contain the provisions of this section.

1210 Employee Assistance Program (EAP)

An Employee Assistance Program is provided by the City for all regular employees at no cost to the employee. The program provides initial counseling for employees and their immediate family for a variety of personal problems, including drug and alcohol abuse, stress and family and marital problems. Information on the EAP is available from the Personnel Office.

1211 Leave Defined

Leave is any authorized absence, with or without pay, during regularly scheduled work hours which is approved by proper authority.

1212 Leave Approval

Leave shall be granted in consideration of the work requirements of the department and, whenever possible, the personal wishes of the employee. Requests for leave which are anticipated shall be requested sufficiently in advance to permit scheduling and work reassignment by the supervisor. Requests for leave shall be submitted in writing on a form provided for approval by the supervisor and submitted to the Department Head.

1213 Absence Without Leave - AWOL

An absence for which requested leave has been denied or an absence without requesting leave is an absence without leave (AWOL).

1214 Holidays

It is the policy of the City to insure that all regular employees enjoy the same number of paid holidays per year. The following days shall be recognized and observed as paid holidays:

New Year's Day
Martin Luther King Jr. Day
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Friday after Thanksgiving
Christmas Eve
Christmas Day

Additional holidays may be observed if approved by the Governing Body.

- 1214.1 For regular employees working a Monday through Friday work week, a holiday which falls on a Saturday shall be observed on the preceding Friday; a holiday which falls on a Sunday shall be observed on the following Monday.
- 1214.2 For regular employees on a work week other than Monday through Friday, the City Administrator shall determine the work day which shall be observed as the holiday.
- 1214.3 Employees working schedules other than five - eight hour days in a work week shall only receive holiday pay for eight hours for the holiday during work weeks in which a holiday falls. In such cases, the department shall have the option of switching to eight hour days during the holiday week or allowing the employees to use annual leave, if available, for the additional hours.
- 1214.4 A holiday which falls within an employee's annual leave shall be paid as a holiday and shall not be deducted from accrued annual leave. A holiday which falls within a period of sick leave shall be paid as a holiday and shall not be deducted from accumulated sick leave. A holiday which occurs during a period of unpaid leave will not be paid.

1215 Holiday Pay Eligibility

To be eligible for holiday pay, an employee must be eligible for pay for his last scheduled work day prior to the holiday and his first scheduled work day after the holiday.

1216 Floating Holiday

In addition to those holidays listed in Rule 1214 every employee shall receive an eight hour floating holiday each calendar year. Employees shall be entitled to take their floating holiday after four months of employment with the City

and shall take such floating holiday before January 1 of each year. Floating holidays shall not be carried over nor accumulated.

1217 Temporary Employees

A temporary or as-needed employee shall not be paid for a holiday unless the employee actually works on the holiday, in which case payment shall be made for the hours worked at their regular rate of pay.

1218 Work on a Holiday

A non-exempt, regular employee who must work on the day designated for observing the holiday shall, whenever possible, receive an alternate day off for the holiday. If the employee and the supervisor cannot schedule such a compensatory holiday, the employee shall receive, in accordance with Rule 610, one additional hour of pay at the regular rate for each hour worked on the holiday up to a maximum of eight hours, over and in addition to the regular or overtime pay, as applicable for the time worked. An exempt, regular employee who must work on the day designated for observing the holiday shall receive an alternate day off for the holiday.

1219 Annual Leave

Annual leave is intended primarily to provide each regular employee with a paid vacation each year, although it may be used for other employee needs requiring absence during working hours. Annual leave should be planned and requested as far in advance as practicable in order to allow the supervisor to plan for operation of the department and temporary coverage of duties. Annual leave may be used by an Employee as soon as it is earned.

1220 Payment of Unused Annual Leave

Employees who terminate employment shall be paid for unused, accrued annual leave at their regular rate.

1221 Accrual Rate for Annual Leave

Each regular full-time employee shall accrue annual leave based on length of service, in accordance with the following rate table:

1st through 5th anniversary - 80 hours

6th through 10th anniversary - 120 hours

11th through 15th anniversary - 160 hours

Years above 15 - 8 hours of annual leave for each year of service to a maximum of 240 hours.

1221.1 Leave without pay in excess of one calendar month shall not be credited toward cumulative service for leave rate purposes, nor shall additional leave be accrued during such periods. Time on paid leave is creditable time for vacation leave accrual.

1221.2 Regular part-time employees shall accrue annual leave on a pro-rata basis based on hours worked and the rate as specified in Rule 1221. Temporary and as-needed employees shall not accrue annual leave time nor sick leave benefits.

1222 Maximum Balance of Annual Leave

Annual leave may be accrued to a maximum balance of 400 hours except for Department Heads who may accrue to a maximum balance of 600 hours.

1223 Sick Leave

Each regular, full-time employee shall accrue sick leave at the rate of eight (8) hours per month. There shall be no limitation on the amount of sick leave benefits accumulated. Sick leave may be authorized for personal injury or illness. Sick leave may not be authorized for reasons unrelated to illness or injury, except as is authorized under FMLA and Disability leave. Upon separation from employment, no right shall accrue the employee for unused sick leave benefits, except as stipulated in Rule 1206.

1223.1 Sick leave benefits shall be paid at the employee's regular hourly rate to the extent the employee has earned and accumulated such benefits. Sick leave benefits paid shall be deducted from an employee's total sick leave accumulation on the basis of hours used. Sick leave benefits, when paid, shall only be paid for the employee's regularly scheduled work days.

1223.2 Accrued sick leave benefits shall be coordinated with weekly indemnity insurance benefits and temporary total disability benefits under the Workers Compensation Act in order to allow employees to be compensated at a rate equal to, but not greater than, his straight-time, hourly earnings.

1223.3 Employees on disability leave due to an on-the-job injury shall continue to accrue sick leave benefits for a period not to exceed one (1) year, or until termination, whichever is earlier.

- 1223.4 Any employee desiring to utilize sick leave benefits for non-emergency scheduled medical or dental treatment or examinations shall notify his supervisor at least 24 hours in advance of the date and time of such appointment. Employees will be released from work under such circumstances thirty (30) minutes prior to such appointment unless released earlier by their immediate departmental supervisor.
- 1223.5 Employees shall furnish a doctor's release on a form provided by the City before returning to work after having been absent from work for five (5) consecutive work days.
- 1223.6 Employees may utilize sick leave benefits for absence from work due to the illness or injury of the employee's spouse, child, parent, or other person living in an immediate-family relationship in the employee's home. Any employee desiring to utilize sick leave benefits for non-employee illness or injury shall notify his supervisor as far in advance of the date and time of such leave as is reasonably possible. Requests in excess of two days must be approved by the Director of Human Resources or City Administrator. The provisions of this paragraph shall not apply to classified employees unless such provisions are expressly stated in the applicable collective bargaining agreement.

1224 Notification of Supervisors

An employee who is unable to come to work because of the employee's illness or injury shall notify the immediate supervisor prior to the beginning of the employee's scheduled shift. A formal application for sick leave shall be submitted for post approval upon return to work. Failure to notify as required shall constitute a tardiness, but sick leave benefits shall not be denied.

1225 Exhaustion of Sick Leave

An employee who has used all his accumulated sick leave benefits and is unable to return to work, shall use previously accumulated vacation benefits in lieu of sick leave benefits until paid leave is exhausted. Subsequent approved absences for sick leave purposes will be leave without pay.

1226 Leave Without Pay

Upon the exhaustion of accrued sick leave and/or annual leave, as applicable, an employee will be considered to be on leave without pay for the remainder of the specified approved leave period.

1227 Effect of Leave Without Pay

Leave without pay does not constitute a break in service; however, leave without pay is not creditable service toward seniority, sick leave accrual, or annual leave accrual.

- A) Employees participating in the group insurance plans must comply with the premium payment provision.
- B) Employees who continue on leave without pay are responsible for payment of the full premium charge.
- C) The City does not guarantee the same or any position or salary to an Employee upon return from leave without pay in excess of 30 days except for situations arising under Rule 1233.

1228 Abuse of Sick Leave

An employee who abuses sick leave by using it for purposes other than those authorized in Rule 1223 shall be subject to disciplinary action.

1229 Voluntary Sick Leave Transfer

There are times when employees may face medical conditions which require an extended absence from duty and subsequently result in the exhaustion of their annual and sick leave accrual. In such cases, other employees who have a minimum of 240 hours accumulated sick leave, may voluntarily donate the transfer of a specified number of sick leave hours to a specific employee from their accrual bank, upon the approval of the City Administrator. A leave benefit transfer may be approved only for extended absences due to the employee's personal medical condition. Transfers will not be approved for a leave to care for a family member or other individual. When a leave benefit transfer is granted, the leave recipient shall be considered to be on sick leave with pay in accordance with the donated hours. However, during times of the use of donated sick leave, an employee shall not receive holiday pay nor accrue sick leave or annual leave.

1230 Request for Transfer of Leave

A donating employee may request the transfer of sick leave hours to a specific employee by submitting a written donation designation form to the Director of Human Resources. The Director of Human Resources will require verification of the recipient's inability to work, the exhaustion of sick leave accrual and the donating employee's leave balances prior to the approval of

the transfer. An employee may donate sick leave hours which have been accrued and are banked currently at the time of the transfer request, but must maintain a sick leave minimum balance of 240 hours. An employee may not carry a balance of donated sick leave that exceeds the amount necessary to compensate the employee for four weeks pay. Leave transfers from several employees can be processed for one individual.

1231 Leave Hours Converted to Dollars

Sick leave transferred will be converted to a dollar value and then converted to hours based on the recipient's hourly rate. Example: the leave donor's salary is \$8.00 per hour and the recipient's salary is \$16.00 per hour; thus, a donor must transfer twice the amount of hours to achieve full conversion.

1232 Termination of Medical Situation

The medical situation affecting a leave recipient shall be considered to have terminated as of the date on which the City Administrator determines that the medical situation no longer exists as substantiated by a doctor's certificate; or upon the termination of employment.

1232.1 Transferred leave remaining to the credit of a leave recipient when the medical situation is determined ended will not be credited back to the donating employee(s) nor will such transferred leave be available for further use by any recipient.

1233 Family and Medical Leave Act Policy and Procedures

Definitions

A) "Eligible employee" is an employee who:

- 1) has been employed by the City of Carlsbad for at least 12 months, and
- 2) has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

B) "Spouse" means a husband or wife as defined or recognized under the laws of the State of New Mexico.

- C) "Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parent "in law."
- D) "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."
- E) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
- F) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- G) "Persons who are in loco parentis" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.
- H) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - 1) any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility;
 - 2) any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider; or
 - 3) continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.
- I) "Continuing treatment by a health care provider" means one or more of the following:

- 1) the employee or family member in question is treated two or more times for the injury or illness by a health care provider.
 - 2) the employee or family member is treated for the injury or illness two or more times by a provider of health care services under orders of, or on referral by, a health care provider, or is treated for the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider to resolve the health condition.
 - 3) the employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured.
- J) "Health care provider" means:
- 1) a doctor of medicine or osteopathy who is authorized by law to practice medicine or surgery; or
 - 2) others capable of providing health care services include only podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized by law to practice and who are performing within the scope of their practice as defined by law; or
 - 3) nurse practitioners and nurse mid-wives, if any, who are authorized by law to practice and who are performing within the scope of their practice as defined by law; and
 - 4) Christian Science practitioners as defined by and limited by the Family and Medical Leave Act.

1233.1

Leave Entitlement

In any "rolling" 12-month period measured backward from the date an employee uses any FMLA leave, an eligible employee is entitled to a total of 12 work weeks of leave for any one or more of the following reasons:

- A) The birth of a son or daughter, and to care for the newborn child;

- B) The placement with the employee of a son or daughter for adoption or foster care;
- C) To care for the employee's spouse, son, daughter, parent, or other person living in an immediate family relationship with a serious health condition; and
- D) Because of a serious health condition that makes the employee unable to perform the functions of his or her job.

1233.2 Compensability of FMLA Leave

- A) FMLA leave shall be unpaid, except that an employee using FMLA leave for any permitted reason shall substitute his or her accrued sick leave, vacation and personal holiday leave to the extent such paid leave time is available to substitute for unpaid FMLA leave.
- B) The designation of leave as "FMLA leave" and as paid or unpaid shall be made before the leave is granted.

1233.3 Continuation of Health Benefits During FMLA Leave

- A) Benefits provided to employees through the City's group health plan will be maintained during periods of FMLA leave on the same conditions as such benefits would have been provided if the employee had been continuously employed during the entire leave period with the employee and City each continuing to pay their customary share of the cost of such benefits.
- B) Prior to the start of unpaid FMLA leave, a payment schedule will be agreed upon for payment by the employee of his or her share of group health coverage cost.
- C) If an employee on FMLA leave fails to make the required payment for his or her share of the group health coverage, coverage will be discontinued after the date the payment was due.
- D) Group health coverage which has been discontinued for non-payment by the employee of his or her share will be restored at the same terms and conditions upon return to work.
- E) If circumstances warrant, the City may elect to pay both the employee's and the City's share of health care premiums during periods of unpaid FMLA leave. However, the amount paid by the City for the employee's

share shall be recovered from the employee upon his or her return to work. If the employee fails to return to work after the end of the FMLA leave period as established in the regulations, the City may recover from the employee the amounts paid on his or her behalf for health care coverage during the period of unpaid FMLA leave.

1233.4 Employee Rights Upon Return to Work

An eligible employee who takes FMLA leave will be restored to the same position he or she held when the leave started or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

1233.5 Requesting FMLA Leave

- A) An employee must provide the City at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member.
- B) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the City may deny the taking of FMLA leave until at least 30 days after the date the employee provides notice to the City of the need for such leave.
- C) When the need for FMLA leave, or its appropriate timing, is not foreseeable, an employee shall provide notice to the City as soon as practicable under the facts and circumstances of the particular case.
- D) Employees shall direct requests for FMLA leave to the City's Director of Human Resources, or in his absence, the City Administrator.

1233.6 Medical Certification to Support FMLA Leave

- A) Medical certification may be required by the City of an employee requesting FMLA leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform the functions of his or her position.
- B) Medical certification, if requested by the City, must be provided in writing within 15 calendar days after the request is made or as soon thereafter as is possible depending upon the circumstances of the particular case.

- C) Medical certifications shall be made on a form provided by the City for such purpose.
- D) If an employee fails to provide timely medical certification of a foreseeable leave after requested to do so by the City, the taking of FMLA leave may be denied until the required certification is provided.
- E) If an employee fails to provide timely medical certification of an unforeseeable leave after requested to do so by the City, the City may deny the employee's continuation of leave.
- F) Under certain circumstances, the City may require subsequent medical recertifications. If requested, such recertifications will be requested at reasonable intervals, but no more often than every 30 days.

1233.7

Return to Work

- A) The City shall require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.
- B) Employees returning to work from leave occasioned by the employee's own serious health condition shall provide a doctor's release prior to returning to work.

1234

Disability Leave

- A) A non-job-related disability is any illness or injury not compensable under the Workers' Compensation Act and which causes an employee to be unable to perform the essential functions of his job, either permanently or temporarily.
- B) A job-related disability is any illness or injury compensable under the Workers' Compensation Act and which causes an employee to be unable to perform the essential functions of his job, either permanently or temporarily.
- C) Employees suffering from either non-job-related disability or job-related disability shall be granted a continuous disability leave not to exceed one (1) year. Successive disability leaves separated by less than 30 days of full-time work are considered one (1) disability, unless the second disability leave is due to a different cause and does not begin until after a return to full-time work. Successive disability leaves due to injuries received in one (1) accident are considered one (1) disability leave.

- D) As a condition of disability leave being granted, notice of the reason for the absence must be given to the City as soon as possible. The employee shall, as soon as possible thereafter, notify the supervisor of the anticipated length of the absence.
- E) As a condition of granting or continuing a disability leave, the City may require a physical or psychological examination by a duly licensed and practicing medical practitioner of the City's choice.
- F) The City has the right to take all reasonable actions necessary to comply with the Americans with Disabilities Act, even if the actions taken by the City are inconsistent with any provision of this manual.
- G) Employees on disability leave for non-job-related injuries or illnesses may return to their regular job at any time within one (1) year provided the employee furnishes a medical release stating that the employee can perform the essential functions of his regular job with or without reasonable accommodation.
- H) Employees suffering from job-related injuries or illnesses shall be allowed to return to work on light duty at their regular rate of pay at any time within the one (1) year period provided the employee furnishes a medical release stating that the employee can perform the essential functions of the light-duty job. The medical condition of employees who have returned to work on light-duty status shall be reviewed periodically and such employees shall return to their regular duties at the earliest time a medical release can be obtained stating that the employee can perform the essential functions of his regular classification with or without reasonable accommodation. In no event, however, shall an employee remain on light-duty status for a period longer than one (1) year. However, if after one (1) year an employee on light duty cannot obtain a medical release to return to his regular classification, and a vacancy exists in another classification for which a qualified employee can obtain a medical release stating that the employee can perform the essential functions of this classification with or without reasonable accommodations, the employee shall be offered the position as a permanent classification change at the commensurate rate of pay. If, after one (1) year on light-duty an employee cannot return to his regular classification and no permanent position is available for which the employee qualifies, the employee shall be terminated from employment.
- I) An employee, in case of sickness or injury incurred while off duty, may obtain the services of a duly licensed and practicing physician of his own choice, and shall obtain a release from such physician to return to work

if required. The City shall have the right to require the employee to furnish a release from a physician selected by the City, it being understood that such examination will be without cost to the employee. In such case, the employee will receive a copy of the physician's report in writing.

1235 Catastrophe Leave

Any employee sustaining a death in his/her or his/her spouse's immediate family, or sustaining a catastrophe such as a loss of a home by fire, flood or storm, shall be allowed a leave with pay up to a maximum of three days for local situations and up to five days for out-of-town situations. Additional time may be allowed for unusual travel distances. Such time will be fixed by the Director or the City Administrator after consultation with the employee, and the Director shall notify the employee of such fixed time. The immediate family shall be defined as spouse, children, mother, father, sister, brother, grandparents, and spouse's mother, father, sister or brother, grandparents, or anyone who is living with or has lived in an immediate family relationship. Local situations shall be defined as all destinations within a 150 mile radius of the City of Carlsbad. All other destinations shall be considered out-of-town situations.

1236 Court Time

An employee who is subpoenaed or directed by proper authority to appear in an official capacity due to employment with the City of Carlsbad as a witness for the Federal Government, State of New Mexico, or political subdivision thereto, shall be considered to be on City business.

1236.1 This benefit is not available for matters in which the employee is a litigant such as a petitioner, respondent, plaintiff, or defendant.

1237 Jury Leave

A regular, full-time employee who is called to jury duty in any municipal, county, state, or federal court will be placed on jury leave for the hours spent in service and shall be paid at the regular straight-time rate. Such pay shall be based on the hours the employee normally is scheduled to work during such time of service. Any additional compensation received for jury duty service during an employee's regular scheduled work hours shall be remitted to the City Treasurer.

Additionally, employees shall be given sufficient time off before jury duty to change clothes and travel in order to arrive on-time and appropriately attired.

1238 Administrative Leave

Administrative leave with pay may be extended to employees at the discretion of the City Administrator for work-related time away from the job.

1239 Personal Leave

A leave of absence without pay for personal reasons unrelated to FMLA or Disability leave may be granted to regular employees for a period up to four months.

1240 Request for Personal Leave

Requests for personal leave of absence without pay must be in writing and approved by the Director. Leaves in excess of five days must be approved by the City Administrator. Except in cases of emergency, requests must be submitted one month in advance. All requests must specify the date of return. Failure to return by specified date will be considered job abandonment. The employee is responsible for initiating any request for an extension of the approved leave period prior to the previously indicated return date.

1241 Military Training Leave

In accordance with provisions of Section 20-4-7, NMSA, 1978, regular employees, including probationary employees, will be granted military training leave with pay not to exceed 15 calendar days annually upon receipt of active duty training orders. Temporary and on-call employees are not eligible for military training leave.

1242 Extended Military Leave

A regular, full-time employee who is called for active military duty other than annual training as described in Rule 1241 may be granted military leave of absence without pay; such leave to extend no more than 90 days after release from active military duty.

1242.1 Employees with regular status who enter on extended military leave without pay shall be reinstated at their former position or the first vacant position in the same classification provided:

- A) The separation from the armed service was other than dishonorable; and
- B) The person applies within 30 days of separation from the armed service; and

- C) The person applies within 4 years from the time leave began; and
- D) The person is physically and mentally capable of performing the duties of the position.

CHAPTER 13

EMPLOYEE DEVELOPMENT

- Rule 1300** It shall be the goal of the City Administrator and Directors to foster and promote programs of training for the purpose of improving the quality of City service and aiding employees to qualify for advancement.
- 1301** Employees shall, whenever possible, in keeping with the goals of efficient and economical service, avail themselves of opportunities to learn the duties and skills of their fellow employees so that emergency requirements may be met and employee capabilities enlarged.
- 1302** The Director of Human Resources shall examine the relationship of the various jobs and determine logical paths of progression by which employees may qualify for transfer or promotion. In cooperation with Directors and Department Heads, the Director of Human Resources or designee shall develop criteria for advancement and shall identify and, whenever possible, provide for such additional training as is necessary to allow employees to advance.
- 1303** The Director of Human Resources shall:
- A) Assist Directors in developing and coordinating training to meet the specific needs of their departments and in developing and utilizing other techniques for increasing employee skills and efficiency.
 - B) Develop supervisory and management training and other types of training and employee development programs common to all departments.
 - C) Assist Directors in establishing standards of performance and procedure for evaluating employee efficiency and potential.
 - D) Provide to employees information and counseling concerning job requirements and training opportunities to enable them to increase their proficiency in their current positions and to qualify for promotion in the City service.
 - E) Whenever practicable, establish trainee or apprentice positions for skilled positions in the City service.

1304 Performance Evaluations

As a means to promote employee development the overall work performance of each regular employee shall be evaluated in writing as follows:

- A) During the probationary period at specified intervals.
- B) At other times as deemed appropriate by the Director and Department Head.
- C) Upon the transfer to another position in another department.

1304.1 The performance evaluation provides an opportunity for the employee to learn how the supervisor rates the employee's performance. It allows for recognizing accomplishments, identifying weaknesses, setting performance standards and goals and planning together for improvement.

1304.2 The Department Head will initiate the probationary review by sending notification to the supervisor approximately 30 days prior to the employee's performance review date. The supervisor will prepare the written evaluation, rating the individual on the basis of established duties, responsibilities and requirements as stated in the job description.

1304.3 The evaluation will be based upon the entire rating period. Recent events shall not receive undue consideration, nor shall singular or unusual circumstances such as reprimands, commendations, or other dramatic happenings.

1304.4 The supervisor conducting the evaluation will discuss the rating with the employee. No supervisor shall rate an employee without full discussion with the employee. Signature by the employee shall not indicate agreement or disagreement with the evaluation or elements of the evaluation. The employee may submit a written response to the evaluation.

1304.5 A performance rating which the employee feels to be unjustified may be appealed pursuant to the procedures in Chapter 10. The appeals process must be initiated within two weeks of the evaluation discussion.

1304.6 Employees may request a copy of their performance evaluation for their personal record keeping.

CHAPTER 14

USE OF DRUGS AND ALCOHOL

Rule 1400

Preface

The City of Carlsbad has a commitment to act as a leader in promoting a drug-free work force. To this end, all job applicants for positions must pass a drug/alcohol screen prior to employment. All employees are subject to a drug/alcohol screen based upon reasonable suspicion of the violation of this policy. All employees will participate in a substance abuse awareness program, if required by the City.

1401

Definitions

- A) "Reasonable suspicion" means a belief based on specific objective facts and reasonable inferences drawn from those facts.
- B) "Under the influence" means having the presence of a drug or alcohol at or above the level of a positive test result and the physical or mental manifestation of the influence of such substance upon a person.

1402

Drugs for Which to be Tested

When drug and alcohol screening is required under the provisions of this policy, a urinalysis or, if applicable, breath analysis by use of a breath analyzer will be used to detect the presence of drugs and alcohol.

1403

Current Employee Testing, General Standard

The City will require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during work hours. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

- A) a pattern of abnormal or erratic behavior.
- B) information provided by a reliable and credible source.
- C) direct observation of drug or alcohol use.
- D) following any accident which results in injury, whether to the employee or not.

- E) following any incident or accident which results in property damage .
- F) the presence of the physical symptoms of drug or alcohol use; i.e., glassy or bloodshot eyes, odor of alcohol beverage on breath, slurred speech, poor coordination and/or reflexes, etc.

1403.1 Upon the determination of the supervisor of reasonable suspicion, the supervisor will contact the Director, Safety Officer and Director of Human Resources immediately as the decision to administer a drug/alcohol test can be made only by these individuals.

1403.2 Supervisors are required to detail in writing, as soon as possible, the specific facts, symptoms, or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee following the recommendation. This documentation will be forwarded to the City Administrator and Director of Human Resources. The facts underlying the determination of reasonable suspicion will be disclosed to the employee at the time the demand is made. Failure of a supervisor to immediately report and document any information coming to their attention indicating any violation by an employee of any provision of this chapter shall be grounds for disciplinary action.

1403.3 Drug and/or alcohol tests shall be required of an employee immediately following any on-the-job accident or injury that may result in a workmen's compensation claim.

1404 Prohibited Activities

The following policy shall apply to all employees:

- A) Employees shall not report to any scheduled work assignment while having .04% by weight or more alcohol in the blood.
- B) Employees shall not report to scheduled or unscheduled work assignments under the influence of alcohol.
- C) Employees shall not consume alcoholic beverages within eight (8) hours of the start of his/her regularly scheduled work shift. This rule, however, shall not apply to unscheduled call outs provided that the affected employee is in compliance with paragraphs A and B above.
- D) Employees shall not report to any scheduled or unscheduled work assignment while using any substance that affects the employee's faculties in any way contrary to safety.

- E) Employees shall not consume any alcoholic beverage while on duty, nor shall an employee use any drug or medication while on duty if such drug or medication may affect the employee's faculties in any way contrary to safety.
- F) Employees shall not consume alcoholic beverages while off duty to the extent that such use could bring discredit to the department, the City, or the employee.
- G) Employees shall not use any drug or other substance contrary to law.
- H) Employees shall not use any controlled substances unless prescribed by a doctor and taken in accordance with the prescription.
- I) Employees shall refrain from the use of any tobacco product while performing official duties in public view and while performing official duties out of public view when citizens are present unless the citizens present give the employee affirmative, verbal approval for such use. In no case, however, shall an employee use any tobacco product while performing official duties in the presence of a juvenile.
- J) Employees on duty shall refrain from using any tobacco product in any way that is unsightly, unsanitary or offensive to co-workers.
- K) Employees on duty shall adhere to "No Smoking" restrictions where posted in public and private buildings and at any other locations where such restrictions exist or are posted.

1404.1 Violations of this policy will constitute cause for disciplinary action in accordance with departmental or contractual policies. Supervisory personnel are responsible for the enforcement of this policy and shall utilize reasonable measures to determine the fitness for duty of any employee.

1405 Supervisory Training

All supervisors will participate in a program of training to assist in the identification of drug and alcohol abuse among employees. Such training will be directed toward helping supervisors to recognize the conduct and behavior giving rise to a reasonable suspicion of drug or alcohol use and to be aware of those employees who pose an immediate safety threat.

1406

Consent

Before a drug and alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those municipal officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy. Employees and applicants shall, at this time, provide a list of those medications that he/she has used recently. The list of medications, if provided, shall be held as confidential. In the event of a confirmed positive test result, the list of medications shall be disclosed only to the medical official at the test site who will determine whether the positive result was due to the lawful use of any of the listed medications.

1406.1

The consent form also shall set forth the following information:

- A) The procedure for confirming an initial, positive test result;
- B) The consequences of a confirmed positive test result;
- C) The right to explain a confirmed positive test result and the appeal procedure available; and
- D) The consequences of refusing to undergo a drug and alcohol test.

1407

Refusal to Consent: Applicants

A job applicant who refuses to consent to a drug and alcohol test will be denied employment with the City.

1408

Refusal to Consent: Employees

An employee who refuses to consent to a drug and alcohol test when reasonable suspicion of drug and alcohol use has been identified, as in Rule 1403, is subject to disciplinary action up to and including termination. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action.

1409

Confirmation of Test Results

An employee or job applicant whose drug test yields a positive result will be given a second test for verification purposes. The second test will use a portion of the same test sample from the employee or applicant used in the first test.

1409.1 If the second test confirms the positive test result, the employee or applicant will be notified of the results in writing by the Director of Human Resources. The letter of notification shall identify the particular substance found and its concentration level.

1409.2 An employee or applicant whose second test confirms the original positive test result may, at the employee's or applicant's own expense, have a third test conducted using the same sample at a laboratory approved by the City.

1410 Consequences of a Confirmed Positive Test Result

Applicants:

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

Employees:

If a regular employee's positive test result has been confirmed, the employee is subject to disciplinary action and mandatory participation in a drug and/or alcohol assessment program, conducted by a licensed, qualified health care counselor or provider, for a first offense. The disciplinary action issued will be based upon a review of the employee's personnel file and may result in a recommendation for discharge.

1410.1 A confirmed positive test result during the probationary period will result in a recommendation for discharge.

1411 Return to Work Agreement

Employees who participate in a treatment program and whose disciplinary action does not result in discharge will be required to enter into a Return to Work Agreement which provides:

- A) That they thereafter refrain from violating the City's policy on drug and alcohol abuse.
- B) That they submit to random drug and/or alcohol screens or testing, as directed by the City Administrator, at the employee's personal expense, for a period not to exceed two years following their return to work.

- C) Such other counseling, treatment, or other rehabilitation requirements as recommended by their participation in a treatment program.

1411.1 A refusal to submit to a required, random screen or a violation of the Return to Work Agreement will constitute grounds for termination.

1412 Voluntary Participation in Rehabilitation

Voluntary participation in a treatment program is encouraged. A regular employee may request a leave of absence in accordance with the provisions of the leave of absence policy through his supervisor or the City Administrator. Such request and resultant leave of absence will be held confidential.

1413 Confidentiality

All records and information pertaining to employees and the enforcement of this policy, as well as all files relating to laboratory reports or test results, except for documentation of disciplinary action and the Return to Work Agreement, will be placed in a special locked file maintained by the Director of Human Resources. Such records will remain confidential with only authorized individuals who have a "need to know" having access to them.

1413.1 All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee or applicant, or required by law. The results of a positive drug test will not be released until the results are confirmed. The records of unconfirmed, positive test results and negative test results will be destroyed by the testing laboratory.

1414 Laboratory Testing Requirements

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

- A) Testing procedures that ensure privacy to employees and applicants consistent with the prevention of tampering;
- B) Methods of analysis that ensure reliable test results, in accordance with industry standards to confirm positive test results.

- C) Chain-of-custody procedures that ensure proper identification, labeling and handling of test samples; and
- D) Retention and storage procedures that ensure reliable results on confirmatory tests of original samples.

1415 Employee Rehabilitation Referral

The City will provide information to employees concerning the Employee Assistance Program (EAP) for assessment, counseling, and rehabilitation of drug and alcohol abuse available within the community. Participation in such programs are voluntary and no disciplinary action may be taken against an employee for failure to begin such program, unless participation is a condition of continued employment in accordance with Rule 1411.

1416 CDL Testing Requirements

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive transportation employees, i.e., employees who are required to have a commercial driver's license (CDL). This law requires employers to conduct pre-employment, reasonable suspicion, random, and post-accident testing of holders of a CDL.

1416.1 Although alcohol is a legal substance, the rules prohibit the performance of safety-sensitive functions in the following circumstances:

- A) While having an alcohol concentration of 0.04 or greater as indicated by an alcohol breath test;
- B) While using alcohol;
- C) Within four hours after using alcohol; and
- D) Using alcohol within eight hours after an accident or until tested.

1416.2 The rules require the following alcohol tests for safety-sensitive employees:

- A) Pre-employment - conducted before applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time; also required when employees transfer to a safety-sensitive position.
- B) Post-accident - conducted after accidents on employees whose performance could have contributed to the accident.

- C) Reasonable suspicion - conducted when a supervisor observes behavior or appearance that is characteristic of alcohol misuse.
- D) Random - conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions.
- E) Return-to-duty and Follow-up - conducted when an individual who has violated the prohibited alcohol conduct standards returns to performing safety-sensitive duties; follow-up tests are unannounced and at least 6 tests must be conducted in the first 12 months after an employee returns to duty; follow-up testing may be extended for up to 60 months following return to duty.
- F) The number of random tests conducted annually must equal at least 25% of all the safety-sensitive employees.

1416.3 The rules broadly prohibit any unauthorized use of illegal drugs (i.e., controlled substances) by safety-sensitive employees on or off duty. In addition, there are other rules which prohibit the use of legally prescribed controlled substances by safety-sensitive employees while operating commercial vehicles. Regulations require safety-sensitive employees to report any medical use of controlled substances.

1416.4 As with alcohol testing, the rules require pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up drug testing.

The following provisions govern random drug testing:

- A) At least 50% of the safety-sensitive employees must be randomly tested for drugs each year.
- B) Some employees may be tested more than once each year and others not at all depending on the random selection.
- C) Because use of illegal drugs is prohibited both on and off duty, the random testing for drugs does not have to be conducted in close time proximity to the performance of safety-sensitive functions.

- 1416.5 If a safety-sensitive employee tests positive in either an alcohol or drug test, the rules mandate the following:
- A) The employee must be removed from safety-sensitive duty;
 - B) the employee cannot be returned to safety-sensitive duties until he/she has been evaluated by a substance abuse professional, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug or alcohol test;
 - C) Follow-up testing to monitor the employee's compliance with the alcohol and drug policies.
- 1416.6 If a safety-sensitive employee refuses to submit to a required alcohol or drug test, the employer may not permit the employee to continue to perform safety-sensitive functions.

CHAPTER 15

TRAVEL

Rule 1500

Travel out of the City limits on City business requires the prior, written authorization of the City Administrator. Employees who are required or requested to travel out of the City limits shall submit a travel order and expense request form to their Director who shall forward the request form to the City Administrator at least one week prior to the anticipated travel.

- 1500.1 City employees required to travel on City business will be paid for mileage and per diem expenses as specified in the City's mileage and per diem resolution. Upon return from authorized City travel Employees shall complete and submit a travel expense report within five working days after completion of travel.
- 1500.2 For the purpose of this policy, ambulance runs out of town, urgent police matters requiring travel to nearby cities and other sudden, urgent business requiring travel to nearby cities are excluded from the requirement for prior notification; however, the Director must approve such travel.
- 1500.3 Out-of-state travel for any City employee on City business requires the prior, written authorization of the Mayor which is accomplished by the Mayor signing as indicated on the travel order and expense request form prior to the anticipated travel.
- 1500.4 Cash advances for travel can be paid only upon prior approval of the City Administrator pursuant to City Resolution.

CHAPTER 16

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY

Rule 1600

It is the policy of the City of Carlsbad to forbid discrimination against any employee or applicant for employment on the basis of sex. The City will not tolerate sexual harassment activity or sexual misconduct by any of its employees. This policy similarly applies to non-employee volunteers who work subject to the control of City authorities.

1601

Definitions

A) Conduct of a Sexual Nature is:

- 1) physical sexual advances including touching, pinching, patting and brushing against;
- 2) verbal sexual advances including comments or descriptions regarding physical or personality characteristics of a sexual nature, sexually-oriented teasing, double entendre and sexually-oriented jokes;
- 3) any display of sexually-oriented photographs, drawings, or any other sexually-oriented visual media when such display has no valid job-related purpose.

B) Unwelcome Conduct of a Sexual Nature is conduct of a sexual nature directed toward an employee who has indicated by his or her conduct or verbal statement that such conduct is unwelcome.

C) Sexual Misconduct is any conduct constituting a criminal sexual offense under the laws of the State of New Mexico or the ordinances of the City of Carlsbad.

D) Sexual Harassment is unwelcome conduct of a sexual nature when:

- 1) submission to such conduct is made either an implicit or explicit condition of employment, or
- 2) submission to or rejection of such conduct is used as a basis for any employment decision affecting the subject employee, or
- 3) such conduct interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

1602 Reporting

It is the express policy of the City of Carlsbad to encourage employee victims of sexual harassment or sexual misconduct to come forward with such claims. Employees who feel that administrators or supervisors are conditioning promotions, increases in wages, continuation of employment, or other terms or conditions of employment upon sexual favors are encouraged to report these conditions to the appropriate supervisor.

1602.1 If the employee's direct supervisor is the offending person, the report may be made to the next higher level of administration or supervision. Reports may also be made directly to the City Administrator or Director of Human Resources.

1602.2 Employees are also urged to report any unwelcome conduct of a sexual nature by supervisors or fellow employees if such conduct interferes with the individual's work performance or creates a hostile or offensive working environment.

1602.3 Confidentiality will be maintained and no reprisals or retaliation will be allowed to occur as a result of the good faith reporting of charges of sexual harassment or sexual misconduct.

1603 Investigation

In determining whether alleged conduct constitutes sexual harassment or sexual misconduct, the totality of the circumstances, the nature of the conduct and the context in which the alleged conduct occurred will be investigated. The City Administrator, Director of Human Resources, Directors and Department Heads have the responsibility to investigate and resolve complaints of sexual harassment or sexual misconduct.

1604 Disciplinary Action

Any employee found to have engaged in sexual harassment or sexual misconduct shall be subject to disciplinary action in accordance with applicable City policies or contract provisions.

1605 Dissemination of this Policy

Directors shall ensure that this policy is disseminated to all employees through SOP Manuals or other appropriate means. Records shall be maintained indicating that each employee has been provided with a copy of this policy.